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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The Senate will be led in prayer by the Senate Chaplain, Dr. Lloyd John Ogilvie.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, thank You for Your love that never gives up on us. Help us discover the power of resting in You and receiving assurance and encouragement of Your amazing grace. Here we are at the beginning of another day. You know our needs and are prepared to meet those needs with exactly the right gift of Your spirit. You are present, impinging with inspiration to lift our spirits; hovering with hope to press us on. All through this day there will be magnificent moments when we overcome the temptation of trying to make it on our own strength, and instead, yield to the inflow of your wisdom, insight, vision, and guidance. Our souls are meant to be containers and transmitters of Your power. We thank You in advance for a stunning day in which we are blessed by being carried by Your presence rather than being bogged down by trying to carry our problems. In the Lord's name. Amen.

RESERVATION OF LEADER TIME

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

The able Senator from New York is recognized.

SCHEDULE

Mr. D'AMATO. Mr. President, we will consider the conference report, as was indicated, to H.R. 1058, the securities litigation bill. There is an 8-hour time limitation on the conference report.

We will recess from 12:30 to 2:15 for the weekly policy conference meetings.

Following the securities litigation, we will resume consideration of H.R. 1833, the partial-birth abortions bill. Rollcall votes, therefore, will be expected during today's session.

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—CONFERENCE REPORT

Mr. D'AMATO. Mr. President, I submit a report of the committee of conference on H.R. 1058 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. FRIST). The report will be stated.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 28, 1995.)

Mr. D'AMATO. Mr. President, today, the Senate will vote on the conference report to H.R. 1058, the Private Securities Litigation Reform Act of 1995.

This legislation has been 4 years in the making. It is a thoughtful and carefully crafted bill. The provisions in the conference report are balanced to make the legal system fairer and better for investors. The current system does not protect investors, it exploits them. Now, the system is not fair to investors and is not fair to American business. Plaintiffs' lawyers know that and take advantage. It is time to reform the securities class action litigation from a moneymaking enterprise for lawyers into a better means of recovery for investors.

The present system is a feeding frenzy for plaintiffs' lawyers who prey on companies with volatile stock prices, eat up the companies' profits with a strike suit and move on to the next victim. Lawyers are now able to file a baseless securities class action lawsuit against a company, claiming millions of dollars in damages, and coerce huge settlements. About 300 securities class action lawsuits are filed each year. The same lawyers, and in some cases the same plaintiffs, the world's unluckiest investors, show up in these lawsuits time after time.

Frequently, the same complaint comes out of a word processor barely changed. In one infamous case, a lawsuit against Philip Morris claimed fraud in the ''toy industry.'' In other words, the forms are set, the stock price drops, and bang, the suit is filed with the same plaintiffs hired—in many cases, the plaintiff owns only 10 shares of stock. We have seen some cases where the same plaintiffs appears in as many as 13 lawsuits. They are professional plaintiffs.

A drop in a public company's stock price, a failed product development project, or even adverse market conditions that affect earnings, can trigger one or more securities fraud lawsuits. Many times the complaint simply alleges that management's predictions about the company's future did not come true.

Once discovery begins, plaintiffs' counsel begins a fishing expedition for evidence. One witness told a securities subcommittee that his company produced 1,500 boxes of documents during discovery in this type of case. The discovery ended up costing the company $1.4 million.

The threat of a protracted securities class action lawsuit is powerful. Companies pony up huge settlements rather

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

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than face the time and expense of a class action lawsuit. The lawyers do not just go after the money in the company's pockets, they also name other deep pockets—the company's lawyers, accountants, underwriters and directors—as defendants to assure a hefty settlement will be paid out. The plaintiffs' lawyers are rarely disappointed. Almost 93 percent of the cases settle at an average settlement cost of $8.6 million.

In 1994 alone, companies or their insurers paid out $1.4 billion to settle these cases. The so-called victims of the fraud recover pennies on the dollar and the lawyers pocket the rest. While the lawyer's share is taken out, the class members get about 6 cents on the dollar. Frequently, the only egregious offense is committed when the company's shareholders are forced to pick up the tab.

The conference report reforms the system for securities litigation.

First, the conference report makes it harder to file frivolous complaints and sanctions attorneys who do.

The conference report stops abusive securities litigation before it starts. It will help to weed out frivolous complaints before companies have to start paying enormous legal bills.

The legislation creates a uniform standard for complaints that allege securities fraud. This standard is already the law in New York. It requires a plaintiff plead facts giving rise to a strong inference of the defendant's fraudulent intent.

The conference report also provides a strong disincentive for lawyers to file abusive lawsuits. The legislation does not contain a loser pays provision, which would go too far. Instead, the bill requires courts to make findings about whether an attorney filed a frivolous complaint, motion or responsive pleading and to sanction attorneys who do.

Second, the conference report makes sure that the victims of securities fraud bring the lawsuit—not professional plaintiffs.

The conference report puts control of the lawsuit into the hands of the victims. Right now, there often is no victim, just a professional plaintiff whose name appears in lawsuit after lawsuit.

Professional plaintiffs are paid well for their services, usually in the form of a bounty payment. News accounts report that one individual, a retired lawyer, appeared as lead plaintiff in 300–400 lawsuits. Last year, an Ohio judge refused to permit class certification, noting that the lead defendant had filed 182 class actions in the last 12 years.

The conference report discourages the use of professional plaintiffs by eliminating bonus payments to name plaintiffs and prohibiting referral fees.

The conference report encourages real investors, especially pension funds and other institutional investors, to take control of the lawsuit. It provides that the plaintiff with the largest financial interest in the outcome of the case should be the lead plaintiff.

Third, the conference report allows companies to talk about the future of the company without the threat of a lawsuit.

The conference report will get more information to shareholders about the future prospects of a company. The conference report codifies existing law to provide a safe harbor to companies that make forward-looking statements accompanied by meaningful cautionary statements.

Now, corporate management is afraid to make statements about the future of the company, knowing that incorrect projections will inevitably lead to a lawsuit. One study found that over two-thirds of venture capital firms were reluctant to discuss their performance with analysts or the public because of the threat of litigation.

The conference report includes a safe harbor that fairly balances the need for a free flow of information to the marketplace and the need for investor protection.

The conference report creates a two-pronged safe harbor. The first prong gives safe harbor protection if there is a good enough warning about why the forward-looking statement may not come true.

The safe harbor does not give a license to lie. The second prong does not give safe harbor protection when forward-looking statements are made with actual knowledge that the statement is false or misleading.

The conference report safe harbor does not cover areas where there is potential for abuse. For example, the safe harbor does not cover IPO's, financial statement information, penny stocks or limited partnerships. There is no safe harbor for brokers.

The conference report safe harbor is balanced. The conference committee worked with the SEC to make sure the safe harbor is safe for investors as well as companies. I would like to include in the RECORD as if read in its entirety, a letter from the SEC to me, dated November 16, 1995, supporting the safe harbor provision.

Fourth, the conference report modifies the system of liability so that deep pocket peripheral defendants cannot be coerced into paying more than their share of the damages.

The conference report reduces the coercive effect of unlimited liability by making peripheral defendants liable only for the share of damages they caused. Now, all defendants are on the hook for 100 percent of the damages—even if they are only responsible for 1 percent.

In class action lawsuits with hundreds of plaintiffs, the potential liability can be staggering. Deep pocket defendants who may only be 1 percent liable routinely settle for much more rather than face paying 100 percent of the damages.

The conference report changes that by requiring peripheral defendants to pay for only the share of damages they caused under a system of proportionate liability.

This bill does not leave small investors out in the cold. Small investors are always compensated for 100 percent of their damages if they have a net worth of $200,000 or less.

The conference report does not change the system of liability for defendants who knowingly commit securities violations. Anyone who has knowingly committed a securities violation will still be liable for 100 percent of the damages. That's fair.

Fifth, the conference report improves the settlement process by getting more information to investors about a proposed settlement and restricting the amount attorneys may recover in fees.

The conference report enables the plaintiffs to receive a favorable settlement rather that the attorneys. All too often, plaintiffs' lawyers take the money and run. The legislation requires counsel to the class to inform investors about the terms of a proposed settlement and to be available to answer questions about the settlement.

The conference report also restricts the percentage of the recovery that goes to the lawyers. Lawyers fees now sometimes add up to more than 50 percent of the entire settlement. This legislation puts more of the settlement money into the pockets of investors by limiting the lawyers portion to a reasonable percentage of the settlement amount.

Sixth, the conference report also contains other provisions that make the system for securities litigation reform fairer and better for investors.

The legislation requires auditors to be on the lookout for wrongdoing and report any evidence of fraud to the SEC. The conference report also reinstates the SEC's authority—which the Supreme Court put into question in the Central Bank of Denver case—to bring actions against defendants who knowingly aid and abet securities fraud.

The bill prohibits document destruction by making it unlawful for a party to destroy documents once a complaint is filed. Finally, the bill makes sure that small investors are always compensated for 100 percent of their damages if they have a net worth of $200,000 or less.

In summary, the bill will put a stop to abusive securities litigation. It will curtail the use of professional plaintiffs. It will empower real investors, especially pension funds and other institutional investors, to take control of the lawsuit.

This legislation is aimed at weeding out frivolous cases by making it harder to file factually baseless complaints. It also provides that each defendant is liable for only his or her fair share of the damages, making it more difficult for lawyers to coerce settlements from the deep pocket defendants—that is, the defendant that has some assets or money. At the same time, it will make accountants report fraud to the authorities.

