burst into applause as Senator Revels became the first African American ever to serve in the Senate.

Five years later, Mississippi sent America its second African American Senator, Blanche Kelso Bruce, the first African American to serve a full term in the Senate.

Although he served only 6 years, Senator Bruce distinguished himself as a passionate advocate of civil rights for blacks, Native Americans, Chinese immigrants, and even former Confederates.

Besides Mississippi, there was another bond that connected these extraordinary men: a fierce commitment to education.

During the Civil War, Hiram Revels not only raised two black regiments for the Union Army and fought at one of the war's bloodiest battles, he established a school for freedmen in St. Louis. After serving in the Senate, he became president of a college in Mississippi.

Blanche Bruce was born a slave. His first teacher was a tutor hired to teach his master's son. At 20, he escaped slavery and became a teacher in Missouri. He later attended Oberlin College and spent much of his life after the Senate working to bring learning to former slaves, their children, and grandchildren.

It is fitting we remember these two great men of history in this Chamber where they made history, and it is especially appropriate that we remember them this year, on the 50th anniversary of Brown v. Board of Education, the Supreme Court ruling that declared once and forever that in America, no child can be consigned to a second-class school on the basis of race.

All Americans—not just African Americans, all Americans—are the beneficiaries of the Brown decision. It has made America stronger spiritually by realigning our public institutions with our great guiding principles.

It has also made America strong economically, socially, politically, intellectually, artistically, militarily, and in so many other ways by requiring every child in America—every child—be given the opportunity to make the most of his or her God-given potential.

In this Black History Month especially, America remembers and honors Thurgood Marshall and Linda Brown, the giant at the head of the NAACP brilliant legal team in Brown, and the brave little 8-year-old girl at the center of the case. We also remember and honor all those who helped them—and there were many—because it takes many people of good will to right great wrongs. But it is not enough to remember great turning points in our past. We should also rededicate ourselves to the great principles at the heart of the Brown decision.

This Black History Month, the right of every child in America to attend a good school and get a good education, regardless of race or income, is once again in jeopardy. The threat to equal educational opportunity today is not as obvious or virulent as it was before Brown. We no longer tolerate laws that say some children can be consigned to second-rate schools and third- or fourth-rate futures. In fact, our laws today promise to leave no child behind. But the law is not being funded. It is a check written on insufficient funds.

I was the first in my family to graduate from college. I could not have gone to college had it not been for the ROTC scholarship I had.

I voted for No Child Left Behind because I believe every child in America deserves the same opportunities I have been given. I voted for No Child Left Behind because I know investing in the minds of young people is the smartest, most productive investment a nation can make. I voted for No Child Left Behind because I support accountability and because I have no doubt that students, teachers, principals, parents, and school board members in South Dakota and across the country can meet higher standards as long as they are given the resources.

I voted for No Child Left Behind because President Bush gave his word that the law would be funded, but that is not what has happened. In the 2 years since President Bush signed the law, he has proposed three budgets to Congress. All three times, the President has drastically underfunded his own education reform plan. The education budget President Bush recommended for next year falls $9.4 billion short of what was originally promised in No Child Left Behind, $9.4 billion less than what is needed to make it work.

The program that is most critical to closing the achievement gap between minority and nonminority students, title I, is cut the deepest—more than $7.1 billion below what the law promises. The President's education budget does not leave one child behind; it leaves 4.6 million children behind, and a disproportionate number of them are African American and members of other minorities.

The President's budget also makes deep cuts in afterschool programs despite strong evidence that good afterschool programs keep children safe and help them academically. It provides less than half the share of special education costs the Federal Government committed in 1975. It slashes career and technical education. It eliminates dropout prevention programs. Despite promising during the campaign of 2000 and again last month in the State of the Union Address to raise the maximum Pell grant by $1,000, the President's budget actually freezes Pell grants next year for the third year in a row. Three years ago, the maximum Pell grant paid 42 percent of the average annual cost of attending college. Today, it covers only 34 percent.

The President's neglect of education and his repeated refusal to fund even his own educational plan is hurting America. It is hurting African-American and other minority children disproportionately. This is not a partisan criticism. Republican legislators in Arizona and Minnesota have introduced bills that would allow their States to partially opt out of No Child Left Behind. They consider it an unfunded mandate.

Legislatures in at least 10 other States have adopted resolutions criticizing the law and seeking waivers from parts of it. In Utah, a Republican-dominated House has voted not to implement No Child Left Behind unless Federal funds are provided adequately. States are being put in a horrible bind: Accept huge, costly, unfunded mandates or give up tens of millions of dollars or more in Federal education aid, much of which is intended and which works to close the achievement gap.

Brown v. Board of Education is one of the most inspiring chapters in our Nation's history. It gave all American children the promise of equal educational opportunity and the No Child Left Behind Act reaffirmed that promise in principle, but the promise is hollow unless we fund it. When the Senate debates the budget resolution, we will be offering amendments to fully fund the No Child Left Behind Act and to make other critical investments in education and training.

It is important we remember our history. It is also essential that we keep our promises and invest in our future.

I yield the floor.

RESERVATION OF LEADER TIME

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

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 1805, which the clerk will report.

The assistant journal clerk read as follows:

Motion to proceed to the bill (S. 1805) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. will be equally divided between the Senator from Idaho, Mr. CRAIG, and the Senator from Rhode Island, Mr. REED, or their designees.

Who seeks recognition?

The Senator from Idaho.

Mr. CRAIG. Mr. President, the leader has obviously taken time. We thought we were going to have an hour on each side. Is the vote still scheduled for 10:30, or does the leader's time count in that?

The ACTING PRESIDENT pro tempore. The vote will be at 10:30. The time has been reduced proportionately.

Mr. CRAIG. I think we can live with that.

The ACTING PRESIDENT pro tempore. For the information of the Senators, each side will have 23 minutes.

Mr. CRAIG. I believe several of my colleagues will want to be on the floor to speak prior to the cloture vote. As the leadership has said, there is a cloture vote on the motion to proceed to S. 1805, the Protection of Lawful Commerce in Arms Act. We will vote on that at 10:30 this morning.

I regret that a few of our colleagues are forcing us to go through this procedural step instead of simply moving to the bill. This bill is supported by a strong bipartisan majority in the Senate, and I believe as we work our way through it, that kind of bipartisan relationship will clearly demonstrate itself. More than half the Senators, as I have said, both Republicans and Democrats, are cosponsors of our legislation, including the leadership of both parties. A very similar bill passed in the House nearly a year ago by a 2-to-1 vote margin, or nearly that margin.

Some of our colleagues have already announced they intend to play politics with this bill instead of debating its merits. They have already announced their intention to throw a variety of nonrelated bills or amendments at this important—the legislation my guess is to attempt to divert the legislation and delay the completion of its consideration. However, I believe this morning's vote will demonstrate that a majority of the Senate is, indeed, ready to proceed to this bill and to debate it, as we should, offer legitimate amendments, debate those amendments fully, and vote them up or down if necessary.

This legislation addresses a crisis in our courts and the integrity of our courts because our courts are now threatened by the kind of lawsuits that are simply not necessary but politically motivated. For a long time, the trial bar has attempted to use the court system to legislate social policy or legal activity in this country. What this bill does, and what we have worked to do and why it has gained the support it has, is craft a very narrow exception in the law so that we still hold those responsible accountable for their actions under all laws.

What we have always said within the law is that someone cannot be held accountable for someone else's actions, and if someone is attempting to reach back through the law when someone is innocent and legal in their acts, then that kind of thing ought to stop. That is why we have worked hard to craft it narrowly.

I think Americans clearly understand what we are attempting to do, and that is our goal. I hope my colleagues will vote in favor of cloture so that we can get into the full and robust debate of this legislation. It is important.

I will turn to my colleague, Senator REED, who will be handling the opposition, and then I believe at that time we will probably have several of our colleagues who wish to speak to it.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. REED. Mr. President, I rise in strong opposition to the so-called Protection of Lawful Commerce in Arms Act. At a time when this country is faced with extraordinary problems—with economic problems, international problems—we are devoting very precious time to legislation that is in behalf of a special interest rather than dealing with the broader public interest, the economy of this country and the international position and status of this country.

This is not legislation that is designed to protect the courts. This is legislation that is designed to protect gun dealers, the gun industry, manufacturers, and trade associations such as the National Rifle Association. To suggest this is simply a response to politically motivated cases flies in the face of cases that have been filed, like the cases of the victims of the sniper shootings here in Washington, DC; people like Bernice Johnson, whose husband was sitting on a bus reading his paper waiting to go on and run his route that day and was killed. It subsequently turns out the weapon that was used in this crime came from a dealer in Washington State who apparently couldn't account for 238 weapons. Mrs. Johnson is not suing to make a political point. She is suing simply because she lost her husband, the father of her children, and she would like to hold responsible those people who were negligent.

The suggestion that this is a minor exception to the law when people are acting legally, following a statute, flies in the face of our concept of civil liability. It is not a question of just following the law. It is also a question of being responsible for your actions, of not being negligent, of taking due care in the performance of your legal duties. This whole approach is something I think flies in the face of basic common sense and the basic law of this country.

We are struggling with huge problems across this Nation. Yet we are spending precious time here to try to deal with the interests of a special group of people, a very influential group of people. We are not out protecting the rights of Mrs. Johnson and others bringing this suit. We are protecting the rights, frankly, of the gun industry to be negligent and harm people through their negligence.

This legislation is not a minor, carefully crafted exception. It would wipe out virtually every opportunity to assess whether a gun dealer, a gun manufacturer, or a trade association was negligent in their activities. It would bar virtually all negligence for product liability in State and Federal courts and throw out all pending cases, cases that have already been filed prior to this date, prior to the potential enactment of this legislation. It is a sweeping immunity to gun dealers, gun manufacturers, and even trade associations such as the National Rifle Association.

It is no wonder the gun lobby dropped this legislation in the 107th Congress, because we were paralyzed here in Washington by a sniper—two snipers, it turns out—who killed people with weapons that were obtained through the apparent negligence of a gun dealer. Yet these individuals, these victims and their families, would be denied the right to go to court because of this legislation.

It is also ironic that this would be the first gun bill to be enacted since Columbine, a situation in which, again, young people, disturbed young people, were able to go to a gun show using a straw purchaser, using the loophole that exists in buying weapons without a background check, and then went into a high school in Colorado and wreaked havoc. Instead of closing the gun show loophole, we are now trying to open up a huge highway for the negligence of gun dealers, negligence of the gun industry.

Talking about the procedural correctness of this approach, this legislation did not go through the Senate Judiciary Committee. There were no hearings, no committee markups were ever scheduled. This very complicated issue of balancing the rights of plaintiffs versus the rights of defendants in the context of civil litigation was never fully assessed through hearings. Now we are here and now we must have a vigorous debate on this legislation. We must not only look to the specifics of this legislation but also to its impact across the country and address some larger issues of gun violence in the United States.

Two years ago or so, it was the Washington area snipers who paralyzed this country, certainly paralyzed this area of the country. Today there is apparently one or perhaps more gunmen who are stalking innocent people on the highways of Ohio.

Gun violence exists and we should do more to stop it. We should use this opportunity to pass provisions that will close the gun show loophole, that would reauthorize the ban on assault weapons that has operated in the last few years at least to keep the most dangerous weapons out of the hands of some very dangerous people. We should require effective safety locks on handguns. We should improve the national instant criminal background check system so there is a more accurate and more effective system of checking.

These are the things we should be doing and I hope we can have an opportunity to offer amendments in this regard. Every day there are hundreds of thousands, millions of families who struggle to do all they can to protect their children and themselves. Here we are telling the gun industry: Don't join that effort to make people safer. You can ignore reasonable, responsible actions. You can be negligent and you will not be brought to justice.

I think that is wrong. I think that is bad law, bad public policy. I urge my colleagues to oppose this legislation, to

oppose this motion to go forward. There are much more pressing demands in this country we should address today: the unemployed, those who are struggling to find jobs in a jobless economy; funding fully our national defense. We have a budget that was presented to us that does not include any money for Iraq and Afghanistan. That is something we should be focused on today.

Mr. DODD. Will my colleague yield?

Mr. REED. I am happy to yield.

Mr. DODD. I commend my colleague for his statement this morning. I want to underscore the last point he is making.

Here we are with the highest unemployment figure since the Great Depression and we are debating the gun issue. I come from a State that probably has more manufacturers of guns than any other in the country. I think Connecticut is still the largest manufacturer. The idea we are going to take an entire industry and exclude it from liability should there be a just cause to bring them to a bar of justice is rather remarkable to me in light of everything else going on in the country. So I commend my colleague from Rhode Island. We come from the same region of the country. We have lost 45,000 jobs in my State in the manufacturing sector in the last 30 months. I ask whether, in his view, there aren't higher priorities we ought to be addressing other than excusing an entire industry from liability against negligence?

Mr. REED. Reclaiming my time, I agree entirely with the Senator from Connecticut. Rhode Island, like Connecticut, is seeing its manufacturing base evaporate. These are real problems. These are problems that affect families throughout this country. This is truly in the public interest, finding an answer to disappearing jobs throughout the country. Yet today we want to protect one very special interest.

Let me add, too, as the Senator points out, not only are we trying to give an unprecedented immunity to one industry, this industry is virtually unregulated in the sense of other industries. It is not controlled by the Product Safety Commission, which would look at the product design. So one of the only recourses an individual has with respect to negligence claims is through the courts. Here we are eroding that avenue.

Mr. DODD. I thank my colleague. If he will yield further?

Mr. REED. I will.

Mr. DODD. I thank my colleague. I will join him in opposing cloture on this bill and I hope the leadership would move on with another issue that I guarantee has a far higher priority with the American public than to satisfy one industry's fear that they might have to appear before the bar of justice to explain their behavior. The idea we would exclude this industry—we tried to do that on another issue on the MTBE issue that came up on the energy bill. As my colleague may know, I offered the securities reform bill, the National Standards legislation, Y2K, terrorism insurance. I am also a strong advocate of class action reform. I am not an opponent at all of trying to reform the tort system. But the idea that we would eliminate an entire industry from liability due to the potentiality of their products for causing great harm is amazing to me. Given the challenges our country faces, it is amazing we would spend time on this legislation.

Mr. DURBIN. If the Senator will yield, I thank the Senator from Rhode Island for his leadership on this issue. I worked with him and I will continue. I would like to ask him this question.

Am I correct that yesterday the item of business before us was to exempt individuals who had been held liable for creating medical injuries from their full accountability and liability in medical malpractice, including pharmaceutical companies and medical device companies? That was the item on the agenda yesterday. Now, today, we are taking up the exemption from liability for gun manufacturers and dealers. Does the Senator from Rhode Island detect a pattern here, that each day of the week we are going to try to single out another special interest group and give them an exemption from accountability and liability in courts in America?

I think he is accurate in his description of what we have been doing in the last couple of days, which is trying to not provide for the public interest but to protect special interests, and not to provide individual citizens a right, regretfully, when they have been harmed, at least a right to make a determination of who should be held liable, but simply and categorically strip away these rights and to protect industries that have powerful influence in Washington.

Mr. DURBIN. Mr. President, I ask the Senator: Did he not say this bill has never gone through a committee for hearings and for our close scrutiny in determining exactly what the impact would be?

Mr. REED. Mr. President, the Senator is right. There have been no hearings. This bill has been brought to the floor directly. That is why it is incumbent for us to take a greater amount of time to look over the bill.

Mr. DURBIN. If the Senator will yield for a further question, if we look at existing law in America and at companies, manufacturers, and interest groups that are currently exempt from being held accountable in a courtroom for misuse of their products or selling a product, the only one I can think of is the Price-Anderson law relative to the nuclear power industry. There are a lot of different exceptions where we have said you can't be sued no matter what you do. Is there a long list we are adding to with this legislation?

Mr. REED. The only exception other than Price-Anderson I can think of is General Aviation Aircraft, over 18 years old, that has special protection. That is a very narrow protection, and I think it is nothing like contemplated in this legislation.

I must also note those aircraft are supervised by the FAA. There is significant Federal involvement in the design and airworthiness, things that do not apply at all to a weapon.

Mr. DURBIN. If I may ask the Senator a further question, if he will yield for a question, is it my understanding if we pass this bill that individuals—for example, the victims of the District of Columbia snipers—who are going after gun dealers who were selling massive amounts of weapons which they could not even account for, that we may in fact eliminate the lawsuits brought by the surviving families of the DC snipers against the gun dealers who were just negligently and wantonly selling guns without any consideration as to whether they could be misused?

Mr. REED. That is my understanding. It is not only my understanding, but it is the understanding of various counsel who looked closely at this legislation and rendered an opinion to that effect.

Mr. DURBIN. If the Senator would further yield for a question, we had two individuals we believe who were absolutely terrorizing the Washington, DC area and killing people with sniper rifles. Then we identified where that rifle was purchased and found out this Bull's Eye dealer—whatever the name was—was not even keeping good records of the guns that were being sold. The families of the victims who were killed by the DC snipers believe the gun dealer should be held liable and accountable for its negligence in selling guns without keeping the records that are required. And the Senator from Rhode Island is telling me we are bringing a bill to the floor of the Senate to exempt the gun dealer who sold the weapon that killed these innocent people in the Washington, DC area from liability. Is that what this debate is all about?

Mr. REED. That is my view entirely. That is what this legislation will accomplish. It will not only prospectively provide barriers to the courts for victims of negligence like this, but it will reach back and protect these individuals who apparently—at least arguably—were negligent in not properly controlling over 230 weapons, not just the one the snipers used, which disappeared.

Mr. DURBIN. I ask the Senator from Rhode Island: If we are going to decide to pass laws here on a daily basis to exempt companies across America from being held accountable for their negligence and for wrongful conduct, does the Senator from Rhode Island share my belief this is going to become an auction process where the Senate, frankly, will decide which special interests we will honor on a weekly basis to make certain they cannot be held accountable by a jury of their peers

and by judges so that individuals who were wronged, like the victims of the District of Columbia snipers, will eventually find they have no recourse? They cannot go to the White House on a gun issue because the President is on the side of the gun lobby. They cannot go to Congress which is controlled by Members who apparently pay a lot more attention to the gun lobby than gun victims. So we are closing the courthouse doors to the victims of gun violence by the passage of this legislation.

Mr. REED. I think the Senator is entirely correct. His insight also is accurate in that I cannot see that other industries, if we pass this, won't come to us and say, We have very valid reasons, too. We are being assailed every day by these claims. This sets a very dangerous and very unfortunate precedent.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. Six minutes 20 seconds.

Mr. DODD. Mr. President, will my colleague yield for an additional question? I was curious whether my colleague would share with us what problem this legislation seeks to solve. Normally, when you bring a bill to the floor you try to solve the problem. I wonder if my colleague has any idea of the volumes of lawsuits that have been brought against gun manufacturers that the author of this legislation is trying to solve.

Mr. REED. Very few suits have been filed. There is not an epidemic throughout the Nation, but probably the best evidence is from the companies themselves. Let me make reference to the 10–K report on weapons.

> In the opinion of management, after consultation with special counsel, it is not probable and is unlikely that the outcomes of these claims will have a material adverse effect on the results of the operations or the financial condition of the company as managers believe it has provided adequate reserves.

So in 10 cases, in the statement required to be sworn to under the securities laws, Smith & Wesson and other companies have essentially said there is not a material problem.

At this point, because I know there are other speakers who would like to respond——

Mr. DODD. If the Senator will yield for one more additional question, I want to make the point that my colleague is absolutely correct.

Further, is he aware that over the last 10 years there have been 33 cases brought by municipalities—one in the State of New York—and none of them have resulted in conclusions that have been harmful to the gun manufacturing industry? With a population of 280 million people, there have been 33 or 34 cases in almost 10 years, not one of which has resulted in an adverse decision for the manufacturers. Is my colleague aware of that?

Mr. REED. I am aware of it. The Senator is correct. We think there are less than 100 cases.

Mr. DODD. The police chiefs from across the country are urging the Senate not to protect gun dealers who arm killers.

Mr. REED. I am aware of that. In the course of this debate, I hope we can emphasize that point.

I retain the remainder of my time and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, before I yield to the Senator from Texas, let me make a couple of comments in response to what my colleagues have been saying this morning.

Let's take the gun dealer in Tacoma, WA who is alleged to have sold to the sniper who held this area hostage for a time with a gun. His license has been revoked. There is a criminal investigation, and BATF has asked the Justice Department to file felony charges against the dealer. The business is now closed and broke.

In other words, what I am saying is if this licensed gun dealer violated current law, he will be shut down. What we are talking about here again is a narrow piece of legislation that deals with civil liability—not product liability—and in the case of current Federal law it does not touch it. The day in court comes.

But what the Senator from Connecticut didn't say is even his own gun manufacturers and their associations in those some 30-plus lawsuits have spent millions and millions of dollars before the court system defending themselves, and to date the judges have thrown them out. This is called ''death through attrition'' by simply taking to the courts and constantly bringing to the courts these kinds of arguments. Here is the reality.

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

Mr. CRAIG. I can't yield at this time. My time is limited. We are going to be on this for days, as the Senator knows. We will debate it thoroughly.

But what he is suggesting is running the risk of losing all of his gun manufacturers and the hundreds of jobs that are out there. He is concerned about jobs. I think he would be concerned about keeping the jobs he has in his home State. That is part of this discussion.

Mr. DODD. Will the Senator yield?

Mr. CRAIG. I can't yield. Time is limited.

Mr. DODD. The Senator made reference to the Senator from Connecticut.

Mr. CRAIG. I did it fairly. You are here on the floor. We will talk about this more in the hours to come.

Let me yield to my colleague from the great State of Texas.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I rise to say a few words on our broken civil justice system. Today we are debating yet another common sense reform proposal, the Protection of Lawful Commerce in Arms Act.

Despite many recent opportunities, Congress has been unable to enact meaningful tort reform, largely because of strong resistance by trial lawyers and their allies in this chamber. Just yesterday we failed to reach cloture on medical liability reform that would protect our mothers and their children. We have been blocked from enacting broader medical liability reform.

And we saw this drama played out last year with the Senate's failure—by one vote—to end a filibuster of the Class Action Fairness Act and give the bill a vote on the floor. Despite the fact that a bipartisan majority stands ready to pass that bill, the obstructionist opposition prevents us from acting.

I believe our civil justice system is badly broken. It serves the interests of the few at the expense of the many. It has become almost entirely directed not at dealing out justice, but at finding as many scapegoats as possible, the wealthier the better.

It used to be that if you slipped and fell on a sidewalk, you picked yourself up and kept on walking. But nowadays, far too many trial lawyers continue to feed the idea that instead of getting up again, you ought to sue the maker of the sidewalk for making it too hard, the maker of your shoes for not putting enough ridges on your soles, and everyone in your near vicinity for not rushing to catch you as you fell. After all, there is money to be made.

The current system rewards lawyers and short-changes the real victims. There is no doubt that this system of over-litigation cannot last without more negative results. And without reform, I fear the entire system will collapse under its own weight.

Today, the Senate has the opportunity to take a step in the right direction on this problem, by passing the Protection of Lawful Commerce in Arms Act.

This bill is simple: it provides that lawsuits may not be brought against lawful manufacturers and sellers of firearms or ammunition if the suits are based on criminal or unlawful use of the product by someone else—when a criminal, not the manufacturer, commits a crime.

Such lawsuits are not intended to find real fault, but to play on the emotions of a jury and drive the gun industry out of business, holding legitimate, law-abiding manufacturers and dealers liable for the intentional and criminal acts of others.

This bill reinforces years of legal precedent—that individuals and businesses are responsible for the harm they case, not for the actions of third parties over whom they have no control.

Many Judges across the Nation recognize the ridiculous nature of these suits. The Louisiana Supreme Court struck down New Orleans' right to bring such a suit in the face of State law forbidding it, and said ''this lawsuit constitutes an indirect attempt to regulate the lawful design, manufacture, marketing and sale of firearms.''

In dismissing New York State's case last year, a New York appellate court observed ''the plain fact that courts are the least suited, least equipped, and thus the least appropriate branch of government to regulate and micromanage the manufacturing, marketing, distribution and sale of handguns.''

Thankfully, many States are acting: 33 States have enacted some form of legislation to prevent junk lawsuits against the firearms industry based on the criminal behavior of others. We must follow the lead of the majority of States, and pass this common sense measure.

Don't allow any illusions about the intentions of the people involved in these suits. At an American Bar Association symposium in 1999, one of the plaintiffs' attorneys for the antigun lawsuits explained that the attorneys had read the Dun & Bradstreet reports on the firearms companies, estimated how much the companies could spend defending themselves against litigation, and then filed so many cases in so many jurisdictions that the gun companies would not be able to spend the money to see the cases through to a verdict. The irresponsible tort community is simply looking for another law-abiding business to prey on.

And even if all the gun companies in America were put together, they would not constitute a single Fortune 500 company—so the gun companies are much more vulnerable to abusive litigation than deep-pocketed giants such as the New York Times.

The real way to stop gun crime in America is simple: those who abuse the constitutional right to keep and bear arms by using firearms to commit crimes must be aggressively prosecuted and punished. When I was Attorney General of Texas, I joined with then-Governor Bush to launch a program we called Texas Exile. That program provided local prosecutors with the funds to get more than 2,000 guns off the streets and to issue more than 1,500 indictments for gun crimes, resulting in almost 1,200 convictions in its first 3 years of existence alone.

And when President Bush came to Washington, he built upon our success in Texas by making Project Safe Neighborhoods one of his top priorities. Project Safe Neighborhoods expands on existing programs that target gun crimes in each State. It is a nationwide commitment to reduce gun crime in America by networking these existing local programs and providing those programs with the additional tools necessary to be successful.

The Bush administration has committed more than $900 million to this effort over three years, using funding to hire new Federal and State prosecutors, support investigators, providing training, distribute gun lock safety kits, deter juvenile gun crime, and develop and promote community outreach efforts as well as to support other gun violence reduction strategies. And Texas has seen great success with the integration of Project Safe Neighborhoods with the existing Texas Exile infrastructure.

These are the kinds of steps that get real results, not ill-intentioned frivolous lawsuits. I question the integrity of any system that would reward such abject agreed. We need to work in this body to fix our broken civil justice system, and this bill is a good place to start.

I am somewhat bemused by the arguments I have already heard this morning on this motion to invoke cloture. In fact, we want to have a debate. Those who oppose even having a debate are, I guess, not going to allow it to happen. I hope they are not successful in blocking debate. It is healthy to have a debate.

I am bemused by the suggestion that this is a narrow bill directed toward special interests. Yesterday, we had a narrow bill to protect the special interests known as pregnant women and children. However, the trial lawyers prevailed and we were unable to get that commonsense tort reform measure on the floor for debate. I submit that the suggestion is misguided that this is a special interest piece of legislation. This is in the public interest.

I suggest the worst thing about the arguments we hear from the other side of this debate is they are misdirected. In other words, they contend this bill would immunize lawsuits against gun manufacturers for what is a lawful activity. The fact is, there is a shrine in our Constitution, the right of the people to keep and bear arms. What they are trying to do would have the effect of impeding and impairing that constitutional right because, as Senator CRAIG has pointed out, there have been many lawsuits filed against gun manufacturers for the very fact of making a lawful product, none of which, so far as I understand, has been successful but which are destroying these companies which are in the business of manufacturing a lawful product, destroying jobs, and impairing ultimately the constitutional right of citizens, people like you, me, and others in this room from owning firearms to protect our homes and our property, our families for use in sporting events, for hunting, and other lawful and decent activity.

The focus of the opponents of this bill is totally misguided. What we ought to focus on is the criminals who use firearms illegally to commit crimes. In fact, I have had a little experience in this area as attorney general of Texas. With the cooperation of then-Governor Bush, we created a program in Texas called Texas Exile. I wish we could claim we originated the idea but we borrowed the idea from Richmond, VA, something called Project Exile, which was a cooperative effort of local, State, and Federal law enforcement officials to target criminals who use guns to commit crimes and convicted felons who could not even legally own a firearm. The great thing about that was, No. 1, it was so successful; No. 2, it was not a wedge issue which, clearly, there is an attempt to inject wedge politics in this debate. But it was an issue which everyone could agree: The NRA, the gun control folks, everyone came together and said, yes, that is what we ought to do. Let's focus on the criminals who misuse this product.

Indeed, in 2001, Texas led the Nation in the number of criminal defendants who were indicted for weapons violations in Federal court. In 2000, there were 757 in that year alone, which was almost double the number of indictments in 1999. This amount was greater than the number of defendants indicted on similar charges in the States of New York and California combined.

How were we able to use the existing criminal law in a way that made our streets and our communities and our States safer? We simply enlisted the help of local law enforcement to work with Federal law enforcement authorities so when a criminal was caught illegally possessing a firearm—illegal because a felon cannot legally possess a firearm—or someone under a protective order—it is a Federal offense to carry or possess a firearm when you are under a protective order—or someone who simply used a gun to commit a bank robbery or any other offense, we focused on the gun possession portion of that and were successful in leading the Nation in the number of prosecutions. That sends a very powerful message that if you carry a gun illegally or if you use a gun illegally to commit a crime, then we are coming after you with everything that the law allows.

It is a powerful deterrent to the sort of illegal conduct that causes the harm that the opponents of the bill—and I grant their good faith; I think they believe in good faith that what they are proposing is a path to a good result, a sound result—that is reducing injuries, reducing death, but it is misguided. All this does is encourage lawsuits against a manufacturer of a legal product when someone criminally misuses that product to cause another person harm.

As the Senator from Idaho has noted, this is death by 1,000 cuts or death by 1,000 lawsuits, so to speak, because anytime a gun manufacturer is sued, even with a frivolous lawsuit, they have to hire a lawyer, they have to defend that case at greater expense which threatens their economic viability which in turn threatens the jobs of the people who work there in that company.

I wish we could have a broader debate on commonsense tort reform generally, but we have seen what happens when we try to raise these issues. We could not even get cloture on a class action reform bill. We have not been able to bring up asbestos reform which is damaging a lot of good job providers in this country and not benefiting the people who are truly sick but only the lawsuit industry which benefits from churning the cases without really benefiting the people who need compensation.

We found in almost every instance—medical liability, class action reform,

or asbestos reform—we are simply not able to even get a debate. We cannot even get cloture because we cannot find 60 people in the Senate who are willing to stand up and say this is a serious problem. It is raising the costs of health care. It is bankrupting companies in the case of asbestos. It is an abuse of the class action system in the case of class action reform where lawyers get millions and consumers get a coupon.

So the strategy has been, and it is a good strategy, to try to identify certain types of cases. Yesterday it was obstetrical liability cases which have threatened the ability of pregnant women to find doctors to simply deliver their babies.

I recounted in my own State in 154 different counties a woman cannot even find a doctor to deliver her baby, an obstetrician, because people are leaving the practice. It is pricing out of reach health care liability insurance, putting people out of business, hospitals out of business, and we are simply seeing the tail wag the dog in each of these areas. The tail seems to be the special interest groups that like the status quo, which is a broken civil justice system that does not serve justice.

I commend the Senator from Idaho for bringing up this bill which admittedly is a narrow bill. Boy, I wish we could have a broader debate on tort reform, commonsense tort reform generally. When we talk about what causes job loss in this country, it is the regulation by litigation, it is the tort tax that imposes additional costs on consumers and discourages innovation and entrepreneurs in this country. We are not talking about locking the courthouse door and denying someone access to justice. I believe strongly we must retain meaningful access to justice for anyone who is harmed by the wrongful conduct of any other person. But the system right now benefits the few at the expense of the many in ways that I doubt consumers really understand because it adds costs to their products, and it makes it harder for entrepreneurs and small businesses to open their doors and to hire people to allow them to provide for their families.

So here we are, rather than taking on a broader tort reform bill, we are left with a narrow bill. I congratulate the Senator from Idaho for it. I believe we should protect manufacturers of lawful products whose products are misused by criminals. Let's focus on the criminals, not the people who are providing jobs and are producing a lawful product.

With that, I yield back any remaining time I have to the Senator from Idaho.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the Senator.

May I inquire of the time remaining for both sides?

The ACTING PRESIDENT pro tempore. The majority has 5 minutes 40 seconds. And 4 minutes 17 seconds are remaining for the minority.

Mr. CRAIG. I will reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. REED. Mr. President, I yield such time as he may consume to the Senator from Massachusetts.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Will the Chair notify me when I have a half minute left?

Mr. President, at a time when capitulation to special interest groups is a major issue in the Presidential election campaign, it is difficult to believe that the Republican leadership in the Senate is serious in asking the Senate to accept this flagrant special interest legislation. I urge my colleagues to break the stranglehold of the gun industry and gun dealers and oppose proceeding to this shameful legislation.

The list of issues that demand the Senate's immediate attention is long. Unemployment is a crisis for millions of citizens. Retirement savings are disappearing. School budgets are plummeting. College tuition is rising. Health care costs and prescription drug costs are soaring. Federal budget deficits extend as far as the eye can see. The war in Iraq has brought new dangers, imposed new costs, and more and more American lives are being lost each week.

The well-being of most American families has declined at an alarming rate in the past 2 years. We can and should be acting to meet these challenges. Instead, the Republican leadership wants to spend time on this flagrant pro-special-interest, anti-victim, anti-law-enforcement legislation to give broad legal immunity to the gun industry.

This bill's proponents claim they are targeting ''frivolous lawsuits.'' But we all know that its real effect would be to prevent victims of gun violence—police officers, innocent bystanders, and their families—from pursuing valid claims in State and Federal courts.

This special interest bill is a direct attack on the interests of law enforcement. Police Chief William J. Bratton of the Los Angeles Police Department recently told it like it is:

> To give gun manufacturers and gun dealers immunity from lawsuits is crazy. If you give them immunity, what incentive do they have to make guns with safer designs, or what incentive do the handful of bad dealers have to follow the law when they sell guns.

The bill would prevent the families of the victims of the DC snipers from holding accountable the gunshop in the State of Washington that somehow ''lost'' the assault rifle that was used in the attacks. Under current law, if negligence is proved, the families of the victims are entitled to seek redress. If this bill is enacted, the gunshop will be totally immunized from liability, and the families' lawsuits will be thrown out.

Unbelievably, the gun industry and the tobacco industry are the only two consumer industries that are not subject to Federal consumer safety regulations. America does more today to regulate the safety of toy guns than real guns, and it is a national disgrace.

The gun industry has worked hard to prevent Federal consumer safety legislation. At the same time, it has conspicuously failed to use technology to make guns safer, and it has attempted to insulate itself from its distributors and dealers, once the guns leave the factory.

Now it wants to become the only industry in the Nation exempt from lawsuits. The overwhelming majority of Americans believes that gun dealers and gun manufacturers should be held responsible for their irresponsible conduct, like everyone else.

The ACTING PRESIDENT pro tempore. The Senator has 30 seconds remaining.

Mr. KENNEDY. Surely, the Republican leadership has higher domestic priorities than providing legal immunity for the gun industry. Surely, we can do better than debate this extraordinarily reckless and unprecedented special interest legislation.

I withhold the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

There are 16 seconds remaining for the Senator from Rhode Island and 5 minutes 13 seconds remaining for the Senator from Idaho.

Mr. CRAIG. Mr. President, if the Senator wants to make his closing comments before I make mine, what time does he have left?

The ACTING PRESIDENT pro tempore. Sixteen seconds.

Mr. CRAIG. All right. It is obvious, Mr. President, by those who have already come to the floor, that this will be a very spirited debate. The great tragedy of debates such as this is that they oftentimes fail to read the bill before them, and they make the kinds of salient political statements that have nothing to do with the legislation at all.

I invite my colleagues, on S. 1805, to go to section 4 of the bill and see how narrowly we have crafted this bill to go directly at civil lawsuits that involve a third party criminal act and trying to reach back through the courts and back through the law to say to a licensed, legitimate, legal firearms dealer or a licensed, legal gun manufacturer that they have to be responsible for the criminal act of another. That simply has not been the basis of law in our country ever, nor should it be allowed to be the basis of law today.

But if that gun manufacturer and if that licensed gun dealer violate civil law, violate the law of the land, then this bill does not hold them harmless. That is the crux of the issue. That is what is important about this legislation.

There are a lot of ways to achieve a political goal in this country. Many have found that you can file frivolous and junk lawsuits in the court, and you

have found that you can file frivolous and junk lawsuits in the court, and you can slowly but surely bleed down those who you file them against because they have to come and defend themselves, even though the courts constantly throw out these lawsuits. Hundreds of millions of dollars have already been spent by legitimate gun manufacturers that make those fine weapons for our men and women in Iraq, that make those fine weapons for our civil law enforcement officers wearing the blue uniforms on the streets of America.

They would say to them: No, we are going to bust those companies. And guess where that cop is going to get his gun. From China or Yugoslavia. Or our men and women in uniform are going to have to rely on foreign gun manufacturers because we have bankrupt and thrown out of this country those acting under the law in a legitimate way.

That is what S. 1805 is about. It is not about the political agenda of many. It is about what we have said in this country is a legitimate product. We even said so in the Constitution. Most other products we do not talk about in the Constitution. They were not invented. But we did speak to guns and their value in this country. Now we are saying: No, we are going to play the political game. We are going to drag them through the courts. And they are going to spend all kinds of money to do so.

I am not willing to hold anybody harmless who violates the law. I am not willing to hold anybody harmless who allegedly acts in a criminal way. Let's find out if they did. The courthouse door is not locked by S. 1805. The courthouse door is still open. This law will be applied in arguments before the court. A judge will make the determination of whether S. 1805 fits or it does not fit. Was the licensed dealer or the gun manufacturer acting in a legal way or acting against current Federal law? That is how narrowly we have defined it.

Even the minority leader, Senator DASCHLE, has joined with me to clarify and refine this bill even more—he will be to the floor to speak to that issue—as we worked to make sure we are on point directing this specifically at those who continually play the game at the legal bar of this country to file the frivolous or the junk lawsuits to drive a legitimate operating American company and industry out of business.

I hope my colleagues will come now and vote on the cloture motion to allow us to proceed so we can fully debate the bill, bring the necessary amendments that others will have for or against the purpose of this legislation. We will vote them up or down and move it through the Senate. That is our job. I know there are a lot of issues that are important. But there are a lot of Americans who view this as a very important issue for our country.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. REED. Mr. President, the legislation before us is a benefit to special interests, the gun lobby. It will deny individual Americans the right to go to court to challenge the conduct of individuals who negligently or allegedly negligently sold weapons. It would be a great distortion of the law. I hope my colleagues will resist this legislation.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. The hour of 10:30 having arrived, under the previous order the clerk will report the motion to invoke cloture.

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 Calendar No. 363, S. 1805, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

Bill Frist, Orrin Hatch, Mitch McConnell, Larry Craig, Jim Talent, John Ensign, John Cornyn, Conrad Burns, Saxby Chambliss, Craig Thomas, Don Nickles, Rick Santorum, Trent Lott, John Sununu, Mike Crapo, Lamar Alexander, Wayne Allard.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay''.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 75, nays 22, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—75

Alexander	Bond	Chafee
Allard	Breaux	Chambliss
Allen	Brownback	Cochran
Baucus	Bunning	Coleman
Bayh	Burns	Collins
Bennett	Byrd	Conrad
Biden	Campbell	Cornyn
Bingaman	Carper	Craig
Crapo	Inhofe	Pryor
Daschle	Jeffords	Reid
Dayton	Johnson	Roberts
Dole	Kohl	Rockefeller
Domenici	Kyl	Santorum
Dorgan	Landrieu	Sessions
Ensign	Leahy	Shelby
Enzi	Lieberman	Smith
Feingold	Lincoln	Snowe
Fitzgerald	Lott	Specter
Frist	Lugar	Stabenow
Graham (SC)	McCain	Stevens
Grassley	McConnell	Sununu
Gregg	Murkowski	Talent
Hagel	Nelson (FL)	Thomas
Hatch	Nelson (NE)	Voinovich
Hutchison	Nickles	Warner

NAYS—22

Akaka	Feinstein	Mikulski
Boxer	Graham (FL)	Murray
Cantwell	Harkin	Reed
Clinton	Hollings	Sarbanes
Corzine	Inouye	Schumer
DeWine	Kennedy	Wyden
Dodd	Lautenberg	
Durbin	Levin	

NOT VOTING—3

Edwards	Kerry	Miller

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 75, the nays are 22. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. KENNEDY. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. CRAIG. Madam President, I hope now, with a vote of 75 to 22, we could move on to the bill. Certainly, it is our intent to allow this bill to be debated fully and for amendments to be offered. Time is running. Some Senators spoke this morning to the urgency of time to get on to other issues. Certainly, that is important to all of us. So I hope we would be able to do so. I hope now that Senators could come to the floor with their arguments, but most importantly I hope we could move to the bill itself.

As you know, under the cloture rule there would be allowed 30 hours. I hope those in opposition would not take that 30 hours and allow us to get to the bill. What we are trying to do in S. 1805 is very narrowly go through the law and allow law-abiding gun manufacturers and law-abiding dealers to be exempt from the kind of harassment and junk lawsuits that we have now seen filed in over 30-plus different venues over the last several years. All those cases then brought to court were thrown out of the court, and the reason was quite simple. The judge looked at them and said: This lawsuit is of no value.

Here you had a law-abiding manufacturer, adhering to the laws of the United States, making a legitimate product, and that person cannot be responsible for a third party action that might have been a criminal action and

the trial bar trying to reach through that person to a legitimate gun manufacturer or to a licensed gun dealer.

In doing so I believe these suits were intended, of course, to drive the gun industry out of business by holding manufacturers and dealers liable for the intention and the criminal acts of that third party over whom we all know they have had absolutely no control.

Lawsuits have been filed in multiple States with demands of massive monetary damages on a broad and varying range of injunctive relief relating to the design, manufacture, distribution, marketing, and the sale of firearms. These demands, if granted, would create major judicially imposed restrictions on interstate commerce in firearms and ammunition.

Let me, though, say with that comment, this deals with civil cases, not product liability. If a gun malfunctions and someone is damaged, or if the gun manufacturer and the gun dealer were violating civil law, then, of course, this issue that we are debating today has no value. We have clearly narrowed it and cleanly gone after the very kind of lawsuit that we have, as I mentioned, seen over the last several years.

The bill does something very important to the underlying principles of our country. It reinforces centuries of legal precedent based on individual responsibility, not responsibility for actions of third parties. Law is based on the act of the individual, and that ought to be the basis of all law. Yet what these lawsuits would argue is that somehow a legitimate, legal manufacturer of a product is liable for the way the product is used. I have oftentimes said: What about an automobile? Certainly that is a legitimate product on the road. What about an automobile dealer licensed in his State to sell automobiles? If someone takes the automobile designed to give ultimate pleasure and to move people from one point to another and they get drunk and go out and get in their vehicle and kill someone, does the trial bar then say that it is the automobile dealer and the automobile manufacturer who are liable for the drunk driver who killed someone? That is what they are trying to say and that is exactly the fundamental argument here. That is why we think it is time this Congress deal with it in a forthright way.

The House argued this issue over a year ago and, by a 2-to-1 vote said: No, we are not going to let this kind of lawsuit go forward.

But they did something our bill also does. We didn't lock the courthouse door. Some will argue this simply locks any person out of the courthouse who might place an argument against a gun manufacturer or licensed firearm dealer. The answer to that is absolutely not. This will be a basis in the law by which lawyers will argue before a judge whether these kinds of charges can legitimately be brought based on the evidence at hand. The judge will then make the decision based on the law as to how we proceed.

Many judges, as I have mentioned, have outright rejected these suits already. They literally clutter up the judicial system. Antigun activists are trying to destroy tort law by creating totally new and expansive theories of liability to win restrictions that have been rejected in the legislative process. What does that mean? If you can't win it on the floor of the U.S. Senate or in the legislatures of your States, then you get a good attorney and you go before the court and try to argue it there and establish some kind of judicial precedent.

I have already suggested that we do not lock the courthouse door, that we simply allow the argument to be placed. We think that, of course, is important to all citizens, having their day in court and their right to argue it.

Would this bill affect several high-profile cases such as the lawsuit against a gun dealer in Takoma, WA, a store where the DC snipers, John Muhammad and Lee Malvo, got their rifle?

Well, it won't, and here is the reason it won't. In the case of that situation, Malvo himself said he stole the gun.

What we are also finding is that this particular gun dealer may not have operated in the most legitimate of ways, even though the case will not be brought.

There is a criminal investigation underway. The BATF has jerked the license of the gun dealer. The business is now out of business, and it is my understanding that the BATF has asked the Justice Department to file felony charges against the gun dealer. Even within that argument, you have the contradiction of the person who did the shooting saying: I stole the gun. And, of course, you have a gun dealer who may have operated illegally. Certainly that is a case in action, although what is important is this particular bill won't affect that. If that gun dealer in Takoma, WA, is found liable, if he acted in a criminal way, if he mismanaged his records that he must keep in a way that distorted what he had and guns were stolen and he never allowed that to be known, then he is at risk.

I am not a lawyer. So I can't go to the next step of that argument, and I will not. But what I do know and what we have insisted on in the crafting of S. 1805 is that it be very straightforward and very clear. Senator DASCHLE has incorporated within this an amendment that I have accepted. He may bring some fine-tuning to the floor. He, too, believes we need to deal with this issue. But he is fine-tuning to make sure what I just said is absolutely clear in the law. There will be no arbitrary way for someone to wiggle through the law.

Does the bill wipe out century-old tort law principles? The answer is quite simply, no. The bill reinforces the century-old legal tenet of personal responsibility that underlies all of our judicial system. Individuals and businesses are responsible for the harm they cause.

Let me repeat that. Individuals and businesses are responsible for the harm they cause—not for the action of third parties beyond their control.

The bill protects the rights of truly injured parties. The exceptions allow for legitimate and recognized causes of action. Manufacturers or sellers of firearms or ammunition could still be sued if they violated Federal or State law, manufactured defective products, violated contracts or warranties, or knowingly sold guns to irresponsible and/or dangerous individuals.

The law is still out there. The law still provides recourse for an individual who would fall within those categories.

But to suggest that the actions of a third party, or the criminal act of a third party, is the opportunity to reach through the court by the trial bar to go after the manufacturer of a legitimate legal, law-abiding approach or product simply should not be allowed.

Most importantly, antigun activist lawyers are the ones who are trying to distort the law by fabricating new theories for imposing liability only after having repeatedly failed to cast their political agenda right here or in our State legislatures.

Just a few years ago, they admitted this when their legislative allies introduced a bill that would have expressly created a new Federal cause of action against a manufacturer, a dealer, or importer who knew or reasonably should have known that its design, manufacturing, marketing, importation, sale, or distribution practices would likely result in gun violence.

How can anyone suggest that any action of the sale of a gun, if it is done legally, results in violence? That is the reality of what we dealt with.

There are a good many more issues that we will have an opportunity to discuss in the course of this.

It looks as if Senator KENNEDY is on the floor to debate the bill.

I reserve my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Madam President, just prior to the vote I addressed the Senate on a tight timeframe pointing out my concerns about why we were taking this action at this particular time. I have had the opportunity to travel the country.

We just ended the February recess where we had a chance to get around, as well. One of the things that has struck me over the course of those travels is the overwhelming concern working families have over the state of the economy. It is reflected in whether they are going to be able to retain their job; if they have a new job, the fact it does not pay as well as the old

job; they are concerned about the cost of health care, the cost of prescription drugs; and concern over the increase of tuition. These were the issues.

One concern I have meeting at this time is we are considering special interest legislation. We have heard a great deal both by the President and during the course of the election. Hopefully, we can free ourselves from special interest legislation.

Our Republican friends offer this legislation, put a cloture motion down immediately, limit the time for any debate and discussion that provides very special interest legislation for the gun manufacturers. That must concern millions of Americans, certainly those who are concerned about the state of the economy, those concerned by the failure of the Senate to increase minimum wage over 7 years. We have 7 million Americans making $5.15 an hour who have not had a raise for 7 years and we are considering special interest legislation to protect just a single industry, the gun manufacturing industry.

There are tens of thousands of Americans losing their unemployment compensation every single week yet we are not debating the question of the extension of the unemployment compensation—which is in surplus, close to $18 billion. Senator CANTWELL has an amendment to extend that for a temporary period of time, give some relief for all of the workers who cannot find work.

Finally, the administration admits we will not have good jobs, good pay, good opportunities for the future. Finally, the President has agreed with that. He differs with his Council of Economic Advisers. For weeks we heard from the other side of the aisle: The economy is back. And now the President agrees the economy is not back.

We do not need much Senate time on the issue of a minimum wage increase. I would agree to an hour, half an hour on either side. Let's send to American workers working on the lower rung of the economic ladder a message that help is on their way. It will benefit primarily women because they are primarily the recipients of the minimum wage. It will go to mothers and children because many of the women have children. It is a children's issue, a women's issue. It is a minority issue because most of the minimum wage workers are men and women of color. It is a civil rights issue, a children's issue, and a women's issue. Most of all, it is a fairness issue.

People wonder why the Senate doesn't do something about increasing the minimum wage. We have the majority of votes but our Republican friends will not let us vote.

We hear the pious statements—look who is controlling the time—and can't we go ahead with the Nation's business. The Nation's business is increasing the minimum wage. No, no, we cannot deal with that this morning. No, we are not going to deal with that. We will have special interest legislation for just one industry—that is what the other side says—but not for the 7 million people who would be affected.

What about those in need of unemployment compensation? These men and women have paid into the unemployment compensation. Now they have lost their jobs through no fault of their own through basic mismanagement of the economy. They lose their jobs and as a result they have difficulty paying their mortgage, putting food on the table, making sure their children are going to be looked after. It is not because of them. They are hard-working Americans. They have a record of employment.

Under the Cantwell amendment, we extend the unemployment compensation. We did that in other times of our history. We did it in the previous Democratic administration before that Democratic President had created 2 million jobs. We still provided for those who had long-term unemployment, that they would be able to get unemployment compensation even after more job were created.

Now we have the loss of 3 million jobs, a sputtering return of 78,000, a total loss of 2 million jobs, and they are out there and losing every single day whatever unemployment insurance they have. We say, let us at least provide some temporary help.

Finally, our President has agreed we are not going to get the kind of recovery and create the 2.6 million jobs the Council of Economic Advisers said would occur. They finally admit that. And we are stonewalled to not work on unemployment in the Senate. No, let's look after one industry, not the tens and thousands and millions of hard-working Americans who have worked hard, played by the rules and need enough to be able to continue to pay their mortgages and look after their families. No, no, no, we cannot do that. It might take all of an hour. Everyone in this body knows what the issues are. We have to do special interest legislation.

That is not even the end of it. We have the clock ticking on unemployment. More than half of the unemployed adults have had to postpone medical treatment, 57 percent; or cut back on spending for food, 56 percent. One in four, 26 percent, has had to move to other housing or move in with friends or relatives; 38 percent have lost telephone service; 22 percent are worried they will lose their phone. More than a third, 36 percent, have had trouble paying gas or electric bills.

One of the principal reasons for the increase in bankruptcy is because of this kind of challenge. Our Republican friends want bankruptcy reform in order to expedite the pursuit of these unemployed people who are having difficult times paying their bills and mortgage. That is what the bankruptcy bill is all about: make the Federal Government collection agencies for special corporate interests. That is why they are trying to rush it through. And more and more are going into bankruptcy.

Unemployment benefits should be extended with the economy still down over 2 million jobs. This chart reflects where we are today, with a total loss of 2.4 million jobs. These figures are from the Department of Labor. The Republicans say, no, no, we have something more important to deal with, special interest legislation.

This chart shows during the previous administration, they created 2.9 million jobs, yet they still had the extension of the unemployment compensation for those out of work who had paid in over a long time. The unemployment compensation fund is in surplus, $17 billion. It will cost $7 billion and they say it will put a strain on the fund.

This is what is happening, the unemployment impact on the family. More than three in four, or 77 percent, of the unemployed Americans say the level of stress in their family is increased. I don't know how you put dollars and cents on that figure. Everything is dollars and cents around here. This is the kind of pressure and tension and anxiety these families are under, the 2.5 million.

Two-thirds, or 65 percent, of those with children have cut back on spending for their children. Those are working families trying to provide for their children clothes, or perhaps a birthday present, perhaps an outing, taking them to a baseball game in the spring, a hockey game or a basketball game in the winter. That is not there for any of these families.

Twenty-six percent say another family member has had to start a job or increase their working hours. Those are basically the women, the mothers, when they can find it. All those mothers are working twice as hard now as they did 20 years ago.

Twenty-three percent have had to interrupt their education. Imagine that, working families, the unemployed—2.4 million of them—and almost a quarter of their children have had to interrupt their education because their parents are unemployed through no fault of their own.

That is the pressure they are under. Do you think we can get an extension of the unemployment compensation? No, no. We have to deal with this special interest legislation.

This is the overall view of where we are in our country now. We have 13 million children who are going hungry. We have 8 million Americans who are unemployed. We have the 8 million Americans who will lose overtime pay under the Bush proposal. This is another interesting issue. There is no increase in the minimum wage, there is no extension on unemployment compensation for workers, and now we have the proposal to eliminate overtime for 8 million Americans.

Well, you have 13 million children who are going hungry, and the millions who are without work.

We have 7 million low-wage workers waiting 7 years for an increase in the minimum wage. There are 3 million more Americans in poverty—3 million more Americans in poverty—since President Bush took office. Are we addressing this issue today? Oh, no, no, no, we do not have the time to do that. We have to rush through this special interest proposal. We do not have time out here on the floor of the Senate to address the issues of those who are living in poverty, or the 90,000 workers a week—90,000 workers a week; think of that: 90,000 workers a week.

Most of us are always impressed during Sunday football games that we watch in our stadiums when they have that incredible view from the airplanes or balloons or whatever that shows the stadiums packed with people. They will say: 89,000 people, 75,000 people. I guess it is 78,000 out in Lambeau Field out in Wisconsin, which I have been to recently. People look out there and they see the mass of people out there: 80,000, 90,000 people. Think of that number of people every single week—every single week—losing their coverage of unemployment compensation.

I want to mention one other area because I see good friends in the Chamber. My friend and colleague from Iowa will be offering an amendment on overtime. I know the Senator from the Washington, Ms. CANTWELL, will be here soon to talk about her amendment on the unemployment compensation.

But one of the cruelest, cruelest, cruelest suggestions that has been made by any administration in the time I have been in the Senate is to effectively do away with overtime pay for 8 million Americans and for those who receive training in the Armed Forces and acquire special skills.

Now let us think about the administration's proposal and who they are talking about. Who would be affected by the proposal the administration is talking about? Shown on this chart is a list of the professions that would lose the coverage for overtime pay.

The idea of a 40-hour workweek has been at the heart and soul of our whole country's ethic. Certainly from the late 1930s it has been a part of it. There has been a recognition that if you are going to require people to work overtime, you are going to pay them time and a half. That has been accepted by Republicans and Democrats alike since the end of the 1930s. But not under this administration. They are talking about limiting overtime.

Who will be the groups that will be affected by the elimination of overtime? This is the group: It is going to be the policemen, it is going to be firefighters, it is going to be the nurses, among others. I mention policemen and firefighters and nurses because, as we know, they are the backbone of homeland security. If we are going to have a problem with chemical or biological warfare, it is going to be those policemen and firefighters and nurses who are going to be the first responders who are going to risk their lives locally in those communities to try to contain this kind of threat. They are the ones who are going to be on the front lines. Yet those are the very people who this administration feels are being overpaid. Even the police force that is here in the Senate in many functions would be affected.

There are a lot of things that are troubling in the United States of America today we should be and must be concerned about. I mentioned the number of children who are living in poverty and what is happening to these families who have seen their jobs outsourced. Many of these things we ought to be working on. But one of the great problems in our country today is not that our policemen, firefighters, and nurses are being overpaid. I have not heard anyone say that except the President of the United States or the Secretary of Labor. I have not heard anyone come up to me back in Massachusetts saying: You know something, Senator, those policemen and firefighters and nurses are being overpaid. Do something about it. Do something in Washington about it. I don't hear that. There is no question that some manufacturers believe that and feel that and have asked the administration to do something about it. No question about that. And they did, the administration has. I will give you an example.

But let me just conclude on this chart—police officers, nurses, firefighters. The interesting part is that women, by and large, are mostly in these areas and professions. This reduction in overtime primarily affects women in our workplace.

But something that just makes this extraordinary—and has been debated here on the floor of the Senate—this proposal was rejected by the Senate of the United States, rejected by the House, but this administration feels sufficiently strong about this issue that they insisted the Harkin-Kennedy language be taken out of the bill in the middle of the night behind closed doors—behind closed doors—at the insistence of the major manufacturing companies in this country. And we are going to face that. We are going to be facing that in these next few weeks as we have the reauthorization to do it.

Now let me point out something on the rates that have been proposed. These are the ones that have been proposed on the overtime. Listen to this. And I am talking about the kinds of skills, cumulative skills that will make people ineligible for overtime. I am reading right from the Federal Register, and I will include the appropriate reference in the RECORD:

> However, the word ''customarily''—

That means the definition about the skills that will be excluded—

> means that the exemption is also available to employees in such professions who have substantially the same knowledge level as the degreed employees, but who attained such knowledge through a combination of work experience, training in the armed forces. . . .

There it is, the Federal Register, volume 68, No. 61, Monday, March 31, administration's proposed regs. If you get the skills, training in the Armed Forces, if you happen to be over in Iraq today or Afghanistan and you have gone to some training programs in order to provide greater protection for your fellow troops in fighting for our country, maybe a member of the National Guard or Reserve, you get those kinds of training functions, you come back here, you are out of the Guard, you return to work, and your boss says: Hey, these new regs say you got the training in the Armed Forces. Too bad. You are not getting your increase.

That is what this says. A number of us raised this in the earlier debate. The Secretary of Labor in January sent a letter to the Speaker of the House, DENNIS HASTERT, saying—and I will include the letter in the RECORD; it is only a page and a half long—

> I want to assure that your military personnel and veterans are not affected by these proposed rules by virtue of their military duties or training.

But that training in the Armed Forces can make a worker an overtime-ineligible, professional employee. This is new language. It is not in the current regulation, and its only purpose is to take away overtime for veterans.

Why don't they just drop the language and free us from any kind of ambiguity? Just say, this was brought to our attention, we are going to drop it, instead of trying to explain it away.

Continuing from the letter:

> First, the Part 541 ''white collar exemptions'' do not apply to the military. They cover only the civilian workforce.

No one is complaining that the rule affects the military workforce. The issue is the veteran who leaves the military to work in the civilian workforce and would lose overtime protections. They are rather clever. They say the white-collar exemptions don't apply to the military. No one is suggesting it applies to the military. This letter is an attempt to mislead. It is very clear. If the administration does not intend to apply these overtime regulations to those who have been in the service, they ought to just eliminate it.

I ask unanimous consent to print the letter from which I have quoted in the RECORD.

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

SECRETARY OF LABOR,
Washington, January 27, 2004.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I write to provide you with the facts to correct the record following last week's Senate floor debate on the Consolidated Appropriations Act with regard to the Department of Labor's proposed revision of the Fair Labor Standards Act's overtime exemption regulations. I also would like to thank you for your support and leadership on this important issue.

The recent allegations that military personnel and veterans will lose overtime pay, because of proposed clarifications of the Fair Labor Standards Act (FLSA) ''white-collar'' exemption regulations, are incorrect and harmful to the morale of veterans and of American servicemen and women. I want to assure you that military personnel and veterans are not affected by these proposed rules by virtue of their military duties or training.

First, the Part 541 ''white collar exemptions'' do not apply to the military. They cover only the civilian workforce.

Second, nothing in the current or proposed regulation makes any mention of veteran status. Despite claims that military training would make veterans ineligible for overtime pay, members of Congress should be clear that the Department of Labor's proposed rules will not strip any veteran of overtime eligibility.

This has been one of many criticisms intended to confuse and frighten workers about our proposal to revise the badly outdated regulations under the FLSA ''white collar'' exemption regulations. It is disheartening that the debate over modernizing these regulations to meet the needs of the 21st Century workforce has largely ignored the broad consensus that this rule needs substantial revision to strengthen overtime protections.

The growing ambiguities caused by time and workplace advancements have made both employers' compliance with this rule and employees' understanding of their rights increasingly difficult. More and more, employees must resort to class action lawsuits to recover their overtime pay. These workers must wait several years to have their cases adjudicated in order to get the overtime they have already earned. In fact, litigation over these rules drains nearly $2 billion a year from the economy, costing jobs and better pay.

I hope that this latest concern will be put to rest immediately. Once again, I assure you that military duties and training or veteran status have no bearing on overtime eligibility. We hope that future debate on this important provision is more constructive. If we can provide further assistance in setting the record straight, we would be pleased to do so. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

ELAINE L. CHAO.

Mr. KENNEDY. The Bush overtime proposal denies overtime to veterans. The overtime proposal explicitly states that training in the Armed Forces could disqualify workers from the overtime protection. Many employers, such as Boeing, acknowledge that this will affect much of their workforce. According to Boeing's comments on the Bush proposal:

Boeing observes that many of its most skilled technical workers received a significant portion of their knowledge and training outside the university classroom, typically in a branch of the military service. . . .

There it is. That is the reason. Because many manufacturers wanted that kind of savings for the bottom line. That is why that is in there. Because this company and others have hired people who have been in the military, and when they see they have these kinds of skills which are necessary for our Armed Forces, they are being penalized for it.

I would be interested in seeing the discussion between the Secretary of Defense and the Secretary of Labor in putting these out. So many of these training programs and education programs are programs that inspire young people to go in the Armed Forces. They are men and women of limited means but have ability and capabilities and understand that they cannot achieve their fullest potential unless they take these training programs or build the kind of credits in order to get advanced degrees.

They ought to be on warning now that if they go ahead and do that, they may very well be knocked out of any kind of overtime protection. That is what this basically says. It is a cruel hoax to so many who are in the National Guard now and are going to come back and be in the civilian workforce.

I want to read from a letter:

My name is Randy Fleming. I live in Haysville, Kansas—outside of Wichita—and I work as an Engineering Technician in Boeing's Metrology lab.

I'm also proud to say that I'm a military veteran. I served in the U.S. Air Force from August 1973 until February 1979.

I've worked for Boeing for 23 years. During that time I've been able to build a good, solid life for my family and I've raised a son who now has a good career and children of his own. There are two things that helped make that possible.

First, the training I received in the Air Force made me qualified for a good civilian job. That was one of the main attractions when I enlisted as a young man back in Iowa. I think it's still one of the main reasons young people today decide to enlist. Military training opens up better job opportunities—and if you don't believe me, just look at the recruiting ads on TV.

The second thing is overtime pay. That's how I was able to give my son the college education that has opened doors for him. Some years, when the company was busy and I had those college bills to pay, overtime pay was probably 10% or more of my income. My daughter is next. Danielle is only 8, but we'll be counting on my overtime to help her get her college degree, too, when that time comes. For my family overtime pay has made all the difference.

That's where I'm coming from. Why did I come to Washington? I came to talk about an issue that is very important back home and to me personally as a working man, a family man, and a veteran. The issue is overtime rights.

The changes that this administration is trying to make in the overtime regulations would break the government's bargain with the men and women in the military and would close down opportunities that working vets and their families thought they could count on.

When I signed up back in 1973, the Air Force and I made a deal that I thought was fair. They got a chunk of my time and I got training to help me build the rest of my life. There was no part of that deal that said I would have to give up my right to overtime pay. You've heard of the marriage penalty? Well I think that what these new rules do is to create a military penalty. If you got your training in the military, no matter what your white collar profession is, your employer can make you work as many hours as they want and not pay you a dime extra.

If that's not a bait and switch, I don't know what is.

You can't make the case any better—no matter how long we speak, how many charts we have—you can't make the case any better than is being made by this former serviceman.

And I don't have any doubt that employers will take advantage of this new opportunity to cut our overtime pay. They'll tell us they have to in order to compete. They'll say if they can't take our overtime pay, they'll have to eliminate our jobs.

It won't be just the bad employers either—because these rules will make it very hard for companies to do the right thing. If they can get as many overtime hours as they want for free instead of paying us time-and-a-half, they'll say they owe it to the stockholders. And the veterans and other working people will be stuck with less time, less money, and a broken deal.

I'm luckier than some other veterans because I have a union contract that will protect my rights for a while anyway. But we know the pressure will be on, because my employer is one that pushed for these new rules and they've been trying hard to get rid of our union.

And for all of those who want to let these military penalty rules go through, I have a deal I'd like to propose. If you think it's okay for the government to renege on its deals, I think it should be your job to tell our military men and women in Iraq that when they come home, their service of their country will be used as a way to cut their overtime pay.

Madam President, is there anyone in this body who doesn't believe that eliminating that possibility isn't of greater urgency than the special interest provision presently before us in the Senate?

Why don't we clear this up once and for all? Why don't we take an hour or so and debate the Harkin-Kennedy amendment on this issue? Why don't we vote on that amendment and send it over to the House? Let's send a message to families, nurses, police officers, and firefighters. Let's send a message to those who have gotten skills in the National Guard. Let's send a message that we stand with them, that we believe their service is of importance to us in the Senate. Let's put aside the speeches for a little while that will be made by political leaders all over the country about how much we appreciate the service of men and women and do something for them in the Senate now? Now.

There are a number of other issues that we could be talking about in terms of the state of our economy. I have taken a short period of time. I see others in the Chamber who wish to address the Senate. It does seem to me that the matters I have mentioned, no matter how you come out on them, are of importance to working families in this country. And, the working families in this country are faced with economic challenges.

It is not just the questions about outsourcing, although that is enormously important and a matter of great and expanding concern. It is what is happening with the failed increase in the minimum wage, the failure of providing unemployment compensation, the failure to do the overtime provisions, the failure to deal with the high

cost of prescription drugs. There is another amendment we could do to permit the Secretary of Health and Human Services to actually negotiate and do something about lowering prescription drugs for people. We could do that pretty quickly.

People are concerned about the high cost of tuition in colleges, and there are things we can do on that.

I say these are the matters that are of principal concern to working families across this country. We have seen the loss of manufacturing jobs, the concerns that working families have. They want some action. They don't want us to yield to special interest provisions. Not only do they not want us to yield to them, but those who have been victims of violence and violent gun activity don't want us to throw their cases away, and leading law enforcement officers of this country understand that we should not yield to the special interests as well.

I look forward to the opportunity for some discussion and some action on these issues prior to the time we have a vote. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, the Senator from California is now in the Chamber to discuss this bill. We are not on the bill yet. I hope we can get there.

The Senator from Massachusetts has taken ample time to discuss the bill, I guess, and other issues. I would like to talk about jobs. I think the Senator is right to talk about jobs, but what he didn't talk about were the jobs in Westfield, MA, at Savage Firearms. They used to be a total of 500 high-paying union jobs strong. They have spent over half a million dollars fighting the lawsuits that we would like to prohibit. Now there they are 160 strong. They have lost jobs in Massachusetts. I want the Senator from Massachusetts to stand with me and protect the hard-working men and women at Savage Firearms.

The bill is about jobs, I say to the Senator from Massachusetts. That is what this issue is all about.

Why is our bill endorsed by the United Steelworkers and by the United Auto Workers? The reason it is endorsed is because these high-paying jobs at law-abiding gun manufacturing locations are being eliminated by the glut of a thousand lawsuits—in this case over 30—where they have had to go to court, spend a lot of money, and the court threw it out because it was frivolous, but the company was less viable because these are really not big companies.

If we took all of the firearms manufacturers in the United States today and brought them all into one company, they would be smaller than a Fortune 500 company.

Let me read a great quote from the Colt manufacturers, Colt firearms. They are located in Connecticut:

> We today have 383 members from the Colt workforce. By comparison, about 5 years ago, we had over 600 Colt workers who were members of our local. Our members built the finest small arms in the world, including the M–4 carbine, the M–16 rifle, and the M–203 grenade launcher.

I believe those are the firearms of our military.

> Many of them were shipped to the U.S. military and lawfully provided for the principles of democracy.

That company is at risk today unless we pass the kind of legislation about which we are talking.

I do believe the working men and women of this country are a special interest. I think the tens of millions of law-abiding gun owners in our country are a special interest. So it is really a matter of how you define ''special interest.'' If it has been said once on the floor, it has been said 15 times in the last 45 minutes: special interest, special interest, special interest.

Let's talk about the working men and women of the firearms industry. Let's talk about the law-abiding gun owners of America as a special interest of us, this country, all Americans. You are darn right we debate special interests on the floor of the Senate, but it really is a matter of definition.

Time limit? We are not proposing a time limit. Senators can speak for up to an hour on this issue now, and if they want to, they have 30 hours postcloture before we get to the bill. I hope we don't spend all of that time doing that. I would like to get to the bill. I know the Senator from California has talked about an amendment. I think she would probably want to offer that amendment and have it amply debated.

We do not want to limit time, but we do want to talk about special interests: law-abiding gun owners in our country, working men and women of the law-abiding gun manufacturers, the people who work at legal gun shops all over this country that by law are licensed and that by law carry out the law. That is what we are talking about today. Call them a special interest, if you will. I do. My job is to try, under the law, to protect them from the kinds of frivolous lawsuits the trial bar has decided to bring in court after court because they couldn't gain legislation on the floor to change the character of our country. That is the issue at hand.

I am glad the Senator from Massachusetts has come to talk about special interests. I wish he would understand that the hard-working men and women in Westfield, MA, for Savage Firearms are, in fact, a special interest—a special interest of mine and, I am quite confident, a special interest of his.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise today to speak on the bill that is before this body, and I wish to begin by saying that I have great respect and have enjoyed working with the Senator from Idaho on a number of issues, including Healthy Forests. But I also must say we profoundly disagree when it comes to guns. So it is probably no surprise to him that I rise to strenuously object to what I see happening here.

I think we have to recognize that guns in America are responsible for the deaths of 30,000 Americans a year. The question comes whether we should be giving the gun industry sweeping and unprecedented protection from the type of lawsuits that are available to every other victim involving every other industry in America.

The simple fact is that over the years, the gun industry has managed to lessen, avoid, or prevent any prudent regulation. For example, they are exempt from Consumer Product Safety Commission laws, thanks to the National Rifle Association's efforts over the years to keep it that way.

Secondly, the Federal Government cannot do much to police bad gun dealers—and we know there are some—or to enforce gun laws because the hands of the ATF, the Bureau of Alcohol, Tobacco and Firearms, are tied by limits to their authorities which have been put in place by the National Rifle Association. They can only do a once-a-year audit, for example. They only have limited options.

The number of ATF agents is kept so low they cannot possibly inspect all of the gun dealerships in this country. So today only the court system offers victims of negligent manufacturers, of which there are some, and dealers, of which there are some, the ability to receive compensation for their injuries. Only the court system provides a means for changing these negligent practices through the threat of legal liability.

I hope to show that the threat of legal liability has, in fact, resulted in more responsible manufacturing and selling principles by this industry. If we remove this one remaining avenue toward enforcing responsibility, victims will have no recourse. Gun owners and gun victims alike will be left virtually powerless against an industry that is already immune from so many other consumer protections. So we find ourselves today on the cusp of yet another NRA victory.

Let me be clear, this is not a victory for NRA members, most of whom are law-abiding gun owners who might some day benefit from the ability to sue a manufacturer that sold them a defective or dangerous gun. No, this will be a victory for those who have turned their organization into a political powerhouse, unconcerned with the rights of the majority of Americans who want prudent controls over firearms.

I do not support meritless lawsuits against the gun industry. I do not think anybody does. It is my belief gun manufacturers and dealers, though, should be held accountable for irresponsible marketing and distribution practices, just as anyone else would be,

particularly when these practices may cause guns to fall into the hands of criminals, juveniles, or mentally ill people.

This legislation has one simple purpose: to prevent lawsuits from those harmed by gun violence. These include: suits filed by cities and counties which face rising law enforcement and medical costs due to increased gun crimes, crimes often committed using guns that flood the illegal market with the full knowledge of the distributors that the legal market could not possibly be absorbing so many of these weapons; suits filed by organizations on behalf of their members; and victims of violent crimes and their families who are injured or killed as a result of gun violence or defective guns that malfunction due to negligent design or manufacture.

This issue is not an abstract one. When people vote for this gun liability absolution today, they are going to be hurting a lot of people all across this land, and I want to point out a few because this bill affects the lives of real gun victims, victims not simply of criminal misuse by a well-designed firearm, but victims of guns that have been designed poorly or marketed in ways which quite frankly should be illegal.

One of the cases that could be affected by this legislation, though this would ultimately be decided by a judge, is that of Brandon Maxfield, a 7-year-old from my State, Oakland, CA.

On April 6, 1994, Brandon was shot in the chin by his babysitter. The shooting left him a quadriplegic and he will never be able to walk again.

The babysitter, a friend of the family, was simply trying to remove a bullet from the chamber of a weapon that was found in the house, a .38 caliber Saturday night special, when the gun accidentally fired.

Here is the key: The weapon was clearly designed in an inherently dangerous way. It can only be unloaded when the safety is in the off position and can therefore fire.

Now common sense might say when you want to unload a gun you would first put the safety on. It defies common sense, on the other hand, to design a firearm so it can only be unloaded in the firing position. After all, one might expect the gun to accidentally fire as someone like Brandon's babysitter struggles to unload it.

Finally last year, after 9 years of litigation, a jury found the manufacturer and distributor of Saturday night specials partially liable for Brandon's injuries. This was a tremendous victory for Brandon and his family and a victory for all people who want to see guns made safer. This bill, however, would take away Brandon's right to sue, and I will explain why a bit later.

The bottom line, though, is Brandon's case was not frivolous. The jury did not think it was. Without the threat of lawsuits, companies like the one that made the gun in this case will have little incentive to change the design, but this legislation would remove the threat of that suit, depriving Brandon of compensation but, even worse, depriving the public of this key avenue to improving the habits of gun manufacturers.

I will quickly go through what the bill does. I know others have and will continue to speak to this, but I think it bears repeating because I do not think everybody supporting this bill really understands its full ramifications.

Essentially, this bill prohibits any civil liability lawsuit from being filed against the gun industry for damages resulting from the criminal or unlawful misuse of a gun, with a number of narrow exceptions.

In doing so, the bill effectively rewrites traditional principles of liability law, which generally hold that persons and companies may be liable for their negligence even if others are liable as well. This bill would essentially give the gun industry blanket immunity from civil liability cases, an immunity no other industry in America has today.

The bill does allow certain cases to move forward, as its supporters have pointed out, but these cases can proceed only on very narrow circumstances. Countless experts have now said this bill would stop virtually all of the suits against gun dealers and manufacturers filed to date, many of which are vital to changing industry practice and compensating victims who have been horribly injured through the clear negligence or even borderline criminal conduct of some gun dealers and manufacturers.

The exemptions in the bill, even the new bill, set a very high burden of proof of negligence for plaintiffs, allow for a very slight number of cases against gun manufacturers to be filed, and only protect a limited class of cases against sellers.

Under this bill, cases could only be filed in the following narrow circumstances. First, if a gun dealer transfers a firearm knowing the gun will be used to commit a violent or drug trafficking crime. In other words, a suit could go forward if a dealer gives a gun to someone who comes in and says, ''Give me a gun, I need to go kill someone.'' This provision only applies in the highly unlikely event a gun buyer clearly indicates his or her criminal intentions to the gun seller. Fat chance of that happening.

I am not a gun dealer, but I imagine most criminals do not make a habit of announcing their criminal intentions to gun dealers. So this exception to the immunity created by the bill is really no exception at all. It will apply to almost no cases.

Secondly, there is an exemption in the bill which applies if a dealer sells a gun to someone knowing the buyer will or is likely to misuse the firearm and that the individual buyer does indeed misuse it to commit a criminal offense. This provision is slightly more likely than the first exemption, but it still requires a very high burden of proof. Instead of common negligence, which might only require that the dealer did not take enough care in making sure that criminals did not obtain guns to commit crimes, what this provision requires is that the dealer actually know that the buyer is likely to use the gun to do harm.

How can this be proven? Mr. President, you are an attorney. How can this be proven? The difficulty in proving such a claim might all but bar this exemption from ever coming into play. It would have no effect on such practices as straw purchases and large volume sales—which, incidentally, are the two most common sources of crime guns—because in a straw purchase, the dealer could always claim that he or she had no idea what the buyer would be doing with the guns.

Third, the bill would allow suits to proceed where a defendant has violated a law or regulation in the sale of the specific gun that caused the damage or injury. This sets a very high burden of proof for negligence. Again, this would not affect dealers who conduct straw purchases or other dangerous distributing conduct because such conduct does not specifically violate any laws or regulations, although I must say it should.

Because there are so few real laws or regulations governing how guns are sold or manufactured, this provision, too, is relatively insignificant in terms of how it affects the underlying thrust of the bill.

Now I should point out that this provision is different than the provision in the original bill as passed by the House. Under the original bill, only knowing and willful violations of the law could be subject to suit, which is an even higher burden to reach. But even under this revised legislation, this standard is far higher than current law.

The simple truth is, negligence does not involve a violation of the law. Requiring a plaintiff to prove that a gun store, for example, was not only negligent in letting a criminal obtain a dozen guns, but the gun store actually violated a law in doing so, of which there are few, makes it very difficult to succeed.

So with any other business or product, in every other industry, a seller or manufacturer can be liable if it is negligent—but not here. Since money, rather than life or liberty is at stake in a civil case, the standard of proof is lower. There need not be a criminal violation to recover damages, and in the overwhelming majority of civil cases there is no criminal violation. So if, for instance, a crib manufacturer designs and markets a crib that results in the death of children who use the crib, we allow that manufacturer to be sued as one means of deterring such conduct and of compensating the families of the children who died from the defectively designed crib. The manufacturer need

not have committed any crime. It is the negligence in making a defective and dangerous crib that is enough. Here, contrary to general negligence law covering almost every other product, this bill allows negligent gun dealers and manufacturers to get off the hook unless they violated a criminal law. That is just dreadful. You are creating a special area of law for gun manufacturers and saying unless they violate a law they can manufacture a defective weapon.

The judge in Washington State presiding over the case brought against the DC area snipers has twice ruled that the dealer, Bull's Eye Shooters Supply, and the manufacturer, Bushmaster Firearms, may be liable in negligence for enabling the snipers to obtain their gun. But even with the new modifications, the sniper victims' case could very well be thrown out of court under this bill. So know what you are doing, Members who vote for it. The sniper victims' case could well be thrown out of court by this bill because there is no evidence that either the negligent dealer or manufacturer violated a criminal law.

Indeed, both Lloyd Cutler and David Boies, each prominent attorneys, recently stated unequivocally that the sniper case would have to be dismissed under this bill, and countless professors have written a letter agreeing with this interpretation of the law.

This is the most notorious sniper case in America. You have negligence on the part of the gun dealer who sold that gun, didn't report it until way late, allowed the snipers to get that gun, and now we are passing a law to prevent the victims from suing under civil liability. Nowhere else in the law does this exist.

In another case, a Massachusetts court has ruled that gun manufacturer Kahr Arms may be liable for negligently hiring drug-addicted criminals and enabling them to stroll out the plant door with unmarked guns to be sold to criminals. But with the proposed changes, the case against Kahr Arms would be dismissed. Its conduct, though outrageous, violated no law. Negligent? Yes. Criminal? No.

Members, know what you are doing when you vote for this bill.

The fourth exemption in the bill is when a dealer somehow violates a sales contract. An example of this would be the dealer failing to provide the gun for which the purchaser paid. This, too, is clearly a limited exception. Victims of defectively designed or negligently sold guns would not be allowed to file cases under this provision. Furthermore, the claims of gun purchasers would be limited to what they were entitled to under the scope of the contract or warranty.

The fifth exemption in the original bill allowed suits to go forward if the gun manufacturer has caused ''physical injuries or property damage resulting directly from a defect in design or manufacture of a product when used as intended.'' This provision altered generally accepted principles of products liability law which essentially state that a manufacturer must implement feasible safety features that would prevent injury caused by foreseeable use or misuse, even if that use is not ''intended.'' For instance, it might not be intended for a child to try to eat a small toy, but it is clearly foreseeable.

This new modified gun immunity legislation does add language allowing suits to go forward as long as the activity was ''reasonably foreseeable'' by the manufacturer or dealer, which appears to match current law. However, the devil is in the details because the bill then takes away any benefit that language might have by stating that the exemption will not apply to lawsuits that also involve criminal acts by the defendant.

The best example of how this provision would affect the case is the Brandon Maxfield babysitter shooting I mentioned earlier, where a child was accidentally shot by a babysitter because the chamber of the gun could not be checked without clicking the safety to ''off.'' In that case, the gun fired while the babysitter tried to check the chamber.

The problem is the bill prohibits suits involving even foreseeable accidents, if there are criminal charges. In the babysitter case, the babysitter could easily be, and indeed was, charged with manslaughter—which is a crime. Thus, even this suit would still be barred by this revised bill.

Contrary to current law which allows judges and juries to apportion blame and damages, this bill would bar any damages against a manufacturer if another party was liable due to a criminal act.