Finally, this bill creates a safe harbor from private lawsuits about forward-looking statements. The legislation will solve the problem of abusive securities litigation without preventing investors from bringing meritorious lawsuits.

I congratulate my Senate colleagues for all the time and effort they have put into this important legislation. I particularly would like to thank Senators DODD and DOMENICI, who introduced this legislation more than 4 years ago.

I thank Senator GRAMM, the chairman of the Securities Subcommittee, for his leadership. And I thank the staff who has worked so hard on this bill. Our staff director, Howard Menell; the Banking Committee staff: Laura Unger, Bob Giuffra, Wayne Abernathy, Mitchell Feuer, and Andrew Lowenthal; Senator DOMENICI's staff: Denise Ramonas and Brian Benczkowski, and the other key staff members, including Robert Cresanti, Dave Berson, Peter Hong, and Carol Grunberg, who have been indispensable to this process.

I also want to thank the SEC, the Security and Exchange Commission, its staff, and the judicial conference, and all the others who have made this piece of legislation successful.

The conference report is balanced. It hits the bullseye of the target, curtailing abusive securities litigation, while allowing investors to bring meritorious lawsuits. Once this bill becomes law, investors will have a system of redress that serves them and not entrepreneurial lawyers.

Mr. President, let me take the time now to indicate that on November 15 I received a letter from the Securities and Exchange Commission, signed by Chairman Levitt, and Steve Wallman, a Commissioner. And let me ask that I be permitted to read the letter into the RECORD.

DEAR MR. CHAIRMAN: As we approach the end of the long road traveled on securities litigation reform, you have asked we provide our views of the current draft of the legislation. At the outset, let us express our appreciation for your willingness to heed the concerns of the Commission regarding the draft conference report October 23, 1995. Together we have sought to achieve the most responsible reform possible.

While the Commission has raised a number of concerns about earlier versions of this legislation, we believe the draft conference report dated November 9th responds to our principal concerns. We understand the need for a greater flow of useful information to investors in the markets and we share your desire to protect companies and their shareholders from the costs of frivolous litigation.

The safe harbor provisions of the draft bill have been of particular interest to us. While we could not support earlier attempts at a safe harbor compromise, the current version represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse. The need of legitimate businesses to have a mechanism for early dismissal of frivolous lawsuits argues in favor of codification of the ''bespeaks caution'' doctrine that has developed under the case law. While the trade-off requires that class action attorneys must have well written and carefully researched pleadings at the outset of the lawsuit, we feel this is necessary to create a viable safe harbor, given that it does not prevent Commission enforcement actions, and excludes the greatest opportunities for harm to investors.

Outside of the safe harbor provisions, we have consistently advocated reversal of Supreme Court decisions of Lampf and Central Bank. It is unfortunate that Congress has not restored these investor protections that were removed by the Supreme Court; however, we recognize that amendments on both subjects were defeated in the course of this legislative effort, thereby making it difficult to include such provisions in the bill. The conference bill raises other minor issues, but the language in the conference report hopefully will prevent any unintended consequences. We remain grateful to you and your staff, as well as the other members and their staffs, for the willingness to engage in a dialogue with us aimed at getting a better deal for investors.

Thank you for your consideration.

Signed Arthur Levitt, chairman.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

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

U.S. SECURITIES AND
EXCHANGE COMMISSION,
Washington, DC, November 15, 1995.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As we approach the end of the long road traveled on securities litigation reform, you have asked that we provide our views of the current draft of the legislation. At the outset, let us express our appreciation for your willingness to heed the concerns of the Commission regarding the draft conference report dated October 23, 1995. Together we have sought to achieve the most responsible reform possible.

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Thank you for your consideration.

Sincerely,

ARTHUR LEVITT,
Chairman.
STEVEN M.H. WALLMAN,
Commissioner.

Mr. D'AMATO. Mr. President, let me conclude by simply saying that this bill may not be the perfect solution and, indeed, there may be some unintended consequences that create problems. This Senator and, I know, Senator DODD and Senator DOMENICI and all of my colleagues are ready to deal with any problems that may come about.

But let me say this, too. First, in this bill we go after the greatest abuse that is taking place, which is lawyers who do not represent the general public but represent themselves. They have for hire plaintiffs who are not really aggrieved, who own minimal, in some cases as little as 10 shares, of stock. As soon as there is a price variation, these lawyers race to the courthouse so that they can file a claim so they will control the case. There is little regard for the company, little regard for the real aggrieved investors. We have changed that significantly. No longer will there be permitted professional plaintiffs.

Second, for the first time we say that the court shall look at the facts as they relate to the questions: Is there a pension fund? Is there a large investor involved whose interests should be protected? The court will look at these questions as they relate to the lawyer's representation so that we have lawyers, who really represent the aggrieved investors, controlling the case, not a string of professional, sharks, sharks for hire.

Third, we have made it more difficult to bring suits that are aimed at forcing settlements.

Fourth, we answer questions which are long overdue. Should we hold somebody responsible for the total loss, if there is a loss, if they have been minor participants and if they have been responsible for 1 or 2 or 3 or 4 percent of the loss, because they are wealthy or have a member of the board of directors who has deep pockets? Do we want to encourage people to participate in corporate governance, or do we want to discourage it; do we want to make it impossible for large firms to come in and use their expertise because they are afraid of being sued so they say, ''No, I do not want to audit your books; the exposure is too great''?

Do we really want to have a system where people are forced—forced—to give up and settle a case because if there is even the slightest doubt as it relates to liability, they may be facing huge, huge losses. These companies, therefore, are forced to settle even when they know they have not committed any tortious acts, but the risk of the jury finding any evidence in the way of negligence, even a small, minute amount, might jeopardize the company with huge claims?

So what you literally have is a group of bandits who force companies into settlements of millions and millions of dollars. Is that fair to those companies? Is that fair to the shareholders? I do not think so. What we have said in this conference report is, if you are negligent, if you have committed a tortious act, you should be held responsible for the percentage of losses due to your tortious act, not that the full consequences of somebody else's actions should fall on you simply because you are a person who has some money and some resources. That is wrong. That is not fair.

If you are intentionally defrauding investors? That is a different matter. You will be held. I think this is fair. I think this is reasonable.

I understand that there are some provisions that some of my colleagues have some differences with, but I think overall we have moved forward in a very conscientious manner in the attempt to have a fair and balanced system, so that those who truly have committed tortious actions will be held accountable for their actions, and they will not be held accountable for other people's actions, nor will they be forced to make settlements that are indeed unfair. We have eliminated a terribly unscrupulous practice that I believe is a stain on the legal profession.

I have stood up and I have battled on behalf of litigants and on behalf of the attorneys who represent them, so that they may have a level playing field. But the law as it exists today is not a level playing field. And there have been and there are a handful who have abused the system. We are attempting to deal with those abuses.

I want to thank my colleagues for their participation. I certainly want to thank Senator BENNETT for his job in terms of working with us. I urge my colleagues to vote in favor of the final passage. And I thank the Chair.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The Senator from Maryland.

Mr. SARBANES. Mr. President, later today the Senate will vote on the final version of the securities litigation bill which has been brought back from conference. Supporters of the bill argue that it is a balanced response to a widespread problem; namely, frivolous securities litigation. What should be clear to all Senators, however, is that this bill is not—is not—a balanced response to that problem.

This legislation will affect far more than frivolous suits. When the arguments are made for the legislation, the examples that are always cited are examples of frivolous suits. And I do not know of any difference in here, that we ought to find ways to get at those and that those are an abuse of the system. But this bill goes way beyond that. This bill will make it more difficult for investors to bring and recover damages in legitimate fraud actions—legitimate fraud actions.

As the editors of Money magazine concluded, this legislation hurts investors. In fact, the December editorial of Money magazine warns, ''Now only Clinton can stop Congress from hurting small investors like you.''

At every stage of the legislative process, this bill has been amended to make it more difficult for investors to bring legitimate suits. As it has moved through the process, provisions favorable to investors have been taken out. Balanced provisions in the legislation have been made harmful to investors. Individual investors, local governments and pension plans all will be hurt by this legislation. All will find it more difficult to bring fraud actions and to recover full damages as a result of the measure now before the Senate. That is why this bill is opposed by a broad coalition of regulators, State and local government officials, labor unions, consumer groups and investor organizations, and by literally dozens and dozens of editorials in major newspapers and magazines across the country.

I want to review just some of the areas in which this negative trend took place in the course of the legislative consideration of this legislation.

First, the statute of limitations. The process of hurting investors began in the Banking Committee when it deleted the extension of the statute of limitations. The bill originally introduced by Senators DOMENICI and DODD, who have had a keen interest in this matter, Senate bill 240, that original bill as introduced by them extended the statute of limitations for security fraud suits—that is, the period of time available to investors to discover that they have been defrauded and to file a claim. This was in fact the one clearly proinvestor provision in that bill introduced by Senators DOMENICI and DODD. It responded to the experts in this area—the Federal and State securities regulators—all of whom agree that the current statute of limitations is too short to protect investors.

For over 40 years, courts held that the statute of limitations for private rights of action under section 10(b) of the Securities Exchange Act of 1934, the principal antifraud provision of the Federal securities laws, was the statute of limitations determined by applicable State law. While these statutes varied from State to State, they generally afforded securities fraud victims sufficient time to discover that they had been defrauded and sufficient time to bring suit.

In 1991, in the Lampf case, the Supreme Court significantly shortened the period of time in which investors may bring securities fraud actions. By a 5-to-4 vote—in other words, a very closely divided Supreme Court—the Court held that the applicable statute of limitations is 1 year after the plaintiff knew of the violation and in no event more than 3 years after the violation occurred. These time periods are shorter than the statute of limitations for private securities actions which existed under the law of 31 of the 50 States.

Regulators have testified unanimously that this shorter period does not allow individual investors adequate time to discover and pursue violations of securities law. Testifying before the Banking Committee in 1991, SEC Chairman Richard Breeden stated, and I quote,

> The timeframes set forth in the [Supreme] Court's decision is unrealistically short and will do undue damage to the ability of private litigants to sue.

Chairman Breeden pointed out that in many cases, and I quote, ''events only come to light years after the original distribution of securities and the cases could well mean that by the time investors discover they have a case, they are already barred from the courthouse.'' In other words, if the perpetrator of the wrong can conceal it long enough under this very shortened statute of limitations, the victim will have no remedy.

The FDIC and the States securities regulators joined the SEC in favor of overturning the Lampf decision. What happened to this provision that was in the legislation as originally introduced by Senators DOMENICI and DODD? It disappeared when the Banking Committee met to consider this bill. Despite the fact that all the securities regulators recommended it, despite the fact that Senators DOMENICI and DODD had included it in their original bill, despite the fact that the Banking Committee had approved this provision before in 1991, despite the fact that it was the one clearly proinvestor provision in the bill, the provision was dropped.

Let me make clear that the statute of limitations issue has nothing to do with frivolous cases. The current statute of limitations keeps worthy cases from the courthouse. Both Republican SEC chairmen and Democratic SEC chairmen have told us that the statute of limitations imposed by the Supreme Court in 1991 is too short. It allows con artists to perpetrate frauds, and it prevents defrauded investors from seeking restitution.

When the statute of limitations provision disappeared from the bill, the bill moved down the path of being an unbalanced effort. At that point, the bill began to tilt away from individual investors, away from pension funds and county treasurers, in favor of corporate insiders and the attorneys and accountants who advise them.

When the Banking Committee dropped the lengthening of the statute of limitations provision, it went beyond deterring frivolous lawsuits and began hurting investors.

I want to underscore that because that is the basic point that must be understood about this conference report. Again and again it goes beyond deterring frivolous lawsuits and hurts investors.

Let me turn now to another example of this proposition, that is, the aiding and abetting issue. Failure to include the extension of the statute of limitations removed the balance from this bill and tilted it toward corporate wrongdoers. The Banking Committee could have added some balance to the bill by restoring the ability of investors to sue the accountants and attorneys who aid and abet securities fraud. This was recommended by the SEC, the State securities regulators, and various bar associations. Again, however, the committee hurt investors by leaving this key provision out of the bill.

Prior to 1994, courts in every circuit in the country had recognized the ability of investors to sue aiders and abettors of securities frauds. Most courts required that an investor show that a securities fraud was committed, that the aider and abettor gave substantial assistance to the fraud, and that the aider and abettor intended to deceive investors or behaved recklessly toward the fraud. In other words, the investor had to show that the aider and abettor either intended to deceive the investors or behaved recklessly toward the fraud. Aiding and abetting liability was most often asserted against lawyers, accountants, appraisers, and other professionals whose assistance is often crucial to perpetrating a fraud.

In 1994, in the Central Bank of Denver case, the Supreme Court eliminated the right of investors to sue aiders and abettors of securities fraud. Writing for the four dissenters—this was another 5-to-4 opinion—Justice Stevens criticized the five-member majority for ''reach[ing] out to overturn a most considerable body of precedent.'' While the issue was not directly before the Court, Justice Stevens warned that the decision would also eliminate the SEC's ability to pursue aiders and abettors of securities fraud; in other words, not only a private cause of action, but the SEC's ability as well.

One of the lead sponsors of this legislation, Senator DODD, stated at a Securities Subcommittee hearing in May 1994, and I quote:

> Aiding and abetting liability has been critically important in deterring individuals from assisting possible fraudulent acts by others.

Testifying at that hearing, the Chairman of the SEC stressed the importance of restoring aiding and abetting liability for private investors, and I quote:

> Persons who knowingly or recklessly assist the perpetration of a fraud may be insulated from liability to private parties if they act behind the scenes and do not themselves make statements directly or indirectly that are relied upon by investors. Because this is conduct that should be deterred, Congress should enact legislation to restore aiding and abetting liability in private actions.

The North American Securities Administrators Association, the Association of States Securities Regulators, and the Association of the Bar of the City of New York also endorsed restoration of aiding and abetting liability in private actions.

This bill, unfortunately, restores only the SEC's ability to go after aiders and abettors of violations of the securities laws and then only in part—only in part. The provision in the bill is limited to violations of section 10(b) of the Securities Exchange Act and to defendants who act knowingly. It ignores the recommendation made by the SEC, the States securities regulators and the bar association that aiding and abetting liability be fully restored for the SEC and private litigants as well. By ignoring the needs of individual investors, the committee further tilted this bill toward the corporate insiders and their professional advisers who abuse the investor.

The effort in the Banking Committee, which I have alluded to with respect to the statute of limitation and the aiders and abettors provision, which tilted this bill away from the investor, that effort was continued in the conference committee. Consider what happened in the conference committee to the provision that directly addresses the filing of frivolous cases.

Rule 11 of the Federal Rules of Civil Procedure is the principal sanction against the filing of frivolous lawsuits in the Federal courts. Rule 11 requires all cases filed in the Federal courts to be based on reasonable legal arguments and supported by facts. That is the requirement of rule 11. The case is to be based on reasonable legal arguments and supported by facts.

As passed by the Senate, this bill required the courts to include specific findings in securities class actions regarding compliance by all parties and attorneys with rule 11(b) of the Federal Rules of Civil Procedure. That is the way the Senate passed it. If a court found the violation of rule 11 by either the plaintiff or the defendant, the court was required to impose sanctions. That provision was balanced. The sanctions would have applied equally to plaintiffs and to defendants. It was intended as a deterrent to frivolous cases, and it might well have worked in an efficacious manner.

What happened to this balanced provision, between plaintiffs and defendants, in conference? The balance was removed so that it now applies more harshly to investors than the corporate insiders. The Senate bill had contained a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with rule 11 was an award of reasonable attorneys' fees and other expenses incurred as a direct result of the violation. That was the presumption: An award of reasonable attorneys' fees and other expenses incurred as a direct result of a violation. That applied, in the bill passed by the Senate, both to the plaintiff and to the defendant.

The conference changed this presumption so that it no longer applies equally to plaintiffs and defendants. Under the conference provision now before us, if the defendant substantially violates rule 11, he pays only reasonable attorneys' fees and other expenses incurred as a direct result of the violation; namely, the provision that was in the Senate-passed bill. But now under the conference-reported measure, if the plaintiff substantially violates rule 11, he pays all attorneys' fees incurred in the action, not just those resulting from the violation.

Disparate treatment. The bill, as sent out of the Senate, had balanced treatment with respect to plaintiffs and defendants. Now we have this disparate treatment, and there is no justification for it. Its true purpose, I think, is to scare investors from bringing meritorious fraud suits. When the conference removed the balance from this provision, it was not deterring frivolous lawsuits, it was hurting investors.

The conference further hurt investors by changing the pleading standard provision of the bill. Pleading standard refers to what an investor must show in order to initiate a securities fraud lawsuit. The bill reported by the Senate Banking Committee codified the pleading standard adopted by the U.S. Court of Appeals for the Second Circuit. This standard says investors who seek to file securities fraud cases must ''specifically allege facts giving rise to a strong inference that the defendant acted with a required state of mind.'' This standard, it should be noted, is more stringent than the Federal Rules of Civil Procedure and is the minority view among the circuit courts. Nevertheless, that was the standard adopted by the Banking Committee.

When the bill came to the Senate floor, the Senate adopted an amendment to this provision offered by the distinguished Senator from Pennsylvania, Senator SPECTER. Senator SPECTER's amendment codified into the legislation additional second circuit holdings clarifying the standard they had earlier enunciated. These additional holdings state that a plaintiff may meet the pleading standard by alleging facts showing the defendant had motive and opportunity to commit fraud, or constituting strong circumstantial evidence of state of mind. In other words, the second circuit laid down this standard and then had subsequent opinions that elaborated upon it and developed it, and Senator SPECTER said that if you are going to include the second circuit standard as initially enunciated, you should also include the further holdings by the second circuit clarifying this standard.

This, I think, was the one proinvestor amendment adopted on the Senate floor. What happened to this amendment in conference? It disappeared. It was dropped from the legislation. This is part of this process that I have been outlining here of now you see it, now you don't. Of course, the person who bears the brunt of that is the investor.

The draft conference report deleted the Specter amendment, leaving investors without the protection of the additional second circuit holdings. Once again, a proinvestor provision that would have provided some balance to the bill was removed.

Let me turn briefly to the proportionate liability provisions of the bill, which reduce the amount of damages that defrauded investors can recover from people who have participated in committing the fraud. This provision is not targeted at frivolous suits and never has been. It affects even legitimate securities fraud suits and, therefore, is harmful to all investors. The conference found a way, though, to tilt the legislation even further away from the investor and toward the corporate insider.

The legislation changes the rule for liability for securities fraud from joint and several liability to proportionate liability. Under the current rule of joint and several liability, all fraud participants are liable for the entire amount of the victim's damages—both fraud participants who intended to mislead investors and fraud participants whose conduct was reckless. The rationale for this in the law, which has been the traditional holding over the years, is that a fraud cannot succeed without the assistance of each participant, so each wrongdoer is held equally liable.

Let me just observe that the recklessness standard for liability is a very demanding standard, and it is one usually applied to a company's professional advisers, such as accountants, attorneys, and underwriters.