Why should firearms get special treatment? In our society, we hold manufacturers liable for the damage their products cause. This is the case with automobiles. This is the case with cribs. It is the case with children's toys, and it should be the case with guns as well. Lawsuits filed against the gun industry provide a way for those harmed to seek justice from the damages and destruction caused by firearms. Just as important, they create incentives to reform the practices proven to be dangerous.

After all, this is the most dangerous consumer item found in a home.

According to statistics, there is a gun in 43 percent of the households with children in America. There is a loaded gun in 1 of 10 households with children, and a gun that is left unlocked or improperly stored in 1 of every 8 family homes.

More children and adult family members are killed each year by having a loaded gun at home than from incidents with criminal intruders. In fact, a gun in the home is 22 times more likely to lead to an accidental injury or death to family members than used against a criminal intruder. These are senseless actions that can be prevented by simply designing guns with technologically and economically feasible safety devices.

Recent cases have produced evidence from law enforcement investigations, as well as industry insiders, that the gun industry may be ignoring numerous patented safety devices for guns and intentionally flooding certain markets with guns knowingly, and also profiting from the fact that the excess weapons would make their way into the hands of criminals. We have seen gun dealers selling guns when they know these guns are being purchased to immediately resell to criminals—often to criminals who wait right outside the door or even inside the very store while the guns are being bought by someone who can pass a background check.

Lawsuits filed against the gun industry provide a way for victims and municipalities to seek justice from the damages and destruction caused by firearms.

Additionally, lawsuits provide this largely unregulated industry with incentives to reform irresponsible manufacturing and distributing practices proven to be dangerous.

According to Tom Gresham, a writer for the magazine Guns & Ammo, lawsuits have, in fact, proven effective in encouraging manufacturers to design their guns with proper safety devices. Even though guns are not required to be made with safety features, Gresham writes in the June 2002 edition of the magazine that lawsuits have spurred manufacturers to include them to avoid liability in future actions.

Don't we want this to take proven steps to improve the safety of their weapons?

Gresham claims, ''No matter what you think of them, you will find built-in locks on more and more guns in the future. I predict that in ten years, no firearm will be made without one.''

What does this bill do to that? It encourages the gun companies to do exactly the opposite—to not put better safety components on their weapons.

When this bill was introduced, its supporters spoke about the need to protect the industry from frivolous lawsuits and the need to protect the industry from the potential loss of jobs brought on by future lawsuits. These claims are unfounded. This bill is simply the latest attempt of the gun lobby to evade industry accountability. The suits against the gun industry come in varying forms, but they all have one goal in common—forcing the firearm industry to become more responsible.

In addition to ongoing cases filed by individual victims, there have been a handful of cases filed by private associations, such as the National Association for the Advancement of Colored People, and the National Spinal Cord Injury Association. These cases have been filed on behalf of groups of individuals who claim to have been harmed by the gun industry's bad behavior.

And there are government cases—at least 24 cases—that have been filed

against the gun industry on behalf of nearly three dozen cities and counties and one State attorney general claiming that the reckless conduct of the gun industry has threatened public safety and hindered the ability of municipalities to provide for the health and welfare of their citizens. A majority of these municipalities' lawsuits have successfully defeated industry attempts to dismiss their cases. This bill would kill that.

Last year, Dennis Herrera, City Attorney of San Francisco, said that, ''Cases being pursued by my office and some 30 other jurisdictions nationwide have already achieved important milestones in exposing gun industry recklessness, with mounting evidence and an increasing number of high-level whistle blowers revealing gross misconduct by manufacturers and dealers . . . I'm convinced that the City and its fellow plaintiffs have a compelling case against the gun industry.''

This legislation would prevent them from going ahead.

Let me describe a few representative cases that also could have been stopped by this bill.

The case of Cincinnati v. Beretta is one example of a legitimate and successful case filed against the gun industry. In this case, officials from the city of Cincinnati, OH, contended that the gun industry's reckless marketing and distribution of guns enabled them to wind up in the hands of criminals and children leading to murders, shootings, and suicides that imperil public safety. The city also argued that gun manufacturers were negligent in failing to design safer weapons and owed the city compensation for the cost of emergency responses to acts of gun violence.

The Supreme Court of Ohio agreed and ruled the issue deserved exploration at trial. The court found that under generally applicable principles of law, it is the duty of gun manufacturers to use reasonable care in their design and sales of guns, and they may be liable for damages arising from their negligent conduct and failure to equip their guns with practical safety features.

This is no different an analysis than would be used against the manufacturer of any product used by a consumer—whether a child's crib, a toothbrush, a chainsaw, or an automobile.

The Court also found that a manufacturer could be held liable for their role in creating and facilitating the criminal gun market through their failure to use reasonable care in their sale and distribution of guns. The Court specifically rejected the argument that those who irresponsibly sell guns cannot be liable if the damage foreseeably resulting from their negligence was ultimately caused by a criminal act.

Furthermore, the Court noted the socially beneficial role of lawsuits against gun sellers and manufacturers can play:

> If as a result of both private and municipal lawsuits, firearms are designed to be safer and new marketing practices make it more difficult for criminals to obtain guns, some firearm-related deaths and injuries may be prevented . . . Such litigation may have an important role to play, contemplating other interventions available to cities and states.

This case could well be stopped in its tracks if this bill passes.

In another case, Hurst v. Glock, the New Jersey Court of Appeals also ruled in favor of the plaintiff. This products liability case centers on an incident in which a teenage boy, Tyrone Hurst, was seriously injured when his friend picked up a gun she thought was unloaded and fired at Tyrone. The Hurst family argued that the shooting could have been prevented had the gun manufacturer included a safety feature known as a magazine disconnect safety.

Again, the Court agreed and found that the gun manufacturer could be liable for injuries caused by the failure to include a safety feature on the firearm. Wiped out.

In 1994, Griffin and Lyn Dix from Berkeley, CA, lost their youngest son Kenzo after he was accidentally shot to death at the age of 15 by his best friend, Michael. Michael was showing his father's gun to Kenzo and, believing the gun to be unloaded, pointed it at his friend and fired. Michael did not realize there was a bullet hidden in the chamber of the gun.

In an interview after the incident, Michael described the situation after turning the gun on his friend:

> I look down and I don't even aim. I heard a pop, my eyes opened up and I was shocked. I look and saw Kenzo hunched over, kind of moaning—a creepy moan you don't want to hear. It just stays with you.

The bullet went straight into Kenzo's chest. Tragically, he was pronounced dead within the hour.

Kenzo's parents sued Beretta, the manufacturer of the gun that killed their son. They argued that the gun lacked adequate safety features and warnings and that is why it appeared unloaded despite the fact that a bullet lay in the chamber.

The case sent a necessary wake-up call through the industry that they could rightly be held accountable in future wrongful-death cases. Faced with the threat of litigation, a number of manufacturers have changed their design standards and designs to include proper and practical safety features. That is a positive benefit all across this Nation.

I ask my colleagues, how can we justify giving blanket immunity to the gun industry that manufactures and distributes products that kill 30,000 Americans a year, yet fail to provide the proper and practical safety features in their products?

Under the principles of common law, all individuals and industries have a duty to act responsibly. How can we give total legal immunity to an industry that time and time again has failed to act in such a manner?

This is not just about manufacturers and the design of products. It is also about gun dealers and distributors that know their guns are sold to be used in crime. This very bill was scheduled to come to the Senate for consideration during the 107th session of Congress. It was withheld in light of the sniper attacks that terrorized the Washington, DC area. I guess enough time has now passed that the bill's supporters think we will have forgotten those sniper victims. But we have not. We have already heard today that the victims of those attacks have filed one of the cases currently pending. The suit results from alleged negligent conduct of a gun dealer that has been accuse of some incredibly negligent conduct.

Mildred Denise Muhammad filed three restraining orders against her husband, John Allen Muhammad, one of the convicted snipers. Those restraining orders should have prohibited John Allen Muhammad from owning a gun.

However, nothing stopped him from obtaining the handgun he allegedly used to commit murder in Alabama, nor the Bushmaster XM–15 assault rifle used in the sniper attacks, in all likelihood because the dealer that had the Bushmaster assault rifle was either negligent or willful in allowing it to fall into Muhammad's hands.

The assault rifle used in the sniper attacks was one of 238 guns that have been reported missing from the Bull's Eye Shooters Supply store in Tacoma, WA. We learned about this dealer's dangerous inability to keep track of his guns not from the store itself but, rather, from audits performed by the ATF. The store had no record of purchase for the assault rifle used in the attacks and failed to report it stolen until after the ATF recovered the weapon from the snipers and traced it back to the store. Here is a store that has 238 guns that are missing and does not report them. That is class A evidence.

Even after this blatant display of negligent conduct, the rifles manufacturer announced that the gun store remained a ''good customer'' and it would continue to sell guns to the store. The manufacturers showed clear disregard for the victims, their families, and public safety.

And the store itself, in either failing to adequately account for its guns, or even worse, illegally selling the gun to a prohibited person, may well also be liable for its conduct. The alleged snipers were clearly aided and abetted by the irresponsible conduct of the owners of this gun shop that managed to simply lose hundreds of deadly weapons and the manufacturer that supplied serious combat weapons to a dealer with no questions asked.

If they are not liable, they will be found not liable by a jury; but if they are liable, should we not allow a court to decide? How can we, with a clear conscience, pass a bill that would deny the right of these victims of gun violence their day in court?

As I mentioned earlier, this case would almost certainly be dismissed if

the bill now before the Senate becomes law. With no liability threat, few ATF enforcement tools, and a blanket exemption from consumer laws, Bull's Eye will have no incentive to clean up its act.

Such disregard for public safety is identified in another case filed against the gun industry, Lemongello and McGuire v. Will's Jewelry & Loan. In this case, the argument that those who irresponsibly sell guns cannot be held liable if the guns were later used in a criminal act was again rejected, this time by West Virginia Circuit Court Judge Irene Berger.

As the Presiding Officer knows, a felon, fugitive, or stalker cannot legally buy guns. So sometimes the individuals will find someone also to help them evade the current gun laws and get their hands on a gun.

A straw purchase occurs when a buyer purchases guns on behalf of criminals or other individuals who are prohibited from purchasing guns. Federal law enforcement agencies estimate 46 percent of crime guns nationwide come from this type of purchase. I repeat, 46 percent of the guns used in crimes in America come from these straw purchases with gun dealers.

The National Shooting Sports Federation is the gun industry's leading trade association. It is fully aware of the reality that guns from straw purchases are often ultimately found in the hands of criminals. The Foundation also recognizes that these dangerous purchases can easily be prevented so long as dealers act responsibly.

To promote this policy, the Foundation provides training for gun dealers ''to help prevent and deter the illegal 'strawman' purchase of firearms.'' In the brochure of its training campaign entitled ''Don't Lie for the Other Guy,'' the Foundation claims that it is the responsibility of the gun dealer to prevent these purchases from taking place by simply prohibiting any sale they suspect to be a straw purchase. Despite these warnings, a straw purchase is exactly what took place at Will's Jewelry & Loan, a West Virginia pawnshop, in the fall of 2000. James Grey, a felon and gun trafficker, came into the store accompanied by Tammi Lea Songer, a woman who had a clean background and thousands of dollars in cash. James Grey methodically selected 12 guns he wanted and Songer bought them, all in a single purchase, no questions asked.

The shop's employees were suspicious of Grey and Songer's actions. They contacted the ATF to notify them of the purchase.

The problem is that the call to the ATF was made after the guns were purchased, after the profits were made by the dealer and Sturm, Ruger. The warning signs were so obvious, yet proper actions were not taken until it was too late.

Just months later, one of these guns, a 9 mm semiautomatic Ruger handgun, was used by a convicted felon to shoot and seriously injure two New Jersey police officers in the line of duty.

Officers Dave Lemongello and Ken McGuire were shot with that handgun while responding to the scene of an attempted robbery. The shoot-out put an end to the careers of both men. The injuries they received were so debilitating they could no longer serve.

Those officers filed a lawsuit against the dealer and Sturm, Ruger, who both profited from their irresponsible conduct. Their claims were recently validated, and the West Virginia Circuit Court found the gun dealer could be liable under West Virginia law of negligence and public nuisance for failing to use reasonable care in its sales. As a result, a jury could find the subsequent criminal shooting was a foreseeable result caused by that negligent act.

The bill we are considering today would turn a blind eye to the reckless conduct shown by those in the industry that enabled this tragic incident to have taken place.

Last year, Officer Lemongello spoke before the House Judiciary Committee to protest this bill. In his testimony he stated:

> The next disturbing news I heard was that some people in Congress wanted to take away my right to present my case in court and wanted to give that irresponsible dealer special protection from the legal rules that apply to all other businesses in this country. Other businesses have to use reasonable care and may be liable for the consequences if they don't. Those who sell lethal weapons that are highly valued by criminals should have at least the same duty to use reasonable care as businesses who sell BB guns or any other product . . . Gun sellers have to be more responsible when they sell guns to prevent guns from getting into criminals' hands before they do their damage. What happened to me and Ken is an example of what happens when gun sellers are irresponsible.

As if the valuable lessons learned from the cases I have detailed were not convincing enough to prove that criminals are able to get guns on the black market due to the complicity of gun manufacturers and dealers, simply listen to the words of gun industry insider Robert Ricker.

Former Executive Director of the American Sport Shooting Council and former Assistant General Counsel for the NRA, Robert Ricker has testified in support of lawsuits against the gun industry—a brave man. In a recent affidavit, Ricker claimed:

> Instead of requiring dealers to be proactive and properly trained in an effort to stop questionable sales, it has been common practice of gun manufacturers and distributors to adopt a ''see-no-evil, speak-no-evil'' approach. This type of policy encourages a culture of evasion of firearms laws and regulations.

In the same affidavit, Ricker also claimed lawsuits provide a valuable tool for motivating the industry to reform and act responsibly. He stated:

> Until faced with a serious threat of civil liability for past conduct, leaders in the industry have consistently resisted taking constructive voluntary action to prevent firearms from ending up in the illegal gun market and have sought to silence others within the industry who have advocated reform.

That says it all. They will not move to do the right thing, and they will silence others. That is according to one of their own insiders, and we go along with it and are going to give them civil liability protection. I cannot believe it.

Again, I do not support meritless lawsuits against any industry, including the gun industry. But the fact of the matter is, this bill's goal of granting the gun industry blanket immunity would cause much greater harm to the American public than it could ever possibly prevent for an already under-regulated industry.

The right way for the gun industry to protect itself from liability for irresponsible conduct is simply to act responsibly, by manufacturing guns with safety devices and ensuring their products are going to reputable, law-abiding dealers.

Is that asking too much? Is it asking too much that dealers enforce the rules on the books and prohibit straw purchases? Straw purchases, remember, are responsible for the sale of 43 percent of the guns in this Nation that are used in crimes.

I think dealers should enforce the rules on the books and prohibit these purchases. If litigation is the only way to keep the gun industry in check, we should not give the gun industry total immunity. As I have pointed out, everything else is stretched thin.

This is an industry that is less accountable under law than any other in America. The only avenue of accountability left is the courtroom, and this bill attempts to slam the courtroom door in the face of those who would hold the industry responsible for its actions.

We ought to hold this industry accountable for product standards so that in the event a juvenile ends up with a gun, common sense safety devices will prevent senseless accidents.

We ought to hold this industry responsible for taking the proper precautions to ensure law-abiding citizens are able to obtain the guns they choose while criminals and other prohibited individuals do not.

Mr. President, I beg, I plead with this body. It is incomprehensible to me that the Senate of the United States is going to provide this kind of liability protection to an industry that does what I just laid out in these remarks. It is incomprehensible.

I have watched the NRA win time after time—the latest being the Federal database of gun sales being obliterated after 24 hours. If this bill passes, there will be no stay on the gun industry for responsible conduct because they can get away without doing it.

I implore my colleagues, please take a second look at this bill. Talk to attorneys like Lloyd Cutler and David Boies. Ask them what this bill will do to merit cases.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would like to discuss this matter on the level I think it should be discussed;

and that is, is it good public policy, is it the right thing to do in light of the litigation we are seeing against gun dealers and gun manufacturers that is going on in America today?

I do not believe in any way this is a blanket immunity for wrongdoing or total immunity for wrongdoing. In fact, it is not that. What it says is, classical rules of law ought to be enforced. Some could ask why we even need this law. Because how can you sue the person who manufacturers a can of Campbell's soup if somebody buys that can of Campbell's soup legally and kills somebody by hitting them on the head with it? What if you buy an automobile, and you run somebody over on the street, are we going to sue the automobile manufacturer for that?

What is happening in America is the classical concepts, the classical rules of litigation are being eroded. The courts are being politicized. That is a very dangerous thing. As a result, lawsuits are occurring in ways they should not occur and are impacting our daily lives.

I conducted a hearing in the Subcommittee on Courts of the Judiciary Committee on the food industry. Should we sue the manufacturer of food, Little Debbie's, because somebody bought too many of them and became overweight and obese?

Thirty, 40 years ago those lawsuits would have been laughed out of court. They don't meet the principle. A person is responsible for what they eat and how much, not the person who provides the cakes and cookies and Cokes and those kinds of things, unless that product is inherently dangerous and harmful to a person and the consumer does not know about it. We are getting away from that.

With regard to gun dealers and manufacturers, this is the worst of all. The Federal Government and State governments have taken over the sale of guns. Regulations are many. I was a Federal prosecutor for nearly 14 years. I prosecuted people for selling guns. If they file off the serial number, that is a crime. If the gun dealer does not write down the serial number, he can be prosecuted and put in jail. If he does not get an ID from a person who buys a gun, if he does not ascertain and make that person sign a statement that they don't have a criminal record or make them sign a statement they are not addicted to drugs or mentally unstable, or if the dealer knows that and he sells the gun anyway, then he is in violation of the law.

There are waiting lists in States and counties that dealers must comply with. If they don't comply with those rules, they can be sued—not only sued, they can be prosecuted and put in jail. I have prosecuted and put in jail people who sold guns illegally. That is a fact.

If we want more regulations on how guns ought to be sold, let's debate it right here and see if it is justified. We have had all kinds of amendments to put rules and bans and restrictions on innocent, law-abiding people who choose to take advantage of the constitutional right to keep and bear arms. This is what we are talking about. Gun dealers have to comply with these rules, just like the gun manufacturers. And if they don't comply with them, they can be sued.

This legislation would not keep them from being sued. What we are talking about is manufacturers who comply with the laws of manufacturing, and they sell the gun according to the rules, and a dealer takes it and sells it according to their rules, without any knowledge of the manufacturer in Massachusetts or wherever they make them. The gun dealer in California or Alabama or South Carolina sells it according to the law.

Then some activist groups that believe we need to conduct guerilla warfare against a lawful industry want to promote these lawsuits. One of our Members said earlier: If litigation is the only thing to keep the gun industry in check, we ought to sue them.

That is not right. If there is not a cause of action, you should not sue them. They are being sued and are having to expend hundreds of millions of dollars in their defense. They tend to win those cases at the bottom line. But they bring them, frankly, in big cities a lot of times, where there is an anti-gun hostility, where mayors want to crack down and eliminate gun ownership. We virtually have eliminated gun ownership in Washington, DC.

They are not happy with what the legislation will do in passing the law. The elected representatives won't pass restrictions as tight as they would like to have or to eliminate gun ownership anyway, so they want to do it through the backdoor, through litigation. I don't like their idea: If they can't do it this way through law and regulations, we ought to do it through litigation.

I remember Hodding Carter, who used to work for former President Carter. He was on ''Meet the Press'' one time. He said something to the effect that: We liberals have gotten to the point where we want the courts to do for us that which we can no longer win at the ballot box.

If we need to tighten up on gun restrictions, let's put the rule out here and debate that. But we don't need to be creating bogus lawsuits against people who are not doing wrong.

I know the Presiding Officer was a JAG officer and served in the military. I defended a lawsuit against the United States Government because a veteran in a veterans hospital walked off the grounds and was murdered. They sued the hospital. There is a classical rule I have not forgotten: A criminal act is not foreseeable. You are not normally expected, anyone, to foresee someone will commit a criminal act.

I defended that lawsuit on the grounds that, well, maybe he had gotten lost and this or that, got hit in the accident, maybe. But the principle that the hospital is responsible for an intervening criminal act did not justify the lawsuit.

We won the lawsuit. That was a long time ago. I don't know if that would happen today, liberalizing the old principle of law.

A gun manufacturer is not required and cannot be expected legally to foresee criminals will use the gun and who those criminals are. If we think they should not have guns, we have to pass laws. We have to amend the Constitution, frankly, to stop that. They are doing what is lawful.

It is a good effort today. It would be healthy for our entire legal system that we confront this issue and allow the classical rules of liability to be followed again and not allow the abuse of it.

We almost voted earlier on constraining liability of doctors who deliver babies. They are getting sued in incredible numbers. That is a difficult thing. How do you deal with it? We voted on it. Forty-eight Members of this body voted for that. But to a much more significant principle, a violation of the established rule of law, is this idea you can sue a manufacturer who produces a gun that does what it is supposed to do and gets in the hands of a criminal and they use it.

How should you normally think you would sue a gun manufacturer? If he buys a gun and you fire it and it blows up and knocks out your eye. That is what you are supposed to sue the manufacturer for. If a person buys a gun from Smith & Wesson and he aims it and fires it and it hits the target exactly where he aimed it, the gun dealer is not responsible, if that was a lawful sale of the weapon. We set in this Congress and the cities and the States set additional restrictions on the sale of guns. When they do that and when dealers comply with that, they ought not to be sued.

If they violate those laws, don't comply with the laws, or if they have absolute knowledge or actual knowledge a purchaser of a gun is going to use it for a bad purpose, then they have a responsibility. Absent that, they don't. And they should not be sued.

This would be a good step in removing from our overburdened courts a host of abusive lawsuits that have no basis in principle and indeed should not be brought anyway. In fact, this legislation does not change any principle of American law, but basically clarifies it so these cases can be dismissed promptly rather than having to go through the length of time and the great cost that is going on in some of the areas of this country where the lawsuits are being brought.

I know others want to speak on this issue. I see the Senator from Ohio and others. I believe this is good public policy. It is time for us to work hard to establish a more clear understanding of litigation in America. It has become confused. Congress has always had the power to define litigation and the parameters of it when it is in confusion

and not working according to good public policy. We ought to speak out. I am glad there is bipartisan support for this. I think we will pass this bill and it will be a great step forward to improve the rule of law in America.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, I will be brief. The Senator from Ohio has been on the floor a good long while and deserves to be heard.

As you know, we are in a postcloture environment on a motion to proceed. I would hope by early afternoon we can actually get on the bill and begin to consider some amendments on this critical piece of legislation. It has been portrayed by many in many different ways. I would ask the Senators to pick up this very small document, 1805. In fact, there are exactly 11 pages of big print so all of us can clearly read it.

I ask Senators to go to section 4 of the bill and read what we are doing. In a very narrow way, we are denying a third party the ability to reach through the law and say to a law-abiding gun manufacturer and a law-abiding firearms dealer: When you sold that weapon, it down the road got misused in a criminal act and, therefore, you are responsible.

Shame on us for suggesting that as a basis of law today in our country. We have denied it. We have always held the individual responsible. That is clearly where we ought to go. That is why I think this ought to be a clean bill. There are some who want to offer different amendments. We can deal with them on a different day in a different way. Let's keep this bill clean. This is tort reform in the very narrowest of margins, and I hope Senators can work with us to make sure that in final passage we have a clean bill.

I yield the floor.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Ohio.

Mr. DEWINE. Mr. President, I have the utmost respect for my colleague from Alabama who just spoke most eloquently, and I certainly have respect for my friend from Idaho who has brought this bill to the floor. I certainly have great respect for the many firearms dealers who are legitimate, honest, and hard working, and manufacturers around this country, but I must oppose this bill.

I oppose this bill because it denies certain victims in this country their day in court. It singles out one particular group of victims and treats them differently than all other victims in this country. It sets them apart. It sets them aside, and it treats them differently. It denies them their access to court.

It does not put a limit on their lawsuit. It does not put on a cap. It is not what we were talking about yesterday. Rather, it says they are barred from coming to court.

It is unprecedented what this Senate, if I can count the votes correctly, is about to do. This bill shields a certain group of defendants. It establishes an immunity. This bill would overturn over 200 years of civil law, 200 years of tort law, 200 years of common law. It would overturn over 200 years of civil law in this country and fundamentally change our justice system. It would, in essence, turn the civil justice system and our tort law on its head. It would do this by denying one group of our citizens access to the court system.

Most fundamentally, the problem with this bill is it sets a precedent. It will not affect that many victims, that is true, but the real reason to oppose this bill is for the precedent it sets, because if we do it for these victims, what is to stop us from doing it for other victims? And if we don't care about these victims, will we care about other victims in the future, and will we do it to other victims who maybe some of us care about?

Civil liability law is about encouraging people and industries to take responsibility for their actions, and it is also about protecting victims. It is about deterring irresponsible behavior by making sure there are incentives in place to encourage people to behave responsibly. It is about preventing bad conduct and holding people accountable under our common law.

It is not and should not be about undercutting the ability of innocent victims to hold irresponsible people accountable for wrongful and negligent actions. This bill, unfortunately, does just that. It undercuts the ability of innocent victims to hold irresponsible individuals accountable for harmful and negligent actions.

The fact is, this bill cuts to the core of civil liability law and would essentially gut it. As my colleagues know, right now under current law throughout this country, to prove liability in a civil suit, the plaintiff only needs to prove the defendant acted in an unreasonable manner, if the defendant failed to meet his duty to act in a responsible fashion. That is basic common law, basic civil law, that his or her failure led to harm to the victim. Nothing more than that is required.

We do not normally require a victim to prove that the defendant is guilty of a violation of the law, but this bill, however, provides that a victim cannot sue a gun dealer for damages resulting from illegal actions of a third party without also showing that a dealer is guilty of a violation of the law. So that in this bill, in effect, for a plaintiff to prevail in lawsuit and recover damages, he or she would not only need to prove that a gun dealer acted with negligence, that the dealer was irresponsible, but would also have to prove that the gun dealer also broke the law. In other words, the plaintiff would have to prove the gun dealer violated a statute or was guilty of a crime.

There is one exception to this general rule built into this statute we are debating, and that is the so-called negligent entrustment exception. For the most part, this bill requires a defendant violate a statute before he is liable. We do not require this in any other place in our law. In civil law, sometimes it happens when you prove negligence, the defendant did violate a statute, but that is not a requirement. That is not something in a civil suit you have to prove.

When you study law, one of the first things you learn is the difference between civil law and criminal law, and that someone can be liable in civil law to someone else and have to pay monetary damages and it not be a crime. That is a basic concept.

What we are saying in this statute is, under these circumstances, with an irresponsible gun dealer, that the plaintiff would have to prove that the irresponsible gun dealer violated a criminal law. We don't do that anywhere else in our law. Why do we want to do it in this case? Why that special protection in this one case?

If those who support this bill think that is such a great idea that we want to build this impediment into this law or the requirement into our civil law that you have to violate criminal law before you can sue someone, if that is such a great idea, let's just pass that law for everything. So in any civil suit in this country, you would have to find a violation of criminal law. I don't think we want to do that.

If it is good for this victim, why is it not good for everything? Obviously, it is not. Obviously, we are not going to do that. I do not see anybody suggesting that.

Clearly, this bill would make a major change in traditional liability law and is something we should more thoroughly consider and debate before we move toward a vote. Why is there such a rush to pass this legislation? This is legislation that I might point out never had a hearing. No witnesses were called. No one came in. Yet we are here on the Senate floor today. No discussion about this. Why is there this rush to bring this bill to the Senate floor? Why the rush to judgment?

I have two thoughts. I guess the main reason we are here is because there are the votes here to do it. There is the power to pass this bill. When there are the votes, it can be done, and I can count. I know which way this vote is going to come out. There are the votes to pass it. So when there are the votes, I guess the job can get done. But that does not make it right.

I ask my colleagues who have cosponsored this bill or are thinking about voting for it to think one more time, to think about the precedent that is being set. Yes, undoubtedly there are frivolous lawsuits that are being filed against this industry. There is no doubt about that. But there are legitimate victims who when this legislation is passed will not be able to file their lawsuits.

Why not trust the good judges we trust in every other civil suit in this country to make the decision to throw

out those frivolous lawsuits? There are frivolous lawsuits filed in this country every day in all kinds of cases, and we trust the good men and women, the judges who sit on our benches, to get rid of those cases.

By and large, they do a pretty good job kicking them out of court. Why penalize the people who might have a legitimate case and kick them out and deny them, in fact, the opportunity to ever get to court at all?

The precedent is what I worry about. I worry about the victims in this case, but I worry about the precedent because if we, who have the votes to do this today to this group of victims, say we are going to do it because we have the votes to do it, we have the power, whether it is because this lobby is more powerful for whatever reason, what about when the next lobby comes along and they happen to have the votes? Maybe it is a set of victims you worry about or you care about who will be blocked from coming to the courthouse and filing their case. What if it is your child, your mother, your father, your wife, or your husband, and they happen to be among a group of victims who some lobby has put together enough votes to convince Congress to deny them the access to come to court? Their day may come. So, yes, I worry about the victims we are going to disenfranchise and block from coming to the courthouse by this bill. But more than that I worry about the precedent we are setting by this bill.

I worry about the day in the future when another lobby group, another Congress, has put together enough votes to come to this floor to deny another set of victims the right to have access to the courthouse. I think that is what should bother everybody else in this Senate.

Let me make a prediction about this group of victims. Yes, the passage of this bill will get rid of some frivolous lawsuits. There will be lawsuits that will never be filed because of this bill, no doubt about it. But let me make a prediction to everyone who is thinking about voting for this bill. Mark my words, if this bill passes, in the future there will be a case or cases that will be so egregious and so bad that when they are read about and it is found out that that victim could not file a lawsuit and could not file that lawsuit because this Senate voted not to allow that victim to file that lawsuit, it will be so bad, it will turn one's stomach. Mark my words, that will happen if we pass this legislation.

A second reason which has not been stated or discussed as to why there is such a rush to judgment and why some people are in such a big hurry to get this bill passed: We are having a great increase in crime technology. One of the great things that has happened in the last few years is our ability to trace guns and ballistics. We are putting great systems together in this country, and many of us in the Senate have worked hard to do that. We have the ability in law enforcement to trace these guns better today.

I think some of the irresponsible—notice I say ''irresponsible''—gun dealers are worried about that because they know their days are numbered. They know when they ship out all of these guns, put them out on the market, guns that are just getting by today, they know they are going to be able to be better traced and they know they are going to be more liable and we are going to have the ability to trace them.

I believe the passage of this legislation will be more damaging in the future than it is even now. As ballistics technology improves, law enforcement will be better able to find the original source of crime guns, and that oftentimes would be back to a dealer who should not have sold the weapon in the first place. To the extent that we immunize these negligent dealers now, we will be decreasing their incentive to act responsibly and therefore deny their victims their day in court.

There is another aspect about this bill that has not been talked about a lot, and that is the fact that it is retroactive. How dare us in the Congress come to the Senate floor and wipe out every lawsuit that has been filed in this country that would come within the parameters of this bill. How arrogant of us to do that. In this Congress, we have the arrogance to come to the floor and pass legislation that wipes every case out in every State in the Union where there is a lawsuit pending. Did we really get elected to the Senate to do that? That is what this bill does. It will kick people out of court. It would not just bar people from coming to the courthouse. That is not enough. No, what this bill does is kick people out who are already in court. It kicks out people on whom judges have already ruled summary judgments, motions to dismiss, and have already made decisions that the case is at least valid enough to go forward and to go to trial. We are saying, oh, no, judge, we are now going to kick that case out of court and take it away from you and throw that person out of court. To me, if we do that, it would be the height of arrogance. I think that is wrong.

It is not my job to judge these cases. It is not my job to determine whether one of these cases should proceed or should not, or determine whether someone is negligent or not negligent. But I don't think, on the other hand, it is my job to say someone should not have the right to go to court and present that to a judge and ultimately, in most cases, to present that to a jury. That is fundamentally the American way.

Let me talk about a couple of cases. We don't need to look too far to find legitimate cases that would be dismissed if this bill were to become law. Everyone remembers all too well the tragedies of the DC sniper cases. Some of the victims of the DC snipers are suing the Washington State gun retailer known as Bull's Eye Shooter Supply for allowing John Malvo to walk off unnoticed with a 3-foot semiautomatic assault rifle. In fact, there were allegations that Bull's Eye not only failed to report the missing assault rifle, this particular missing assault rifle, but also failed to report over 230 other missing firearms because Bull's Eye was never aware that over 230 guns were missing, in total. That is absolutely unbelievable.

It is, of course, totally unacceptable for a firearm dealer, a retailer, to so poorly monitor and protect its stock. If these allegations are proven true—again, I don't know if they are true—then Bull's Eye should be held accountable for the negligent fashion in which it handled these weapons. Under the provisions of this bill, however, such behavior would be protected from private lawsuits. We would in effect be saying it is OK to allow unknown people—without, of course, background checks—to walk off your premises with hundreds of guns, be they criminals, terrorists, or in this case an underage serial killer.

There is another case in Worchester, MA. This bill would not only prevent recovery for the victims of the DC sniper, but the family of a young man killed in Worcester, MA, by the name of Danny Guzman would also be barred from recovering for the negligence that caused his death. In that case, Danny Guzman was shot and killed with a gun taken from a gun maker by one of his own employees. The employee had a significant record of violence and drug abuse but was able to steal the gun because apparently the gun maker allowed this criminal free access to his guns without any legitimate check of his background and also failed to implement effective security procedures that would have prevented the theft. Indeed, this gun maker could not account for at least 50 of his firearms. If this bill were to pass, Danny's family would be barred from continuing their suit against the gun maker for negligence in completely failing to screen its employees or secure its facilities to prevent repeated thefts of guns.

Let me talk about another pending case—again, I emphasize, this is a pending case—that would be affected by this bill. In this case, a couple entered a gun shop. This was referred to by my colleague from California a few minutes ago. A couple entered a gun shop. The man identified several weapons he was interested in purchasing. The woman he was with was not involved in the discussions between the man and gun shop owner and clearly didn't know much at all about guns. Then she purchased these guns and she paid cash. She paid cash for them.

The man in the gun shop, because he was a convicted felon, was prohibited, of course, from purchasing guns. The woman, however, was allowed to buy them on his behalf. The man then illegally sold the guns on the black market. One of these guns was used to shoot at least one police officer.

Clearly the gun shop owner should have known what was going on. The woman, while technically the purchaser, obviously was merely carrying out the wishes of a convicted felon. Therefore, the owner should never have sold her the guns in the first place. That would appear at least to be negligence. Obviously the criminal who shot the police officer should go to jail. But the dealer who negligently supplied that gun to the criminal should be civilly liable for his negligence as well. However, if this bill becomes law, it is likely the gun shop owner will be immune from liability.

As I mentioned earlier, there is a possible exception written into the law known as negligent entrustment, that might arguably, in this case, allow the lawsuit to go forward. We don't know. But many courts have construed that exception in the past narrowly under the common law, so it is a close call in a case such as this. Candidly, though, why in the world would we even want to take a chance this sort of irresponsible behavior might be immune from liability?

The point is, we can argue these cases. I know some of my colleagues might come to the floor and say under our bill maybe these cases could proceed. Maybe they could proceed. The point is, Why take a chance? Why take a chance? I would argue the three examples I have given. This bill could stop these cases cold in their tracks, and in each one of the cases I have cited, we have lawyers we could bring in, if we could get a hearing, who would swear under oath these cases, in their legal opinion, would be stopped by this bill. We could debate that. But the point is, why take the chance? Why pass a bill that would create that kind of legal impediment to people proceeding?

Again, we get to the point I raised earlier, and that is the inequity, the inequality of creating two classes of victims in this country. Other industries face legal challenges. Other industries have had lawsuits filed against them they don't like. Other industries face suits that in their eyes many times are frivolous and they have cases thrown out of court. Other industries are involved in cases where many people die. We understand that. But we don't grant this kind of immunity from civil liability.

For example, the auto industry. There are 42,000 or 43,000 Americans who die in car accidents every single year. We wouldn't think of coming to the floor and granting any kind of immunity like this for the auto industry, would we? No, we wouldn't. We wouldn't think of that for the world. We can each come up with our own example.

But here we are today picking one industry for no reason. We all know what the truth is, for no other reason than that they have simply put together the votes to do it. They are here and they have the votes. If I count correctly, they are probably going to get this passed. But that doesn't make it right. Victims are going to suffer and there will be victims in the future who will be denied their opportunity to go to court.

It is wrong. I support the second amendment. I support individuals' rights to own guns. I support gun manufacturers. I support legitimate gun dealers. But this is wrong; it is unfair. It is unfair to victims. But more important than that, it is a horrible precedent.

If we do it this one time, what is to stop a future Congress, where the votes are maybe configured differently, from saying, oh, there is another group of victims and we are not going to protect them. We are not going to protect them.

If we deny this group of victims their rights, what is to stop a future Congress from denying another group of victims their rights?

Let us think about that before we cast our vote. I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I want to first commend my colleague from the State of Ohio. I was listening to his presentation. It was a reasoned presentation which I think analyzes this bill in a fair manner. I want to also salute his political courage. It is not easy on his side of the aisle to stand up and oppose this bill. He has done this time and again on many issues. I am happy to count him as a friend and as a colleague whose judgment I value very much. I thank the Senator from Ohio for his continuing leadership in this Chamber.

Mr. President, what is this bill? S. 1805 is a bill brought to the Senate floor by the National Rifle Association on behalf of firearms manufacturers, dealers, and their own trade association. It is a bill that has been introduced to insulate those manufacturers and dealers and the NRA itself from liability for wrongdoing. It is unimaginable that we would name any other industry in America and say that you can sell your product and not worry about being held accountable, if you did it in an irresponsible and negligent way. We wouldn't think of doing it, but we are doing it with the gun industry.

I can count votes. I can count the cosponsors. A majority of my colleagues support this bill. I can't explain it. I could never explain it. In a country where we value the right to own and use firearms legally and responsibly, we have a bill which says we will protect those who sell and use firearms illegally and irresponsibly. Why? Why does the Senate reach this low point—possibly one of the lowest points in its history when we are carving out an exception from liability for gun manufacturers and gun dealers? Maybe my colleagues who support this don't watch the evening news in cities across America. Maybe they do not see the blood and gore in the streets of cities from the misuse of firearms used illegally and irresponsibly that have caused so much heartache and misery for families across America. Frankly, I think they are ignoring the obvious—that unless we ask those who own firearms to establish a standard of use that keeps them away from those who misuse them, that we, in fact, are inviting more restrictions on the legal use of firearms. This bill—this outrageous bill—is going to draw us again into a national debate which is long overdue.

Since President Bush was elected and during his campaign, the NRA said once he is in the White House we don't have to worry about any restrictive legislation. Since President Bush's election, we haven't had an honest debate about a gun issue in Congress. That is a fact. Gun crimes continue, gun deaths continue, and the proliferation of weapons in the hands of those who misuse them continues. We ignore it, but we can't ignore this. This is not an effort to restrict gun ownership. This is an effort to restrict the legal ranks of the victims of gun crimes.

There is a crime victims' amendment which has been supported by both sides of the aisle—Senator KYL, a Republican, and Senator FEINSTEIN from California, a Democrat. They make an impassioned plea for a constitutional amendment to make certain that crime victims and their families will be present in important parts of criminal proceedings. It is a compelling argument. I had my personal questions as to whether it rises to the level of a constitutional amendment, but I would be happy to enthusiastically support a Federal statute that would establish that right.

I believe when it comes to victims, they need to be a part of the process of prosecution. They need it not only because they are important to the process but because it brings closure in their own lives.

The many Members of the Senate who rush to the side of crime victims for this constitutional amendment are the same Members of the Senate—many of them—who are supporting this legislation which will close the courthouse doors to crime victims and their families across America when firearms are involved. Don't tell me your sympathies are with crime victims. If your sympathy is with the victims of crime, you have to vote no on this.

Let me give you an illustration in my home State of Illinois.

Five years ago, in June of 1999, a man named Benjamin Smith went on a shooting rampage in my State. You may remember it. It was finally discovered that he was linked to a group known as the World Church of the Creator. He was a follower of a white supremacist. And in his mania, this demented disciple went on a shooting spree across the Midwest. In June 1999, Benjamin Smith attempted to purchase guns from a licensed gun dealer. He was denied because a background check

turned up a domestic violence restraining order which prohibited him from purchasing a gun. So he turned to someone he knew on the street who could buy a gun—a gun trafficker named Donald Fiessinger. Fiessinger routinely bought handguns—usually Saturday night specials, cheap little crime guns—from a place called the Old Prairie Trading Post in Pekin, IL. Mr. Fiessinger would then resell these guns through classified ads in a local newspaper. Over a 2-year period, Fiessinger—this gun trafficker—purchased 72 guns, three a month on average, from the Old Prairie Trading Post in Pekin, IL, and then turned around and sold them.

The gun store never even asked at any time whether these guns were going to be used for Fiessinger's personal use.

I think it is pretty obvious. Buying three guns a month for 2 years—I don't care whether you are a target shooter or interested in self-defense, I can't imagine a need for the 72 cheap Saturday night specials which Fiessinger was buying from the dealer.

The manufacturer of these cheap crime guns, of course, didn't place any restrictions or conditions on dealers like the Old Prairie Trading Post. It didn't say you should prevent the large volume sale of guns to people who are obviously turning around and reselling them to gun traffickers.

As a result, this Benjamin Smith bought two guns from Fiessinger, and then he went on a 3-day, hate-filled shooting spree across Illinois and Indiana. It was a shooting spree inspired by his hatred and his bigotry. He targeted racial and religious minorities. When it was all over, he killed two people and wounded nine others.

Five of those victims joined in a lawsuit against both the manufacturer of these cheap Saturday night special weapons, as well as the distributor. They included Sherialyn Byrdsong—we know that name in Chicago and in the Midwest. It was her husband, Ricky, a former basketball coach at Northwestern University, an African American, who was shot in the back and killed as he walked with his children down their residential street in Skokie, IL; on behalf of the family of Won Joon Yoon, a 26-year-old South Korean graduate student at Indiana University, who was shot twice in the back and killed on the steps of the Korean United Methodist Church in Bloomington, IN, picked out of the crowd because he had the appearance of an Asian; Rev. Stephen Anderson, a minister who was shot on his way to join his family at a Fourth of July celebration; Hillel Goldstein—whom I met—one of six Orthodox Jews picked out by Benjamin Smith on his shooting spree when he drove through a predominantly Jewish neighborhood in Chicago, hunting for Jewish families walking to the synagogue for temple services; and, Steven Kuo, another graduate student at the University of Illinois.

These five survivors and families brought a lawsuit. The case is not based on the fact that the gun was present and used in these crimes. The case against the manufacturer, Bryco Arms, is based on the intentional and reckless sales and distribution practices because Bryco took no reasonable steps to ensure that their guns were not diverted to prohibited customers.

Although Bryco asked the court to dismiss the case, the court ruled that a claim of public nuisance should go forward against this manufacturer.

In October 2000, the gun dealer, Robert Hayes of the Old Prairie Trading Post, was indicted on 13 counts of violating Federal firearms sale laws because he didn't get approval for the sales from the Illinois State Police before transferring guns to that trafficker, Fiessinger. The seventh count of the indictment concerned the gun used in the Benjamin Smith shooting spree.

Robert Hayes pled guilty to one count of making an illegal sale of a gun and was sentenced to 2 years of probation. Fiessinger also pled guilty and was sentenced to 10 months in prison and 2 years of supervised release.

Despite this acknowledgment of criminal activity by the dealer and the gun trafficker regarding the sale of firearms, the lawsuit brought by the victims of Benjamin Smith would be terminated by this bill. The families and the survivors from the shooting spree would have lost and will lose their right to go to court because this bill says that even if the manufacturer is irresponsible in distributing the weapons and the dealer is irresponsible in selling those weapons to a trafficker, this bill says they cannot be held accountable despite the fact that people died and were injured on this shooting spree. Although this gun dealer, Robert Hayes, pled guilty to making an illegal sale, the gun he pled guilty to illegally transferring was not the gun used by Benjamin Smith. That is crucial. Smith's gun was under count 7, an indictment Hayes did not plead to. Therefore, the criminal conduct of the dealer did not cause the shooting. So the exception in this bill would not help.

As a result, Hayes, the gun dealer, the Old Prairie Trading Post, was free to argue that the victim's case should be dismissed because he could not be held liable for the lawful sale of a gun. The court ruled against his motion and held that it would allow a claim for public nuisance and negligence to continue. If this case were frivolous, the court would have dismissed it. It was not frivolous. People were dead, injured, and someone should be held accountable for it.

Why, then, should we in Congress, in the Senate, step into this lawsuit, not only prospectively but retroactively, and say to the families of the victims that they have no right to go to court, to hold the manufacturer accountable for irresponsible distribution practices, they have no right to go to court, as this bill says, and hold a dealer responsible, a dealer that is literally feeding firearms and Saturday night specials to gun traffickers? That is what this bill says.

I point out the exceptions in this bill are so narrowly drawn that even if this gun dealer pled guilty to count 7 for not seeking approval from the Illinois State Police before the sale, the victim's case would still be terminated.

The third exception provided in the bill requires that the violation of law be a proximate cause of the harm for which relief is sought.

In this case, if Hayes, the dealer, had sought approval from the State police, the police would have granted it because Fiessinger was not a prohibited purchaser. Therefore, regardless of whether Hayes violated the law, Fiessinger would have been able to purchase the weapon and resell it to Smith. So there is no way around it.

This bill is designed to stop those families and those victims from holding an irresponsible gun dealer for peddling guns to a trafficker used in the commission of a crime.

The Senator from Ohio said it best a few minutes ago: It is an outrage that we would say, retroactively, we are going to throw these suits out of court; that we would say to these families, these crime victims, they will lose their day in court. Why? To protect a special interest group—gun manufacturers, gun dealers, and trade associations such as the National Rifle Association.

Take a step back for a moment and look at the big picture. We have a case that the court in Illinois has ruled is not frivolous, a gun dealer and trafficker who have already pled guilty to illegal firearms sales, and yet this legislation would close the courthouse doors for the tragic victims of this shooting spree.

Let me give one other case that amply illustrates why this bill is so bad. Michael Ceriale, a 26-year-old Chicago police officer, was shot by a 16-year-old member of the Gangster Disciples, one of the terrible street gangs that, unfortunately, wreak havoc on many neighborhoods of the great city of Chicago. This police officer, 26 years old, was killed conducting narcotics surveillance. Once again, the mere use of the gun is not the underlying cause of action. In this case, his family sued the manufacturer, Smith & Wesson for shipping the gun used to kill the officer to the distributor, Camfour. Smith & Wesson sold this weapon to Camfour, even though it knew or should have known that Camfour, the distributor, was part of a core group of irresponsible distributors that act as the initial distributors for nearly 80 percent of the firearms traced to crimes in the city of Chicago.

There is ample evidence that when we trace back crime guns, we find there are a handful of irresponsible gun dealers that are selling these guns on a

wholesale basis to gangs and to gun traffickers. It is outrageous that this continues in this country.

For those irresponsible gun dealers, there is good news in S. 1805. You are off the hook. S. 1805, brought to us thanks to the National Rifle Association, says that if you are one of those irresponsible gun dealers selling to traffickers, selling to criminal gangs, shooting innocent children on the street, killing police officers, you are off the hook with S. 1805.

They argue it is part of your second amendment right to be able to sell guns on a wholesale basis to be used by criminal gangs across America. Incredible.

This Camfour, the distributor, then shipped the gun to Strictly Shooting, even though it knew Strictly Shooting was part of 24 gun dealers that were responsible for 27 percent of the crime guns recovered in the city of Chicago.

On August 15, 1998, the gun found its way into the hands of a Gangster Disciple gang member, who killed a 26-year-old Chicago police officer, Michael Ceriale. Unfortunately, this case, even though it has been upheld by the court of appeals in Illinois, would be dismissed because its cause of action is based on the claim of public nuisance, which does not fall into one of the narrow exceptions written into this bill.

Now, all who stood with pride and admiration for the men and women in uniform, those policemen and those firefighters who rose to the occasion on September 11 and protect us every single day, all Members in the Senate who say to these men and women that when they put their badges on in the morning as police officers and put their lives on the line that we can never thank them enough, all who give speeches back home about the law enforcement officers who keep our communities safe, should keep in mind that S. 1805 is a cop killer bill. S. 1805 says that cop killers such as the Gangster Disciple gang members who killed Michael Ceriale in the city of Chicago, those cop killers are going to get a free ride because of S. 1805. The family of this 26-year-old police officer, going to court to recover money for those irresponsible activities by the manufacturers, distributors, and gun dealers, will have the courthouse door slammed in their faces.

Cop killers will love this bill. Frankly, those that supply the guns to these cop killers should be ashamed of themselves and be held accountable. But they will not be.

So in those two illustrations from my home State, crime victims of a shooting spree will lose their right to go to court, to hold gun traffickers responsible under this bill, and the family of a fallen Chicago police officer who gave his life trying to stop the drug trade in that great city will have the courthouse doors slammed because the National Rifle Association wants this bill and wants it desperately. That is a sad commentary.

I remind my friends, do not stand before the Senate, saying how much you care about crime victims, how much you care about the police who risk their lives every day for us and then turn around and support this terrible legislation.

You cannot have it both ways. You cannot let guns flood America's streets to be used with criminal intent on a day-to-day basis, guns that are sold to criminal gangs, guns that are sold to deranged individuals. You cannot stand by and watch that happen and then protect those responsible for the sales with this legislation. That is exactly what is happening.

I thank the Senator from Rhode Island, Senator REED. He has been a leader on this issue. We have talked about the DC sniper case, which I know will be addressed time and again during the course of this debate. I make it clear that this was no isolated case in the District of Columbia when these two men went on a shooting spree killing innocent people in every direction. Sadly, these things are being repeated over and over.

To my friends who are following this debate who are hunters, sportsmen, target shooters or own a gun for the self-defense of themselves and their family, I plead, stop for a moment and think about this. To protect your rights in America, to use guns legally and responsibly, you must tell those like the National Rifle Association, that their agenda on this issue is too extreme. What they are trying to do is to protect those who use guns illegally and irresponsibly. In their passion to do that they are jeopardizing your rights. They are raising a question which ultimately will come back to you, the legal owner of a firearm, as to whether or not we have gone too far in America.

We were told, of course, when President Bush was elected to expect this. The National Rifle Association would have its day. We were told they have a friend in the White House. It is abundantly clear that President Bush is going to sign this bill. But what is not clear to me is how my colleagues in good conscience can support this legislation. I cannot understand this. Day after weary day we come to the floor of the Senate and say that individuals across America are going to be denied the right which we have considered part of our American birthright, the right to walk into a courtroom, rich or poor, to stand before a judge in a court of justice, and to ask for fair treatment, to ask that others be held accountable, and to let that court, that judge, that jury make that decision.

Clearly, we are seeing, day after day, an attempt to erode that right to go before the jury of your peers, your neighbors, and to let them decide what is just and what is right. In this case, unlike the other cases, it is not just a matter of money, it is a matter of life and death—life and death for crime victims, life and death for police officers.

That is why the Major Cities Chiefs Association opposes this legislation. They know what this means. They know that police officers across America will be targeted because of this bill. They know their families, once they are killed in the line of duty, will have fewer options to turn on those who have used guns and those who have purchased guns illegally. They know that.

The Major Cities Chiefs Association, the Brady Campaign To Prevent Gun Violence—all of these organizations have made it clear this is a terrible bill. It is a bill that should be defeated. I sincerely hope my colleagues will join in support of stopping and thinking twice before they vote for its passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me remind my colleagues again that we are in a postcloture environment. We are hoping we can get on the bill and hoping we can look at some amendments. I do have to respond to try to keep this debate clear and honest and the RECORD representing what it ought to represent.

My colleague from Illinois says the reason we have this debate today is because of George W. Bush. He forgot that 10 Democrat cosponsors and his own leadership are cosponsoring this bill and are openly advocating its passage. This is not about George W. Bush. This is about the rights of Americans under existing law, and also frivolous third-party lawsuits that we ought to block. That is what the essence of this debate is about.

Now, certainly the Senator from Illinois can say what he wishes to say on the floor. Will George W. Bush sign this bill if it gets to his desk? He says he will. I would think any law-abiding American U.S. President would want to preserve law in this country, the kind of law that would suggest that any President would want to reinforce centuries of legal precedents based on one premise, individual responsibility.

Are we suggesting that, as the Senator from Illinois suggests, a gun manufacturer ought to be liable for a criminal act of a third party? Well, he used the word—let me see; I have written it down here—''establish a standard of use.'' I believe that was the term used.

How many automobile dealers establish this standard of use of their product when it is manufactured in his State and sold in the marketplace, that it will be used safely and lawfully? Now, would any automobile manufacturer intentionally sell a car knowing a drunk was going to get in it and wipe out a teenager or a teenager wipe out an adult?

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

Mr. CRAIG. Not at the moment. I want to be quick here so I can yield to one of your colleagues.

Of course they would not.

Does any manufacturer of a legal firearm make the clear assumption

that it is going to be used illegally? Of course they do not. They make them under the guidelines of the law. They abide by the law. And we protect those who do. We do not—we do not—protect those who do not abide by the law.

The Senator also went on to say that this would somehow protect trade associations. Go to the bill. You have held it up. I wish you would read it in detail. It is not the intent of our bill to do so. In fact, the Daschle amendment clarifies that we do not necessarily protect trade associations. Well, then you better talk to Senator DASCHLE. He is the amender of the legislation that is before us to clarify that point. We believe we have effectively clarified it, and the Congressional Research Service says we have done just that.

So if a trade association acts negligently, acts outside the letter of the law, then they are every bit as liable as they would be under current law. So we do not reach out to do that.

Do we close the courthouse door? Absolutely not. The plaintiff makes it to the courthouse, with his or her attorney. They argue it before the judge. The judge weighs it in light of the law—if this were to become law—and makes the decision as to whether that case can go forward. I think that is clearly an important argument that needs to be established.

As to the argument about lawsuits involving, what they describe as, high volume gun sales—I think he spoke to a tragic situation in Illinois—the regulations of the numbers of guns that can be sold in a single transaction, however, are not the job of the courts. They are the job of the legislators. They are that Senator's job and this Senator's job, if you can gain a majority of the votes to establish a certain number of gun sales per day. The job of the dealer is to check the background, to check the legality, and to do so openly and knowingly.

Now, having said that, let's talk about the dealer. In S. 1805, we exclude from its protection actions brought against a transferer convicted under section 924(h), title 18 of the United States Code, or a comparable State felony law. 18 U.S.C., section 924(h), provides: whoever knowingly transfers a firearm knowing that such firearm will be used to commit a crime of violence or drug trafficking crime shall be imprisoned not more than 10 years, fined in accordance with this title.

S. 1805 does not wipe out this provision of the United States Code. We intentionally narrowed its focus so that would not happen.

The Senator from Illinois is rightfully concerned about the trafficking of firearms, as am I. I certainly do not want that to happen. But what I do not want to happen either is for hard-working men and women of this country—many of them union men and women—who are working in firearms production in this country today for civilian use and for military use, to lose their jobs because their company has simply been strangled to death by lawsuit after lawsuit after lawsuit. That is what is happening.

We have lost thousands of legitimate jobs in this country because this industry is a very small industry in total. Put it all together, and it is less than a Fortune 500 company. That is why it is extremely cautious about how it operates within the law, and it is why our judges have recognized the frivolous character of these lawsuits and have thrown them all out.

The problem is simply this: It costs hundreds of millions of dollars to argue the law and to argue before the courts and to continue this legal dance that certainly those who are now engaged in it put law-abiding manufacturers and dealers through. Well, that is going to be part of the argument we look at here.

But I do ask our colleagues to focus on the bill, to understand how narrowly it has been designed. It is a product of a bipartisan effort, not a single-interest effort but a bipartisan effort, to reform our tort process in a way to deny a very particular frivolous kind of lawsuit of the kind that is addressed in S. 1805.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wanted to ask a question of the Senator from Idaho but he did not have an opportunity to yield, so I will make a statement and then yield the floor to the Senator from Washington who has been waiting patiently.

I missed it. I am sorry, and I apologize. I thought this was a bill to protect a special interest group, and it turns out it is a jobs bill. If I had only known that. We have lost almost 3 million jobs under this President, and this is being offered to create jobs. I have to take another look at this. Because, frankly, if protecting gun carnage on the street is going to create jobs, where does that leave us? Where does that leave us? If we reduce gun violence on the street and the number of victims, it is going to cost us jobs. Well, I guess you can argue that. It would be less work in the trauma centers, less work in emergency rooms, less work in the rehabilitation centers from the gun violence victims.

I guess we would lose some jobs. I guess the Senator from Idaho is right. What a price to pay—your money or your life.

The argument has been made we have to support this bill to protect American jobs. Crime victims and their families who have had someone killed or maimed with a weapon won't be able to go to court to hold the manufacturer and dealer responsible because we need jobs in America. Has it come to this? Have we reached this point?

Let me say to my friend from Idaho, I don't understand what he said about trade associations. I turn to page 11 of the bill, and it is all about trade associations. As I read that, I can't help but believe that written between the lines are three letters: N-R-A. Isn't that what it is all about? So the trade association that is being protected by this bill is the National Rifle Association?

If it isn't about trade associations, strike the whole thing. Get rid of it. It is all over this bill, protecting trade associations.

I might say his reference about transfers to individuals knowing that they will use it for a crime, the legal standard most of us learned in law school is ''knew or should have known.'' There is a world of difference between knowing you are going to use a gun for a crime or the fact I should have known it. Because Mr. Fiessinger was buying three guns a month for 2 straight years, at some point I should have known something is odd about his behavior. He was not buying guns for personal use or for self-defense. He was a gun trafficker.

Did I know as a dealer that he went outside the door and sold it to someone who used it for a crime? There was no way I would know it. I was inside the store. But should I have known? You don't include that standard in your bill. You intentionally exclude it because it is the obvious and real life standard people are held to.

Now that I know this is a jobs bill, I will have to look at it long and hard. We need jobs so desperately in America that we are going to close the courthouse doors to the widows and families of slain police officers for fear if they recover from a gun dealer who is selling guns to criminal gangs, somehow or another that is going to cost us jobs. What a sad rejoinder that is the defense for this bill.

I yield the floor.

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

Ms. CANTWELL. Mr. President, I am glad this debate has finally turned toward jobs. For the last 2 days we have been having a debate about what groups to exempt from liability. One of the groups we need to be talking about—because they have paid a heavy price for the liability of our economy—is the unemployed workers in America. Because we won't reinstate the federal unemployment benefits program, unemployed workers are being held liable for our economic recession.

I am glad my colleagues are finally talking about jobs. We need to be questioning whether jobs are being created in this country. We need to ask whether we believe in the President's economic forecast for this year, in terms of the job growth he says is going to take place, or whether we don't believe those numbers and we want to do something about unemployment.

In the past few weeks, we have heard much about the number of jobs that will be created this year. And we've also heard some backpedaling based on economic modeling, statistics and rounding errors. In the end, they say

that the economy is going to grow by X number by the end of this year, and we don't have to worry about the unemployed.

The bottom line, however, is that the economy isn't going to create enough jobs to put America back to work. And since this recession started in early 2001, millions of people have lost their jobs through no fault of their own, and millions are still out of work. After the recession began in March of 2001, this country faced another blow: 9/11. In addition to the horrific personal losses resulting from that tragedy, our national economy and my own State's economy was gravely hit in a variety of sectors that caused huge job loss.

And here we are today, still with 2.3 million fewer jobs than in January 2001. And yet, some of my colleagues on the other side of the aisle would like to say the economy is recovering and we don't have to do anything about helping unemployed workers.

Part of our job at the Federal level is to use the Temporary Emergency Unemployment Compensation program to help laid-off workers in times of economic decline. This program is funded by employer, and by extension employee contributions. They are paying into a Federal program that is supposed to help in downturns of our economy to keep people—with mortgage payments, hospital payments, health insurance—going until they actually have an opportunity for jobs in the future. This has been a essential program.

At the State level, a laid-off worker can get 26 weeks of help. But, during recessions that's often not enough to get back to work. So the Federal Government has said that in times of high unemployment, we're going to step in. After a laid-off worker has exhausted their state benefits, a Federal program will kick in that provides an additional 13 weeks of help. In some instances where States have really been hard hit by high unemployment, such as my state, which had for a time over 7.5 percent unemployment, there is an additional 13 weeks of help. But somehow this body has decided, after much debate, that we were not going to continue that program.

In fact, in December of last year we tried numerous attempts to pass unemployment benefit extensions. We tried to get the other side of the aisle to agree that this was a necessary step. We were rebuffed by people saying the economy is going to get better, the economy is going to get better, so we don't need to do this.

I found it amazing that people on the other side of the aisle, when we returned in January, were still asserting that in that debate: The economy is going to get better.

Now the President and his Cabinet, who came to Washington State just this past week, are saying their original predictions on the economy aren't going to be as rosy as they predicted. The President's own economic report, in which they cite on page 98 a chart talking about growth and real GDP and productivity over the long term, basically said this year we were going to create 2.6 million jobs. That was a great forecast. Many of my colleagues on the other side of the aisle said that that is an indication that the economy is going to grow, and we don't need to do unemployment benefit extensions. People will find jobs.

The three Cabinet secretaries—the Secretaries of Treasury, Commerce, and Labor—who visited Washington State must have thought the picture was so rosy that they didn't need to meet with unemployed workers who wanted to share their plight. And yet, when they were asked about the President's economic numbers and the President's economic plan, they all backed off of those numbers. They all said the economy is not going to grow at that fast a rate. Those were just numbers.

If they are just numbers and you don't really believe that is the growth rate, then let's go back to the business we are charged with—helping out in times of high unemployment with Federal assistance. This program is paid for by employers and employees. Let's put back on the table the 13 weeks of Federal assistance and, in high unemployment States, an additional 13 weeks in Federal assistance.

Let's not make a mistake. There are hundreds of thousands—in fact 760,000 people in America—who have exhausted all their state benefits and have no federal program to pick them up. And in addition to the 8.3 million people officially counted as unemployed, there are another 1.7 million who are actually no longer counted as in the ranks of the unemployed. If we count them, the national unemployment rate jumps from 5.6 percent to 6.7 percent. These people are out of work just the same as those who are counted, but yet they are not in the numbers. Many are discouraged workers. Many have exhausted their benefits.

Let's take a look at the economic policies of the past two administrations. Let's look at what the first Bush and the Clinton administration decided to do when this country faced an economic downturn in the early 1990s. They decided that we should create a federal program for unemployment benefits to help people until they could get back to work.

I have numbers of e-mails and letters from constituents in my State and other parts of the country. These constituents say that they have sent resumes to hundreds of companies and maybe only had two or three interviews. When they go to those interviews, they are competing with people who are three and four times more qualified for the job. These overly qualified people are willing to take that job because it is the only job that is out there. Thereby those individuals who are themselves qualified but not overqualified are left without employment.

Let's compare the number of jobs that were created in the last recovery and this one. The bottom line is that in 1992 we started to see a recovery in jobs. In April of that year the economy started to create about 150,000 jobs per month. But, even so, we kept the Federal program going for 22 more months. In February of 1993, we finally closed the jobs deficit, and yet, we continued the program until 2.9 million new jobs had been created, above and beyond the jobs deficit.

In the current recovery, we are simply not seeing that kind of growth. Last month, just 112,000 jobs were created. And yet, everybody is ready to say that 112,000 jobs signals our great return. We need to take a lesson from history: In the 1990s, when the economy started creating about 150,000 jobs, we continued the program for almost 2 more years. We certainly didn't cut it off as we did in December of 2003.

In April of 1992, that administration was not heartless as to the plight of Americans being out of work. That administration recognized that even though the economy is starting to recover, it hadn't fully recovered. Under that Republican administration, they said let's go ahead and keep the Federal employment program going. So they extended it for another 22 months.

In February 1993, when we basically had broke even for the jobs that had been lost, the Federal unemployment extension program was still extended another year.

The past recession provided good economic evidence that extending unemployment benefits at the Federal level not only helped bridge the gap between the end of State benefits and finding a new job.

It also provided economic stimulus. For every dollar spent on unemployment benefits, it generates $2 of stimulus to the economy. We found out in the 1990s that was a good economic plan, and two administrations, a Republican administration, the first George Bush, and a Democratic administration, Bill Clinton, found that this was great economic policy for our country.

Yet today, the administration is simply being heartless. Somehow, even though the President has backpedaled on his own economic plan for the year and said he doesn't support the job growth projections—somehow even though we have created only a minuscule number of jobs, 112,000 in January, the administration doesn't want to continue this program.

I find that amazing. What else I find amazing is that even though we have $17 billion in the UI trust fund—$17 billion that does not have to be found, that does not have to be taken from another program; $17 billion that has been paid for by employers and employees, and is, in fact, designed to take care of employees during economic downturns—we're not going to extend the program.

As the program has been designed, it says these people can be eligible for

Federal temporary assistance for 13 weeks and, if they are in a very high unemployment State, an additional 13 weeks. I want to point out that in the 1990s, not only did they extend that program for 27 months, much longer than we did in the current program, the program was also a richer program. The program was richer in that you actually had twice as many weeks of benefits.

So the current program has fewer weeks of benefits, and it hasn't been in place for as long—it only lasted 22 months.

I think people across America are getting the message. I know they are in Washington State. They were so disappointed when the Cabinet Secretaries showed up in town and said they wanted to do something about the hard economic times, and yet refused to meet with laid-off workers. Then the Secretaries Snow and Evans refused to back the President's jobs projections. Laid-off workers in my state said: If you guys do not believe in the economic numbers, we can tell you firsthand we do not believe in them because we have been on job interview after job interview and have sent resumes and the jobs are just not there.

As the Seattle P.I. wrote in an editorial, everything is not fine in the job market. They clearly point out that we have a responsibility, and the one thing to do to alleviate the pain is to extend Federal unemployment benefits. I ask unanimous consent to print that editorial in the RECORD.

EVERYTHING IS NOT FINE IN THE JOB MARKET

Helping unemployed workers is the one thing the Bush administration could still do about the lousy jobs environment.

Three-fourths of the way through his term, President Bush is pretending that everything is fine for workers. The administration has shown no interest in extending federal emergency unemployment assistance for workers whose benefits are expiring.

The country has lost 2.3 million jobs. The recovery is pushing up CEOs' pay, ironically, in part because they are helping stock prices by holding down hiring. And the layoffs continue.

Boeing said Friday it might cut 50 workers in Everett. The sale of AT&T Wireless Services will spark thousands of layoffs. Yesterday, Sen. Maria Cantwell, D-Wash., visited workers and managers of a Seattle warehouse where the staff was laid off and the building put up for sale.

As Cantwell notes, there are far more unemployed workers than new jobs. For good reason, the White House has jettisoned its own prediction of 2.6 million new jobs this year.

The fury over outsourcing of jobs is much overstated, but it is fed by the weak economy. The export of some jobs underscores the need for helping unemployed workers through a transitional time until more jobs are created. The one way to alleviate the pain quickly is to extend federal unemployment benefits.

Ms. CANTWELL. Mr. President, the Minneapolis Star Tribune wrote:

At this sluggish pace, it will take the nation four years to recover the jobs it lost in nine months during the recession of 2001.

So there are people saying obviously it is going to take us a while to recover.

The L.A. Times recently wrote:

More than 2 million jobs have been lost in the last three years. . . . Even in the best-case scenario, Bush will end this term with a net job loss. That hasn't happened to a president since Herbert Hoover at the beginning of the Depression.

Mr. President, I ask unanimous consent to have these articles printed in the RECORD.

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

[From the Star Tribune, Minneapolis, MN, Feb. 10, 2004]

JOBLESS; BENEFITS ARE RUNNING OUT

To a casual reader, the government employment report released on Friday shows an economic recovery finally taking hold. Payrolls expanded for the fifth consecutive month, and the unemployment rate fell slightly to 5.6 percent.

To Americans who are standing in the unemployment line, however, the January data reveal a recovery that remains woefully inadequate. If President Bush really cares about the nation's unemployed, as he said Sunday, he will endorse congressional efforts to enact a badly needed extension of federal unemployment benefits.

The January jobs report was encouraged in the context of the current recovery, but it was pathetic in the context of history. Since the labor market hit bottom last summer, employers have been adding about 73,000 jobs per month. That compares with 216,000 jobs per month during the economic expansion of the early 1990s, and much larger monthly gains in recoveries before that. At this sluggish pace, it will take the nation four years to recover the jobs it lost in nine months during the recession 2001. There is simply no modern precedent for a jobless recovery of this duration.

The slow pace of hiring is taking a terrible toll on those in the unemployment line. Nearly one-fourth of the nation's 8.3 million jobless workers have now been out of work for six months or longer. As of December, nearly 400,000 workers are exhausting their unemployment benefits every month, according to the Center on Budget and Policy Priorities in Washington, D.C.

(A different Labor Department measure, known as the household survey, has been showing much stronger job creation in recent months. But the department said Friday, as it has for years, that it considers the household survey less accurate than the payroll survey that is showing tepid growth. And even by the household survey, the current expansion is much slower than its predecessors.)

Bush says that in light of the large budget deficit, he wants to contain federal spending, and we sympathize. But the modest cost of extending unemployment benefits would disappear as soon as the job market truly recovers, unlike the much larger tax cuts that the president continues to propose.

Lawmakers dragged their feet on this question all last fall, arguing that a jobs recovery was just around the corner. Last week a majority in the House finally recognized its error and voted to extend benefits. The Senate and the White House should concur.

[From the Los Angeles Times, Dec. 29, 2003]

JOBLESS COUNT SKIPS MILLIONS

(By David Streitfeld)

San Francisco.—Lisa Gluskin has had a tough three years. She works almost as hard as she did during the dot-com boom, for about 20% of the income.

When Gluskin's writing and editing business cratered in 2001, she slashed her rates, began studying for a graduate degree and started teaching part time at a Lake Tahoe community college for a meager wage.

It's been a fragmented, hand-to-mouth life, one that she sees mirrored by friends and colleagues who are waiting tables or delivering packages. In the late '90s, the 35-year-old Gluskin says, ''we had careers. We had trajectories. Now we have complicated lives. We're not unemployed, but we're underemployed.''

The nation's official jobless rate is 5.9%, a relatively benign level by historical standards. But economists say that figure paints only a partial—and artificially rosy—picture of the labor market.

To begin with, there are the 8.7 million unemployed, defined as those without a job who are actively looking for work. But lurking behind that group are 4.9 million part-time workers such as Gluskin who say they would rather be working full time—the highest number in a decade.

There are also the 1.5 million people who want a job but didn't look for one in the last month. Nearly a third of this group say they stopped the search because they were too depressed about the prospect of finding anything. Officially termed ''discouraged,'' their number has surged 20% in a year.

Add these three groups together and the jobless total for the U.S. hits 9.7%, up from 9.4% a year ago.

No wonder the Democratic Presidential candidates have seized on jobs as a potentially powerful weapon.

Howard Dean criticized President Bush for ''the worst job creation record in over 60 years.'' Richard Gephardt said that ''I have three goals for my presidency: jobs, jobs, jobs.'' John Kerry said ''the first thing'' he'd do as president would be to fight his ''heart out'' to bring back the jobs that have disappeared in recent years.

Bush, meanwhile, is quick to seize credit where he can. When the unemployment rate for November fell one-tenth of a point, he went out immediately to give a speech at a Home Depot in Maryland.

''More workers are going to work, over 380,000 have joined the workforce in the last couple of months,'' Bush said. ''We've overcome a lot.''

A number of economists say it's a mistake to evaluate the job market solely by talking about the official unemployment rate. It's a blunt instrument for assessing a condition that is growing ever more vague.

''There's certainly an arbitrariness to the official rate,'' says Princeton University economics professor Alan Krueger. ''It irks me that it's not put in proper perspective.''

On Jan. 9, when the rate for December is announced, both Republicans and Democrats will assuredly again maneuver for advantage—precisely because the number isn't expected to change much.

''At this point, where we don't know which way it's going but it isn't likely to be going far, both sides will try to use it,'' says Michael Lewis-Beck, a political scientist at the University of Iowa.

In every election since 1960, the party in the White House lost when the unemployment rate deteriorated during the first half of the year. If the rate improved, the party in the White House won.

That's not a coincidence, says Lewis-Beck, who has edited several volumes on how economic conditions determine elections. ''People see the President as the chief executive of the economy,'' he says. ''They punish him if things are deteriorating and reward him if things are improving.''

By any normal standard, things should have been improving on the employment front long before this point. More than 2 million jobs have been lost in the last three

years, a period that encompassed a brief, nasty recession and a recovery that was anemic until recently. Even in the best-case scenario, Bush will end this term with a net job loss. That hasn't happened to a president since Herbert Hoover at the beginning of the Depression.

Many economists are mystified about why a suddenly booming economy is producing so few jobs.

''We're all sitting there and saying, 'When are they going to return?' '' says Richard B. Freeman, director of the labor studies program at the National Bureau of Economic Research. ''It's looking a little better, but we don't understand why it isn't looking a lot better. Why shouldn't Bush be sitting there saying, 'Man, I'm sitting pretty. This is a great boom'?''

One statistic proving particularly perplexing is the percentage of the adult population that is employed. this number rises during good times, as people are lured into the workforce, and falls during recessions as companies falter.

True to from, the percentage of adult Americans with jobs dropped from a high of 64.8% in April 2000, just as the stock market was cresting, to 62% in September—the lowest level in a decade. If past recessions are any guide, those 5 million people who found themselves jobless should have driven the unemployment rate up to about 8%.

Instead, the rate never went much above 6%

More than half of the additional people who would have reported themselves as unemployed in a previous big recessionary period . . . aren't,'' a puzzled UC Berkely economist, Brad DeLong, wrote on his website. ''They're reporting themselves as out of the labor force instead.''

''Out of the labor force'' means you're not working for even one hour a week and don't want to, either. It's the traditional category for students, married women with young children, flush retirees and idle millionaires.

A new way that people seem to be joining this category is by getting themselves declared disabled. This designation makes them eligible for government payments while removing them from the unemployment rolls.

From 1983 to 2000, economists David Autor and Mark Duggan wrote in a recent study, the number of non-elderly adults receiving government disability payment doubled from 3.8 million to 7.7 million.

The scholars present a case that the sharp increase isn't because the workplace suddenly became more dangerous. Instead, it has been prompted by liberalized screening policies, which make it possible to claim disabled status for, say, several small impairments as opposed to one big injury. Government examinations also have been downplayed in favor of the disabled's own medical records and the pain he or she claims to be experiencing.

At the same time, benefits have been sweetened. As a result, millions of individuals who lost jobs now have an attractive—and permanent—alternative to searching for work.

Autor and Duggan concluded that if disability payments weren't so appealing, many more people would be unemployed, boosting the jobless rate two-thirds of a point.

Another way in which people forgo an appearance on the unemployment rolls is if they decide to go into business for themselves. There are 9.6 million people who say they are self-employed full time, a number that rose 118,000 last month. Without the recent increase in self-employed, the jobless number would look much worse.

Many others may be working for themselves part time, temporarily, as a way to get food on the table in the absence of better options.

Take Steve Fahringer, who until recently was working for a Bay Area marketing agency that cut 20% of its employees and trimmed the wages of the remainder by 20%. Fahringer didn't particularly like his job. Because the recession supposedly was history, he thought he could find a new position. The 34-year-old didn't think it would be easy, but he thought it possible. So he quit.

''I left July 1,'' he says. ''I haven't found a new job yet.''

It's a common problem. The segment of the labor force that has been jobless for more than 15 weeks has risen nearly 150% since 2000. The current level is the highest since the recession of the early 1990s. Nearly one-quarter of the jobless have been unemployed for longer than six months.

In Fahringer's case, he spent some time aggressively looking for a job, which made him part of the official July unemployment rate of 6.2%. Then he stopped looking, which meant that he was one small reason the rate started going down.

Instead of unemployed, Fahringer was classified as ''discouraged.'' A little more than 8% of the people who want a job in the Bay Area are estimated by the Bureau of Labor Statistics to be discouraged, slightly higher than Los Angeles/Long Beach but lower than the battered technology center of San Jose.

Discouraged workers have never been included in unemployment rates, although they came close the last time a commission met to reform the system, a quarter of a century ago. ''It was a very hot issue,'' remembers Glen Cain, a retired economist who was a commission member. He says the conservatives on the panel, who felt that anyone who really wanted a job should be out there hustling no matter what, prevailed.

Fahringer found an alternative way to earn a bit of money. He did some acrylic paintings, which he sold for a total of $1,000. He calls himself ''a hobbyist,'' which means for a while he moved out of the labor force entirely.

Now he's a temp, assigned by his agency to a nonprofit office. For the first time in six months, he's working 40 hours a week. By the government's accounting, he has once again joined the ranks of the employed. But from the standpoint of his wallet, Fahringer is worse off: He's earning less money, with no paid holidays, no sick leave, no pension plan, no health insurance, no future.

The Economic Policy Institute, a liberal-leaning Washington think tank, says Fahringer's situation is in many ways typical. The industries that were expanding in the late '90s, including computer and professional services, paid well.

Those industries are in retreat. So is manufacturing, a traditional source of high wages. On the rise, meanwhile, are lower-paying service jobs.

During the boom, it was easy to trade up. Now it's just as easy to trade down.

Fahringer's solution: Opt out.

''I'm thinking of going back to school,'' he says. ''I'd take out a loan.'' That would put him out of the labor force again.

In some eyes, a nation of burger flippers, temps and Wal-Mart clerks isn't the worse scenario for the economy. The worse is that companies continue to eliminate jobs faster than they create them, setting up a game of musical chairs for the labor force.

That prospect alarms Erica Groshen, an economist with the Federal Reserve Bank of New York. ''If you plot job losses versus gains on a chart, it's shocking,'' she says.

Losses are running at about the same rate they were in 1997 and 1998, two good years for the economy. But job creation in the first quarter of 2003—the most recent period available—was only 7.4 million, the lowest since 1993.

''If this goes on too long, you'd have to worry there's something fundamentally wrong,'' Groshen says. Although the economy has picked up since March, ''so far I haven't seen anything that suggests job creation is picking up.''

That bodes poorly for Ian Golder. His last full-time job was with a start-up publication that wrote about venture capital.

Two years ago, Golder was laid off. It was the first time since he graduated from UC Berkeley 14 years earlier that he didn't have steady work.

Golder looked for a while, gave up for a while, then landed a contracting gig with no benefits proofreading for a chip maker. When that ran out, he worked 20 hours a month on a financial services newsletter.

His wife, Heather, a recent graduate in English from UC Davis, also was without a job. They thought about selling their house in Sacramento and moving, but prospects didn't look any better anywhere else. To make ends meet, they took in two boarders.

At the beginning of December, things seemed to improve a bit. Golder got a job in the document-control department of a medical devices company. The department, he was told used to have 20 full-time people. Now it has five, plus four temps.

The job will last two months. After that, who knows?

Optimists say things will be better then,'' Golder says. ''But a full-time position with benefits seems pretty remote.''

Ms. CANTWELL. Mr. President, the point is, this administration and the other side of the aisle need to look at economic history when we have faced similar downturns and discuss what is the best way to alleviate this pain as we see our economy barely start to chug along.

We have heard a lot about outsourcing in the last week or two. I am sure we have not heard the last of it. There are a lot of people who are concerned that we may never see that job growth that was even initially predicted in the President's economic report of which it has now backed off. So America has a very uncertain time ahead, but Americans know they have a program at the Federal level to which they are being denied access.

What are the consequences? My colleagues need to read their e-mails. They need to read letters from their constituents. I read mine. When you know that money is there to help and assist them, when you know an economic plan and responsibility for our fiscal policy is something we should be concerned with every day, it just breaks your heart to understand the plight some of these people are going through.

One laid-off worker from Camano Island said he cashed out every dime of his 401(k) savings plan with significant penalty. He doesn't know how he is going to make the mortgage payments, he is at such a desperate point. He is trying to figure out any way he can just to keep the lights on and keep food on the table.

Another constituent wrote to me from Bothell, WA:

I had to resort to selling my 20-year-old naval sword for grocery money. As a naval veteran, I can tell you that hurt a lot to do.

A constituent from Steilacoom, WA, who has been unemployed and his wife worked at $17 an hour for a phone company and she was laid off, too, writes that they had to borrow from friends just to keep their kids in the house and make their house payment.

Washingtonians are having a very hard time. I bet many Americans across this country are having a hard time. That is because we are not living up to our responsibility to pass this temporary unemployment benefit extension. We had this debate in December of 2003, and a lot of rankling about it, and we came back in January and ultimately did the right thing.