The bill limits joint and several liability under the Federal securities law to certain defendants, specifically excluding defendants whose conduct was reckless. The bill, thus, reduces the accountability of accountants and attorneys whose conduct is found to be reckless. This change will hurt investors in cases where the principal framer of the fraud is bankrupt, has fled, or otherwise cannot pay investors damages. In those cases, the innocent victims of fraud will be denied full recovery of their damages.

Unfortunately, this provision became even worse in conference for the investors. The bill passed by the Senate did nothing to disturb liability under the securities law for reckless conduct. The conference, however, added language that could call liability for reckless conduct into question. The language of the conference report could be read as inviting the courts to eliminate all liability for reckless conduct under the securities fraud provisions. The conference further added language that could be read as applying the new proportionate liability rules not just to suits brought under the antifraud provisions of the Securities and Exchange Act of 1934, as under the bill passed by the Senate, but to suits brought under the Securities Act of 1933, as well. So the conference, again, took this bill down the path of reducing protections and remedies for investors and providing an additional sheltered area for those who practice corporate fraud and abuse. In the areas, then, of the statute of limitations, aiding and abetting liability, rule 11 sanctions, pleading standards, and proportional liability, this legislation before us hurts the investor, and it has been made significantly worse by the actions in the conference.

Before I conclude the discussion of the substance of the bill, let me now turn to the so-called safe harbor provision, and I underscore "so-called." This bill creates a statutory exemption from liability for forward-looking statements. Forward-looking statements are broadly defined in the bill to include both oral and written statements. Examples include projections of financial items such as revenues and income for the quarter or for the year, estimates of dividends to be paid to shareholders, and statements of future economic performance, such as sales trends and development of new products. In short, forward-looking statements include precisely the type of information that is important to investors deciding whether to purchase a particular stock.

The SEC currently has a safe harbor regulation for forward-looking statements that protects specified forward-looking statements that were made in documents filed with the SEC. As originally introduced, the bill could have allowed the SEC to continue its effort to conduct a comprehensive review of safe harbor regulations. However, the committee abandoned this approach in favor of enacting a statutory safe harbor.

I am aware of the letter that the chairman read from the SEC about the safe harbor provision, but I remain concerned that the safe harbor provision before us today will, for the first time, provide protection for fraudulent statements under the Federal securities laws. For the first time, fraudulent statements will receive protection under the Federal securities laws.

The American Bar Association wrote the President last week that the safe harbor "has been transformed not simply into a shelter for the reckless, but for the intentional wrongdoer as well." Projections by corporate insiders will be protected no matter how unreasonable, no matter how misleading, no matter how fraudulent, if accompanied by boilerplate, cautionary language.

Let me just take a moment to explain this. It is claimed by its supporters that this draft codified the legal doctrine applied by the courts known as bespeaks caution.

Now, as I understand it, all courts that have applied this doctrine have required that projections be accompanied by disclaimers specifically tailored to the projections. The courts have not accepted boilerplate disclaimers. They have required that the projections be accompanied by disclaimers specifically tailored to the projections. If companies want to immunize their projections, they must alert investors to the specific risks affecting those projections.

The bill before the Senate today does not include this requirement of specific cautionary language to alert investors. The Association of the Bar of the City of New York warned of this provision:

> The proposed statutory language, while superficially appearing to track the concepts and standards of the leading cases in this field, in fact radically departs from them and could immunize artfully packaged and intentional misstatements and omissions of known facts.

That letter was signed for the bar association by Stephen Friedman, a former SEC Commissioner. Under this bill, fraud artists will be able to shield themselves from liability simply by accompanying their fraudulent statements with general cautions that actual results may differ. I predict that this provision will come back to haunt us in the years to come.

Because this bill hurts investors, because it makes it harder for defrauded investors to bring suits, because it makes it harder for defrauded investors to recover losses, dozens and dozens of newspapers around the country have expressed their opposition. From the Bangor Daily News to the Miami Herald, from the Minneapolis Star Tribune to the San Francisco Chronicle, editorial pages have argued this bill is a bad deal for investors and urged a Presidential veto. The headline of the Wisconsin State Journal editorial sums up the argument nicely: "The Securities Reform Act goes too far." I ask unanimous consent to have printed at the end of my remarks some sampling of these editorial comments.

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

(See exhibit No. 1.)

Mr. SARBANES. A New York Times editorial last week stated:

> The securities bill that Congress is about to pass addresses a nagging problem, frivolous lawsuits by investors against corporations, but in such cavalier fashion that it may end up sheltering some forms of fraud against investors. President Clinton should veto the bill and demand at least two fixes to protect truly defrauded investors."

Citing the failure to extend the statute of limitations and to restore aiding and abetting liability, the Times warned that "provisions threaten to shut off valid suits" and suggested that "a well-targeted veto might force this bill back on the right track."

No publication has editorialized more strongly against this bill than Money magazine. For 4 months in a row, Money magazine has devoted editorial columns to this bill. In September 1995, Money magazine warned "Congress aims at lawyers and ends up shooting small investors in the back.'' In October, they urged ''Let's stop this Congress from helping crooks cheat investors like you.'' In November, they were hopeful that ''Your 1,000 letters of protest may stop this Congress from jeopardizing investors.'' This month they stated:

. . . the new bill jeopardizes small investors in several ways. . . . The bill helps executives get away with lying. . . . Investors who sue and lose could be forced to pay the winner's court costs. . . . Even accountants who okay fraudulent books will get protection.

Investors around the country agree with Money magazine's analysis that this bill hurts investors and are voicing their opposition. The National Council of Individual Investors, an independent membership organization of individual investors, has written to the President to ''express opposition to the recent draft report,'' saying, ''The draft conference report fails to treat the American investor fairly.''

The labor movement has said, ''This bill tips the scales of justice in favor of the companies and at the expense of stockholders and pension plans.''

The Fraternal Order of Police wrote the President urging him ''to reject a bill which would make it less risky for white collar criminals to steal from police pension funds * * *.''

A coalition of consumer groups, including the Consumer Federation of America, Consumers Union, USPIRG, and Public Citizens also oppose this bill.

But perhaps most telling about this bill is the opposition of hundreds and hundreds of State and local government officials. The National League of Cities, the National Association of Counties, and the Government Finance Officers Association all oppose this legislation.

Keep in mind that State and local investors issue securities—State and local governments raise money through bond issues. As issuers of securities, it is asserted by the supporters of this legislation, they would stand to benefit from the bill. Why, then, do they oppose it? Because they also purchase securities as well. They invest taxpayers' money and retirees' money in securities and sometimes are victimized by unscrupulous brokers.

Orange County, CA, lost over $2 billion in leveraged derivative investments. In my own State of Maryland, Charles County lost nearly $3 million in derivatives. Orange County is currently suing the brokers who sold it these securities. When such scandals occur again, and they will, this bill will make it harder for taxpayers to bring securities fraud actions and recover losses.

Let me quote further from the letter of these government officials who are seeking meaningful remedies in case they are defrauded:

The following are the major concerns State and local government have with the latest ''draft conference report'':

Despite changes in the safe harbor provision relating to forward-looking statements, there are still loopholes in that provision that would allow false predictions to be made and that will shield a company from liability.

Aiders and abettors of fraud would still remain immune from civil liability and would not have to pay back fraud victims for the losses they suffer.

The ''draft conference report'' maintains the short three-year statute of limitations that will allow a wrongdoer who can conceal his fraud to be completely let off the hook.

Eleven State attorneys general wrote to express their opposition. They said, ''If enacted, this legislation would severely curtail our efforts to fight securities fraud and to recover damages for our citizens if any of our State or local funds suffer losses due to fraud.'' They went on to say, ''This is unwise public policy in light of rising securities fraud and substantial losses suffered by States and public institutions from high-risk derivatives investments.'' The American Bar Association and the Association of the Bar of the City of New York oppose this bill as well.

When this measure originally came to the Senate floor, I received a communication from the securities commissioner of the State of Maryland, Robert McDonald. I expect that most Senators received similar letters from their State securities commissioners.

In that letter, Commissioner McDonald opposed the bill, writing:

Our financial markets depend not so much on money as on public confidence. The confidence that investors have in the American financial marketplace will be shattered if they believe that they have little recourse against those who have committed securities fraud.

Now, the managers of this bill in their conference report state at the outset,

The overriding purpose of our Nation's securities laws is to protect investors and to maintain confidence in the securities markets, so that our national savings, capital formation, and investment may grow for the benefit of all Americans.

So, they pick up the first part of Commissioner McDonald's statement about ''our financial markets depend not so much on money as on public confidence,'' but the supporters of this bill ignore the second part of Commissioner McDonald's warning that the confidence of investors will be shattered ''if they believe they have little recourse against those who have [committed] securities fraud.''

The editors of Money magazine wrote, ''this bill will undermine the public's confidence in our financial markets. And without that confidence, this country is nowhere.''

By making it harder for investors to bring legitimate securities fraud suits, by reducing investors' recoveries when they win securities fraud suits, by consistently hurting investors and helping corporate insiders and their accountants and attorneys—in other words, by going way beyond anything necessary to deal with the frivolous lawsuits—this bill will end up rewarding con artists and punishing America's individual investors, pension funds, and local governments.

For all of the reasons I have described, I oppose this legislation and I urge my colleagues to vote against this bill.

EXHIBIT 1

[From the New York Times, Nov. 30, 1995]

OVERDRAWN SECURITIES REFORM

The securities bill that Congress is about to pass addresses a nagging problem, frivolous lawsuits by investors against corporations, but in such cavalier fashion that it may end up sheltering some forms of fraud against investors. President Clinton should veto the bill and demand at least two fixes to protect truly defrauded investors.