In December of this year, when the program expired again, we came back and everybody wanted to sing how the economy was getting better. Now the administration will not stand by its own numbers of whether the economy is really getting better or not.

The House of Representatives, albeit a difficult task, actually got an amendment on a different bill and actually passed an extension of unemployment benefits. They had the votes to, in a bipartisan way, pass the unemployment benefit extension, but we have not had the courage to do so.

My colleagues on the other side of the aisle need to stand up and say that unemployment benefits are a priority and that they are a good way to deal with this economic situation, and that while we have curtailed this program at a much shorter time period when we have not had positive job growth—we are still in the negative numbers—this has been premature and that the smart thing to do now is, as the economy is barely starting to respond, the most prudent thing to do to stimulate the economy is not to take more money out of it. That is exactly what we are doing. We are taking more money out when we do not help provide the stimulus that unemployment benefits provide.

So I think this is the best investment we could be making. My colleagues need to realize it is heartless to leave these Americans out in the cold without either a paycheck or an unemployment check.

In the 1990s recession, even when there had been the start of job growth, the program was extended for 22 months. And even when we had recovered all the jobs that were lost and the economy had started to positive growth, this program was extended another year. So we are being very shortsighted. While we have lots of legislation to discuss, various issues about liability, we are saddling the American public with the biggest liability yet, and that is a bad economy and no help on unemployment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I have today asked my colleagues to support the Protection of Lawful Commerce in Arms Act. This important legislation has strong support from both sides of the aisle with more than 50 cosponsors on the original bill, S. 659. I am proud to be an original cosponsor of the bill. I thank my dear friend and colleague from Idaho, Senator LARRY CRAIG, for his leadership. He has done yeoman's work on this bill in the drafting, introduction, and shepherding of this bill as it passes on the Senate floor.

The legislation in question will correct a significant injustice that threatens the viability of a lawful United States industry, the firearms industry. An increasing number of lawsuits are being filed against the firearms industry seeking damages for wrongs committed by not them but by third persons who misuse the industry's products.

These lawsuits seek to impose liability on lawful businesses for the actions of people the industry has absolutely no control over. When one stops to think about it, it is really outrageous. Businesses that comply with all applicable Federal and State laws and that produce a product fit for an intended lawful purpose, including elk and duck hunting, target shooting and personal protection, should not be subject to frivolous lawsuits that have only one goal; that is, to put them out of business. It is an outrage.

Montanans particularly are proud of their independence and their outdoor heritage. We are an outdoor people. People in our State, as in the State of the occupant of the Chair, almost honor and cherish the outdoors. We spend so much of our time outdoors. Almost every Montanan regards himself or herself as an outdoorsperson. Hunting, fishing, hiking, even one's job, whether it is raising cattle, growing wheat, grain, the mining industry, forest products—we are outdoors people. We cherish our right to hunt. We cherish our right to fish and enjoy the outdoors. Passing this bill will allow us to protect that right by ensuring the firearms industry stays in business.

Gun owners and sportsmen are an important part of our Nation's economy. Each year they spend nearly $21 billion in our national economy. This in turn generates more than 366,000 jobs. Those jobs pay more than $8.8 billion in wages and salaries. That is no small item, particularly these days when we are trying to get as many jobs in our country, particularly good-paying jobs. The industry also provides about $1.2 billion in State tax revenues.

In addition, excise taxes imposed on firearms in the Federal Aid to Wildlife Restoration Act, otherwise known as the Pittman-Robertson Act, generate revenues for State fish and wildlife conservation efforts, and also hunter safety programs. For example, the Pittman-Robertson Act generated more than $150 million in revenue in the year 2002 alone.

In short, the U.S. firearms industry serves America's gun owners and sportsmen well. It provides good-paying jobs. It provides revenues that benefit all Americans. The industry should not be penalized for legally producing or selling a product that functions as designed and intended, but that is exactly what certain groups are trying to do—asking the courts to step in and micromanage the firearms industry when the Congress and most State legislatures have refused to do so.

Let me now list some of the demands that have been made in these lawsuits so we can get a flavor and a picture of just how incredible these lawsuits are. Some would require a one-gun-a-month purchase restriction not required by a State law. That is a one-gun-a-month restriction. Other of these suits would require firearm manufacturers and distributors to participate in a court-ordered study of lawful demand for firearms and, get this, cease sales in excess of lawful demand.

Another request is to require a prohibition on sales to dealers who do not stock at least $250,000 in inventory. And here is still another: require systematic monitoring of dealers' practices by manufacturers and distributors.

These are just a few of the sweeping demands made in the lawsuits the Protection of Lawful Commerce in Arms Act seeks to stop. As my colleagues can tell, these suits are asking courts to step well outside their jurisdiction and legislate regulation of the firearms industry. They also have nothing to do with holding accountable those who actually misuse firearms or commit crimes with firearms.

Most courts have dismissed such lawsuits. Some courts have expressed sentiments similar to those of a New York appellate court judge who stated:

> The plain fact is that courts are the least suited, least equipped and thus the least appropriate branch of government to regulate and micromanage the manufacturing, marketing, distribution and sale of handguns.

However, the time, expense, and effort that goes into defending those nuisance suits is a significant drain on the firearms industry costing jobs and millions of dollars, increasing business and operating costs and threatening to put a good number of dealers and manufacturers out of business. That is why this bill is so necessary.

Let me be clear about a couple of points, though. This bill will not bar legitimate suits against the firearms industry. It preserves the right of Americans to have their day in court. For example, this bill will not require dismissal of a lawsuit if a member of the industry breaks the law; if a member of the industry acts negligently in supplying a firearm to a person they should have known is likely to misuse that firearm. In addition, it does not require dismissal of a lawsuit if a member of the industry supplies a firearm to someone they had reason to know was barred by Federal law from owning a firearm or designed a defective firearm. So there are safeguards in this bill.

This bill is only intended to protect law-abiding members of the firearm industry from nuisance suits that have no basis in current law, and again are only intended to regulate the industry, harass the industry, or put it out of business, none of which are appropriate purposes of a lawsuit. That is what this legislation is intended to deal with.

We can all agree when a firearm is used in a criminal or careless manner that causes serious injury, such as the loss of life, this is a terrible tragedy. Those responsible for such tragedies should be held accountable, clearly, and held accountable to the fullest extent of the law in both civil and criminal actions.

This includes the firearms industry, obviously, when or if one of its members breaks the law or gives a firearm to a criminal or other person they knew would use the firearm to hurt, kill, or threaten another person.

The Protection of Lawful Commerce in Arms Act would do nothing to change this or shield the firearms industry from liability or criminal or other wrongdoing. At the same time, it is not fair and it is not right to hold lawful members of the industry, who produce a legal product, accountable for the independent actions of third parties who use a firearm in the manner the industry never intended.

This is a very simple bill. It has a simple purpose. It is also critically important to a very vital industry and I ask my colleagues to give it their full support.

I yield the floor, and 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. CRAIG. 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. CRAIG. Mr. President, again, I remind our colleagues that we are in a postcloture environment. What does that mean? It means we could actually debate the broad issue of the bill for upwards of 30 hours before we actually get to the bill, even though 75 of us have said let's move on, let's get to this legislation, debate it, offer amendments, and bring it to final passage.

My colleague from Montana is leaving. I thank him for his statement of the work he has done in behalf of gun owners and manufacturers and law-abiding gun dealers. I thank him for being an original cosponsor and working with me to get S. 1805 to the floor.

I thought what I might do for a few moments, while we are waiting for leadership on both sides of the aisle to see if we can't find an agreement on how to proceed to this legislation, is to deal with some finer points that are involved in the legislation. My guess is, over the course of this week and probably the next week, you are going to hear a great deal said about the bill—11 pages, a relatively small bill—and what it does or does not do.

S. 1805 has basically two substantive provisions. First, section 3(a) states that:

> A qualified civil liability action may not be brought in a Federal or State court.

A qualified action may not be brought.

Second, section 3(b) orders the immediate dismissal of a qualified civil liability action pending on the date of enactment of S. 1805. The key to S. 1805, therefore, is the definition of ''qualified civil liability action.'' That is what most of our colleagues, I hope, would focus on, even though the issue spirals around the use of a gun and that brings about substantial heated debate and political decisions.

Key in S. 1805, again, is the definition of a civil liability action which is addressed in the definition section, then, in section 4(5). A qualified civil liability action is defined as a lawsuit:

> . . . brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. . . .

Subsection (5), the definition, then excludes five categories of lawsuits from coverage under S. 1805:

First:

> (i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted.

In other words, we don't exempt that. We exclude these categories from that definition so you can still go to court, you can still gain redress from that.

The second one is:

> (ii) an action brought against a seller for negligent entrustment or negligence per se.

Negligent entrustment is defined:

> . . . the supplying of a qualified product by a seller for use by another person when the seller knows, or should know, the person to whom the product supplied is likely to, or does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

In other words, if the seller knows that this is going to be used for criminal intent or for misuse, then of course that provision is exempt from the protection under 1806.

Third:

> (iii) an action in which a manufacturer or seller of a qualified product [knowingly and willfully] violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which the relief is sought. . . .

Again, the courthouse door is open to that.

> (iv) an action for breach of contract or warranty in connection with the purchase of the product.

That is available.

> (v) an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a manner that is reasonably foreseeable.

Those are really the key points here that we do not in any way exempt. What we are doing in S. 1805 is very simple. We are trying to reinforce centuries of legal precedent, based on individual responsibilities, not responsible for actions of third parties. In other words, once again the trial bar is trying to suggest that a criminal act is the responsibility of the person who manufactured the product that the criminal may use in that act. We have never allowed that to stand in our courts, and now we are trying to assure that a very small industry in this country can be protected from the kinds of frivolous lawsuits filed that are draining them of their very livelihood.

Earlier this afternoon I talked about the hundreds of jobs that have been lost. Some scoffed and said, ''This is a jobs bill?''

You bet it is a jobs bill. If you destroy that industry, thousands of high-paying jobs will be lost across the United States in an industry that is legal, that is law abiding, that one might argue is even enshrined in the Constitution under the second amendment. That is why we are here today.

Is it important? You bet it is important. Is it a part of what our Senate ought to be debating? Absolutely.

If we are able to do this, we establish extremely important precedent that other manufacturers of law-abiding products will look at, and should look at. Why should the trial bar be allowed to suggest that the maker of a Chevrolet, Ford, Dodge, or Toyota pickup used by a drunk driver that ended up killing someone be responsible for it? Because they manufactured it? Since when is this country going to exempt the actions of the individual and say, Oh, no, it really wasn't his fault; it was the fault of the vehicle. It was the fault of an inanimate object known as a gun.

That is the issue today and it really is fundamental. You hear a great many arguments. One of them is that we are locking the courthouse door. No, all those principles I talked about are exempt and can be tried and can be argued before the courts. Even in S. 1805, somebody who by definition brings a junk lawsuit gets to argue the case before the judge. They get through the courthouse door. The judge then listens, applies the law, and makes a determination whether this is a legitimate case that should go forward or it was an illegitimate case.

Will this bill affect several high profile cases such as the lawsuit against a gun dealer in Tacoma, WA, from whose store the DC snipers, John Muhammad and Lee Malvo, got their rifle? Does it exempt that dealer if he acted unlawfully? We don't know that yet. We know that BATF has investigated it and jerked his firearm license and the store is now closed. We are told that BATF has asked the Justice Department to file criminal charges against him.

But we do know one thing. We do know that Lee Malvo has admitted to

stealing the gun from that dealer. Therefore, there is a principle in tort law that says that a manufacturer is not liable if the product used, being his, was stolen before it was used. That we do know. And now we have an admission by the person who pulled the trigger that the Bushman rifle used in those tragic incidents here that kept this city rivetted for a tremendous amount of time and took numerous lives was a stolen weapon.

Having said all of that, the case is yet to be investigated. The facts are yet to be truly known. Allegedly, guns went missing. Allegedly, they were not reported.

If all of that is true, then the owner of this particular gun shop in Tacoma, WA could well be liable and could well come under the criminal laws of today, and S. 1805 would do nothing about that and shouldn't do anything about that.

Once again, as I have already said numerous times today—and I am sure I will repeat it over the course of a good number of days—this is a very narrow approach. It is an important one.

Senator DASCHLE, the minority leader, and I joined in his amendment embodied in S. 1805 to ensure that we refine it even more to make it very clear exactly what and who might be exempt and for what reason. We think we have so effectively narrowed it that it has met the broad acceptance of our colleagues in the Senate.

I hope the cloture vote today is reflective of some of that acceptance as we work and debate through this issue. I hope leadership on both sides can get us to an agreement so we might proceed and get on the bill and deal with some of the amendments at hand. I hope we can defeat them. I would like a clean bill. The administration would like a clean bill. There is ample time to debate other issues. There is ample time to debate extension of the assault ban. I strongly oppose that. That was legislation I called a political placebo at a time when everybody wanted to try to do something, even though they knew it was impossible to control the criminal element in this country unless you got tough on crime. So we passed that legislation.

History shows the assault weapon ban did little to no good—except it did one thing. It kept law-abiding citizens from buying certain types of firearms even though our second amendment would suggest they have the right to own them.

That is why I hope the assault weapon ban as it expires can be left to its expiration. I hope we can defeat that.

The other issue, the gun show loophole: Is there a loophole in gun shows?

Let me set the stage for that. I would like to compare a gun show and an auto show. If you are a licensed car dealer or a licensed manufacturer of automobiles—I don't know that you have to be licensed to manufacture automobiles—then you can put all kinds of auto shows together, and you can sell from those shows. You can demonstrate your product. You can sell all kinds of things with no prohibition. In Idaho, the only prohibition, if you sell more than five a year, is you have to get a license to be an auto dealer. What we say in gun shows is if you are a licensed gun dealer at a show, then you must comply with all laws during that show in the sale of a firearm. But if you are an individual who sells very few firearms but you might sell one to a friend or someone else on occasion, and you sell at a gun show, or you met a friend at a gun show and you tell him about a gun you have and the transaction occurs, you don't have to comply with a background check; You are not a licensed dealer.

Someone would suggest that is a loophole. I don't see that as a loophole because outside of gun shows it is not considered one—only if it is inside.

What this is all about is establishing a Federal regulation to control gun shows. This will be a new entity of Federal control over something that is clearly a free market process. Do we want Federal regulations over the control of auto shows? Do we want Federal regulations in control over new-clothing shows? No. That is the marketplace at work. But if there are Federal laws that control these different products and/or sale, then they comply. They comply inside the show or outside the show. That is standard today.

What our colleagues are trying to do in suggesting there is a loophole, which I believe I have suggested by demonstration of facts does not exist, is to control the gun show, and to suggest if you are an individual and you make a sale at a gun show, you then must do background checks and all other due diligence you would not do if you were outside the gun show, speaking neighbor to neighbor, friend to friend, and were not viewed as a licensed dealer, or not a gun dealer in any way.

That is the reality of what we are talking about. Those are some of the amendments we will have which we will be dealing with on the floor. I hope as we deal with those, we might deal with others such as concealed carry. We might look at the gun ban of Washington, DC, where law-abiding citizens cannot legitimately own firearms, and a variety of other issues.

The President asked—and I would like to honor that because I believe strongly in it, too—that we produce a clean bill just exactly like the House did on a better than 2-to-1 margin—285 to 140—that we produce a clean bill and get it to the President's desk; wipe out these frivolous lawsuits but still allow law-abiding citizens who might be injured by illegal action of a gun dealer or illegal action of a gun manufacturer their day in court without the kind of frivolous and/or junk lawsuits—the kind that are costing the industry millions upon millions of dollars right now and slowly but surely diminishing them.

Lastly, if we are not successful and if the trial bar is at some day and at some point successful, my guess is this relatively small industry in our country will not be here. What happens when we no longer produce high-quality firearms in this country for our military or for our police? Do we rely on China or Yugoslavia or Hungary or some other foreign country to produce the firearms our men and women in Iraq use to defend themselves and to enforce the law? Do we put them at risk? Do we say to our good law enforcement officers, You are going to have a foreign firearm on your hip and it will not be produced by a legitimate company in this country as a part of our national protection and our freedoms and rights?

That is ultimately what could happen because already we have seen these industries go out of business because of the risk of doing business and the liability involved based on these types of lawsuits we are now trying to shape and limit. That is the essence of S. 1805.

I hope we can soon move to the bill and begin debating it in its entirety, and certainly any amendments that would then come forward, debate those, get an up-or-down vote and move toward final passage.

With that, I yield the floor and 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. REED. I ask unanimous consent the call of the quorum be rescinded.

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

Mr. REED. Mr. President, this legislation before the Senate has been described as necessary for the gun industry. It is nothing at all like that. There is no crisis with respect to lawsuits aimed against the gun industry.

This legislation, though, poses a very serious risk to the rights of an individual citizen who is a victim of gun violence to go to a court of law in the United States and to simply ask on the facts whether the conduct of the individual gun dealer and the manufacturer represents the standard of care that is expected of every individual and corporation in this country. That is very simply what we think is inherent in our rights as citizens. This law will strike at those rights on behalf of a powerful and influential industry, in this case the gun industry.

There has been some suggestion we are trying to protect the courts from third party lawsuits when, in fact, the reality is these actions are based on the actions of the manufacturers and the dealers, not the actions of someone with a gun. This is based upon the standard of care of the manufacturer and the dealer, not what an individual may or may not have done with a firearm. These are not third party lawsuits. These are lawsuits brought by victims, Americans who have suffered themselves personally or suffered through the death or injury of their

family members. They are going to court and they are simply saying these manufacturers or these gun dealers have violated their duty to be reasonable, their duty to be prudent, the duty of every individual who lives in an organized society to behave in a way that does not unnecessarily bring harm to others. That is the essence of our law.

This legislation turns all of that on its head and says for a very special class, the gun lobby, the rules of the game do not apply. And if there is a citizen who seeks redress, then do not go to the courts of the United States.

They tried to make the point that this does not close the door on the courthouses of America. No, this bill goes much further. It takes individuals who already have cases in courts and throws them out the door. Page 5 of the bill:

> DISMISSAL OF PENDING ACTIONS.—a qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought.

Not shall be considered in light of this legislation and the judge may make a determination that the suit can go forward, immediately dismissed.

That is not just shutting the court door; that is evicting the plaintiffs from the court, through the door. That is just one aspect of the legislation.

There is a discussion, too, about exemptions, talk about knowing that if a gun dealer or manufacturer knowingly does something, of course, they might be liable. That is a criminal element because in our criminal law we do not choose to punish people who unwittingly or unknowingly do something. There has to be, in most cases, some intent, some knowledge. Otherwise, the criminal law is absolutely arbitrary. It captures people simply for making a mistake. That is the criminal side.

What we are talking about here is civil jurisprudence, the ability of an individual to go to court to get damages for harm against that person. That is not a criminal case; that is a civil case. That is not enforcing the criminal laws of the Nation which rest upon knowledge and intent; that is seeking redress based upon the standard of conduct, the obligation to care, to exercise an appropriate degree of care.

The opponents of this bill are bringing those two issues together, confusing and mixing them up. But there is no confusion about this bill. It takes away the civil rights of an individual to go to court and a judge and jury to decide whether the individual, the defendant, has harmed them through negligence, through their inability to actually conform to a recognized standard of care. It is an extraordinary assault on basic legal rights.

I find it amazing that at this time when there are so many problems facing this country, we are looking at legislation that is not just so overwhelmingly slanted to a particular special interest but one that disregards these basic rights that we all take for granted.

There is also a suggestion in this legislation that there is a crisis because of these suits that are driving the gun manufacturers out of business. That is not what the gun manufacturers are telling their shareholders. That is not what they are telling the Securities and Exchange Commission under the penalty of perjury. This is an excerpt from the April 30, 2001, report of Smith & Wesson:

> In the opinion of management, after consultation with special counsel, it is not probable and it is unlikely that the outcome of these claims will have a material adverse effect on the result of operations or the financial condition of the company as management believes it has provided adequate reserve.

Under the penalty of perjury, the industry is telling the SEC and the shareholders, do not worry; these are not material claims. This is nothing that is going to put us out of business. This is nothing that is going to bankrupt us. Buy our stock. We are a good deal.

But here people seem to be suggesting that they are on the verge of collapse because these lawsuits are creating so much liability for the companies that they cannot bear it. I tend to believe their own statements in their SEC filings. As a result, this is not a crisis with respect to the gun industry in the United States. This is an industry that is extremely well-heeled and very zealous in protecting their own rights and interests.

In 1999, the National Shooting Sports Foundation, an industry group, and others created the Hunting and Shooting Sports Heritage Fund. By all accounts, this fund has raised as much as $100 million. They are engaged in lobbying activities. They are engaged in promoting this legislation. They are also engaged in ensuring that their internal documents are protected from discovery by lodging them in a California attorney's office. They are guarding, in a secretive way, their activities. This is not the case of a poor victim of a sniper or an aberrant gunman who does not have $100 million, who does not have a large organization. They have one thing: Their right to go into court, as every American citizen can do, and make a simple claim. If they have been negligent, I have been harmed, they must compensate me for my damages. This bill strikes that. It tears it out of our law.

Now, this is a situation where there is no financial threat of a great magnitude to the industry. In fact, some of these suits do not even talk about monetary damages. They are asking for injunctive relief. I think it is interesting that in the other body they struck out the ability to get even injunctive relief to change the practices of these companies. So this is not about a financial crisis. This is simply about providing remarkable, unprecedented protections for one industry at the expense of the average person on the street.

Again, the suggestion that this is a situation that is required because we have to protect the whole industry from these suits that paint everyone the same way disregards the nature of our tort laws. You have to allege specific facts against a specific individual or personality or corporation—their actions. This is based upon their conduct, not some type of blanket attack on the gun industry.

But if this law passes, we will limit the rights of American citizens. We will disrupt and overturn our system of tort law, which rests upon State action as well as Federal action. This will preempt causes of action that are entirely recognized and permissible in many State courts throughout the country. We will be disregarding the States, their legal systems, their knowledge of local conditions. That is another casualty of this legislation if it passes.

But this, ultimately, is not just about the niceties of tort law and federalism and the financial impact on industries. This is about real people.

I had occasion to meet one of these individuals when I met Denise Johnson. Denise was the wife of the late Conrad Johnson. Conrad was a busdriver and was the final victim of the Washington area snipers. The snipers' Bushmaster assault rifle was one of more than 230 weapons that disappeared from Bull's Eye Shooter Supply gun store in Washington State.

Now, at a minimum, the gun store's very careless oversight of firearms raises obvious questions of negligence and deserves to be explored by the civil courts. The actions which the gun manufacturer took in placing those weapons in the hands of Bulls Eye also are appropriate for scrutiny in the courts. Yet Mrs. Johnson's case would be thrown out by S. 1805.

Now, consider also the case of David Lemongello and Ken McGuire. These are two young police officers from New Jersey, the city of Orange. On January 12, 2001, they responded to a call, as police officers do every day throughout our country. Every day they risk their lives. What they encountered in a backyard was a gunman armed with a weapon. They were both grievously wounded.

It turns out that this individual went into a store in West Virginia with a straw purchaser—a woman without a criminal record—who purchased 12 guns at one time—he was a felon—and then took those guns and went off and became involved in these crimes, became involved in the disposition of these weapons.

This individual seller in West Virginia failed to follow the guidelines that even the trade association, the National Shooting Sports Foundation, has. So here is the seller, who is not at all averse to selling 12 firearms, in cash, to an individual, who walks in, who refuses to buy them himself but has a younger person, a woman in this case, make the purchase in name because of background checks, who disregards the guidelines of the industry,

and yet this legislation would say that those two police officers, who suffered grievously, cannot seek to be compensated by that dealer. It defies common sense as well as our legal tradition.

Now, the manufacturer of those guns, Sturm, Ruger is a member of the Shooting Sports Federation. I would assume they take great pride in their advertisements and say: Look at the guidelines we have. Our sales people have to be reasonable. They have to exercise great scrutiny, good judgment, et cetera. Well, they do not really require that these guidelines be followed, even though their organization promulgated them.

Now, this case is in the courts of West Virginia. Judge Irene Berger of Kanawha County, WV, looked at the case, looked at the law of West Virginia, looked at the specific allegations against the dealers, and said this case should go forward, there are no grounds for summary dismissal. Yet this legislation, if passed, would summarily dismiss that case. It would fall, I think, squarely under section 3(b):

> A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed. . . .

Judge Berger will not have a chance to evaluate whether this legislation and the exemptions comply, not in any real sense, because the presumption, of course, is that all these suits would be barred. There are exceptions which she may consider, but, again, those exceptions are so narrowly constructed that they provide little relief, no practical relief.

Now, there is not just one case. There are multiple cases but not the thousands that the industry would lead you to believe they would be overwhelmed by—but a few cases, inconsequential in monetary effect for the industry, as they stated, but of immense consequences to the individual who has suffered financially, emotionally, personally, and to that individual's family.

This is another case. This is Guzman v. Kahr Arms, in Worcester, MA. Twenty-six-year-old Danny Guzman was fatally wounded with a 9 mm gun. It was stolen from the gun manufacturer's plant by a drug addicted employee who had a criminal record.

Stop and ask yourself: Does a gun manufacturer have a responsibility to the community to ensure that its employees who have access to firearms are not former felons or somehow at odds with the law or who is not currently addicted to drugs? Isn't that the expectation that everyone in that community and every community around the country has? Well, of course.

Any sensible employer would ensure that an employee who has access to firearms would have some type of check to ensure they are not drug addicts or former felons.

They would be amazed if this legislation passed because, frankly, what we are telling the Kahr Arms company is, no, hire anybody you want because you will have no civil liability, none whatsoever.

Now, this company had rudimentary and ineffective controls for these weapons. They had no metal detectors, security mirrors, none of these things. Is that something the citizens of Worcester, the citizens of Massachusetts, the citizens of America want?

That is common sense. These companies have to protect these weapons. They have an arsenal. They manufacture weapons.

Apparently, that was not the case. It turns out the guns were taken from the factory by felons they hired without conducting background checks.

The gun used to kill Danny Guzman was one of several stolen by Kahr Arms employees. This is not just one bad actor. And maybe that is the defense: We are really pretty good. We just made one mistake. And they were stolen before the serial numbers were etched into the weapons. They could not be traced. What kind of company is this?

But what we are telling them, if we pass this legislation, is go ahead, it is fine, no liability for that, do that every day, just one of those things.

These guns were taken and resold to criminals in exchange for money and drugs. Again, common sense suggests there has to be a civil right to go in and challenge the negligence of this company. The loaded gun that killed Mr. Guzman was found by a 4-year-old behind an apartment building near the scene of the shooting, so the gun was apparently tossed away and a 4-year-old found it. Mercifully, the child was not injured.

This company could have done a score of things to prevent the death of Danny Guzman: Screen their employees for felony convictions, screen their employees for drugs, install safety cameras. What we are telling them, if we pass this legislation, is you don't have to do any of those things, because you can do anything you want and you will never be liable in a court of law in the United States.

Will we tell that to the automobile manufacturers? Will we tell that to other industries? Absolutely not. It defies and insults common sense. But we are trying to do that today.

There is another suggestion that you are trying to punish a whole industry because of a few bad apples. Like any industry, there are some scrupulous dealers, and we hope it is the majority. In fact, it does turn out to be the majority. But according to Federal data, 1.2 percent of gun dealers account for 57 percent of all guns recovered in criminal investigations. So obviously we have a problem with a small group of dealers.

What are we telling those dealers today if we pass the legislation? Don't worry; you can't be sued. Even if you represent the worst possible dealers in the industry, even if you don't barely measure up to the standards of every other dealer, you are OK, because the rules of negligence don't apply.

This is something that confounds common sense—forget the niceties of corporate law, of consumer protection law, of the tort system.

Most people believe that if you are in the business of manufacturing and selling weapons, you have a very high standard of care, higher perhaps than other industries, because you are dealing with a weapon that has the potential to kill people, much more obviously and explicitly than perhaps any other product manufactured.

What are we telling the industry? Forget that high standard of care. Not only can you have a low standard of care, you can have no standard of care, because you can do the most outrageous things in the world and no one can sue you. There might be some criminal liability, but then again, there might not. But the people you have harmed through your negligence will remain harmed and uncompensated. Don't worry.

Most industries, manufacturers, are governed by the Consumer Product Safety Commission, which regulates the safety of nearly 15,000 consumer products used in and around the home. Guns are not regulated by the Consumer Product Safety Commission because when it was created in 1972, the gun lobby pressured Congress to specifically exempt guns and ammunition from its jurisdiction. So there is no regulation by the Consumer Product Safety Commission.

Now there is no civil liability. Whatever standard of care exists in this industry is going to further deteriorate. We are causing problems; we are not solving problems with this legislation.

There is another aspect, too. It is not just the criminal on the street who comes into control of a handgun, be it through the poor inventory controls of a Bull's Eye Shooters Company or through the lack of any apparent security procedures of the Kahr Arms Company. There were 9,485 people killed and another 127,000 wounded in unintentional shootings between 1993 and 2001. In about an 8-year period, 127,000 people were unintentionally wounded by weapons; the firearm was defective or the design was inappropriate and it contributed to their injury. Don't we want to at least ensure in the design of weapons that there is a higher standard of care?

For example, there is a case in California of a 15-year-old who was unintentionally shot and killed by a 14-year-old friend with a defectively designed gun—Kenzo Dix. His friend Michael thought he had unloaded his father's gun. He replaced it with an unloaded magazine, he thought. But he failed to realize that in the chamber of the weapon there was still one round, and when he fired the gun, it resulted in the death of his playmate.

Sadly, we read these stories too often. We read these stories about the individual who has a gun at home and

the kid find it. The kids don't realize it is loaded, and death or injury results.

Now Beretta, the manufacturer, could have easily designed the gun to have some type of indication whether there was a round in the chamber. They could have had some type of active device to prevent firing. None of that was done, and, frankly, if we pass this legislation, it will never be done because they don't have to worry about a parent coming and saying: If you had made these changes to that weapon, my son would be alive.

They don't have anything to worry about. We have to worry about it. If you are a parent and you have a firearm in your home, you have to worry about it especially. That is not right.

Again, this is not about sophisticated theories of liability, sophisticated theories of the history of tort law. It is about common sense, common decency, and common obligation. This bill violates all of them.

There are lots of experts about firearms, but there is one group that I think probably is more expert than others. That is the law enforcement community. Where do they stand on this legislation? More than 80 police chiefs, sheriffs, and State and national law enforcement organizations wrote to all of us on February 11 to express their opposition to this effort to strip away these legal rights. These are officers from Maine to Texas to Washington State to Virginia to my home State of Rhode Island, chiefs, rank-and-file police men and women.

I ask unanimous consent that a copy of this letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. REED. These law enforcement officers know a bit more about crime than we do. It is their job. They do it very well. They know about the damage to communities when guns fall into the hands of those who misuse them. They see it up close and personal.

Earlier this year, we were in a situation where previous to this bill there was an effort to destroy gun records, another effort launched on behalf of the gun lobby. These records are maintained for a few days, but they wanted to eliminate these records within 24 hours. Los Angeles Chief of Police William Bratton said: I just can't understand how Members of Congress can even consider this. Obviously, they haven't shown up to the scene of enough officer shootings.

This legislation is in a similar vein. It is not about destroying records of gun purchases. It is destroying the right of an individual to say: I have been harmed. I need redress.

Again, if you talk to the law enforcement community, they are opposed to this legislation. It is a free ride for the dealers, for the manufacturers, and for others.

In this discussion, we have heard a great deal about Bull's Eye Shooters Supply. There is some suggestion that we fixed that problem. They have closed it and everyone is being punished.

Here are the facts: Bull's Eye Shooters Supply is still open for business. The alcohol, tobacco, and firearms agency revoked the license of Bull's Eye prior owner, Mr. Brian Borgelt. Mr. Borgelt's friend, Kris Kindschuh, then took over operation of the store.

Mr. Borgelt is appealing his license revocation to the Federal district court, and that case is pending. Let me stop for a moment. This is an individual who allegedly was so negligent that he could not account for 238 weapons, a litany of problems in terms of following the law. His license is being revoked, but he has a right—and he should have the right—to go into court and say this revocation is not based upon the law or the facts.

The irony here, of course, is we are telling victims—perhaps his victims—that they do not have a right to go into court to seek redress. This, again, not only is unfortunate, it just defies a rough sense of justice and fairness.

I think Mr. Borgelt should have every opportunity to appeal this revocation to prevent an arbitration action by the Government, but don't the victims of gun violence have a right to claim they have lost a great deal and they need redress in the courts? We will protect his rights, as we should, but we are undermining the rights of so many others.

As far as we know, the ATF, the Department of Justice have not filed any criminal charges against Borgelt. So the idea that this situation has been resolved, that this is fine, justice has been done, frankly, is not the case at all.

Indeed, what I am told is Mr. Borgelt runs the shooting range upstairs above Bull's Eye Shooter Supply. The shooting range is not regulated. So for all intents and purposes, particularly if you are a victim of the sniper shootings in Washington, DC, it does not look as if much has changed out there at Bull's Eye Shooter Supply.

If the ATF had recommended to the Department of Justice that they file charges, it has been almost a year. I would hope the Department of Justice, in a case such as this, could move more promptly. But we have a situation, frankly, that even if the Justice Department acted, it still would not compensate and make whole the victims of this series of crimes in Washington.

Let me focus for a minute on some of the facts we know about Bull's Eye Shooter Supply because one of the key issues here is whether or not the Washington sniper victims will be able to go into court if this legislation passes.

Here are some of the things that have been established so far about this dealer in Washington State.

There are a large number of missing guns. Bull's Eye could not account for 238 guns that were missing from its inventory when the Bureau of Alcohol, Tobacco, Firearms and Explosives inspected the gun dealer in 2000 and 2002. Bull's Eye's missing gun rate was greater than at least 99.73 percent of all Federal firearms licensees.

There was no accounting for 238 weapons. A large number of guns from Bull's Eye appeared in crimes. Between 1997 and 2001, Bulls' Eye guns were involved in at least 52 crimes, including homicides, kidnappings, and assaults, placing Bull's Eye in the top 1 percent of all dealers nationwide in the supply of guns used in crimes. This appears to be a pretty good source of weapons for crime.

In addition, the time-to-crime ratio was less than 3 years for more than 70 percent of Bull's Eye guns that were used in crimes from 1997 to 2001. Quick time-to-crime—the time the gun leaves the store and shows up at a crime—suggests this store may be a highway for guns into the criminal system. And they have a high rate.

There were a large number of multiple firearm sales. Between 1997 and 2000, Bull's Eye sold 663 guns to 265 individual buyers, as many as 10 guns at a time. This is not the record of a scrupulous, sincere dealer who is looking to enforce the standards of the industry.

Then, of course, there were numerous ATF citations. ATF cited Bull's Eye for violations at least 15 times between 1997 and 2001 and, following the sniper attacks, revoked the license of Bull's Eye's former owner.

Bull's Eye was cited 15 times between 1997 and 2001. That is not an inspiring record of scrupulous enforcement of the laws of the country.

Yet what we are saying in this legislation is: Go ahead, you are fine; you might have your license revoked, but then you are upstairs in the shooting gallery. Or you might not. Maybe the Government will make an error. Maybe procedurally they have done something inappropriate, but certainly you are not going to be able to face justice in the sense of facing the victims of this negligence.

There is something else this record says. It begs the question, What about the manufacturer? Why did Bushmaster Firearms, the manufacturer of the sniper weapon used by the Washington area snipers, tolerate this? Don't they have an obligation to ensure that the dealers they entrust with their weapons are not violating ATF regulations—cited 15 times—that they are not selling multiple guns to individuals, sometimes 10 at a time? Apparently not. After this legislation passes, they won't have to worry at all.

Many people ask, Why would a manufacturer be involved in this issue? Why should we be able to sue a manufacturer? If a manufacturer, such as Bushmaster, not only keeps supplying weapons to dealers such as this, but then turns a blind eye to all this evidence, it suggests to me they are not conforming to a reasonable standard of commercial conduct. You would not exempt an automobile manufacturer

from potential liability if it was shown that they repeatedly sold cars to dealers that violated ATF—it would not be ATF regulations, but consistently violated regulations, that persistently allowed underage sales, for example, even though you could make the argument that as long as the 15-year-old does not drive the car, it is a legal sale. But I think they would be suspicious at least to what was happening.

As a result, there is not only a strong case but there is a necessary case that manufacturers have to be subject to a standard of care also. This legislation would strip that away.

My colleague from Idaho and my colleagues on this side who support this bill say: Listen, this is narrowly crafted; this is not going to throw any suits out of the courts. You cannot have it both ways. You cannot be claiming, on one hand, that we are protecting this industry from lawsuit and then, on the other hand, say everyone can still go to court after this legislation because they all qualify for the exemptions. It is nonsense. These exemptions have been made so they do not exempt very much, if anything at all.

There is an analysis—and I made reference to it in my discussion surrounding Bull's Eye Shooter Supply—by the law firm of Boies, Schiller & Flexner. I ask unanimous consent that at the conclusion of my remarks this analysis be printed in the RECORD.

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

(See exhibit 2.)

Mr. REED. Mr. President, this law firm analyzed the legislation, and their conclusion is, particularly with regard to the Washington area snipers, that their cases will be thrown out.

There are two sections of the law which provide an exemption from the categorical dismissal of these cases. They are section (5)(A)(ii) and (5)(A)(iii). Mr. President, (5)(A)(ii) says:

> . . . actions against a seller for ''negligent entrustment'' or ''negligence per se''. . . .

And (5)(A)(iii) says:

> . . . actions against a manufacturer or seller who violated a statute in the sale or marketing of a firearm or ammunition, where that statutory violation was a proximate cause of the plaintiff's injuries. . . .

Their analysis concludes that neither of these exemptions would apply in the case of the Washington area snipers. Those cases are already pending. They will be dismissed, thrown out.

It is interesting because we continue to talk about, well, these exemptions will take care of all these cases, but it turns out that they will not, that the various nuances, the wording, the knowing violation of a statute, for example, the arcane cases of negligence entrustment and negligence per se, which are constructs that only a lawyer could fully appreciate and enjoy, all of this is craftily designed to prevent people from going to court, not to give them a fair right in court.

Again, it goes down not to these nuances, to this legal terminology but simple common sense. How can one stand up and say this legislation is designed to protect and insulate injury from the wanton acts of these third party criminals and then also say but, by the way, all of these cases will still go through?

I suspect there are things we could do right now to help these cases go through. ''Dismissal of pending actions'' could be struck. Clearly, that would suggest that the sniper cases would be in order because this legislation is not retroactive.

The thrust is not to give people rights; it is to take them away. It is to protect this one industry at the expense of individual Americans. The legislation is unusually preferential to a small interest group. It defies my understanding of why we would try to protect this industry, which is not financially at risk by their own admissions, at the expense of individual Americans who have been harmed.

I conclude by saying I never met Conrad Johnson, but like all of us in this Chamber, I woke up one morning and read about a bus driver reading his paper, waiting to go to work. I, frankly, thought of my father, who was a school custodian who got up in the morning, read the paper, getting ready to go to work.

He was shot reading that paper, killed. He left a wife and small children. That wife and that family have gone to court to say: Where is our justice? Maybe somebody will be convicted for doing something wrong, but how are we going to live for the next 40 or 50 years? People have been negligent—at least we think they have. There is a Bull's Eye Shooters store that lost 238 weapons and was cited 15 times by the ATF. They are not going to have a day in court to answer to Mrs. JOHNSON? I cannot understand this legislation.

I yield the floor.

EXHIBIT 1

FEBRUARY 11, 2004.

DEAR SENATOR: As active and retired law enforcement officers, we are writing to urge your strong opposition to S. 659, the so-called ''Protection of Lawful Commerce in Arms Act.'' This bill would strip away the legal rights of gun violence victims, including law enforcement officers and their families, to seek redress against irresponsible gun dealers and manufacturers.

The impact of this bill on the law enforcement community is well illustrated by the lawsuit brought by former Orange, New Jersey police officers Ken McGuire and David Lemongello. On January 12, 2001, officers McGuire and Lemongello were seriously wounded in a shoot-out with a burglary suspect. The Ruger pistol used by the suspect was one of twelve guns sold by a West Virginia pawnshop, Will's Jewelry and Loan, to a ''straw purchaser'' for a gun trafficker. The all-cash sale, for thousands of dollars, was so obviously suspicious that Will's reported it to the Bureau of Alcohol, Tobacco and Firearms, but only after the sale was consummated. The pawnshop had every reason to believe that, as soon as the guns left its premises, they would be sold into the underground market, destined to threaten the lives of police officers and ordinary citizens.

Officers McGuire and Lemongello are pursuing legal action against Will's for negligent sales practices and against the gun's manufacturer, Sturm, Ruger, for distributing guns without requiring its dealers to adhere to a code of responsible business practices that would prevent such obvious sales to gun traffickers. A West Virginia judge recently ruled that the officers' suit against Will's and Sturm, Ruger is well-grounded in West Virginia law and should be heard by a jury. If passed into law, S. 659 would override this decision and deprive these brave officers of their day in court.

Police officers like Ken McGuire and David Lemongello put their lives on the line every day to protect the public. Instead of honoring them for their service, S. 659 would deprive them of their basic rights as American citizens to prove their case in a court of law. We stand with officers McGuire and Lemongello in urging you to oppose this bill.

EXHIBIT 2

BOIES, SCHILLER & FLEXNER LLP,
Armonk, NY, February 17, 2004.

Re opinion letter concerning proposed immunity legislation for gun dealers and manufacturers.

MICHAEL BARNES,
President, The Brady Center to Prevent Gun Violence, Washington, DC.

DEAR MR. BARNES: At your request, this letter addresses the legal implications of the proposed gun dealer and manufacturer immunity legislation, focusing specifically on the impact of the legislation on the pending civil lawsuit brought by the victims of the Washington, DC area sniper attacks in the fall of 2002. For the reasons discussed below, it is our judgment that the passage of S. 1805—the current version of the immunity bill, which incorporates the so-called ''Daschle Amendments''—would require the immediate dismissal of the sniper victims' claims against the parties who supplied the assault rifle used in the attacks. We further conclude that the legislation would effect far-reaching, and unprecedented, changes in the law that would insulate the gun industry from other important pending cases as well as future accountability.

After providing a brief background concerning the sniper victims' civil suit and the proposed legislation, we analyze the impact of the legislation on the pending sniper case. We then offer some more general observations about the proposed legislation, including a discussion of its implications for other significant cases against gun dealers and manufacturers.

BACKGROUND

I. The sniper victims' legal claims against the dealer and manufacturer who supplied the snipers' weapon

For over a month in the fall of 2002, John Allen Muhammad and Lee Boyd Malvo terrorized the nation's capital and its surrounding states through a series of sniper attacks on innocent men, women, and children. From the trunk of Muhammad's car, the snipers used a deadly-accurate assault rifle to kill thirteen people, and to seriously injure another six, in Washington, DC, Maryland, Virginia, Alabama, Louisiana and Georgia. Among the snipers' victims were a 47-year-old FBI analyst who was loading a car with her husband in a Home Depot parking lot, a 72-year-old retired carpenter who was waiting on a street corner, and a 13-year-old boy who had just been dropped off at school. Muhammad and Malvo were apprehended on October 24, 2002, and have since been convicted for their crimes.

The weapon that Muhammad and Malvo used in the sniper attacks was a Bushmaster

XM–15 E2S .223 semi-automatic rifle equipped with a bipod and telescopic sight. The snipers obtained the ''one shot, one kill'' assault weapon they used in the shootings from Bull's Eye Shooter Supply in Tacoma, Washington, even though the law prohibited either of them from purchasing any firearm. Muhammad was under a domestic violence protective order, and Malvo was both a juvenile and an illegal alien. Bull's Eye representatives claim not to have any record of sale for the weapon and cannot account for how the snipers obtained the assault rifle.

The publicly-available evidence reveals that in addition to permitting the snipers' weapon to disappear from its shop, Bull's Eye Shooter Supply engaged in numerous irresponsible business practices:

Large Number of Missing Guns. Bull's Eye could not account for a total of 238 guns that were missing from its inventory when the Bureau of Alcohol, Tobacco, Firearms and Explosives (''AFT'') inspected the gun dealer in 2000 and 2002. Bull's Eye's missing gun rate was greater than at least 99.73% of all federal firearms licensees; 80% of dealers who sell at least 50 firearms per year can provide records to account for every one of their gun sales.

Large Number of Crime Guns. Between 1997 and 2001, Bull's Eye guns were involved in at least 52 crimes, including homicides, kidnappings, and assaults, placing Bull's Eye in the top 1% of all dealers nationwide in the supply of guns used in crimes. That same 1% of gun stores supplies the weapons traced to 57% of all gun crimes.

Quick Time-to-Crime. The ''time-to-crime'' was less than 3 years for more than 70% of Bull's Eye guns that were used in crimes between 1997 and 2001. Quick time-to-crime is considered a ''red flag'' for problem gun dealers because it indicates that such dealers' guns are quickly getting into criminal hands through illegal trafficking. In 2000, the nationwide median time-to-crime was 6½ years, and the time-to-crime was under 3 years for only 31% of traced crime guns. The time-to-crime for the snipers' weapon—which was received by Bull's Eye in July 2002—was under 3 months.

Large Number of Multiple Firearm Sales. Between 1997 and 2000, Bull's Eye sold 663 guns to 265 individual buyers, as many as 10 guns at a time. Such ''multiple firearms sales'' are considered to be another indicator that a gun dealer may be selling to gun traffickers.

Numerous ATF Citations. ATF cited Bull's Eye for violations at least 15 times between 1997 and 2001, and, following the sniper attacks, revoked the license of Bull's Eye's former owner.

Following ATF's revocation of his license, Bull's Eye's former owner transferred ownership of the store to a close friend. Bull's Eye continues to operate today, and the store's former owner retains ownership of the property and operates a shooting range in the same building.

The manufacturer of the snipers' murder weapon of choice, Bushmaster Firearms, Inc. of Maine, not only modeled its XM–15 rifle after military-style assault weapons that Congress outlawed with the Assault Weapons Ban in 1994, but also marketed the rifle as an assault weapon designed for sniper activity. At the time, Bushmaster selected and used Bull's Eye as one of its sixty distributors nationwide despite numerous ''warning signs'' concerning Bull's Eye's handling of its firearms inventory. Bushmaster also allegedly failed to take certain basic precautions concerning the guns it shipped to Bull's Eye and others, including, among other things, declining the Justice Department's offer to assist Bushmaster in tracing guns that had been used in crimes in order to determine which of its dealers were supplying such guns; neglecting to require Bull's Eye to adopt any of ATF's suggested measures for preventing gun thefts; and failing to require Bull's Eye to notify it of gun trace requests initiated by law enforcement agencies or to certify its compliance with firearms laws and regulations. Even after the sniper attacks, Bushmaster, through its vice president of administration, referred to Bull's Eye as ''a good customer'' to whom Bushmaster would continue to sell guns.

Victims of the sniper attacks and the families of victims who were killed have filed a civil lawsuit in Washington State Court against Bull's Eye Shooter Supply and Bushmaster Firearms for their roles in permitting the snipers to access their murder weapon. According to the complaint: ''In addition to the intentional acts of Muhammad and Malvo, the gross negligence of the gun industry defendants caused the injuries and deaths that resulted from the sniper shootings by enabling prohibited purchasers Muhammad and Malvo to obtain the Bushmaster assault rifle to wreak havoc on innocent persons.'' Specifically with respect to Bull's Eye, the plaintiffs claim that the gun dealer's grossly irresponsible business practices routinely permitted guns, including the snipers' weapon, to disappear from its store. They further claim that ''Bushmaster deliberately continued to utilize Bull's Eye as a Bushmaster gun dealer and supplied it with as many guns as Bull's Eye wanted, despite years of audits by the Bureau of Alcohol, Tobacco, Firearms and Explosives showing that Bull's Eye had scores of missing guns.'' At the heart of plaintiffs' Complaint is their allegation that if Bull's Eye and Bushmaster had ''acted responsibly in the sale of their guns, Muhammad and Malvo would not have been able to obtain the assault rifle they needed to carry out the shootings.''

On June 27, 2003, Washington Superior Court Judge Frank E. Cuthbertson upheld the sniper victims' claims against the defendants' motion to dismiss, concluding that the plaintiffs' negligence and public nuisance claims were actionable against both Bull's Eye and Bushmaster. *Johnson* v. *Bulls Eye Shooter Supply,* No. 03–2–03932–8, 2003 WL 21639244 (Wash. Super. Ct. June 27, 2003). The court found that the plaintiffs' claims against Bull's Eye could stand based on ''a common law duty in Washington to use reasonable care in the sale and distribution of firearms''; that the ''facts in the present case indicate that a high degree of risk of harm to plaintiffs was created by Bull's Eye Shooter Supply's allegedly reckless or incompetent conduct in distributing firearms''; and that the facts alleged ''demonstrate an arguably unbroken nexus between the loss of the assault rifle and the injuries of the plaintiffs.'' The Court further concluded that the plaintiffs' claims against Bushmaster should be permitted to reach a jury based on Bushmaster's entrusting firearms to Bull's Eye even though Bushmaster allegedly ''knew or should have known that Bull's Eye Shooter Supply was operating its store in a reckless or incompetent manner, creating an unreasonable risk of harm.'' Trial in the case against Bull's Eye and Bushmaster has been set for November 2004.

II. The proposed immunity legislation for gun dealers and manufacturers

On April 9, 2003, the House of Representatives passed a bill (H.R. 1036) to provide sweeping immunity from pending and future lawsuits to distributors, dealers, manufacturers, and importers of firearms and ammunition. Senator Larry Craig (R–ID) introduced companion legislation in the Senate (S. 659), which, last October, was modified to incorporate certain amendments that had been proposed by Minority Leader Tom Daschle (D–SD). The current version of the immunity bill (S. 1805), which incorporates the so-called ''Daschle Amendments,'' is expected to be considered by the Senate in the first week of March 2004.

According to its terms, S. 1805 would foreclose—and require the immediate dismissal of—any state or federal ''qualified civil liability action,'' §3(a), which the statute defines to include any ''civil action brought by any person against any manufacturer or seller'' of firearms or ammunition ''for damages resulting from the criminal or unlawful misuse'' of such products. §4(5)(A). From this blanket prohibition on such civil actions, section 4(5)(A) of the proposed bill carves out the following exclusive list of circumscribed exceptions:

(i) actions against a manufacturer or seller who has been criminally convicted of transferring a firearm with the knowledge that it would be used to commit a violent or drug-trafficking crime, if the plaintiff was directly harmed by the conduct of which the recipient of the firearm has also been criminally convicted;

(ii) actions against a seller for ''negligent entrustment'' or ''negligence per se'';

(iii) actions against a manufacturer or seller who violated a statute in the sale or marketing of a firearm or ammunition, where that statutory violation was a proximate cause of the plaintiff's injuries;

(iv) actions for breach of contract or warranty in connection with the purchase of a firearm or ammunition; and

(v) actions for physical injuries or property damages resulting directly from a design or manufacturing defect in a firearm or ammunition, when such items have been used as intended or in a ''reasonably foreseeable'' manner (as that term is defined in the bill).

Because S. 1805 expressly disclaims any intention to create causes of actions or remedies, see §4(5)(D), the above-described exceptions would only preserve civil claims brought under otherwise applicable state or federal law. Other than as specifically preserved by these exceptions, however, the proposed legislation would preempt, as a matter of federal law, any state or federal lawsuits against irresponsible sellers or manufacturers of firearms or ammunition.

ANALYSIS

I. The proposed immunity legislation would likely require the immediate dismissal of the sniper victims' claims

Close examination of the exceptions enumerated in section 4 of the proposed immunity legislation reveals that none would appear to preserve the claims brought by the victims of the sniper attacks and their families against the parties responsible for permitting the snipers to obtain their murder weapon. In fact, the passage of S. 1805 would likely compel the judge in the sniper case immediately to dismiss those claims. The following analysis focuses on paragraphs (5)(A)(ii) and (5)(A)(iii) of the proposed legislation because those provisions contain the only exceptions that could even conceivably apply to the sniper case.

A. The Statutory Violation Exception Embodied in Paragraph (5)(A)(ii) Will Not Save the Sniper Victims' Claims

Section 4, paragraph (5)(A)(ii) of the proposed legislation preserves an ''action in which a manufacturer or seller of a qualified product violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought. . . .'' According to well-settled tort law principles, proximate cause requires that a defendant's conduct was ''a substantial factor

in bringing about the harm'' suffered by the plaintiff. *See Restatement (Second) of Torts* §431 (2003); accord *Derdiarian* v. *Felix Contracting Corp.*, 414 N.E.2d 666, (N.Y. 1980); *Anderson* v. *Duncan*, 968 P.2d 440, 442 (Wyo. 1998). Where a defendant's statutory violation was not a requirement to reject claims based on that violation. *See, e.g., Fox* v. *Bartholf*, 374 So. 2d 294, 296 (Ala. 1979) (affirming summary judgment for defendants where there was no evidence that truck driver's alleged violation of statute, which prescribed lawful speed in approaching highway intersections when driver's view is obstructed, proximately caused plaintiff's injury); *Yates* v. *Shackelford*, 784 N.E.2d 330, 336–37 (Ill. App. Ct. 2002) (affirming summary judgment for defendants where defendant driver's violation of left-shoulder parking ban did not proximately cause collision); *Travelers Indem. Co. of Ill.* v. *28 East 70th St. Constr. Co.*, No. 01 Civ. 3001 (JGK), 2003 WL 23018604 (S.D.N.Y. Dec. 22, 2003) (granting defendant's motion for summary judgment where alleged failure to stamp pipe with manufacturer's identification number in violation of building code ''clearly did not proximately cause the pipe to freeze and burst'').

The plain language of paragraph (5)(A)(ii) would appear to dictate the same result in the sniper case. Despite the above-discussed evidence of Bull's Eye numerous failings as a gun dealer, there is no reason to believe that the plaintiffs in the sniper case will be able to show that Bull's Eye violated any state or federal statute with respect to the particular gun that was used by the snipers or that any such statutory violation was a proximate cause of the sniper attacks. The evidence concerning the acquisition of the snipers' weapon supports Bull's Eye's claim that Lee Boyd Malvo shoplifted the gun. Indeed, after this arrest, Malvo admitted that he shoplifted the weapon from Bull's Eye in the summer of 2002. Although the plaintiffs claim that Bull's Eye's lax security practices permitted Malvo to acquire the weapon, such proof would not establish a violation of any state of federal statute.

Of course, the plaintiffs in the sniper case could attempt to shoehorn Bull's Eye's failure to report the theft of the snipers' weapon into the illustration provided in subparagraph (A)(iii)(I), which covers ''any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law.'' Federal law requires licensed gun dealers to report the loss or theft of a firearm ''within 48 hours after the theft or loss is discovered.'' 18 U.S.C. §923(g)(6). The difficulty with this argument, however, is that Bull's Eye has denied that it knew the gun was missing until the sniper suspects were apprehended and authorities had traced the gun to the shop, and there is no known evidence to refute that claim. (Bull's Eye in fact reported the missing gun to authorities on November 5, 2002.) Given Bull's Eye's claim, and the fact that the sniper shootings were over by the time Bull's Eye's federal reporting requirement would have been triggered by its discovery that the weapon was missing, it appears unlikely that the plaintiffs will be able to avoid dismissal based on subparagraph (A)(iii)(I).

B. The Negligent Entrustment/Negligence Per Se Exceptions Embodied in Paragraph (5)(A)(ii) Will Not Save the Sniper Victims' Claims

Nor is it likely that the exceptions embodied in paragraph (5)(A)(ii) of section 4—which covers actions ''brought against a seller for negligent entrustment or negligence per se''—would save the plaintiffs' civil claims against Bull's Eye and Bushmaster in the sniper case. As an initial matter, because the subparagraph (A)(ii) exceptions are specifically limited to a ''seller'' and, as defined in paragraph (6), seller does not include firearm manufacturers, the exceptions would not even apply to the claims against Bushmaster. Moreover, as explained below, the plaintiffs' claims against Bull's Eye would not appear to fall within the narrow ''negligent entrustment'' and ''negligence per se'' exceptions of S. 1805.

1. Negligent entrustment

For purposes of applying paragraph (5)(A)(ii), the proposed legislation provides the following definitions of ''negligent entrustment'': ''the supplying of a qualified product by a seller for use by another person when the seller knows, or should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.'' §4(5)(B). In light of the evidence that Malvo shoplifted the snipers' weapon from Bull's Eye, the plaintiffs in the sniper case will face significant obstacles qualifying for that statutory exception.

Courts have repeatedly rejected negligent entrustment claims absent evidence that the defendant acted affirmatively in entrusting—or, in the words of paragraph (5)(A)(ii), ''supplying''—the dangerous instrumentality in question. See *Butler* v. *Warren*, 582 S.E.2d 530, 532–33 (Ga. Ct. App. 2003) (affirming summary judgment against plaintiff's negligent entrustment claim where evidence did not permit finding that defendants had allowed their truck to be driven off their property); *Mackey* v. *Dorsey*, 655 A.2d 1333, 1338 (Md. Ct. Spec. App. 1995) (affirming trial court's finding that defendant was ''not liable for negligent entrustment''; ''We find it axiomatic that when a vehicle is stolen, as it was here, the owner cannot be said to have supplied, entrusted, or 'made available' his or her vehicle. The 'making available' of the chattel requires that the supplier do so knowingly or with the intent to supply the chattel to that person.''); *Kingrey* v. *Hill*, 425 S.E.2d 798, 799 (Va. 1993) (reversing trial court and entering judgment for defendant on plaintiff's negligent entrustment claim, which was based on defendant's failure to prevent access to rifle; court analogized to car cases, in which finding of ''entrustment'' requires ''evidence of express permission, evidence of a pattern of conduct supporting implied permission, or evidence of knowledge that an automobile would be used notwithstanding explicit instructions to the contrary''); *Todd* v. *Dow*, 19 Cal. App. 4th 253, 260–61, 23 Cal. Rptr. 2d 490, 494–95 (Cal. Ct. App. 1993) (affirming summary judgment for parents in negligent entrustment claim arising from their storage of adult child's rifle in their house; ''Liability for negligent entrustment arises from the act of entrustment . . . . Parents did not sell, loan, furnish, or supply the rifle.''); ''*Commercial Carrier Corp.* v. *S.J.G. Corp.*, 409 So. 2d 50, 52 (Fla. Dist. Ct. App. 1981) (affirming dismissal of negligent entrustment claim for injuries sustained in car accident after defendant left keys in unattended car and car was stolen; absent proof of knowledge and consent of car owner, liability for negligent entrustment will not lie); *Cutler* v. *Travelers Ins. Co.*, 412 A.2d 284, 285 (Vt. 1980) (affirming dismissal of plaintiffs' claims arising out of collision, which resulted from car theft; fact that defendant left keys in car ignition or truck lock could not establish entrustment of car, by express or implied consent, to car thief); *Reicher* v. *Melzer*, 158 N.E.2d 191, 193 (Ohio 1959) (affirming directed verdict for defendant on plaintiff's negligent entrustment claim where record showed that employee involved in accident ''was operating the truck solely for his own convenience in going from his place of employment, at the end of his day's work, to his home on a rainy day; and that he had taken the truck without anyone's permission or direction and without defendant's knowledge'').

Although courts throughout the country have recognized separate claims for the negligent storage or security of firearms, see, e.g., *Heck* v. *Stoffer*, 786 N.E.2d 265, 268–70 (Ind. 2003); *Gallara* v. *Koskovich*, 836 A.2d 840, 851 (N.J. Super. Ct. Law Div. 2003); *Long* v. *Turk*, 962 P.2d 1093, 1097 (Kan. 1998); *Pavlides* v. *Niles Gun Show, Inc.*, 637 N.E.2d 404, 408–10 (Ohio Ct. App. 1994); *Kimbler* v. *Stillwell*, 734 P.2d 1344, 1346–48 (Or. 1987) (en bank); *Cathey* v. *Bernard*, 467 So. 2d 9, 11 (La. Ct. App. 1985), such claims would be foreclosed by the proposed immunity legislation.

Furthermore, the narrow definition of ''negligent entrustment'' in the proposed statute would likely prevent the plaintiffs from relying on that exception for yet another reason. The evidence that the snipers' weapon was shoplifted from Bull's Eye would appear to preclude the plaintiffs from making the requisite showing under the statute that the gun shop knew or should have known that the recipient of the gun (i.e., Malvo) was likely to use the product in a criminal or otherwise unreasonably dangerous manner.

2. Negligence per se

The proposed immunity bill does not define ''negligence per se,'' but to the extent that the negligent per se exception in paragraph (5)(A)(ii) would permit the survival of state causes of action, it will not assist the plaintiffs in the sniper case: the negligence per se doctrine has been abrogated by statute in Washington State. See RCWA 5.40.050; *Morse* v. *Antonellis*, 70 P.3d 125, 126 (Wash. 2003); see also *Pettit* v. *Dwoskin*, 68 P.3d 1088, 1091–92 (Wash. Ct. App. 2003) (''But the doctrine of negligence per se is no longer viable in Washington. Rather, violation of a legal requirement is evidence of negligence.'').

In any event, the negligence per se exception would not preserve the sniper case because even where that doctrine is recognized, it requires a violation of a statute or regulation that is the proximate cause of the plaintiff's injury. See 57A. Am. Jur. 2d *Negligence* §728 (2003); *O'Guin* v. *Bingham County*, 72 P.3d 849, 856 (Idaho 2003); *Elder* v. *E.I. DuPont De Nemours & Co.*, 479 So. 2d 1243, 1248 (Ala. 1985). As discussed above, however, it is doubtful that the plaintiffs in the sniper case will be able to establish that any such violation was a substantial factor in causing their injuries.

II. The proposed immunity legislation would overturn well-settled legal principles and jeopardize other important gun cases

The proposed immunity legislation would have far-reaching implications beyond its likely direct and immediate effect on the pending civil case brought by the snipers' victims. The statute would accord gun dealers and manufacturers an unprecedented immunity. Indeed, under the statute, dealers and manufacturers of lethal weapons would receive insulation from lawsuits to which the sellers and makers of virtually every other product (including even toy guns) would be subject. As discussed herein, the legislation would close courtroom doors nationwide to any claims arising out of, among other things, the negligent security or storage practices of any gun dealer or manufacturer, the negligent sale of guns by and dealer to so-called ''straw purchasers'' for illegal gun traffickers, and the negligent failure of any gun manufacturer to include basic safety devices that would have prevented tortious or criminal shootings.

The implications of the sweeping immunity proposed for the gun industry are further compounded by the fact that the industry is already largely exempt from federal

regulations that apply to the manufacture and distribution of other products. Guns were specifically exempted from the jurisdiction of the Consumer Product Safety Commission, which Congress created in 1972 to protect the public from consumer product injuries. Even ATF—which licenses and oversees gun dealers—lacks any authority to establish manufacturing or distribution standards for firearms.

Focusing exclusively on criminal and other statutory prohibitions, supporters of the proposed immunity legislation have argued that the bill would simply eliminate lawsuits against gun dealers and manufacturers who ''have not broken the law.'' But this oversimplified view ignores the pivotal role that state and federal common law plays in promoting public safety and accountability, in addition to ensuring compensation for the victims of dangerous and irresponsible conduct. Beyond criminal and other statutory proscriptions on such conduct, civil common law has long protected the public by holding businesses and individuals alike to a standard of reasonable care in all their activities. The broad insulation from suit promised by the immunity legislation would largely free the makers and sellers of deadly weapons from such generally applicable common law standards.

Nor does the fact that gun injuries often result from criminal acts provide a legal justification for the immunity legislation. It has long been a settled principle of tort law that an intervening act of a third party, even if criminal (*e.g.*, a sniper shooting), will not break the causal chain from a party's negligence (*e.g.*, the negligent distribution of the murder weapon) to a plaintiff's injury so long as the intervening act was reasonably foreseeable. *See, e.g., Largo Corp.* v. *Crespin*, 727 P.2d 1098, 1103 (Colo. 1986) (en banc); *Vining* v. *Avis Rent-A-Car Sys., Inc.*, 354 So.2d 54, 55–56 (Fla. 1977); *see also Restatement (Second) of Torts* §302B (2003) (''An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.''). As Judge Cuthbertson correctly recognized in the sniper case, where a defendant handles a lethal weapon in an irresponsible manner, through which criminals and other prohibited persons may access it and use it to commit dangerous crimes, the question of whether there is an adequate causal link between the tortfeasor's conduct and the resulting injuries is for a jury to decide. *Johnson*, 2003 WL 21639244, at *3–4.

In addition to the sniper case, the proposed immunity would likely require the dismissal of several other important cases that seek to hold allegedly reckless gun dealers and manufacturers responsible for their conduct, including:

Hernandez ex rel. Guzman v. *Kahr Arms*, Civ. Act. No. WOCV2002–01747 (Mass Super. Ct. 2003). Danny Guzman was shot and killed with a nine millimeter handgun, one of several guns that had been stolen and resold by employees of the Kahr Arms factory. According to the lawsuit filed by the decedent's family, defendant Kahr Arms employed a number of convicted criminals and drug addicts because it did not conduct general or criminal background checks on its employees and did not test prospective or existing employees for drugs. To make matters worse, the plaintiffs allege that Kahr Arms did nothing to prevent employees from leaving its plant with guns—which Kahr touted as ''the smallest, flattest, most reliable full power compact handguns made''—even before they had been stamped with serial numbers, rendering them virtually untraceable. Among the plaintiffs' other claims, Kahr Arms had no metal detectors, x-ray machines, security cameras, or security guards; did not check employees at the end of their shifts; did not use any inventory-tracking system to determine when weapons or parts were missing; and could not account for approximately 16 outgoing shipments of weapons that never arrived at their intended destinations between February 1998 and February 1999. On April 7, 2003, the Massachusetts Superior Court upheld the plaintiffs' negligence and public nuisance claims against Kahr Arms' motion to dismiss. The Guzman's family's right to sue Kahr Arms would be immediately revoked if the proposed immunity legislation were to pass. As in the sniper case, the claims against Kahr Arms involve irresponsible security for deadly weapons, claims that would be foreclosed by the proposed immunity legislation. First, the plaintiffs' claims of negligent security against Kahr Arms do not involve any statutory violation. Moreover, the negligent entrustment exception would not apply to Kahr Arms for the dual reasons that it is a firearm manufacturer and that it did not entrust any weapon to Danny Guzman's shooter.

Lemongello v. *Will Company*, No. Civ.A. 02–C–2952, 2003 WL 21488208 (W. Va. Cir. Ct. Mar. 19, 2003). New Jersey Policy Detective David Lemongello and Officer Kenneth McGuire were seriously injured in January 2001 when they were shot by a career criminal while performing undercover police work. Even though the shooter was a person prohibited by law from purchasing a firearm, he obtained his weapon, a nine millimeter semi-automatic Ruger handgun, illegally from a gun trafficker. The trafficker, in turn, was also prohibited from buying weapons due to a prior felony, so he used an accomplice (a so-called ''straw purchaser'') to make multiple gun purchases from defendant Will Jewelry & Loan, in West Virginia. In their lawsuit against Will Jewelry & Loan and others, the officers allege that the gun dealer acted negligently in selling the straw purchaser twelve guns (including the Ruger used in the shooting of the two officers) that had been selected in person by the gun trafficker and paid for in a single cash transaction. The circumstances of that sale were so suspect that the defendant dealer reported it to the ATF—but only after the purchase price had been collected and the guns had left the store. The officers' suit further charges gun manufacturer Sturm Ruger & Company with negligently failing to monitor and train its distributors and dealers and negligently failing to prevent them from engaging in straw and multiple firearm sales. Although a West Virginia trial court has held that the plaintiffs have stated valid negligence and public nuisance claims under state law, the proposed immunity legislation would require the immediate dismissal of those claims. Notwithstanding the plaintiffs' claims that the defendants failed to exercise reasonable care in their sales of firearms, neither the dealer nor the manufacturer violated any statutory prohibition in selling the guns. Nor could the plaintiffs contend that their case falls within the ''negligent entrustment'' exception to the proposed immunity legislation because the gun dealer supplied the firearm to a straw purchaser—not to someone whom the seller knew or should have known was likely to, and did, use the product in a manner involving unreasonable risk of physical injury to the person or others.

Smith v. *Bryco Arms*, 33 P.3d 638 (N.M. Ct. App.), cert. denied, 34 P.3d 610 (N.M. 2001). Fourteen-year-old Sean Smith was seriously injured when a friend accidentally shot him in the mouth with a .22 caliber handgun, the Bryco J–22. The shooter believed the gun was unloaded because the ammunition magazine had been removed; the gun failed to reveal the hidden bullet in its chamber. Sean Smith's parents sued the manufacturer (Bryco Arms) and the distributor (Jennings Firearms) of the J–22 alleging negligence and products liability claims based on the defendants' failure to incorporate any of the various available safety features that would have prevented the accidental shooting, including an internal ''magazine-out safety'' lock, a ''chamber load indicators,'' or a written warning on the gun alerting users that the J–22 could fire even with its magazine removed. Reversing a lower court decision, the New Mexico Court of Appeals has held that the defendants could be held liable for their failure to incorporate long-known, available, and economically feasible safety devices in the J–22. The proposed immunity legislation, however, would require the immediate dismissal of these claims because the shooting of Sean Smith, even if accidental, constituted an ''unlawful misuse'' of the J–22, thereby removing the case from the statutory exception ostensibly intended for cases involving gun design or manufacturing defects. See §§4(5)(A)(v) (preserving ''an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a manner that is reasonably foreseeable'') & 4(5)(C) (defining ''reasonably foreseeable'' for purposes of paragraph 5(A)(v) to exclude ''any criminal or unlawful misuse of a qualified product, other than possessory offenses''). Indeed, given the fact that virtually any shooting of a person would constitute a ''criminal or unlawful misuse'' of a firearm, the immunity legislation would effectively eliminate most claims arising out of the defective design or manufacture of a firearm.

By preventing these cases, and future cases like them, from proceeding against irresponsible gun dealers and manufacturers, the proposed immunity legislation would undermine the incentives that encourage reasonable business practices in the gun industry, thereby inevitably failing to deter avoidable gun injuries and fatalities.

In sum, the proposed legislation would insulate gun dealers and manufacturers from the obligations to act reasonably and in good faith that every other business has. If the legislation were to pass, sellers of products that are among the most dangerous products would have the least obligation to act reasonably.

For all of the above reasons, it is our judgment that the passage of S. 1805 would require the immediate dismissal of the pending civil case against the gun dealer and manufacturer who supplied the snipers' murder weapon as well as other significant cases against gun dealers and manufacturers. Furthermore, by providing the gun industry with unprecedented immunity from common law claims directed at those who engage in irresponsible and dangerous business practices, the proposed legislation would further insulate the sellers and manufacturers of deadly weapons from public accountability for such conduct.

Sincerely,

DAVID BOIES.
SEAN ESKOVITZ.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I rise today in support of S. 1805, the Protection of Lawful Commerce in Arms Act. This critically important bipartisan legislation will block baseless lawsuits initiated by individuals who wish to drive out of business a lawful and legitimate business, the American firearms industry.

This bill will halt lawsuits that are nothing more than shameless attempts

to advance a stalled anti-gun legislative agenda and a flagrant abuse of the judicial system. I commend my colleague, Senator LARRY CRAIG, and other cosponsors from both sides of the aisle, over 50 of them, for their hard work to get this bill to the Senate floor.

As my colleagues are aware, I have long been a proponent of legislation that addresses the growing problem of lawsuit abuse. The issues addressed by this legislation will remedy one such class of shameless and abusive lawsuits. I am hopeful this will be the first of many other reform measures that the Senate will take up before the end of the 108th Congress. This includes asbestos reform that would save this country, save jobs, provide jobs, for hundreds of thousands of people; bankruptcy, which also would save jobs that our friends on the other side seem to be stopping; and class action reform, which in the end would save jobs.

As I mentioned, this legislation has broad bipartisan support, including from the minority leader. I agreed with my colleague, Senator DASCHLE, when he quite accurately stated:

> It is wrong, and it is a misuse of the civil justice system, to try to punish honest, law-abiding people for illegal acts committed by others without their knowledge or involvement. That's not the way we do things in America. We do not hold innocent people responsible for acts they are not involved in and over which they have no control.

I commend Senator DASCHLE. He could not have said it better. I call these lawsuits shameless because the trial lawyers who bring them—and they are really personal injury lawyers, by and large, who bring them—dislike and attack a product that is produced and marketed legally. What is going on is simply outrageous. It is as absurd as suing a car manufacturer for drunken driving accidents or suing a fast food company because a hamburger has more calories than it should. We must put a stop to these senseless lawsuits before our legal system grinds to a halt.

The need for legislation of this type is imperative. This legislation will prohibit civil liability actions against the firearms industry for damages resulting from the misuse of its products by others; that is, meritless lawsuits based on lawful products that are intentionally misused are prohibited by this bill. Now, anybody who thinks ought to agree with that.

In product liability cases, plaintiffs traditionally have been able to sue for compensation for injuries because, No. 1, a product was defective; No. 2, the defect posed an unreasonable danger to the user; and No. 3, the defect caused the injury. A ''defective product'' is one that does not operate as a reasonable manufacturer would design and make it, as a reasonable consumer would expect, or as other products of its type.

Courts uniformly have held that a defect must exist in the product at the time it was sold and that a plaintiff's injury must have been the result of that defect. However, in the firearms context, gun manufacturers and dealers are potentially liable for injuries that occur because their properly operating product is criminally or negligently misused. Now, this is unacceptable.

I would also like to take this opportunity to make clear that this legislation does not relieve from liability gunmakers who create defective products or gun dealers who negligently sell weapons when they know or should have known that such a weapon would be used in a crime.

Additionally, this legislation contains the following significant safeguards: One, an action brought against a transferor convicted for transferring a firearm knowing it would be used in a crime of violence or drug trafficking crime by a party directly harmed by the conduct of which the transferee is so convicted; No. 2, an action brought against a seller for supplying a firearm or ammunition to another person when one knows or should know that person is likely to and does use the product in a manner involving unreasonable risk of physical injury to the person and others for negligence per se; No. 3, an action in which a manufacturer or seller violated a State or Federal statute applicable to the sale or marketing of the product and the violation was the proximate cause of the harm for which relief was sought; No. 4, an action for breach of contract or warranty in connection with the purchase of a product; or No. 5, an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product when used as intended or in a manner that is reasonably foreseeable.

Now, because this bill strikes the right balance between protecting the general public and those who manufacture a lawful product, I strongly support the legislation, and I urge all of my colleagues to do the same.

We all know what is involved. We know the personal injury lawyers are going to sue just about anybody against whom they are able to conjure up a theory of liability, and hope that some of the irresponsible judges in this country will allow those cases to go to the jury. Then on appeal, they hope irresponsible appellate lawyers and activist judges, will ignore the law, ignore every basic instinct of the law, and allow those lawsuits to go forward. And they hope their friends on the Supreme Court will ignore the law as well and through activism do whatever they believe is right, as many of the judges on the Ninth Circuit Court of Appeals do every day. They ignore the law completely, do whatever their gut tells them ought to be done, even though most of the time their gut is filled with legalistic ulcers.

The fact is, that is not the way the law should run. That is not the way it should operate. Lawyers should be ashamed to bring these type of cases. In this particular bill, we protect the consuming public and others from irresponsible misuse of firearms. We protect them from irresponsibility on the part of any gun manufacturer. That needs to be said, and it needs to be said over and over.

The fact is, what we have is a lot of very liberal thinkers who think that guns should not be owned by anybody, or they should be owned only by a few—I guess those who have been to some sort of anti-gun college.

The fact is, most Americans own guns, most Americans value guns, most Americans believe in protecting themselves and their families. Where we have the most guns, that is where we have the lowest amount of crime.

Everybody knows I have brought a bill to the Senate to allow guns to be kept in the home in the District of Columbia, which many refer to as Murder Capital USA. I don't want to bring that up as an amendment on this. I might have to, if some of these irresponsible amendments filed pass. We know the only way this bill is going to make it to the President's signature is if it doesn't have any other amendments on it. But if any others pass, I think we ought to vote on that one as well. Because, to be honest with you, I have had hundreds of DC residents call me and say thank God somebody is acting in our interests, where we can at least protect our homes.

That is how bad it is. We have people who just don't believe in guns, don't believe in sportsmanship, don't believe in the right to collect guns, who are going to be against them for political reasons because they think there are political advantages for them. Frankly, I think they are going to find there are not any political advantages for them because most people in our country believe in the right to have their own arms. Most people hunt and fish. Most people are proud of the fact they can take their young boys or girls out and have target practice and shoot guns.

The fact is, the vast majority, the highest percentile in the world, use guns responsibly in this country. For those who do not, I am for coming down very hard against them. For those who misuse guns in the commission of crimes, you can't get any tougher on crimes than ORRIN HATCH is. Frankly, we passed legislation around here, anti-crime legislation, Senator BIDEN and myself and others, that literally goes hard on those who use and misuse weapons and use them in criminal activity. That is what we should be doing. But we certainly ought not to allow spurious, frivolous lawsuits brought against gun manufacturers who have done nothing wrong other than make guns the American people would like to own.

With that, I don't mean to demean anybody on the floor. All I can say is that for the life of me, I can't understand why anybody would be against this bill who understands the law and

understands the way the law should be applied. Frankly, I am amazed that some are. There were 22 who voted against cloture this morning. That was unbelievable. The fact of the matter is, cloture should have been invoked 100 to zip, but that is how far this issue has denigrated, to the point where it is just a political issue in the eyes of some.

It is time to get rid of the politics and understand the American people are not going to put up with that kind of stuff, and they should not. The law should not be used in the frivolous fashion some of these personal injury lawyers use it. There are a lot of great personal injury lawyers out there and there are a lot of great trial lawyers who do what is right and who would not think for a minute of bringing these frivolous lawsuits against gun manufacturers who are not responsible for the misuse of their weapons. When they are irresponsibly brought, this bill takes care of them. It says you are going to pay for it.

But when they are not responsible for the misuse of their weapons, why in the world would we allow litigation to be brought, just because the trial lawyers might support us? There is a certain point where any good thinking person has to say: Look, the law is more important than just emotion. Unfortunately, most of the arguments used against this bill are emotional arguments that really have no place in the area of law. Frankly, they should not be paid very much attention.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The minority leader is recognized.

Mr. DASCHLE. Mr. President, the legislation we consider today attempts to strike a careful balance between the safety of Americans and the rights of gun manufacturers and dealers. As I have said on many occasions, the vast majority of gun owners, manufacturers, and sellers are honest and certainly obey the law. Moreover, the firearm industry is an important source of jobs and tax revenue for our country. It is wrong, and it is a misuse of the civil justice system, to punish honest, law-abiding people for the illegal acts of others.

At the same time, Americans who are injured due to defective products have a right to seek justice in the courts. In our efforts to protect the gun industry from meritless lawsuits, we should take care not to invalidate legitimate claims from being heard in court. There are several ongoing cases that involve product defects or cases where manufacturers or gun dealers may actually have broken the law, and those victims have a right to be heard.

As this bill was being written, many individuals raised concerns that the bill failed to consider the many important claims of victims of defective products or illegal actions. Because of these concerns, I have worked with my colleagues, Senator CRAIG in particular, Senator BAUCUS, and others to draft a commonsense, bipartisan amendment that improves this legislation by providing stronger protections for meritorious cases. This amendment is not perfect, but it goes a long way toward balancing both the rights of victims and the needs of the gun industry.

Our amendment makes several important changes. First, the language in the original bill forced plaintiffs to prove defendants knowingly and willfully broke the law before a suit could proceed. This is a high standard that would deny many victims the right to pursue legitimate claims. The amendment we now offer removes this language, to ensure cases in which Federal or State firearms laws have been broken can move forward without meeting an artificially high threshold of proof.

Second, as originally drafted, the bill created a few exceptions, where gun manufacturers' and dealers' immunity would not apply. These exceptions were tailored too narrowly. In fact, one of the exceptions could have invalidated cases in which an individual had sold a firearm to someone who committed a drug offense or violent crime simply because the individual had not yet been convicted of that offense. This amendment, our amendment, modifies this language to ensure these bad actors would not be protected from accountability merely because they were not successfully prosecuted.

Third, when a gun is defective, the manufacturer should be held responsible. However, as originally drafted, the bill limited product liability to such degree that it would be virtually impossible to bring cases against manufacturers. Our amendment provides greater protection for product liability cases, so, in particular, if a child is injured by a defective gun, the victim's loved ones can hold those responsible accountable.

Fourth, the original legislation did not specifically address businesses that sell to the straw purchasers; that is, people who buy guns only to resell them in the black market to criminals or children. With this amendment, the bill would include a provision to remove immunity from those dealers who sell to so-called straw purchasers.