The bill seeks with good reason to protect corporate officials who issue honest but unintentionally optimistic predictions of corporate profitability. In some past cases, opportunistic shareholders have waited for a company's stock price to fall, then sued on the grounds that their money-losing investments were based on fraudulent misrepresentations of the company's financial prospects. Their game was to use these ''strike'' suits to threaten companies with explosively expensive litigation in the cynical attempt to win lucrative settlements.

Such suits are a real, if infrequent, problem that can discourage responsible management from issuing information that investors ought to know. The bill would stymie these suits in part by immunizing predictions of corporate profitability that are accompanied by descriptions of important factors—like pending government regulatory action—that could cause financial predictions to prove false. But the language is ambiguous, leading critics to charge that it would protect corporate officials who knowingly issue false information. The President should ask Congress for clarification.

Some provisions of the bill would protect investors by, for example, requiring accountants to report suspected fraud. But other provisions threaten to shut off valid suits. The bill would prevent private litigants from going after lawyers and accountants for inattention that allows corporate fraud. Worse, the bill limits the authority of the Securities and Exchange Commission to use accountants and others for aiding fraud. The bill would also provide a short statute of limitation that could easily run out before investors discover they have been victimized.

Mr. Clinton should demand that Congress extend the statue of limitations so that investors will have time to file suit after they discover fraud. He should also demand that the bill restore the S.E.C.'s full authority to use accountants who contribute to corporate fraud. So far, Mr. Clinton has been curiously restrained. A well-targeted veto might force this bill back on the right track.

[From Money, December 1995]

NOW ONLY CLINTON CAN STOP CONGRESS FROM HURTING SMALL INVESTORS LIKE YOU

(By Frank Lalli)

The debate over Congress' reckless securities litigation reform has come down to this question: Will President Clinton decide to protect investors, or will he give companies a license to defraud shareholders?

Late in October, Republican congressional staffers agreed on a so-called compromise version of the misguided House and Senate bills. Unfortunately, the new bill jeopardizes small investors in several ways. Yet it will likely soon be sent to Clinton for his signature. The President should not sign it. He should veto it. Here's why:

The bill helps executives get away with lying. Essentially, lying executives get two escape hatches. The bill protects them if, say, they simply call their phony earnings forecast a forward-looking statement and add some cautionary boiler-plate language. In addition, if they fail to do that and an investor sues, the plaintiffs still have to prove the executives actually knew the statement was untrue when they issued it, an extremely difficult standard of proof. Furthermore, if executives later learn that their original forecast was false, the bill specifically says they have no obligation to retract or correct it.

High-tech executives, particularly those in California's Silicon Valley, have lobbied relentlessly for this broad protection. As one congressional source told Money's Washington, D.C. bureau chief Teresa Tritch: ''High-tech execs want immunity from liability when they lie.'' Keep that point in mind the next time your broker calls pitching some high-tech stock based on the corporation's optimistic predictions.

Investors who sue and lose could be forced to pay the winner's court costs. The idea is to discourage frivolous lawsuits. But this bill is overkill. For example, if a judge rules that just one of many counts in your complaint was baseless, you could have to pay the defendant firm's entire legal costs. In addition, the judge can require plaintiffs in a class action to put up a bond at any time covering the defendant's legal fees just in case they eventually lose. The result: Legitimate lawsuits will not get filed.

Even accountants who okay fraudulent books will get protection. Accounts who are reckless, as opposed to being co-conspirators, would face only limited liability. What's more, new language opens the way for the U.S. Supreme Court to let such practitioners off the hook entirely. If such a lax standard became the law of the land, the accounting profession's fiduciary responsibility to investors and clients alike would be reduced to a sick joke.

Moreover, the bill fails to re-establish an investor's right to sue hired guns, such as accountants, lawyers and bankers, who assist dishonest companies. And it neglects to lengthen the tight three-year time limit investors now have to discover a fraud and sue.

Knowledgeable sources say the White House is weighing the bill's political consequences, and business interests are pressing him hard to sign it. ''The President wants the good will of Silicon Valley,'' says one source. ''Without California, Clinton is nowhere.''

We think the President should focus on a higher concern. Our readers sent more than 1,500 letters in support of our past three editorials denouncing this legislation. As that mail attests, this bill will undermine the public's confidence in our financial markets. And without that confidence, this country is nowhere.

[From the Banger Daily News, Nov. 30, 1995]

DO NO HARM

Among the most dramatic but least discussed spin-offs of the Contract With America is securities litigation reform legislation, which earlier this year quietly passed both houses of Congress in different forms, but this week could become part of a public spectacle, highlighted by a presidential veto.

House Republicans argued in the contract, which set the tone for the early months of this session, that accumulated legal abuses cost American consumers $300 billion a year. Proponents characterize H.R. 1058 and S. 240, the two bills on which a conference compromise of the Securities Litigation Reform Act is expected to be voted on this week, as antidotes to costly, frivolous lawsuits pursued by greedy lawyers.

Opponents believe the critical elements of both bills, but especially as reflected in the conference version, are destructive of consumer interests. In the best Washington hyperbole, they refer to it as ''The Crooks and Swindlers Protection Act'' because of the manner in which it tilts the courtroom in favor of corporate defendants in securities and fraud cases.

From the perspective of those who are interested in Congress making good choices in the public interest, the act has two more problems. It is an extremely complex area of policy—one that can cause the eyes of a CPA to glaze over—and it is an extension of the catechism of the contract. Consequently, it is an issue that has been exposed to very little sunlight in open debate and it will be defended as political gospel by some Republicans.

Sen. William Cohen voted against the Senate version of the act. Sen. Snowe supported it. As a result, the campaign to persuade the delegation is focused on her office. Critics of the act make excellent arguments against specific provisions, including loser-pays, which will discourage aggrieved small investors from filing suit; and restrictions on legal standards of liability, which limit plaintiffs' opportunities to fully recover legitimate damages.

Another example, the provision of the act narrowing the time window for bringing suit, was the target of a letter from Stephen L. Diamond, securities administrator for the state's Bureau of Banking to Sens. Cohen and Snowe. ''A good portion of the several million dollars in restitution we have obtained for Maine citizens during my tenure,'' Diamond wrote in June, ''would have been irretrievably lost if we had been subject to a three-year limitations period.''

Diamond pointed out that under Maine law, there ''is no absolute outside limit'' for commencing a suit for securities fraud.

The Securities Litigation Reform Act has the potential to save consumers nothing, protect white-collar criminals and add to the burden of the victims of fraud.

It could have serious consequences for Maine taxpayers, investors and retirees. On record opposing the House version are municipalities of all sizes, from the small, Clifton and Berwick, to the state's largest, Portland and Lewiston.

The CMO (collaterized mortgage obligation) disaster that struck Auburn, concern about the integrity and solvency of government and private pension accounts and 401k plans, and public awareness of the threats to the security of investments of an aging population all are reasons for members of the Maine delegation to treat this issue with utmost respect, and caution: do no harm. This one could hurt.

[From the Miami Herald, Nov. 14, 1995]

LIARS' BILL OF RIGHTS?

While most of the country is paying attention to the feud over the federal budget, a sinister piece of legislation is making its way through Congress unnoticed. This bill lets companies report false information to investors. That's right, it essentially licenses fraud. It has passed both houses in slightly different forms. A compromise bill will be written soon. If it passes, President Clinton ought to slay it in its tracks.

This bill is a story of good intentions. Some companies have been plagued by frivolous lawsuits from investors who aren't happy with the company's performance. The investors allege, in essence, that the company had forecast good results and then didn't deliver. That, say the plaintiffs, constitutes fraud.

Well, often it doesn't. Investing has risks, including market downturns. When investors sue over mere bad luck, they cost companies money, clog courts, and drain profits from other investors.

Trouble is, by trying to stop this abuse, Congress mistook a simple answer for the right answer. Its solution, in plain terms, was to declare virtually all promises by all companies to be safe from legal challenge. Under this ''remedy,'' company executives now can promise investors anything they like, with not so much as a nod to reality.

They can't legally lie about the past, but if their claims are ''forward-looking,'' they can promise you the moon to get you to invest, and no one can sue them later for being misleading.

Well, almost no one. The bill would allow legal action in the case of egregious, deliberate fraud, but you'd have to prove that it was intentional. And you'd have just three years to discover the fraud and furnish your proof.

It's rare enough to prove outright intent under the best circumstances, but under this bill, if executives can stiff-arm you for just 36 months (not a big challenge), they'd be home free. And then—in another hair-raising provision of the bill—you'd be stuck for the company's entire legal bill. Facing such a risk, no small investor, no matter how badly cheated, would ever dare sue.

This bill evidently struck many members of Congress as a simple answer to a nagging problem. It's nothing of the kind. The problem is real enough, but its solution isn't simple. And it certainly doesn't reside in a law authorizing phony statements to investors.

President Clinton should veto this blunder. Then, when the fight over the budget is over, Congress can take time to think up a more rational solution to the problem.

[From the Star Tribune, Nov. 17, 1995]

SECURITIES BILL

Give Sen. Richard Bryan, D-Nev., credit for being a good friend to American investors. Since late October, Bryan has stymied passage of ill-designed legislation that would curb investors' rights to sue for securities fraud, Bryan's move is buying time to marshal enough opposition to give the bill the fate it deserves—either significant alteration or death. What opponents need most, though, is support from the top—President Clinton.