Fifth, the amendment Senator CRAIG and I will offer addresses concerns about this bill's definition of trade associations. Many advocates indicated that, as drafted, even extremist organizations could have obtained immunity. Obviously, this is not the intent of the bill's sponsors, nor is it the intent of the gun industry. Therefore, we modified the definition to ensure that only trade associations connected to the business of manufacturing and selling firearms would be covered.

The Protection of Law Commerce in Arms Act, as amended by the Daschle-Craig amendment, strikes a meaningful balance between the rights of legitimate business owners and the rights of individuals who have been injured by gun violence. The Senate achieves the goal of protecting manufacturers from illegitimate lawsuits, while maintaining the rights of victims to hold those responsible for their injuries accountable.

With the inclusion of our amendment, immunity will not cover a number of cases including those where a dealer sells a gun to someone who is prohibited from owning a gun, whether not they have been convicted of a crime; a dealer sells a gun to a juvenile or to an undocumented alien; a manufacturer develops a defective gun that injuries a child; or where a dealer fails to report the theft of a gun as required by law.

In each of these cases, a business loses its immunity only as a result of its own actions, not the actions of a third party.

The cosponsors of this amendment have worked hard to ensure that the gun immunity bill does not inadvertently harm important cases.

The principle of equality before the law demands that everyone—individuals and businesses alike—can be held accountable for their actions.

This legislation should not provide blanket immunity that protects ''bad actors.'' By striking a more sensible balance, my amendment strives to preserve the long-term vitality of an important American industry, while protecting the rights and the safety of the American public.

I hope my colleagues, when the legislation is offered later, will support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank Senator DASCHLE, our minority leader, the Senator from South Dakota, for the cooperative way in which he has worked with us to, in his own words, improve, narrow, clean up this piece of legislation.

As I have already said on the floor today, a good number of times, the Daschle amendment—the effort that S. 1805 seeks to accomplish—is a very narrow way of protecting law-abiding, legitimate firearm manufacturers and dealers, but not to stand in the way of access to the courts as a result of somebody being harmed by somebody who has acted illegally as a licensed dealer or a firearms manufacturer.

I truly appreciate the Senator's efforts in behalf of this very small community of folks in the industry of manufacturing quality firearms. It is critical for our Nation, for law-abiding citizens, and for our national security. The Senator has seen that and understood it, and we will work now to hopefully get this bill before us soon this afternoon so amendments can be offered. I think the Senator has been

ready to do that. That will move us down the road toward hopefully final debate and a vote on this legislation.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I appreciate the kind words of the Senator from Idaho. I also share his view that it is important we move to the bill so we can begin entertaining amendments. I think there are a number of thoughtful amendments which deserve our consideration. The sooner we move to the bill, the sooner we can begin the amendment process. Some will pass and some will be defeated, but I think it is critical we get on with that debate and offering amendments today. It is 4 o'clock. We have had a good debate about the motion to proceed, and certainly about the bill itself. It is my hope that not in the too distant future—sometime perhaps within the hour—we might move to allow floor amendments. I would certainly be prepared to offer mine at that time.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, the leadership of both sides of the aisle, at the moment, is working to try to see if we can gain a unanimous consent request that would bring us to the bill hopefully within the hour and possibly deal with one or two amendments, and at least one amendment voted up or down; and then the laying down of another amendment at least this evening and starting debate on that.

So I thought for a few moments I would give a little background as to what has brought us to this point in time and S. 1805.

Senator DASCHLE was in the Chamber a few moments ago to visit with the Senate about his amendments and what we effectively incorporated in the bill. He has some fine-tuning he may offer as one of the first amendments this evening.

But when Senator BAUCUS and I introduced S. 695 back in the spring, more than half of the Senate—Republicans and Democrats—became original cosponsors. Today we have 55 cosponsors, including the leadership on both sides. A similar bill, H.R. 1036, was passed in the House of Representatives by a 2-to-1 margin over a year ago.

Now we have before us S. 1805, again, very similar to what we did in 1995, but with some adjustments made with the Senator from South Dakota. This is an extraordinary showing of support for a bill. I believe it is a testament to the gravity of the threat addressed by this legislation: The abuse of our courts through lawsuits filed to force law-abiding businesses to pay for criminal acts by individuals beyond their control.

The businesses I am talking about are collectively known as the U.S. firearms industry. The lawsuits I am talking about claim that even though these businesses complied with all of the laws and sell a legitimate product, they should be responsible for the misuse or the illegal use of the firearm they produce, misused by a criminal. These actions are pursued with the intent of driving this industry out of business—regardless of the thousands of jobs that would be lost in the process and the impact on citizens across the Nation who would never contemplate committing a crime with a gun.

Let's be very clear about this. These lawsuits are not brought by individuals seeking relief for injuries done to them by anyone in the industry. Instead, this is a politically inspired initiative trying to force social goals through an end run around the Congress and the State legislatures.

I believe that is worth repeating because it is the essence of the legislation. Instead, I believe these lawsuits are politically inspired initiatives trying to force social goals, or public policy, if you will, through an end run around the Congress and the State legislatures.

The theory on which these lawsuits are based would be laughable if it were not so dangerous: To pin the responsibility for a criminal act on an innocent party who was not there and had nothing to do with the act. They argue that merely by virtue of the fact that a gun was present, those who were part of the commercial distribution chain should be held responsible for the gun's misuse.

Earlier today, I talked about all kinds of chains in commerce—automobiles, and other vehicles, and other tools that are used tragically enough sometimes or misused in a way that they take a human life. What about a baseball bat? We hear, every so often, of a baseball bat used in the commission of a crime in which the baseball bat or the use of it struck a person and killed them. Should we make a person who manufactured that baseball bat liable or should we do that which we have always done in this country: made the individual responsible for his or her action?

This is not a legal theory. It is just the latest twist in the gun controller's notion that it is the gun, and not the criminal, that causes the crime; it is the car, and not the drunk driver, that kills the child it runs over.

The truth is, there are millions of firearms in this country today. Yet only a very tiny fraction of them are ever used in the commission of a crime. The truth is, again and again law-abiding firearms owners are using their guns, often without ever firing a shot, to defend their life or the lives of their family and their property. That is what the second amendment is all about. That is why this right is ingrained within the character and the culture of this country. The truth is, the intent of the user, not the gun, is what determines whether that gun will be used in a crime. A gun can be nothing but a piece of metal until it is used carefully and wisely by an individual in defense of themselves or in hunting by the expertise of the shooter, or it can become a very lethal weapon in the hands of a criminal in the taking of a life.

The trend of abusive litigation targeting the firearms industry not only defies common sense and concepts of fundamental fairness, but it would do nothing to curb criminal gun violence.

Let me repeat that. Does it stop gun violence in this country? No, it does not. The only way you do that is to sweep our country clean of the millions of firearms that are owned out there, and certainly take them out of the hands of criminals. But we know that is a near impossible task, too. Furthermore, the trend jeopardizes America's constitutionally protected access to firearms for defense and other lawful uses.

The bill that more than half of the Senate has already endorsed is a measured response that would put a stop to this abusive trend without endangering legitimate claims of relief. Let me emphasize that it does not insulate the firearms industry from lawsuits or deprive legitimate victims of their day in court, as some critics have already charged.

Nowhere in S. 1805 is there a padlock on the courthouse door. Quite the opposite. If this becomes law, this is the law that will be argued in court by some as to why a given lawsuit ought to be thrown out. And we trust the judge, wise and learned, will listen to all of those arguments and make a decision as to whether the lawsuit goes forward because it is legitimate within the law or it is simply just that, frivolous, it is not legitimate within the law, and it ought to be denied or cast aside.

Again, let me emphasize, it does not insulate the firearms industry from all lawsuits or deprive legitimate victims of their day in court, as some critics would, in fact, argue, and has been already argued several times on the floor today. In fact, it specifically provides that some actions can be brought against those in the business of manufacturing and selling firearms when they violate the law or act wrongfully themselves.

Earlier today, I went through those five areas that we have clearly identified in the law where action can be taken. Senator DASCHLE has even refined that a little more to make sure all is clear in this given area. Actions based on breaches of contract, defects in firearms, negligent entrustment, criminal behavior—these actions would not be affected by this legislation. The laws there are already clear. People are

being tried today in the courts based on those laws, and S. 1805 in no way would wipe them aside or cause a different action.

S. 1805 is solely directed at stopping frivolous politically driven legislation against law-abiding individuals for the misbehavior of criminals over whom they have no control. The courts of our Nation are supposed to be forums for resolving controversies between citizens and providing relief where warranted, not a mechanism for achieving political ends that are rejected by the people's representatives—the Congress or the State legislatures.

I believe that is the fundamental essence of 1805. It is direct. It is clearly to the point. It ought to be. I am pleased that 75 Members of the Senate earlier today said let's move this legislation to the floor. Let's begin the process. Let's vote up or down. Let's keep the bill clean and deal with this critical issue.

Once again, let me talk for a few moments about those exceptions we have carved out or defined within the law in the bill to make sure there is no question. The key to S. 1805 is the definition of qualified civil liability action which is addressed in the definitions section, section 4. I ask all of my colleagues to go there and read it. It is a simple bill, an easy bill to read, of 11 pages. But we made sure that we clearly spelled out a qualified civil liability action, which is defined as a lawsuit brought by any person against a manufacturer or a seller of a qualified product or a trade association for damages resulting from the criminal or unlawful misuse of a qualified product by a person or a third party.

Section 4, subsection 5, the definition then excludes five categories of lawsuits from coverage under 1805. In other words, we make very clear these following areas:

No. 1, an action brought against a transfer convicted under section 924(h) of title 18 United States Code, or a comparable or identical State felony law, by a party directly harmed by the transferee's conduct. In other words, illegal movement of the weapon itself.

An action brought against a seller—this is the second one—for negligent entrustment of negligence per se. Negligent entrustment is defined in section 4, subsection 5(a), as the supplying of a qualified product by a seller for use by another person when the seller knows, or should know, the person to whom the product supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person and others. Misuse of the firearm, knowing that is going to happen. That is what Senator DASCHLE spoke to so clearly today in his clarifying amendment.

The third item, an action in which a manufacturer or seller of a qualified product knowingly and willfully violated a State and Federal statute applicable to the sale or marketing of the product and the violation was a proximate cause of the harm for which relief is sought.

No. 4, the action for breach of contract or warranty in connection with the purchase of the product.

No. 5, an action for physical injury or property damage resulting directly from a defect in the design or manufacturing of the product—in other words, product liability—when used as intended or in a manner that is reasonable and foreseeable.

And then, as I mentioned, the Daschle language amends the text to permit suits against manufacturers or dealers engaging in straw purchase transactions. That is, when one individual purchases a firearm on behalf of a third party.

Why did we spell these out? We wanted the Senate and the citizens of our country to understand that this was not broad, nor was it sweeping. At the same time we wanted everyone to understand that what we were saying very clearly is something that has been said time and time again as it relates to the value of this legislation; that is, the reenforcement of centuries of legal precedent based on individual responsibility, not responsibility for actions of third parties. In other words, if you manufacture a product legally in our economy and it sells and someone misuses it and a life is taken with the misuse of that product, should we be able to come back through the court to the person who produced it when they abided by the law and in no way knew that the product would be used with the intent of harming someone?

That is the basis of individual responsibility in our country and, as I said, of centuries of legal precedent based on individual responsibility and not the responsibility of the actions of third parties. Many judges have already rejected these suits that have been brought. Antigun activists are trying to distort tort law by creating totally new and expansive theories of liability to win restrictions that have been rejected in the legislative process.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CRAIG. I ask unanimous consent that I be yielded Senator NICKLES' hour under rule XXII.

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

Mr. CRAIG. Mr. President, I thank Senator NICKLES for generously yielding me his hour. In a postcloture environment, the sponsors of the legislation are allowed 2, individual Senators are allowed 1. I didn't realize I had already spoken that much today.

Having said what I have just said, I hope I have laid a clear and unambiguous basis to why we are here today and why this legislation is sponsored and supported by so many groups across the United States: the United States Chamber of Commerce; the United Mine Workers of America; National Association of Wholesaler Distributors—and the list goes on—the National Association of Manufacturers; the Boone and Crockett Club; the Buckmasters American Deer Foundation; the Campfire Clubs of America; Congressional Sportsmen's Foundation; Council of Wildlife Management and Education; Dallas Safari Club; Foundation for North American Wild Sheep; Hunting and Shooting Sports Heritage Foundation; International Association of Fish and Wildlife Agencies; International Hunter Education Association; Izaak Walton League of America; Mule Deer Foundation; National Rifle Association; National Shooting Sports Foundation; National Trappers Association; National Wild Turkey Federation; Pheasants Forever; Pope and Young Club; Quail Unlimited, Rocky Mountain Elk Foundation; Ruffed Grouse Society; Safari Club International; Texas Wildlife Association; the Wildlife Society; U.S. Sportsmen's Alliance; White Tail Unlimited; Wildlife Forever; Wildlife Management Institute; the Sports Fishing Association of America; America Tort Reform Association; National Association of Independent Insurers; National Alliance of American Insurers.

Here is something I found most interesting. We began to debate it on the floor today. Representatives from the International Association of Machinists and Aerospace Workers of East Alton, IL. Why? Because many of their members are employed in the Savage Arms Company in Westfield, MA, where they have already lost some 340 jobs over the last few years because that arms company has been so weakened by some of these lawsuits. They have had to pay out since 1999 over $425,000 as the cost of being at court with some of these lawsuits.

They are obviously concerned about their jobs. Somebody scoffed a bit this afternoon that I am standing here talking about jobs, that this is some kind of a jobs bill. It is just that. These industries are at risk today. They are not huge, deep-pocket industries. If we put every gun manufacturer in this country all together, they would make up, in total assets, less than a Fortune 500 company. So they are extremely concerned.

The aerospace workers in Waltham, MA, in Chicopee, MA, along with Westfield, MA, the United Mine Workers, again the United Steelworkers from Gainseville, FL—all of them have spoken to it. The United Auto Workers have employees at the Colt plant in Newington, CT. Today they say, and I read from their letter:

> We have 383 members from the Colt workforce. By comparison, about 5 years ago, we had over 600 Colt workers who were members of our local. Our members built the finest small arms in the world, including M–4 carbines, M–16 rifles, and M–203 grenade launchers.

Obviously, those are not civilian weapons, they are military weapons. Those are the kinds of tools that our men and women use in Iraq today in defense of themselves and in defense of our freedoms. Many of them provide

the U.S. military and law enforcement. Our law enforcement people carry, in most instances, American firearms at their side.

Do we really want, by forcing these industries out of business, Chinese or Yugoslavian or Hungarian firearms to be packed by our military? Some would say: Senator CRAIG, you are just exaggerating. No, I am not. If ever one of these frivolous lawsuits would find root and grow, the kinds of millions of dollars in potential settlement for an argument that a criminal act caused by a third party was ultimately the result of an individual manufacturer who operated in a legal way could easily put them out of business because they simply do not have the kind of depth that, for example, the tobacco industry had years ago when these kinds of lawsuits began to be won against that industry.

Others have been tried in a variety of industries, but there is a reality, and that is why unions are now stepping forward as strong supporters of this legislation saying: Wait a moment, enough is enough. As long as our companies are legal and responsible and producing quality products, leave us alone, unless we act in a criminal fashion or in violation of Federal law in this country.

I cannot blame them for asking it. I believe they should ask it, and I believe we ought to grant that right. That is what S. 1805 does.

There are a good many issues we will be discussing over the course of this debate. My guess is there will be a variety of amendments offered. I find it interesting that this debate gets us to where we are today.

Let me cite something that is interesting, and I will bring some charts to the Chamber probably within the next day. Here is a question asked by the political studies at Southern Methodist University and the Zogby poll people in examining the differences in thinking between people who lived in the States who voted for George Bush in 2000, the red States, and those who voted for Al Gore, the blue States. Think red and blue here for a moment. We all saw those maps after the election, so we begin to think in reds and blues.

Here was the question asked by the Zogby poll people. I don't think you would call Zogby a conservative pollster. He is either center left or is certainly viewed by most as not being conservative. Let me stop there.

Here is a question asked by the Zogby pollster:

> Do you agree or disagree that American firearm manufacturers who sell a legal product that is not defective should be allowed to be sued if a criminal uses their product in a crime?

The answer came back showing a phenomenal result. Opposition in the States that voted for President Bush, the red States, was 74 percent. In other words, 74 percent said that gun manufacturers that operate in legal ways ought to be protected. And in Al Gore States, 72 percent, a 2-percent difference. One could almost say that a vast majority of Americans agree with the essence and the principles of S. 1805. I found that very interesting.

Interestingly, across the board, those most strongly opposed to these lawsuits against the firearms industry are currently members of the military and their families.

There has been a lot of talk about our military these days because we have phenomenally brave men and women standing in harm's way in Iraq, Afghanistan, and other parts of the world. Our military said: We oppose frivolous lawsuits of our gun manufacturers by 83 percent. That was a Zogby poll taken earlier this year of 1,200 voters nationwide. So I find it interesting that opposition occurs to the very narrow approach we have taken when all of these large numbers begin to appear.

Zogby also asked this question:

> Which of the following two statements regarding gun control comes closer to your opinion? Statement 1: There needs to be new and tougher gun law legislation to help in the fight against gun crime. Statement No. 2: There are enough laws on the books. What is needed is better enforcement of current laws regarding gun control.

By a better than 2-to-1 margin, 66 to 31, voters nationwide agreed on statement 2; that is, there are enough laws on the books. What is needed is better enforcement of current laws regarding gun control.

Overwhelmingly, Americans are now speaking out very clearly on gun issues. They are also overwhelmingly speaking out against frivolous lawsuits of the kind that we have seen now launched against this industry. Some 30-plus have been filed. Some are still pending. Some are on appeal. Some have already been thrown out by judges.

That is why we are here today. It is time that Congress stands up and speaks to clarify and disallow the gaming of the system, if you will, by some who want to line their pockets first and, oh, if there is a little bit left, maybe the victim or at least the person in the name the suit was brought would gain some benefit, but large compensation to those who have a license to argue before the courts of the land. That is the reality of what we are dealing with.

I close by saying that we do not block lawsuits that are responsible, that are within the law as we see it today and that we understand have a legitimacy because some manufacturer or some dealer acted beyond and outside the law in a criminal fashion that causes us to suggest that their misaction means they ought to pay the price for that misaction because someone else paid dearly by the use of that firearm.

Those are the fundamental issues before us in this debate, and I think it is important we have these votes. I hope within the next few minutes or within the hour we will have an agreement that allows us to move forward and possibly go to an amendment tonight, and then we will be back tomorrow for the balance of at least Thursday dealing with other critical votes on this issue.

I yield the floor, and 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. REED. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

Mr. REED. Madam President, I ask unanimous consent, under rule XXII, that Senator SARBANES' hour be yielded to me as manager on the Democratic side.

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

Mr. REED. Madam President, may I inquire as to how much time is remaining overall?

The PRESIDING OFFICER. The Chair informs the Senator that there are 24½ hours remaining.

Mr. REED. Madam President, how much time is reserved for the Democratic side?

The PRESIDING OFFICER. The Senator has 82 minutes remaining.

Mr. REED. I yield the floor, retaining my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. BINGAMAN. Madam President, I ask unanimous consent that I be allowed to speak for up to 15 minutes as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator is recognized.

ADVANCED TECHNOLOGY PROGRAM

Mr. BINGAMAN. Madam President, right before the last recess I came to the floor to address the need for a revitalized science and technology policy in the country. One example that I gave of the current administration's inattention to science and technology and high-wage job creation was the proposal in the budget that we received a couple weeks ago to eliminate the Advanced Technology Program, or ATP, in the Department of Commerce. This is in the President's fiscal year 2005 budget request.

In my view—as I stated it then; and I want to repeat it now—eliminating the Advanced Technology Program makes no sense. Even the administration's own budget justification, which clearly praises the program, makes clear that the program is valuable.

The Advanced Technology Program has been a constant target over the

years of those who would like to kill the program for philosophical reasons. But I believe those of us in Congress need to make decisions about Federal programs on a logical basis and on the basis of the good that those programs are doing for the people we represent.

So I believe we should examine the Advanced Technology Program by asking two fundamental questions. First, should our Government be sponsoring an Advanced Technology Program at all? And second, is the Advanced Technology Program we are talking about an effective program for advancing technology development in our country?

In discussing the need for a Government role, a basic principle with which nearly everyone would agree is that a Government role makes sense when there is a market failure of some sort. When it comes to advanced technology, there is ample empirical evidence of a critical gap between the point at which Federal support for basic research ends and the point at which private capital market support of product development begins.

Now, let me try to illustrate that by referencing this chart. This chart is called the ''Valley of Death'' just to try to wake up my colleagues to the fact that this is an important issue. Here, looking at this vertical axis, we are showing the invested money. Along the horizontal axis, we are showing the various stages of developing a technology-based product for use.

The Government does invest a fair amount of money in basic research. That is shown over here at the left, in the beginning stages of developing a product or developing a technology. Here we show labs and universities. Our Federal Government does invest a substantial amount in that area, and that is certainly commendable. Of course, many of my colleagues would argue that we do not invest enough there, and I would agree with that, but that is a subject for another day.

Industry invests most of its research and development dollars at the other end of this development continuum and invests those funds on commercializing short-term, low-risk, reliably profitable products, and then making incremental improvements on those products which they are fairly confident they can make a return on in the market.

In between these two stages of the research and development process, we have what many in the industry call the ''Valley of Death.'' That is the gap where our private capital markets fail to invest applied research dollars to create preproduct, so-called platform technologies. This market failure occurs because such generic technologies are too expensive or they are too risky for industry to develop on its own.

At the same time, it is precisely these generic, platform technologies that are the seed corn for new products, and in many cases new market categories. The benefits to industry generally and to our national economy far outweigh the costs of developing such technologies.

In the case of defense technologies, the Federal Government is the ultimate customer, and programs such as the Defense Advanced Research Projects Agency—the work that they fund in DARPA in the Defense Department—plays an important partnering role with defense contractors and high-technology firms.

But for technologies with predominantly civilian applications, the Federal Government does not have the strong customer stake in developing specific technologies. So filling in this funding gap in the ''Valley of Death'' is precisely the role that the Advanced Technology Program plays for civilian technology.

That brings me to the second question that I outlined earlier. That is, is this advanced technology program an effective program for promoting these new platform technologies? Some in the Congress have reacted over the years to the ATP as if it were some sort of Federal program to help Gillette make a five-bladed razor or to help Microsoft write Windows 2006. This is not an accurate description of the ATP by any stretch.

Let me give a few examples of actual ways in which the Advanced Technology Program has succeeded in bridging the ''Valley of Death'' for U.S. industries with a resulting positive impact on our economy and our global competitiveness.

In 1991, the Council on Competitiveness characterized the U.S. printed wiring board industry as losing badly or lost. That was their description. By this they meant the U.S. was not likely to have a presence in that industry within 5 years. It attracted little private venture funding. Only a handful of the 700 firms in the industry had the capability to undertake advanced research. Through the ATP, a new joint venture between the printed wiring board industry as a whole and the Government was formed that would not have occurred otherwise. The new manufacturing technologies that were developed in the joint venture yielded an estimated cost savings for industry in excess of $35 million.

Another example: In the past, U.S. car makers tolerated dimensional variations of up to 5 or 6 millimeters. That is a level that often complicated the assembly process. It required custom manual reworking, and compromised vehicle fit and finish, as it was referred to in the industry. An advanced technology project was put together with the U.S. auto industry, reducing this variation to less than 2.5 millimeters by inventing an array of new technologies. This one project is credited with increasing the U.S. gross domestic product by over $200 million and creating 1,400 jobs. In short, empirical research demonstrates this project helped increase the demand for domestically produced vehicles and helped domestic producers stem the loss of market share to offshore manufacturers.

The Advanced Technology Program has also been called the godfather of the DNA diagnostic tool industry. That is another example which clearly my colleagues should look into before they follow the administration's recommendation and try to terminate this program.

The Advanced Technology Program was making investments in nanotechnology long before it became a household word, along with investments in homeland security and bringing fuel cells and solar cells and microturbines to the marketplace. In 2003, the White House sponsored a fuel cell demonstration and the President tested a long-life mobile phone. Let me put another chart up here. You might recognize this photo. The President was testing a long-life mobile phone powered by advanced fuel cell technology. Without the Advanced Technology Program, MTI microfuel cells would not have been able to develop this breakthrough technology to power this very phone. So that is another example.

As I have tried to make amply clear, there are many examples of ATP successes. There are certainly also other examples where ATP projects have not been successful. That is the nature of a high-risk, high-payoff research program. But let's put the successes and the failures in the overall context.

The total cost of ATP funding to date has been about $2.1 billion. That is over the life of that program. All told, the preliminary results of a 2003 ATP survey of over 350 companies indicates the actual economic value resulting from ATP joint ventures exceeds $7.5 billion. The benefits from just a few projects analyzed to date are projected to exceed $17 billion, when those platform technologies are fully exploited by the industries involved.

ATP has also been the subject of a recent overall assessment by the National Academies of Science and Engineering, and the core conclusions of this 2001 study speak strongly both to the success of the program and to the generic focus of the program. The national academies concluded the ATP was an effective partnership program at the generic technology level. The academies specifically found the selection criteria applied by the ATP enabled it to meet broad national needs and to help ensure the benefits of successful awards extend across firms and industries. The national academies have also found the ATP peer review of applicants for both technical feasibility and commercial potential was effective in targeting promising new technologies that were unlikely to have been funded through the normal operation of the capital markets.

I could go on and on about the conclusions of the national academies study. Let me just say the reality is industry will not fill the void the President would create if his budget proposal to kill this Advanced Technology

Program were agreed to. Given industry's increased emphasis on short-term applied R&D and consequently reduced emphasis on early phase technology research, the elimination of the Advanced Technology Program would simply trigger the further erosion of U.S. technology leadership and lead to even greater loss of high-technology, high-wage jobs in the future.

I would like to end with a quote from David Morgenthaler, former president of the National Venture Capital Association. The members of the National Venture Capital Association account for around 80 percent of the venture investment taking place in the United States today. David Morgenthaler says:

> It does seem that early stage help by the government in developing platform technologies and financing scientific discoveries is directed exactly at the areas where institutional venture capitalists cannot and will not go.

When experts in venture capital and leaders in industry and our National Academies of Science and Engineering all agree the Advanced Technology Program plays a unique and valuable role in supporting our high technology competitiveness, we ought to pay attention.

I hope all my colleagues will join me in resisting the unwise proposal which we have been given by the President to terminate the Advanced Technology Program. ATP has demonstrably contributed to maintaining our manufacturing strength. A strong and well-funded Advanced Technology Program will help the United States remain competitive in high tech manufacturing in the future. Instead of ending this program, we should look for ways to duplicate its strengths in other civilian technology areas such as energy and environment and homeland defense.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, returning to the gun immunity bill that is being presented, this is legislation that is being bullied through the Congress.

I have been here a long time, now going into my 20th year. This is one of the most outrageous pieces of legislation I have ever seen. We have never seen such a complete sellout. This is like a fire sale to a special interest lobby.

The bill is absolutely a free pass. It says to the gun industry: Do anything you want, and you have no one who can punish you by going to our court system, established effectively by our Constitution. They can do whatever they want, no matter how negligent, reckless, or irresponsible.

Of all the people in society to provide special protections to, why in the world would we give immunity from redress to this industry?

This immunity bill says even reckless behavior—forget about negligence. Negligence says I didn't mean to do it, but I didn't check on the process. Reckless behavior could be deliberate. There could be reckless behavior in the manufacture, sale, or distribution of guns. No matter how destructive the result is to life and limb of innocent people, the victims of that conduct cannot hold you accountable. It just does not make sense.

We hear this claim from our friends on the other side about ''frivolous lawsuits'' is how they describe it. Frivolous lawsuits—lawsuits that, frankly, are far from frivolous because the damage is beyond description when a family loses a child, a father, a brother, a mother, or a sister, or some child is permanently injured and cannot function normally. Frivolous? I don't call that frivolous. These are valid claims of wrongdoing by an industry that puts profit ahead of human life, and we can't let them go without consequence.

Let us ask the gun victims if their lawsuits are frivolous. Ask those who have lost loved ones at the hands of the DC area snipers just over a year ago. And talking about the DC snipers, they were prohibited by law from buying guns. Under law, they could not sell guns to Lee Malvo. He walked into a gun shop and walked out with a sniper rifle. A sniper rifle is a pretty big piece of equipment.

I invite my colleagues to look at this image. This chart says they lost 237 guns; 237 guns for which they have no responsibility to account. They said: Gee whiz, how do you like that, we lost all these lethal weapons that may have just kind of walked out or fallen down a crack in the floor someplace. It is outrageous—including one of those weapons that wound up in the hands of those who committed these atrocities, Lee Malvo and John Muhammad.

This is a picture of a gun shop that has become all too familiar. It is called the Bull's Eye Shooter Supply. They lost the guns.

In the wake of the sniper case, we now know that in addition to losing hundreds of guns from their inventory, this gun shop cannot locate the firearms sales records they are required by law to keep to help police solve crimes. Those records that were recovered showed that Bull's Eye frequently sold numerous guns to individual buyers, a sure sign of phony straw purchases. But obviously this rogue gun store looked the other way.

According to ATF records, between 1997 and 2001, guns sold by Bull's Eye were involved in at least 52 crimes, including homicides, kidnappings, and assaults. Guns in 52 crimes were traced back to this one gunshop.

Under this gun immunity bill, Bull's Eye gets a free pass. They would not be accountable to victims of their negligence, and it is a despicable proposal.

DC sniper Lee Malvo could not have legally purchased a Bushmaster assault weapon from Bull's Eye. He was too young. But he walked into the Bull's Eye store in broad daylight and walked out in a short time with a Bushmaster XM–15. That is the weapon he and John Muhammad used to murder and injure their victims.

I ask my colleagues to take a look. How could he get behind the counter, walk out with a weapon, and not be noticed? It was captured on film, but they didn't see it. What an odd coincidence that is.

It is outrageous. It is an insult to the intelligence of anyone who looks at this picture to know this weapon could not have disappeared without being noticed. Look at the size of it. It tells the story. But then I guess what is being asked for is sympathy for this gun shop, this place that let the murder weapon out of its sight and into the hands of these madmen who shot people at random.

Let them get away with that, with no repercussion, no lawsuits: You injured my child, you injured my husband, you injured my wife? People were shot sitting alongside their mates, and we want to protect them? What do we have to protect them for? I don't understand it.

To me there is an element of curiosity here that just does not register. I don't understand the wailing and weeping about how to protect these guys, these dispensers of murder. It is awful. Yet we hear the case: Gee whiz, if you had an automobile and a drunk driver drove it and killed somebody, why should the automobile company be responsible? We saw that once.

Ford Motor Company made the Pinto. When it was struck from the rear, it would catch fire. We had people testify. They were so disfigured, it was painful to look at them. Imagine what it felt like to be one of them—so disfigured.

They went to the Ford Motor Company and said: Change the design. Ford had a board meeting supposedly in which they said: Change the design? Do you know what that is going to cost us? The heck with it. Let's pay the damages that come from lawsuits. That is the way it goes sometimes.

The automobile is not intended to be a lethal weapon, and we lose a lot more from fewer of these gun manufacturers every year than we do manufacturers of cars. We lose over 28,000 people a year, 11,000 of them homicides, the rest suicides, accidents. That is what happens. We have millions of cars on the road, and we do not have much more of a mortality rate with those cars than we have with these weapons. But we do not try to protect the automobile industry.

We do not try to protect the aviation industry if there is negligence in an air crash. You can bet people have a right and do take advantage of the right to get some redress. They don't want the money, for gosh sakes. They do not want any other families to have to suffer the same humiliating loss they experienced.

If anyone proposed that we go ahead and say to the airlines: Look, tell you what, for reckless behavior and one of

those planes goes down with 200, 400 people on it, we know you really didn't intend to do that, so, therefore, you ought to be excused. We are not going to excuse them, and we should not excuse the gun industry, the people who manufacture these weapons in any form, any shape, disguises for assault weapons that say this really isn't an assault weapon. It passes the specifications test, except if you make an adjustment here in the cartridge carrier or there, it becomes, effectively, an assault weapon. No, we are saying, no, we are not going to punish you for that. Go ahead, be careful because people may not like you, but we are not going to punish you for it.

That is the situation in which we find ourselves.

Do we really believe that in this situation these weapons were lost or stolen from this store? It is ludicrous. So we should not pretend we do not know what really happened. What we are doing is closing our eyes to responsible behavior throughout our Nation. It is obvious they sold the Bushmaster to Malvo under the table, or however he got it. It is a pathetic and irresponsible recognition we are giving these people.

Should Bull's Eye be held accountable for their outrageous actions that resulted in the death of innocent people? The sponsors of this bill say, no, they should not pay for approximately a dozen deaths. The sponsors of this bill say, no, this outlet should not be punished for murder; that, after all, they are okay. They sell things that kill people or close their eyes to the distribution of weapons.

The sponsors of this bill say, no, if one is negligent, they cannot be held accountable. It says if they are reckless, they cannot be held accountable.

The bottom line is there are many victims with valid legal claims who will have their lawsuits wiped out. It is outrageous.

Today we were visited by a policeman from my home State, the town of Orange, NJ. He was shot in an exchange of fire with an assailant. He has a lawsuit in place. He can no longer work at his job. We are saying, too bad. Why were you standing in the way of that bullet when it came? Essentially that is what we are saying: Why did you get in the way of the guy who was going to pull the trigger? You should not have done that. They should not be punished for their complicity by getting a gun for this would-be murderer.

This bill before us tells Bull's Eye and their cronies in the business, keep up the good work; do not worry about it; in the Senate, we are going to take care of you. We are going to immunize them from wrongdoing.

Why on God's Earth do they want to immunize these people? I do not understand it. I have seen pretenses at logic that said, well, we will have no gun industry to supply our Army. Baloney. Everybody knows that is a phony argument. They will get their weapons made. We can protect those who make arms for the military and we can make sure they are under better care than we see now.

The snipers who did the killing wreaked havoc on our society and now we want to reward the gun dealer responsible for illegally giving them their killing weapon with immunity from civil lawsuits. This is absurd.

This Senate is about to make these sniper victims and their families victims a second time. After all they have gone through and that they are going through, we are going to pass a bill to take away their fundamental legal rights. It is reprehensible. There are so many other people who are going to be denied justice by this bill.

I want to take a moment to tell the Senate about two brave police officers, one of whom I mentioned earlier, who are going to be victimized by this bill, Ken McGuire and David Lemongello. They are two police officers from Orange, NJ, who were shot and seriously wounded by a criminal who obtained his gun through the negligence of a gun manufacturer and gun dealer in the State of West Virginia. The criminal who shot them was barred from legally buying guns, but he was able to obtain these weapons from a straw purchaser who was sold 12 guns by a West Virginia gun dealer in a single transaction.

This gun dealer completed the sales in spite of the obvious signs that the purchaser was not buying the guns for himself. The gun dealer admitted he was suspicious of the transaction but turned the other way. Then less than 6 months later, Officers McGuire and Lemongello were shot by one of those weapons.

Is the police officers' lawsuit against the gun dealer frivolous? A West Virginia judge ruled the officers' claims are supported by West Virginia negligence and public nuisance law and that the officers' case should proceed against the dealer as well as the manufacturer of the gun who imposed no requirements on its dealers to cut large volume sales.

If this gun immunity bill is passed, the rights of these two brave police officers are abolished. To make matters worse, it will allow other gun dealers to look the other way and complete suspicious sales because, well, there are not any consequences; we cannot be sued for our negligence.

I want my colleagues to know Officer Ken McGuire is in the Capitol today. He is here to ask Senators not to take his rights away, and I ask my colleagues to give him a moment of their time if he approaches you.

These lawsuits are the only real way to hold these rogue dealers accountable because current laws regulating dealers are a joke. The ATF is restricted to only one announced inspection per year.

In reference to Bull's Eye, I heard the Senator from Idaho say the shop is shut down now. He is very careful with the things he said, but I think he made a mistake. It just is not true. Bull's Eye took advantage of the weak gun dealer laws and merely transferred its license. They are very much in business. My staff called Bull's Eye today and they said they are open until 7 p.m. It does not sound to me as though they are closed. So if someone from the Senate wants to make a quick trip over there today to pick up an assault weapon, they have until 7 Pacific time to do so.

There are a host of other cases that would be affected if this bill is passed. Supporters of this bill will be trampling the rights of innocent victims who only want their day in court, to which I think they are entitled.

The supporters of this bill claim the lawsuits against the gun industry are frivolous. Frivolous? Ask Denise Johnson whether her lawsuit is frivolous. She lost her husband at the hands of the DC area snipers. On the morning of October 22, 2002, Denise Johnson said goodbye to her husband Conrad with her usual ''be careful.'' Neither he nor her children had any idea this would be their last words to their husband and father.

This 35-year-old bus driver was shot on October 22 in Silver Spring, MD. He was standing at the top step of his empty bus when he was hit. He was killed instantly by the Bushmaster portrayed here that Bull's Eye ''lost'' to Lee Malvo.

Some have the impression it is only the DC sniper victims and Officers McGuire and Lemongello from New Jersey who would have lawsuits blocked by this bill. Unfortunately, there are many other victims of gun violence with valid cases who would have their suits dismissed. I ask the sponsors why do they want to do that? Why? Loss of a family member? Perhaps it is the principal breadwinner in the family. Should we have the family suffer from now newly found poverty and doing without the capacity to pay the rent, perhaps be evicted from their homes? Why do we want to punish them a second time? Was it not enough they suffered like that the first time? We want to cut away from them their right to have redress for what took place.

There is Tenille Jefferson. Her 7-year-old son was killed by another child with a .44 caliber rifle. This tragic shooting occurred because the gun ended up in the streets after being negligently sold through a gun dealer to an illegal drug user and gun trafficker.

Then there is Sherilyn Byrdsong who lost her husband, former college basketball coach Rick Byrdsong, when he was shot and killed as he walked with their children in Evanston, IL. The crime was committed by a white supremacist, Benjamin Smith, who targeted minorities in a shooting spree through Illinois and Indiana. Even though Smith was prohibited from buying guns, he was able to obtain a gun because of the actions of a reckless gun dealer.

This reckless dealer sold one gun trafficker over 70 handguns in less than 2 years, almost all of them Saturday night specials, commonly used by criminals. Mrs. Byrdsong's lawsuit is pending in a State court in Chicago. Other victims of this same shooter have joined the lawsuit. If this bill passes, their lawsuits are wiped out. I cannot understand why we would want to do that in this, the Capitol of this Government of our great country. I can't understand why we are bent on taking away people's rights and making them suffer because of a special interest group that has a special reach to those in this Senate and the House who say: We have to take care of this industry. This is an essential industry. We want this. Maybe we can build this into a major industry, make it bigger than it is, sell more guns.

That is hardly a way to see a productive existence in a society that essentially has respect for the law.

The Reverend Stephen Anderson, a minister shot during this spree I was talking about, on his way to join his family in a Fourth of July celebration, would have his lawsuit dismissed. Steven Kuo, a graduate student at the University of Illinois, would have his rights taken away. Hillel Goldstein, one of several Orthodox Jews shot when walking home from temple services, would have his family's lawsuit terminated.

There are other cases that would be dismissed—the parents of 15-year-old Kenzo Dix, who was shot and killed unintentionally by a 14-year-old friend because the gun lacked well-known safety features. The boy thought his father's pistol was unloaded as he had emptied the magazine. Had the gun included an indicator that alerted him that a round was in the chamber, or an integral lock that would have prevented him from firing, Kenzo would not have been killed. But Kenzo's parents' case would be terminated by this bill.

The family of Joan Moore, who was shot and killed by a mentally deranged man in the town of Belle, WV, would have their suit dismissed. Her family brought suit for negligence against the gun dealer who sold a 9 mm rifle to Moore's killer, 18-year-old Robert Copen. Mr. Copen stood in the gun shop's parking lot all day in plain sight, smoking marijuana before he entered the store. He apparently acted so oddly while in the store that an employee asked his supervisor if Copen should be trusted with a gun. Management told the employee to go ahead and make the sale anyway.

This gun dealer was clearly negligent. But Mrs. Moore's family would lose their rights under this bill.

This Senate looks as if it wants to administer a second punishment because the first punishment was not severe enough. It is shocking to believe this could take place.

Since when is Congress in the business of rewarding the worst in our society? Why would we want to send a message that says: Circumvent the law, put our families in danger, and we are going to protect you?

The reality is that the gun industry engages frequently in improper conduct with deadly consequences. We have seen many examples of this. Corrupt dealers who frequently sell to criminals would be immune. Straw purchasers who work with rogue gun dealers to obtain guns for people who are not eligible to buy guns would be immune. Dealers who engage in large volume sales, such as the Illinois dealer who sold 60 Saturday night special handguns to one customer, would be immune.