At first glance, the legislation appears reasonable. The bill seeks to protect public companies and their underwriters from frivolous lawsuits by disgruntled investors. It would provide legal protection for companies whose earings forecasts turn out to be inaccurate, and would limit the liability of accounting firms, legal advisers and others who fail to detect fraud. The bill also would ban ''professional plaintiffs'' who repeatedly sue companies for even minor losses.

Proponents argue that more and more investors are forsaking the win-some-lose-some attitude of investing, opting instead to sue if they lose money because of unexpected events, particularly sudden and steep drops in stock prices. Recent high-profile securities court cases seem to prove their point. From the ongoing Orange County fiasco to Piper Jaffray's stumblings a year ago, many investors, both government and private, have gone to court to recoup losses.

However, securities cases gain notoriety mainly because they rarely occur. The number of securities class-action lawsuits nationwide has fallen to 290 in 1994 from 305 in 1974. In fact, such cases represented little more than 1 percent of new federal civil cases filed last year. The statistics show that curbing investors' rights to sue amounts to a solution in search of a problem.

Indeed, there would be problems if this legislation passed unaltered. The bill would eliminate the current legal standard of joint-and-several liability, which holds even those peripherally involved in fraud to a high degree of liability. Thus, firms providing accounting and other services to corporate clients would have less incentive to be alert to wrongdoing. In addition, this legislation would have a chilling effect on even many valid complaints; it would require a plaintiff who lost a case to pay the defendant's court costs.

The bill's opponents have begun to make a stink. A couple of weeks ago, Minnesota Attorney General Hubert Humphrey III joined 13 other attorneys general in asking Clinton to veto the bill in its current form. A day earlier a coalition representing hundreds of state and local government officials announced its opposition. Consumer groups have fought the legislation all summer.

But the opponents need help. Though the Senate passed the bill by a veto-proof margin, a veto threat from Clinton could prompt needed changes in the measure. That threat should come now, while political momentum favors the opposition.

[From the San Francisco Chronicle, Nov. 27, 1995]

OPENING THE DOOR TO FRAUD

If a House-Senate conference committee meeting tomorrow does not result in significant changes to legislation regarding investment fraud lawsuits, President Clinton should quickly veto the bill.

Compromise has softened some of the anti-consumer aspects of the legislation, which has the stated goal of eliminating frivolous class-action securities fraud lawsuits. But despite the worthwhile aim, the provisions of a draft conference report on H.R. 1058 and S 240 go far beyond curbing trivial court actions and instead would wipe out important protections against hustlers of fraudulent securities.

In a letter asking Clinton to veto the bill, San Francisco's chief administrative officer, Bill Lee, noted that the legislation would "erode investor protections in a number of ways: it fails to restore the liability of aiders and abettors of fraud for their actions; it limits many wrongdoers from providing full compensation to innocent fraud victims, by eroding joint and several liability; it could force fraud victims to pay the full legal fees of large corporate defendants if they lose; it provides a blanket shield from liability for companies that make knowingly fraudulent predictions about an investment's performance and risks; and it would preserve a short, three-year statute of limitations for bringing fraud actions, even if fraud is not discovered until after that time."

Securities fraud lawsuits are the primary means for individuals, local governments and other investors to recover losses from investment fraud—whether that fraud is related to money invested in stocks, bonds, mutual funds, individual retirement accounts, pensions or employee benefit plans.

As the draft report stands, investors would be the losers. And their hopes of receiving convictions in suits similar to those against such well-known con men as Michael Milken and Ivan Boseky would be severely hampered.

In the name of the little guy, Clinton should not let that happen.

AMERICAN FEDERATION OF LABOR, CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, November 29, 1995.

DEAR SENATOR: The AFL–CIO opposes the conference agreement on H.R. 1058, the Securities Litigation Reform Act of 1995. The conference agreement significantly weakens the ability of stockholders and pension plans to successfully sue companies which use fraudulent information in forward-looking statements that project economic growth and earnings. There is a new "safe harbor" provision in this conference agreement that allows evidence of misleading economic information to be discounted in court if it is accompanied by "appropriate cautionary language."

The AFL–CIO believes this compromise will vastly increase the difficulties that investors and pension plans would have in recovering economic losses. Similarly, the joint and several liability provisions in this bill provide added, and unwarranted, protection for unscrupulous companies, stockbrokers, accountants and lawyers.

In short, this bill tips the scales of justice in favor of the companies and at the expense of stockholders and pension plans. Both of these latter groups are forced to rely exclusively on information provided by these companies when evaluating a stock, but this information would not be able to be used in court to recover economic damages for misleading information.

The Congress should reject the conference agreement on H.R. 1058.

Sincerely,

PEGGY TAYLOR,
Director.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC.

DEAR CHAIRMAN LEVITT AND COMMISSIONER WALLMAN: On behalf of a coalition of state and local government officials, the above organizations wish to express our concern over your November 15, 1995, letter to Senator Alfonse D'Amato regarding your views on the most recent "draft conference report" on securities litigation reform. Our organizations have worked closely with the Commission over the years on numerous issues of importance to the securities markets. Although your letter did not specifically endorse the "draft conference report," proponents of this legislation are already representing your letter as an SEC endorsement. We remain opposed not only to the latest version of the safe harbor provision in the legislation, on which your letter focused, but to several other provisions in the bill which are critical to us and which we understood were critical to you as well.

We support efforts to deter frivolous securities lawsuits. We believe, however, that any legislation to accomplish this must also maintain an appropriate balance that ensures the rights of investors to seek recovery against those who engage in fraud in the securities markets. We believe that H.R. 1058, S. 240, and the various versions of the "draft conference report" all fall short in achieving this balance, and erode the ability of investors to seek recovery in the cases of fraud.

The following are the major concerns state and local governments have with the latest "draft conference report:" Despite changes in the safe harbor provision relating to forward-looking statements, there are still loopholes in that provision that would allow false predictions to be made and that will shield a company from liability. Deliberately false forward-looking statements are still immunized under this draft as long as they are accompanied by cautionary language.

Aiders and abettors of fraud would still remain immune from civil liability and would not have to pay back fraud victims for the losses they suffer. If aiders and abettors are immune from liability, as issuers of debt securities, state and local governments would become the "deep pockets," and as investors they would be limited in their ability to recover losses. In Chairman Levitt's letter of May 25, 1995, to Chairman D'Amato and members of the Senate Banking Committee, he indicated that failure to resolve this issue was one of two "important issues" for the Commission. We are disappointed that you have not unequivocally stated that this is still a serious concern to the SEC, as it is to state and local governments.

The "draft conference report" maintains the short three-year statute of limitations that will allow a wrongdoer who can conceal his fraud to be completely let off the hook. The current statute of limitations is widely regarded as too short. Despite the May 25, 1995, statements to the Senate that this too was an "important issue" for the Commission, the most recent draft does not include an extension.

The latest draft adds language opening the way for the Supreme Court to eliminate any implied private right of action under the federal securities laws for victims of fraud by imposing a "rule of construction" stating that nothing in the legislation "shall be deemed to create or ratify any implied right of action." Given the historic role of private suits in keeping the markets honest, and the SEC's previous support for such actions as a complement to its own enforcement activities, we are surprised that no objection was raised in your letter to the inclusion of this new language.

The pleading standard has been changed in the new draft from requiring that the complaint "specifically allege" facts giving rise to a state of mind—an already harsh standard—to a "state with particularity" standard. This is a much more difficult standard and will make it even more difficult for plaintiffs to bring suit. Combined with the deletion of the Specter amendment, this raises the pleading standard to one different from that employed by the Second Circuit.

Under the newest draft, fraud victims face a potential "loser pays" sanction and a possible bond requirement at the beginning of a case, which could discourage many investors from seeking a recovery of their losses. In addition, the victim will now have to show that a shift of full attorneys' fees and costs to the plaintiff would impose an "unreasonable burden" on the plaintiff or his attorney and that the failure to shift fees would not impose a greater burden on the defendants.

The strength and stability of our nation's securities markets depend on investor confidence in the integrity, fairness and efficiency of these markets. To maintain this confidence, investors must have effective remedies against those persons who violate the antifraud provisions of the federal securities laws. In recent years, we have seen how investment losses caused by securities laws violations can adversely affect state and local governments and their taxpayers. Indeed, you, Chairman Levitt have addressed many of our members personally over the past year to underscore just this concern about the markets.

Access to full and fair compensation through the civil justice system is an important safeguard for state and local government issuers and investors alike and is a strong deterrent to securities fraud. Because of the importance of this issue, we are requesting a meeting with you to discuss your recent letter to Senator D'Amato and to convey our concerns about the unwise public policy outlined in the "draft conference report." We stand ready to work with you in vigorously opposing this legislation, particularly in light of other efforts—budgetary and statutory—to further weaken the regulatory protections provided to state and local government investors and others. Betsy Dotson of GFOA will follow up on our meeting request with your staff.

FRATERNAL ORDER OF POLICE,
NATIONAL LEGISLATIVE PROGRAM,
Washington, DC, November 29, 1995.

Hon. WILLIAM JEFFERSON CLINTON,
President of the United States,
Washington, DC.

DEAR PRESIDENT CLINTON: On behalf National the Fraternal Order of Police, I urge you to veto the ''Securities Litigation Reform Act'' (HR1058/S240). The recently released draft of the House/Senate conference report clearly reflects a dramatic reduction in the ability of private, institutional and government investors to seek redress when victimized by investor fraud.

As a matter of fact, the single most significant result of this legislation would be to create a privileged class of criminals, in that it virtually immunizes lawyers, brokers, accountants and their accomplices from civil liability in cases of securities fraud.

This bad end is reached because of several provisions of the legislation: first, it fails to restore the liability of aiders and abettors of fraud for their actions; second, it limits wrongdoers from providing full compensation to victims of fraud by eroding joint and several liability; third, it could force fraud victims to pay the full legal fees of corporate defendants if the defrauded party loses; and, finally, it retains the short three year statute of limitations for bringing fraud actions, even in cases where the fraud is not discovered until after three years has elapsed.

Mr. President, our 270,000 members stand with you in your commitment to a war on crime; the men and women of the F.O.P. are the foot soldiers in that war. On their behalf, I urge you to reject a bill which would make it less risky for white collar criminals to steal from police pension funds while the police are risking their lives against violent criminals.

Please veto HR1058/S240.

Sincerely,

GILBERT G. GALLEGOS,
National President.

ATTORNEY GENERAL OF NEW MEXICO,
Santa Fe, NM, October 27, 1995.

Hon. WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR PRESIDENT CLINTON: As Attorneys General of our respective states, we strongly oppose H.R. 1058/S240, the Securities Litigation Reform Act. The ''draft conference report,'' which is the basis of agreement between the House and Senate bills, would severely penalize victims of securities fraud—consumers, workers, senior citizens, state and local governments. The principal effect of this legislation would be to shield wrongdoers from liability for securities fraud committed against an unsuspecting public.

Any securities litigation reform must achieve a balance between protecting the rights of defrauded investors and protecting honest companies from unwarranted litigation. Abusive practices should be deterred and sternly sanctioned. However, Congress must keep open the doorway to the American system of civil justice for investors to seek recovery of what has been wrongfully taken from them.

If enacted, this legislation would severely curtail our efforts to fight securities fraud and to recover damages for our citizens if any of our state or local funds suffer losses due to fraud. There are several provisions in both bills that would make it exceedingly difficult, if not impossible, for consumers and state and local governments to use the federal courts to recoup losses due to fraud:

Broad immunity from liability for fraudulent corporate predictions and projections; Failure to reinstitute liability for ''aiders and abettors'' under private actions, thereby fully immunizing them from any responsibility for their wrongful actions; A ''loser pays'' provision imposing a significant risk of fraud victims having to pay the defendants' full legal fees;

Severe restrictions on the joint and several liability of wrongdoers, making it impossible for many victims to fully recover their losses; Preservation of an inadequately short statute of limitations (one year after discovery and three years after the fraud was committed); Highly onerous pleading standards; and Elimination of liability under the federal racketeering statute, except after a criminal conviction.

Such extraordinary limitations on our states' ability to recover citizens' tax dollars is of grave concern to us.

As our states' chief law enforcement officers, we cannot countenance such a weakening of critical enforcement against white-collar fraud. Private actions, as a complement to government enforcement, have proven to be extremely effective in deterring securities fraud and in compensating injured investors. This longstanding practice has deterred even greater fraud in the markets and has reduced the burdens that would otherwise accrue as a result of the government having to fully police the markets.

If investors are limited in their right to initiate private causes of action, we fear that victims will turn more and more to the state enforcement agencies, such as the Attorney General, for solutions. There will be more demands on our offices to pursue wrongdoers for fraud, thus increasing the burden on our taxpayers' resources. The legislation would simply force another unfunded mandate on the states.

Effective private enforcement of securities fraud rests on the ability of defrauded investors to take legal action against wrongdoers. Yet there is little, if anything, in the draft conference report that would enhance the ability of defrauded investors to seek redress in the courts, provide enhanced protection for investors or ensure the continued honesty and fairness of our markets. The major provisions of the draft pose significant obstacles to meritorious fraud actions.

While H.R. 1058/S240 would achieve its goal of affording a measure of protection to large corporations and accounting, banking and brokerage firms, it goes so far beyond what is necessary for that goal that it would likely result in a dramatic increase in securities fraud as the threat of punishment declines. This would hurt our entire economy as investors lose confidence in the integrity of our financial markets. This is unwise public policy in light of rising securities fraud and substantial losses suffered by states and public institutions from high-risk derivatives investments.

As custodians of the tax dollars of our citizens, our states have a vested interest in keeping the securities markets safe and secure for investors. The stakes could not be higher for consumers since it is often their retirement savings that are lost in securities frauds. Moreover, the states' economic health, tied inexorably to the nation's economy, depends on continued investor confidence. There must be appropriate recourse to the courts for all investors.

We join the federal and state securities regulators, the state and local government finance officers, mayors and other public officials, labor groups, and all major senior citizen and consumer groups in opposing H.R. 1058/S240.

Given the draft conference report released on October 24th, we strongly urge you to veto the legislation if it is presented to you without substantial amendment to the provisions outlined above.

Sincerely,

TOM UDALL,
Attorney General of New Mexico.
WINSTON BRYANT,
Attorney General of Arkansas.
ROBERT A. BUTTERWORTH,
Attorney General of Florida.
TOM MILLER,
Attorney General of Iowa.
HUBERT H. HUMPHREY III,
Attorney General of Minnesota.
JEREMIAH J. NIXON,
Attorney General of Missouri.
JOSEPH P. MAZUREK,
Attorney General of Montana.
FRANKIE SUE DEL PAPA,
Attorney General of Nevada.
HEIDI HEITKAMP,
Attorney General of North Dakota.
CHARLES BURSON,
Attorney General of Tennessee.
JAMES DOYLE,
Attorney General of Wisconsin.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I understand the Senator from Nevada wishes to speak. I will not take a great deal of time. I do want to respond, however, while the walls are still ringing with the oratory of my friend from Maryland, to some of the particular points that he made. Then I will allow the Senator from Nevada to proceed.

I come at this with some background because I have been the CEO of a company that has been involved in litigation, and I have members of my family who have been involved in this circumstance. I also am not a lawyer and have a little difficulty following the twists and turns of the lawyers talking about the intricacies of rule this or rule that.

The overall point that I think has to be made here is simply this. There is no division between companies and investors. Investors own the company. That which damages the company, damages the owners of the company, who are the investors. So, when the Senator from Maryland talks about pitting investors against the company, he is talking about pitting people against themselves. He implies that this bill helps the company to the detriment of the investors. That, frankly, is impossible. If the company thrives, who gets the money? The investors, the stockholders. If the company survives a market problem and becomes stronger as a result, who benefits? The stockholder, the owner of the company. The two are not separate, in spite of the fact that we have had all of this rhetoric implying that they are.

The most significant problem, from my perspective, with this whole issue has been the attempt to divide the two and imply that the company is doing something to damage the investor and doing it deliberately for the benefit of the company. It simply does not wash. It simply does not track.

Where have these lawsuits come from? They have come from lawyers who have not sought to protect investors and not sought to help the company, but to enrich themselves. I will give you one example that demonstrates the power of this circumstance. Let us say we have a company with 100 shares. Let us keep it very simple. We have a company with 100 shares. We have an investor who owns 1 of those 100 shares. We have another investor who owns 99 of those shares. Keep it very, very simple.

The lawyer would rush to court and file a class action suit on behalf of the shareholder who owns one share on the grounds that the company has been damaged. And when the shareholder who owns 99 shares shows up and says, ''I would like to have a say in how this suit is prosecuted because it is going to damage my 99 shares,'' under the present law we are told, no, the investor with the one share got to the court before you did and he controls the suit and therefore he can make all kinds of claims he wants to in favor of the shareholders.

The shareholder who owns 99 percent of the stock says, ''Don't do me any favors. Don't stand there and file this suit; it is going to damage my interests and, frankly, damage the interests of the shareholder who has one share as well, proportionately.'' Ah, but it does not matter, because the shareholder who has one share as well has a side deal with the lawyer and he is a professional plaintiff and the lawyer will pay him for filing the suit so the lawyer will get the settlement. That is inevitably what happens.

Finally, the company says, ''It is going to cost us $1 million to fight this case.''

''OK,'' says the lawyer, ''you don't want to spend the $1 million? That is fine with me. Let us settle it out of court for $750,000.''

Management says, ''We are not in the business of fighting lawsuits; we are in the business of producing products. Faced with that kind of blackmail, we have to do the best thing—for whom? We have to do the best thing for our shareholders. It will damage our shareholders $1 million to go to court. We can save them $250,000 if we pay this guy his blackmail and send him on his way.''

So they pay the $750,000. The lawyer takes his contingency fee, pays off his professional plaintiff on the side deal, and walks away saying, ''I have protected shareholder rights,'' when what he has really done is looted the company.

What this bill says, what this conference report says, is in a circumstance like that the shareholder with 99 of those 100 shares can go to court and say, ''I am in control of this suit, not the one who has one share, and I move to dismiss.'' And the issue is over.

Who is damaged by this bill under that scenario? The lawyer. Not the shareholder, not the investors; they are benefited by this bill.

One other point I will make and then we can hear from the Senator from Nevada. This bill says there will be a proportionate liability, saying if someone was involved in a loss that was 3 percent that someone's fault, that someone is only liable for 3 percent of the damages.

Oh, that is terrible, we are told. What a chilling effect that will have. Why, accountants and lawyers supporting the company will be immediately up to their eyeballs in fraud because they know they are only liable for a proportionate amount.

That makes for interesting rhetoric on the floor of the Senate. It has little or no relevance to the real world. Let me give an example out of my own experience.

I was an investor in a company that was trying to develop a particular mining project in the Western States. Unfortunately for me and my fellow investors, we did not do very well. For a variety of reasons, a variety of problems, we ultimately had to close down the operation. In the process of doing that whole activity we engaged the services of a very fine lawyer in Los Angeles, one of the premier lawyers of Los Angeles. And he gave us sound legal advice. He helped us through.