And, of course, there is the problem of gun shows, where criminals and terrorists can buy guns without background checks.

As many here know, the Senate passed my gun show amendment with the help of Vice President Gore, a 50–50 tie in 1999. But the House Republicans killed the provision in conference. They were not willing to shut down dealers who are not required to get any data about a purchaser—no names, no addresses, no pictures, nothing, not even a fingerprint.

If the NRA immunity bill is signed into law—and I call it the NRA immunity bill deliberately because that is who we are servicing today. We are not servicing this list of people who had the punishment we have seen, punishment that should never be permitted to be put upon a family, a loss of a child, a loss of a husband, a loss of a wife or mother. We should not do that. But if the NRA immunity bill is signed into law, victims of industry recklessness will be denied their day in court.

It doesn't make sense. It doesn't make sense to me, and I am sure it doesn't make sense to people across the country. And I hope they are listening. People across the country have to understand what we are doing. We are protecting an industry that provided the murder weapon to kill lots of people. Why in the world do we want to protect those people? If your behavior is bad, no matter what the product is, if it is a toy, if it is a crib or otherwise, and it is made improperly, you pay a price for it. I come from a State where pharmaceutical manufacturers are a giant industry. Let a pharmaceutical manufacturer put the wrong ingredient in the capsule which hurts somebody's health, they go to court. They are very conscious of that. They are very much afraid of the repercussions of a lawsuit. That is what makes people pay attention. It does it in that industry. It does it in all other industries.

But we want to exempt this one industry for their noble behavior, for their concern for human life, for their concern for jobs, I heard earlier. The Senator from Illinois scoffed at it and said: Oh, I didn't know we were talking about a jobs bill.

Why don't we make hand grenades and distribute them freely? You could get people to do that.

This is ridiculous. Unfortunately, it is not about common sense but, rather, it is about dollars and cents. It is about political support on the outside. It is about nasty mail campaigns. It is about the deterioration of common sense and collegiality. It says: Look, I don't owe my constituents all that. What I do owe is I owe some special interest friends of mine who helped author the legislation in the House that applies to this. We know the role that the NRA plays in financing political campaigns. It seems as if it is paying off for them right now.

Thankfully, there are still people here who see their responsibility differently, who will stand up for principle, who will do all they can to prevent this unconscionable piece of legislation from passing. We have friends on both sides of the aisle, Democrats and Republicans. This isn't the special property, the unique property of Republicans. It is people who are not looking clearly at the problem, who are not willing to say: Hey, I can catch a little abuse from the NRA and its membership and its friends.

I took a lot of it in my previous term in the Senate. But we did take gun permits away from spousal abusers. Some 40-plus thousand were denied gun permits because of a piece of legislation we passed. Does anybody regret that fact? I wonder, if we asked the question, do you, sir/ma'am, regret the fact that we have taken away those permits from those spousal abusers, permission to buy guns, permits.

I wonder if you feel badly about that, and about other things that try to curb gun violence.

This bill takes away a critical tool in the fight to eliminate gun violence. It is comparable, in my view, to taking away medication from doctors trying to treat a deadly disease, perhaps to prevent death, or immobility, or mental fatigue in a person without proper medication. Why do we not want to prevent the possibility that someone can be permanently injured or incapacitated?

What are the symptoms of this disease? In the year 2000, there were more than 28,000 firearm-related deaths in the United States. About 11,000 were homicides. These deaths and injuries cost an estimated $2.3 billion a year in lifetime medical expenses alone, much of which is borne by the U.S. taxpayer. The total societal cost of firearms is much higher—an estimated $100 billion a year—and the cost to families cannot be measured.

But we know this: The bill on the floor today is a direct attack on people who have already suffered a tragedy. This bill is an embarrassment to the Senate, to our Government, and our Nation, and it ought not to be permitted to go forward.

I ask my colleagues one thing. Before you cast your vote on this bill, spend a second thinking about a child's face who learns that daddy is dead, or about a father's face when he learns that his

child is dead—killed not by nature or something that perhaps could not be prevented. Much of this can be prevented. Think about these victims. Give them their fair consideration before you victimize them once again.

I hate to think that this wonderful body in which I am privileged to serve would want to inflict punishment on those who have already suffered so deeply, or who will suffer so deeply by protecting those scoundrels who break the rules with reckless behavior. Imagine what is being said—that even if you are reckless, you are going to be immunized by this legislation. Negligence is bad; reckless is unacceptable under any condition.

I hope I am talking for the majority of those so we can get a vote against this bill.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Idaho.

Mr. CRAIG. Mr. President, we are hoping in a few moments that we might have a unanimous consent request to allow us to get to this bill.

I will respond only briefly to the Senator from New Jersey and his comments because he did suggest that I had implied something that is not fact on the floor of the Senate today. I want to make sure the record is clear because I don't want in any way to mislead any of my colleagues.

I said that the Bull's Eye gun store was closed. It, in fact, did close. The license of the dealer at the time the weapon was stolen was jerked. He could no longer conduct the business. He sold the business to a new licensed dealer. What the Senator from New Jersey failed to recognize is that licenses aren't given to locations; they are given to individuals, and those individuals must qualify. A condition of the new license also was all new personnel in the gunshop.

The Senator is accurate in suggesting that he might have called today and the gunshop is open under new management and new license and new people. The person who I said this morning had lost his license because BATF had jerked it and he had to close his business is, in fact, a legitimate and valid statement. That did happen. It is also my understanding that the criminal investigation is now underway, and that BATF is recommending to Justice that they file felony charges against this particular dealer. I do not know anything more about the facts. But I do know one thing.

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

Mr. CRAIG. Let me complete this thought, and I would be happy to yield.

I do know one thing. Lee Malvo himself said: I stole the weapon. That is very important. But the Senator suggested—and his words were: Well, maybe an under-the-table deal. I do not know that stealing is under the table, and the man who pulled the trigger admitted he had stolen the weapon. You can imply anything you want. I can't. I have to use factual statements given by, in this case, a man who has been apprehended and we now believe by all evidence committed that tremendously tragic crime and was one of the District of Columbia snipers. That is the reality. I believe those are the facts. I believe them to be honest and straightforward facts.

I would be happy to yield to the Senator.

Mr. LAUTENBERG. I thank the Senator from Idaho.

One thing I know is that we often disagree, but I would never accuse him of these statements. He is an honorable man. We have our differences on things that we ought to be putting into law. But I would like, if I may, to correct my friend's impression because not only was there a phone which was answered but the now owner of the license is a good friend of the former owner.

If one looks at the pictures that we displayed, the weapon used was a pretty sizable piece of equipment. As I remember from what I saw on the film shown on television, there was evidence that this Lee Malvo was carrying a weapon out of that store. The camera saw it. Certainly it could have been negligence. It could have been reckless or maybe the gun was paid for by a friend, and with the wink of the eye, out it went. But to give this criminal credit for telling the truth is something that I—

Mr. CRAIG. I did yield for the sake of a question and not a comment. I would like to reclaim the floor.

Mr. LAUTENBERG. The Senator is absolutely right. My question was, Did the Senator know that the new owner of the license was the friend of the former owner?

Mr. CRAIG. I didn't inquire about friendships or relationships. I inquired about the legality of the license that operates the store, and whether the store is still in business, and whether the owner who is alleged to have mishandled records owns it today; does he operate it. The answer is no.

Let me also add that I appreciate the Senator's logic about the stealing of a weapon. Automobiles are stolen from automobile lots and the thieves are caught on camera. The last I checked, an automobile is substantially larger than a rifle. Is it possible that Lee Malvo picked up a gun and walked out of the store? He says he did. He says he did. He stole the weapon.

I am not going to in any way attempt to defend the man who once owned the Bull's Eye gunshop. He may be indefensible. He may have violated the law. If he did—and he is being investigated for it—S. 1805 does not immune him from any of those actions. That is what is important to understand as we debate the bill. His acts were criminal. If he is in violation of the Federal firearm license, if he has mishandled his records, and if he had, in fact, seen a robbery and failed to report it, then this man is in trouble because that is the law. We would not protect him nor does this bill protect him from that law.

I yield the floor.

Mr. REED. Mr. President, we have heard a lot today about the exceptions contained in that bill which, arguably, might result in liability to someone such as the dealer in the Bull's Eye Shooting Gallery store but legal analysis by eminent attorneys suggests they would not apply to that particular case.

Mr. LAUTENBERG. Mr. President, I wonder if I could ask the distinguished Senator a question.

Mr. REED. Yes.

Mr. LAUTENBERG. I believe the Senator has examined the opinion offered by Mr. Lloyd Cutler and others. Is it not their opinion that these lawsuits would be obstructed from proceeding as a result of this law being put in place?

Mr. REED. The Senator is accurate. The analysis by eminent attorneys looking at this legislation, looking at the exemptions, suggests in the case of Bull's Eye that this dealer would not be subject to liability; he would be immunized from liability because of this particular bill.

This is a situation that has to be made very clear to people. We are essentially giving this individual an opportunity to walk away from serious negligence. I don't think it is appropriate. In fact, I think it is unconscionable.

There is a factual discussion about the status of the Bull's Eye Shooting Gallery. My understanding is—and it is close, I think, to that of the Senator from Idaho with additional detail—as I understand it, the individual who was in fact the owner-operator, Brian Borgelt, had his license revoked. He is appealing that revocation in court. That is his right. He somehow transferred ownership of the store to someone we have been informed is a friend, a colleague, which is also permissible under the law. It appears, though, that Mr. Borgelt is operating a shooting gallery in the same building, but it does look as if this might be an entirely legal transaction.

The point was raised earlier, and Senator LAUTENBERG and I have tried to clarify, at least there was an impression this store was closed, out of business, and not operating. The agreement and the factual accuracy as of this point that we both share is the store is operating. The individual who owned it is no longer operating it because his license has been revoked and he is challenging the revocation.

Mr. CRAIG. If the Senator will yield, I think that is a valid analysis and I certainly did not intend to misportray that.

Again, let's go back to the law. Are you suing the store if there are lawsuits, or are you suing the individual who had the Federal firearms license? Is it the physical structure that is liable or is it the individual who owned the structure who is liable? We know

what the law is. It is the individual and not the store.

I cannot, nor do I, know the details of the relationship. What I do know is that he cannot sell firearms today. His license has been pulled. That is what the law requires, and a criminal investigation proceeds at this moment. I believe that is the essence of the argument.

Mr. REED. That is an accurate description of the situation but, again, the imprecision was whether the store is operating, not who is operating it. The individual is not able to operate because he lost his license.

Mr. CRAIG. If the Senator will further yield, I did use the phrase ''store closed.'' I meant the ownership, as it was; he closed. It reopened. Whether it was 24 hours or 48 hours, he could no longer operate it when his license was revoked. We understood he sold it to a new operator who is licensed.

Mr. REED. I think it is important to clarify that because it has been a matter of factual dispute.

The other issue which has to be clarified is the applicability of this legislation to that original owner-operator who had been accused of a laundry list of inappropriate actions. I had the opportunity to review some of them today.

With respect to the owner of the Bull's Eye Shooting Gallery at the time the Malvo gun was obtained, under his ownership and under his license, 238 guns were missing. Many guns between 1997 and 2001 found their way into crime scenes. A remarkable record of guns found their way from a licensed dealer to crime scenes. Many found themselves to crime scenes in a rapid period of time. The nomenclature is ''time to crime.'' Time to crime was remarkably narrow. The time to crime was less than 3 years in more than 70 percent of Bull's Eye cases between 1997 and 2001, suggesting this organization was a conduit for obtaining weapons for crimes.

There were large numbers of multiple firearms sales. Sometimes he would sell as many as 10 guns at a time. There were numerous ATF citations, at least 15 times between 1997 and 2001. That is the record of the individual whose license was suspended, finally, by the ATF.

But the issue is, with respect to this individual, if we pass this legislation, will he be immunized after this record of negligence, recklessness, irrational responsibility? Most people would say that is the record. The exemption provided by paragraph (5)(A)(iii) says, in effect, the action would be preserved in which a manufacturer or seller of a qualified product violated a State or Federal statute applicable to the sale or marketing of the product and the violation was a proximate cause of harm for which relief is sought.

Two elements: You have to violate Federal and State statutes; and that violation was the proximate cause of the damage to the individual. According to the well-settled tort law principle, proximate cause requires that the defendant's conduct was a substantial factor in bringing about the harm suffered by the plaintiff.

Remember, two elements: State and Federal statutes violated, and that violation being a proximate cause.

Here is the difficulty with respect to the situation at the Bull's Eye Shooting Gallery. Despite the evidence we have that there were certain violations, many of them record keeping, it is going to be virtually impossible that the plaintiffs in the sniper case will be able to show that Bull's Eye violated any State or Federal statute with respect to the particular gun that was used by the snipers or that any such statutory violation was a proximate cause of the sniper attacks.

The evidence concerning the acquisition of the snipers' weapon supports Bull's Eye's claim that Lee Boyd Malvo shoplifted the gun. That is not in dispute. Indeed, after his arrest, I believe Malvo admitted he shoplifted the gun from Bull's Eye. Although the plaintiffs or the family of the plaintiffs claim that Bull's Eye's lax security practice permitted Malvo to get the weapon, that would not establish a violation of any Federal or State statute.

Again, a reading of this exception would say that you have to show, first, a Federal or State statute was violated, and the violation of that statute was the proximate cause was reading to injury. It is virtually impossible in this case.

What is happening in all of these exceptions that are built into the bill is, this is a trapdoor, if you will. We have a general prohibition against any type of suit against these individuals, these dealers, these manufacturers, or trade associations; and then we have exceptions. And they point out within the exceptions, artfully constructed by very good lawyers, provisions for an escape clause for the potential defendants. Here it is, the combination of proximate cause and violation of Federal-State statute.

Again, close analysis of the evidence—and I don't think any of this evidence is in dispute; Malvo admitted he shoplifted the weapon—suggests strongly this exception would not apply in the case of the Bull's Eye shooter. These sniper victims will be without relief. That is not just my view but the view of attorneys who have looked at it very carefully.

Now, this is a very detailed legal analysis. But, again, we so often—all of us—appeal to rather common, homely—in a literal sense—illustrations, something with which we are comfortable. I was struck when the Senator from Idaho talked about, Goodness gracious, if someone stole a car off a lot and drove into another car and caused damage, that you could not hold that dealer responsible.

Well, I can conceive of a situation. For example, if a dealer ordinarily left the keys in all of the cars on his lot, and they were cited 15 or 20 times before for doing that, and people knew that the dealer's cars were available, and young kids came in and jumped into a car and drove off at 60 miles an hour careening into another car and killing someone, I will tell you what I think. You have a pretty good suit against that automobile dealer for negligence, for abandoning the care that any other dealer in the country would adopt. They would not be protected from a suit as we propose to protect the gun industry.

Again, this legislation is very troubling to me. I do not think it provides adequate protections for people who have legitimate claims, the most graphic example of which is the sniper victims in the Washington, DC, area. But they are not alone. Danny Guzman was killed in Worcester, MA, as a result of what I think is gross negligence. A gun manufacturer employed, without background checks, ex-convicts, drug addicts, allowing them to steal weapons from the production inventory of the company, and to sell them to criminals in exchange for cash and drugs. This involved a multiple of weapons. They got the weapons out of the factory before they could stamp the serial numbers on them. Again, common sense would say: My goodness gracious, somebody has to be able to go in and require that employer to be conscious of their weapons, their security procedures.

I also understand—and again it is an understanding that is not shaped by a footnote at the moment—there are really no effective State or Federal laws about the security of weapons. I do not think there is any requirement specifying you have to have triple locks or double locks, et cetera. I think that is left to the reasonable business standards of an individual dealer. Again, if we do not have those rules and regulations or they are not effective, how do we then insist we cannot have a negligence action, as this legislation proposes?

For these reasons and many others I reiterate my opposition to the legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Hope springs eternal that we might, sometime in the late of the afternoon—I guess it is now described as early evening—see a unanimous consent agreement that would take us into tomorrow and the remainder of the week as to how we are able to move to and deal with S. 1805 and its amendments.

I am going to respond only briefly to what my colleague has just said because I am not an attorney and I am not going to attempt to outlawyer the lawyers. Mr. Cutler is a fine lawyer. There are many other fine lawyers who disagree with Mr. Cutler. It is not our job to outlawyer the lawyers, but it is our job to write law as clearly as we can and then allow judges, listening to

the arguments of lawyers as they relate to how a given situation might fit in a suit, to make the determination as to the applicability of the law.

Now, having said that, I would like to refer to another lawyer. Is he as recognized as is Mr. Cutler? No, probably not. But this does come from the Congressional Research Service, and it is one of those services that we utilize. The Senator has, I think, the same work product I have. We are talking about the Daschle-Craig-Baucus amendment that Senator DASCHLE came to the floor to speak to a few moments ago.

The Daschle-Craig-Baucus Amendment would strike ''knowingly and willfully'' in the preceding sentence—

That we are talking about—

potentially increasing the likelihood that [certain exceptions] to the general immunity afforded under the [law] would be applicable in any given case.

They looked at it in relationship to the Bull's Eye case to which the Senator was referring.

Now, these are not my words. I am not this good. I am not an attorney. But I do listen to them, and I seek out their advice when it comes to writing law and making sure that it is clear and unambiguous.

They cite two examples and they say:

Applying these changes to the scenario at issue—

We are talking about Bull's Eye—

it would appear that the Amendment could have the effect of making it more likely that this exception to immunity would be applicable, if certain facts are established.

''If certain facts are established.'' Those facts have not yet been established. They were not established for Attorney Cutler. He is simply looking at the broad presence of the law, or application of it, as are we.

If certain facts are established in an investigation and charges are brought against an owner, then we believe our amendment clarifies and does not provide the immunity, if those facts are established.

Now, the changes we are talking about are twofold:

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record which he is required to keep pursuant to State or Federal law—

If weapons are stolen and they fail to note it, fail to report it to the police, that fits that area—

or aided, abetted or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness or the sale or other disposition of a qualified product.

''Other disposition''—theft. At least this is my interpretation now. I am not a lawyer. Secondly:

[A]ny case in which the manufacturer or seller aided, abetted or conspired with any other person to sell or otherwise dispose of a qualified product, knowing or having reasonable cause to believe that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under section 922(g) or (n) of title 18, United States Code. . . .

That is what the Congressional Research Service says. Then it draws that conclusion I gave earlier:

Applying these changes to the scenario at issue—

That is what the Daschle-Craig-Baucus amendment does. ''The scenario at issue,'' the arguments put forth, the concern about somehow, if the facts are established, this firearms dealer being immune by S. 1805—

it would appear that the Amendment could have the effect—

The amendment is in large part incorporated in S. 1805 now, and Senator DASCHLE is going to offer another amendment that we know will be accepted and will clarify it even more—

of making it more likely that this exception to immunity would be applicable, [again] if certain facts are established.

That is the argument at hand. We can trade arguments of attorneys. We will place all these kinds of things in the RECORD so our colleagues can understand them and hopefully sort them out, but it is my opinion that we are not exempting this formerly licensed gun dealer who has now had his license revoked. Because if an investigation goes forward, and charges are filed against him, I believe we have clearly not granted him immunity under S. 1805 if it, in fact, becomes law. I do believe that is the strength of our argument, and one that certainly is believed to be what we represent here. It is certainly from the Congressional Research Service, which has very active attorneys who deal constantly with the law as we shape it and form it and look at arguments that are placed out there in the public arena in relation to the legislation that we bring before the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I recognize there are different legal interpretations. I recognize also the Senator from Idaho has introduced an interpretation of the Congressional Research Service. I have one, too. Theirs is dated November 3, 2003. Mine is dated October 20, 2003. We made a request. They looked at the amendment, the perfecting amendment offered by Senators CRAIG, DASCHLE, and BAUCUS. In the context of that correcting amendment, they opined in October:

Again, you have specifically inquired as to whether the Amendment would alter the bill to such a degree as to allow the pursuit of a civil action against the gun dealer from whom the weapon used in the D.C.-area sniper shootings was stolen. A review of federal and Washington State law indicates that there are no statutory requirements regarding the storage and security of firearms by licensed firearm dealers. Accordingly, it seems evident that there would be no basis for the application for this exception in the case at hand, irrespective of the presence of the ''knowing and willfully'' requirement, given that there appears to be no violation of a relevant underlying federal or state statute.

That is an October CRS.

Obviously a second opinion was sought. That is the nature of legal opinions many times. This opinion was premised on certain facts that are not yet obvious and perhaps never to be obvious.

In fact, in reference in the report Senator CRAIG referred to:

Thus, in the event that it is established that Bull's Eye was aware that the firearm was missing from its inventory more than 48 hours prior to November 5, 2002, the Amendment would appear to lend further support to the application of the exception to immunity . . . of the bill.

Essentially what was done in this latest CRS was to say: We will assume hypothetically that in fact they violated the Federal statute, i.e., the requirement to report a weapon within 48 hours of its disappearance. Well, if you assume a violation of the statute, you have gotten way over the curve, because once again, Federal statute or State statute has to be violated, proximate cause.

The problem is this assumption does not have much of an evidentiary base. The footnote to the report Senator CRAIG referred to suggests:

These examples are pertinent to the extent—

examples of potential violations—

they could be implicated in any hypothetical sale or transfer to the D.C.-area sniper suspects. It should be noted, however, that it does not appear that any evidence has been produced of actual violations of these provisions by Bull's Eye in the case at hand.

The answer to qualifying this exemption is not to assume a violation of Federal law. There has to be some evidence. But there does not appear to be any evidence of violations of Federal statutes. There are no Federal/State statutes with respect to security of firearms, the physical security. The slender reed—no pun intended—they might hang it upon is they somehow knew the weapon was missing a long time before November 5, 2002, and they failed to report it. No evidence from Malvo suggests that. I don't know if there is, frankly. The stories we have all heard from the operator were he didn't know the weapons were missing until the day they showed up, the ATF showed up and said the weapons were missing. The practical effect of this is a judge might have the opportunity for a few minutes to look at this record, but where is the evidence?

The practical effect of this legislation is these claims will be barred. That would be a great misfortune, not only for the families involved but a misfortune in terms of setting up a very bad precedent in terms of undermining the common law sense of responsibility for your actions. Senator CRAIG is a very articulate advocate for his position and has referred to that several times; this is just about maintaining centuries of legal precedent about individual responsibility. I disagree. I think it is about overturning centuries of legal precedent, the precedent that an individual is responsible

for their actions, that an individual, such as the licensee at Bull's Eye, is responsible for not securing the weapons, is responsible for not knowing he has lost weapons—according to his view at this point—for days and weeks and weeks. If we immunize the individual, we will undercut that basic principle of individual responsibility.

One of the things I find amazing in this whole discussion of the security of weapons is, I commanded a paratrooper company at Fort Bragg. I worried every day about the weapons in my outfit. We had double locks on the doors, locks on the racks, individual accounting every day of weapons. One of the things that as a young airborne captain you are worried about was showing up one day and discovering a weapon or part of a weapon or even equipment associated with a weapon was missing. That was a big deal. That is a standard of the United States Army.

We are telling people who maintain large arsenals in commercial venues that the standard for them is nothing. Miss a few weapons, don't even pay attention because, frankly, knowledge will hurt you.

This goes also to the principle of why we have laws of negligence, tort laws. It is not just for individual compensation. That is an important part of giving an individual the right to make themselves whole after they have been harmed. It is something else. It is about having a system of standards that are self-enforcing, not because there are ATF agents walking around, but because in addition to that, an owner of one of these stores will simply say: You know, I better make sure all these weapons are accounted for at least every week. I better make sure they are secure. I better make sure if people walk in who might not be eligible to purchase a weapon I at least ask them what they are doing. None of that appears to be done.

In response to the specific question of the application of the exemption, I think the proponents have tried all they can to dress it up. It just doesn't work. There is a huge trapdoor when you put together violation of State or Federal statute and that violation causes proximate cause.

Someone could go in and show they didn't file the records properly. That is a violation of Federal and State regulation. They could show perhaps they were lax in some other capacity. Then you have to make the further showing that violation was directly connected. So literally in this case you are going to have to show that particular weapon that found its way into Malvo's hands was the subject or involved with a specific violation of Federal/State law. That is why this CRS report has to assume that particular weapon, of all the 248, was noted as missing more than 48 hours before November 5, 2002. That is an extra burden of proof. That is, again, why I don't think this will work for the victims of these crimes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we hope we are narrowing down to a time when we will have a unanimous consent request which then—and I can't judge this yet—might conclude our efforts today. We will be back early tomorrow morning to resume. I thank my colleague for his arguments. We are not going to try this case here on the floor of the Senate because we don't have a judge. I am not a lawyer. He is; I am not. But I would also ask him to look at another provision we have in the bill as he argues the case. That is that a lawsuit could also be allowed under the bill's exception allowing actions for negligence per se or for negligent entrustment, depending on, of course, the condition of the dealer and the dealer's knowledge, if any, of the suspects.

Having said that, let's remember to address these issues, the victim would need to get his day in court. The case will be filed. The defendant would file a motion to dismiss based on provisions of 1805. And if the judge—remember there is going to be the impartial judge weighing all the law and the findings—decides this case did not fall under those exceptions, then the litigation would proceed. That is the essence. We are not going to argue the case effectively here because, frankly, we don't know all of the facts. We are not a part of ATF's investigation, and all of those facts are not yet public. They will not be public until charges are filed, a suit is brought, and that day in court I just spoke of is at hand.

Obviously, the Senator and I can disagree on what the meanings are, but I do believe the arguments we put forth are extremely valid. Certainly, the minority leader, myself, and others, in a very bipartisan fashion, have worked tremendously hard to craft this bill in a way that is as narrow as I expressed it to be earlier in the day to deal only in the protection of law-abiding dealers, law-abiding manufacturers who make a legitimate product, and to deny the kind of lawsuits we have seen that are more intent on bankrupting the manufacturer than they are in bringing resolution to or, if you will, dealing with the victims and rewarding them in any fashion.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Rhode Island.

Mr. REED. Mr. President, my colleague from Idaho has invited me to look at the theory of negligent entrustment and negligence per se. I will try to do that.

Again, this is not an attempt to dispose of a case before a court. But we all have an obligation to understand what we are voting on, what these provisions will do based on the plain language of the provisions and based upon the facts as we know them in certain cases. That is why I think this is a positive exercise. It is insufficient to say that we pass laws, but we do not have to know what they mean because some judge will figure out what they mean. No, no, I think we have to know what they mean because that should drive our decision about whether this legislation will pass or fail.

Let me turn for a moment to these two theories of negligent entrustment/negligence per se.

Negligent entrustment is generally understood as ''the supplying of a qualified product by a seller for use by another person when the seller knows, or should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.''

Again, the seller has to know, or is likely to know, that the person they transfer the weapon to or supplied it to is likely to harm himself or harm someone else.

The problem we have with respect to the sniper case is that the evidence the snipers' weapon was shoplifted from Bull's Eye would appear to preclude the plaintiffs from making the requisite showing under the statute that the gunshop knew or should have known that the recipient of the gun, Malvo, was likely to use the product in a criminal or otherwise unreasonably dangerous manner.

Malvo indicated he shoplifted the weapon. The owner said he must have taken it. He didn't know it was missing until ATF showed up.

The theory of negligent entrustment is fancy-sounding terminology, but it is another trapdoor from which the exception falls out.

Negligence per se, under most—I am a lawyer, but I am hesitant to say I am a lawyer who is familiar in every detail with Federal practice, but my assumption is since we are talking about Federal and State laws, this negligence per se is a State common law concept that would apply to the laws of Washington State because that is where the Bull's Eye shooting gallery is located.

In any event, with respect to negligence per se, it would not preserve the sniper case because even where that doctrine is recognized, it requires a violation of statute that is a proximate cause of the plaintiff's injury. Once again, you have to show not only the violation but that violation of that particular law was a proximate cause of injury. As discussed above—again I am borrowing from one of these legal analyses—that would be very difficult to show. In fact, also I think there is another problem in Washington State about the doctrine of negligence per se.

The negligence per se doctrine has been abrogated by statute in Washington State. It doesn't apply.

Once again, I think we have an exception that does not provide relief for these individuals.

I conclude by joining my colleague in hoping we have some resolution soon on the procedural process for this evening and tomorrow. I yield the floor.

Mr. CRAIG. 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, after consultation, we have reached a unanimous consent agreement which I will now propound.

I ask unanimous consent that at 9:30 a.m. tomorrow morning the Senate proceed to the consideration of S. 1805; that Senator DASCHLE then be recognized to offer his perfecting amendment; that there be 30 minutes equally divided for debate on his amendment; that at the conclusion or yielding back of time the Senate, without any intervening action or debate, vote on the Daschle amendment; that upon the disposition of that amendment Senator BOXER be recognized to offer a gun lock amendment; further, that following 30 minutes of debate equally divided in the usual form Senator DEWINE be recognized to offer a relevant second degree under the same conditions; further, that following the use of time the Senate proceed to a vote in relation to the second degree to be followed by a vote in relation to the underlying amendment.

Further, I ask unanimous consent that following those votes Senator CAMPBELL be recognized in order to offer an amendment regarding conceal-carry and that there be 60 minutes equally divided in the usual form with no second degrees in order; provided that following that time the amendment be set aside and Senator KENNEDY be recognized to offer an amendment on ''cop-killer'' bullets with 60 minutes equally decided, and that there be no second degrees in order, and that following that time the amendment be set aside.

I further ask unanimous consent that Senator CANTWELL then be recognized to offer her unemployment extension amendment; that there be 60 minutes for debate equally divided on her amendment and it then be laid aside; that no second-degree amendments be in order to her amendment; further, that Senator FRIST or his designee then be recognized in order to offer an amendment relating to voting rights and that there then be 60 minutes of debate equally divided with no amendments to the amendment; provided further that the Senate then proceed to vote in relation to the Cantwell and Frist amendments in that order, and that if either amendment fails to receive 60 votes, the amendment be withdrawn or fall due to a pending point of order.

I also ask unanimous consent that Senator MIKULSKI then be recognized to offer her amendment on snipers with 40 minutes equally divided in the usual form, to be followed by a vote in relation to the amendment, to be followed by an amendment offered by Senator CORZINE on law enforcement officers for 30 minutes equally divided in the usual form, to be followed by a vote in relation to the amendment, to be followed by an amendment by Senator BINGAMAN on definition, with 30 minutes equally divided in the usual form, to be followed by a vote in relation to the amendment.

I further ask unanimous consent that following each of the Boxer, Kennedy, Mikulski, Bingaman, Corzine amendments it be in order for Senator FRIST or his designee to offer a first-degree amendment that would be relevant to the mentioned amendments and limited under the same time constraints; and that the possible Frist amendment on ''cop-killer'' bullets be set aside after time has expired or yielded on the amendment; and that the possible Frist amendments would be voted on prior to the respective Democratic amendments; that on Tuesday morning at 9:30 a.m. the pending amendments be withdrawn with the exception of the Campbell amendment, the Kennedy amendment, and a possible amendment by Senator FRIST regarding ''cop-killer'' bullets, if there are any pending at the time; that Senator REED then be recognized to offer a gun show amendment; that it then be immediately laid aside and Senator FEINSTEIN be recognized to offer her assault weapons ban amendment, that it then be set aside, and that Senator FRIST or his designee be recognized to offer a DC gun ban amendment; that the time prior to 11:35 a.m. that day be equally divided for debate on all amendments concurrently; that no second-degree amendments be in order to any amendment; that at 11:35 a.m. the Senate vote on the Feinstein amendment, followed immediately by a vote on Senator REED's amendment, to be followed by a vote on the Campbell amendment, to be followed by a vote on the Kennedy amendment, to be followed by a vote on the District of Columbia ban amendment; further, that following the disposition of the above amendments the bill be read the third time and the Senate proceed to a vote on final passage of the bill with no intervening action prior to those votes; that where this agreement provides for two or more votes in sequence there be 2 minutes for debate equally divided in the usual form prior to each vote; that all time for debate be equally divided in the usual form.

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

Mr. DASCHLE. Mr. President, it has obviously taken a good deal of time to reach this agreement due to the complexity that is apparent as Senator MCCONNELL has read it.

There are two matters that ought to be recognized. First, this does not preclude Senators who are not listed in this unanimous consent agreement from offering an amendment sometime either this week or early next week. Senators who have additional amendments are certainly welcome to do so.

Second, this does not preclude those who have amendments on Tuesday from discussing and speaking to those amendments at any time between now and when those amendments are raised. There was some question about whether 2 hours on Tuesday for three very important amendments is adequate. My answer is that it is more than 2 hours if people want to devote more than that time between now and the time they are offered. I encourage Senators who wish to speak longer to come to the floor over the course of the next week to do so.

This is a very fair agreement. It is one that takes into account a lot of concerns and interests on the part of many Senators. I am supportive of the agreement and hope that we can have a good debate as a result of it.

I yield the floor.

The PRESIDING OFFICER. The majority whip.

Mr. MCCONNELL. I echo the comments of the Democratic leader. This agreement, which is quite complex, allows us to accommodate various interests on both sides of the aisle but then move to final passage on the underlying bill, which, of course, was the goal of the majority leader in bringing it up at this time. I particularly commend Senator CRAIG, who has done a marvelous job of managing this issue on our side, and I thank him for his important contribution in reaching this agreement that will allow the Senate to achieve final passage on a bill that he is the principal sponsor of and that we believe a substantial majority of Senators on a bipartisan basis would like to see ultimately become law.

Mr. CRAIG. Will the Senator yield?

Mr. MCCONNELL. I yield.

Mr. CRAIG. Let me thank both the leadership on our side of the aisle and certainly the minority leader and the minority whip for the work they have done in trying to bring this together.

Is this something that I wholeheartedly support? Well, let me put it this way: It is something I support because it gets us to a final vote, which is very important, in a timely way.

But something is absent from this unanimous consent agreement that is very important: to allow the underlying bill, however it is changed, to become law. That is why we are here on the floor. Not that this is how we get to conference, which oftentimes is agreed to. When we craft a bill and arrive at a time of final passage, we almost always include in it the procedure by which we will get to conference.

I hope that our minority leader, in good faith, would work to help us get to that point so we can work out the differences between the House and the Senate. There will be differences; that is quite obvious now. Some of these amendments could pass. It is important we work that out.

We saw the underlying bill gain a substantial bipartisan majority support in the Senate, and therefore it is

incumbent upon all of us, I trust, to get this bill to a conference between the House and the Senate, work out our differences so we can vote on a conference report and allow this underlying bill now changed to get to our President's desk.

Having said that, let me thank everyone for the work they have done. This is a very busy schedule. But let me also echo what the minority leader said. It does not stop other Members who feel they must offer amendments from bringing those to the floor. I said early on today we wanted an open process, amendments voted on, but at the end of the day we wanted to vote on final passage. We helped facilitate that by this agreement, and I appreciate the work done by our leaders.

The PRESIDING OFFICER. The majority whip.

Mr. MCCONNELL. I was just reminded by floor staff that the Reed amendment is, in fact, the McCain-Reed amendment. I ask consent that the agreement we just reached be so modified.

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

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

The Democratic whip.

Mr. REID. Mr. President, I feel constrained to say that we have been in a quorum call now for 4 hours 10 minutes, but that does not take away from the fact that people have been working very hard during this entire period of time, plus earlier this day. I personally extend my appreciation to the two leaders, the Republican leader and the Democratic leader, for working with us. Senator FRIST is not on the floor tonight. We have been in constant contact with him during the evening.

I also want to say that Senator REED, my counterpart from Rhode Island, has been representing those people who are extremely concerned about this issue, probably 12, 15 Senators. He has been extremely helpful, as he always is. He has represented his cause in the most efficient way. Without his cooperation and work, Senator DASCHLE and I could not be at the point where we are today.

The PRESIDING OFFICER. The majority whip.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

REPORT PURSUANT TO WAR POWERS RESOLUTION

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached report from the President of the United States be printed in the RECORD, consistent with the War Powers Resolution.

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

THE WHITE HOUSE,
Washington, February 25, 2004.

Hon. TED STEVENS,
President pro tempore of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Increasing armed rebellion in Haiti, the limited effectiveness of the Haitian National Police, and insecurity in Port-au-Prince brought on by increased armed pro-government gang activity have contributed to a climate of insecurity for the U.S. Embassy and its supporting facilities in Port-au-Prince, Haiti. These circumstances and the potential for further deterioration of the security environment in Haiti render the safety of the U.S. Embassy, its facilities, and U.S. personnel uncertain.

On February 23, 2004, a security force of approximately 55 U.S. military personnel from the U.S. Joint Forces Command deployed to Port-au-Prince, Haiti, to augment the Embassy security forces.

Although the U.S. forces are equipped for combat, this movement was undertaken solely for the purpose of protecting American citizens and property. It is anticipated that U.S. forces will provide this support until such time as it is determined that the security situation has stabilized and the threat to the Embassy, its facilities, and U.S. personnel has ended.

I have taken this action pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive. I am providing this report as part of my efforts to keep the Congress informed, consistent with the War Powers Resolution.

Sincerely,

GEORGE W. BUSH.

CONGRATULATING VIRGINIA SCHUYLER

Mr. DASCHLE. Mr. President, I come to the floor today to congratulate Virginia Schuyler, a woman from my hometown of Aberdeen, SD, who has dedicated her life to helping those in need. Virginia is the recipient of South Dakota's 2003 Outstanding Older Worker Award, an honor bestowed by Experience Works, an organization committed to improving the lives of seniors in South Dakota through quality job training and employment programs.

Virginia decided early on that she wanted to be a nurse. From a very young age, Virginia knew she wanted to travel. When her mother told her that nurses travel on boats and planes, her mind was made up. For 60 years she has been a registered nurse, and she has traveled all over the world. For the past 5 years, Virginia, 81, has cared for residents at the Bethesda Towne Square, an assisted living facility. The residents there deeply appreciate her dedication—she insists on working every weekend—as well as everything she does for them, activities that range from bringing them hot tea at night to painting stained-glass windows for the residents in her spare time.

Virginia earned an RN degree in 1943. She joined the U.S. Army, serving in England, France, and Germany, and recalls treating as many as 500 patients daily from the Normandy invasion in France. After her discharge from the Army, she stayed in Germany, where her volunteer work at an orphanage led her to adopt two children who were on the brink of starvation. In 1954, she earned an RN in Pathology degree, the equivalent of a master's degree, from St. Joseph's Hospital in Burbank, CA.

After she earned her pathology degree, Virginia worked in pathology for 7 years at St. Joseph's Hospital, and at St. Luke's Hospital in Aberdeen for 25 years. She also spent 5 years working with Alzheimer's patients at Arcadia in Aberdeen. Today, in addition to her work at Bethesda Towne Square, Virginia works between 30 and 50 hours a week on her stained-glass window business, and acts as her church secretary.

I join Virginia's many admirers in congratulating her on receiving this prestigious and well-deserved award.

TAIWAN

Mr. FEINGOLD. Mr. President, over recent months, aggressive rhetoric has escalated across the Taiwan Strait. In response to Taiwanese President Chen Shui-bian's pledge to hold a nationwide referendum ''to demand that the Taiwan Strait issue be resolved through peaceful means,'' Chinese officials have threatened the use of force. Prime Minister Wen Jiabao of the People's Republic of China has stated that China will ''crush'' any attempts by Taiwan to seek independence and that it will ''pay any price to safeguard the unity of the motherland.'' In addition on November 20, 2003, PRC Major General Wang Zaixi was quoted saying that ''the use of force may become unavoidable'' in dealing with Taiwan. On February 11, 2004, Chinese officials stated the referendum would ''provoke confrontation.''

Threats of violence by the People's Republic of China only undermine efforts to resolve longstanding China-Taiwan tensions. Intimidation and warnings of bloodshed have taken the place of constructive dialogue. I fear that these threats will only intensify as Taiwan's presidential elections on March 20, 2004, draw nearer.

In the midst of this bellicose rhetoric, I express my support for the people of Taiwan and to compliment the Taiwanese people and their leadership for the great strides they have made in strengthening their democracy. Since 2000, with the first peaceful transfer of power from one political party to another in Taiwan's history, Taiwan's democracy has thrived. The U.S. State Department's annual Human Rights Reports for 2002 reported that the government of Taiwan largely respected the independence of both the judiciary and press in practice and stated, ''Taiwan's strides were also notable, with consolidation and improvement of civil liberties catching up to its free and open electoral system.'' Transparency International has ranked Taiwan's