A disgruntled supplier working with us on that circumstance kept trying to find some way to drag the lawyer who was helping us into a management role. He kept pushing and probing. I could not understand why. What in the world did he want to get the lawyer involved in the management kinds of decisions of this company that did not go anywhere?

Finally, the fellow leveled with me. He said, ''If we can get into that lawyer's errors and omissions policy and prove that somehow he was involved in a management decision we think was a mistake, his insurance company will pay us a big payoff just to keep it out of court.''

The lawyer we were dealing with was careful enough that did not happen. But that was the motivation. Not to try to solve the problem, but to tap into the deep pocket of the insurance company for errors and omissions insurance that this lawyer prudently carried for his firm.

So they were looking for every possible technicality to get past the management of the firm—the firm, being bankrupt, had no money to offer—and into the errors and omissions policy and the insurance policy of the lawyer. As I say, fortunately he was not successful. But that kind of attitude is the kind of attitude that causes lawyers to say, ''I will not help you,'' which causes his accountant to say, ''I will not take your account, I will not give you the expert advice you will need because I will get caught up in this.'' And it is to protect who? It is the investors who need the services of that lawyer and who need the services of that accountant that this bill is written as it is.

So, Mr. President, I intend to come back to this theme often as we go through this debate. Let us not lose sight of what it is we are trying to do here. We are trying to protect the investor, and the investor, by definition, is the person who owns the company. Anything that damages the company damages the investor. Anything that chills the company's access to sound legal advice and sound accounting counsel damages the investor. Anything that causes the company to pay blackmail, out-of-court settlements damages the company, which damages the investor.

So let us understand through this whole debate what the conference report does, what the bill does, what the committee approach does is to protect the investor. As we listen to rhetoric, saying let us protect the investor and punish the company, let us always keep that basic principle in mind: The owner of the company is the investor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BRYAN. 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. BRYAN. I thank the Chair. I reserve to myself such time as I may need at this point.

Mr. President, the Senate today is considering the legislation that may well have dramatic consequences for the operations of our securities markets. America's securities markets are the envy of the world. Our markets are the safest, and they enjoy universal investor confidence.

American companies have been able to prosper in large part because of their ability to raise capital in our financial markets. We should all be proud of these markets, yet, at the same time, we must be extremely careful not to jeopardize this investor confidence.

Even though our securities markets are the world's safest, we still have our share of bad apples. There will always be people who feel it is necessary to cut corners, or that they can get away with financial wrongdoing. We have not seen the last of the Keatings, the Boeskys, the Milkens, the Icahns of the 1980's, who penalize the American public by their commitment to greed and avarice, and with horrendous cost to the investors, to the public, and to public institutions as a result of their actions.

The legislation we are considering today will make it more difficult, in my judgment, to bring legitimate fraud cases and will make it more difficult to recover stolen assets.

That having been said, Mr. President, let me be clear that the legislation before us today, although it purports to deal with the issue of frivolous lawsuits, is in point of fact a smokescreen, if you will, the Trojan horse, as I have characterized it, to really get at the heart and substance of this legislation, which is to insulate and immunize perpetrators of fraud from legitimate investor recovery. If this legislation were about frivolous lawsuits, sign me up; count me as being on board. There are some provisions that enjoy universal support. They are incorporated in this bill. Let me mention a couple of them.

There are included in the provisions a requirement that plaintiffs certify individually in each of these securities actions that the actions are brought in good faith, that they are not acting in a frivolous fashion, that, indeed, they are not part of the referral process, all of which I think make a lot of sense and deal with some of the concerns that have been raised by my colleagues on the other side of the aisle.

There are further provisions that prohibit the payment of referral fees to brokers. That, in my judgment, is legitimate and is designed specifically to deal with the issue of potential frivolous lawsuits. The concern is that we should not give stockbrokers, or anyone else, incentives for referral of potential securities fraud cases, and, indeed, these actions ought to be prohibited and the legislation does that.

The legislation also deals with the issue of banning bonus payments to class plaintiffs, and I think this, too, deals with the issue of frivolous lawsuits. It requires the lawyer who has an interest in securities, who brings the action, to have his actions reviewed for potential conflict of interest. That, I think, is highly appropriate, and it calls for improved settlement notice to class members in terms of the proposed terms of the settlement. It contains provisions that limit attorneys fees.

In the original version of this bill, as it passed the Senate, it dealt with the sanction provisions of rule 11, saying that those persons, whether they be attorneys on behalf of plaintiffs or defendants, who take frivolous actions, can, indeed, have the full sanction of the law brought against them.

And this was done in an even and fair-minded way. That, Mr. President, in my judgment, deals with the bona fide, legitimate question of frivolous lawsuits. If that is what this legislation was all about, we would not be having this debate on the floor today. I concur and I suspect that all of my colleagues want to work to eliminate some of the abuses that have occurred in the system. But, Mr. President, that requires a laser-like action to specifically craft legislation that deals with some of the practices that have been abused.

The referral fees to brokers, the bonus payments, the potential conflicts of interest, the improved notice to class members of the terms of a settlement, the limitation of attorney fees and the strengthened sanction provisions of rule 11. That, my friends, is what frivolous lawsuit legislation reform ought to be about. But this goes so much further and, in my judgment, is more about protecting misconduct and fraud than it is about frivolous lawsuits.

Let me point out first, for those who may not be familiar with what is involved in bringing a securities action, let me make a disclosure at the outset I have neither been plaintiff, defendant, nor as a lawyer have I represented anyone in a securities action. But this is what is involved in bringing a securities fraud case.

First, a person must prove that he or she actually purchased the securities. The person must prove that the fraud, the manipulation or deception was in connection with the purchase or sale of a security. The person must prove that a defendant acted with scienter, that is, an intent to deceive or a reckless disregard for the truth or the falsity of the statement.

It needs to be emphasized that negligence, simple ordinary negligence, is not the kind of misconduct that is a predicate for a securities action. So anyone who makes a statement inadvertently or is involved in negligent action does not come within the purview of the provisions of the Securities Act of 1934.

A person must prove a defendant's misstatement or nondisclosure was material, not just incidental, but material. A person must prove that he or she reasonably relied on the defendant's misstatement. A person must prove how he or she was damaged. And, finally, a person must prove a defendant's conduct caused the damages.

Now, those are reasonably difficult things to prove. And they ought to be. They ought to be. I do not have any quarrel with that. These actions ought not to be taken lightly. Our colleagues point out that there is a great expense involved in defending class actions. I acknowledge that. But that is the burden of proof that plaintiffs must submit themselves to under the current law. And it is a rather substantial burden of proof, Mr. President. As I have indicated, with respect to frivolous actions this Senator has no sympathy, and the full provisions of rule 11 under the Federal rules, as strengthened by the version passed by the Senate before this bill went into conference, appropriately deals in a balanced fashion when there has in fact been a finding that a lawsuit has been filed frivolously by a plaintiff or actions by defendants' attorneys are frivolous.

Let me talk for a moment about what is happening in the market. And I would invite my colleagues' attention to a recent Wall Street Journal article. We are not just talking about some remote contingent fraud that may occur in the marketplace. We are dealing with the reality in which, as the Wall Street Journal fairly recently pointed out in a May article earlier this year, in a front page story, the title of which is ''How Career Swindlers Run Rings Around SEC and Prosecutors,'' and the subhead of the story ''White-Collar Crooks Serve Little Jail Time, Leave Billions in Fines Unpaid, The Bad Guys Are Winning.''

Mr. President, this does not appear in the American Trial Lawyers Association Journal. This appears in one of the icons of the business publications in America, the Wall Street Journal. In effect, there is more investor fraud, not less. And even with the resources available at the SEC, this article concludes that the bad guys, in fact, are winning. I offer this as a somber and hopefully sobering assessment that there is massive fraud out there and that we have not seen the last of the Ivan Boeskys and the Mike Milkens or the Charles Keatings. Those are not just some part of a historic record that no longer concerns us in America. There are folks out there every day who, through whatever artifice and device, continue to perpetrate investor fraud. And that ought to suggest to us in this deliberative body that we ought to proceed with some caution as we approach securities litigation reform.

Mr. President, I ask unanimous consent that the Wall Street Journal article of Friday, May 12, 1995, be printed in the RECORD.

Mr. BRYAN. Let me just also invite my colleagues' attention, in a similar vain—here is a similar business publication called Crain's New York Business, the date of which is December 4th through the 10th, 1995. It cannot be much more contemporary than that. That is this very week. And its headline indicates ''New Scams for a new generation.'' The subhead is, ''Driven by high-tech rip-offs, financial fraud is soaring.'' That, Mr. President, is a publication of this very week, ''financial fraud is soaring.'' And I again ask unanimous consent that this publication be printed in the RECORD.

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

[From the Wall Street Journal, May 12, 1995]

HOW CAREER SWINDLERS RUN RINGS AROUND SEC AND PROSECUTORS

(By John R. Emshwiller)

SANTA MONICA, CA.—For more than a quarter century, Ramon D'Onofrio has been playing games with the law—and mostly winning.

The 67-year-old Mr. D'Onofrio, operating out of a modest office suite at the airport here, is a master stock swindler. He is responsible for fleecing the public out of tens of millions of dollars in the course of numerous stock manipulations, say officials who have tangled with him in about 20 civil and criminal investigations. A federal appeals court once referred to him as ''ubiquitously criminal.''

Mr. D'Onofrio has been convicted of fraud-related crimes five times and is once again under investigation, people familiar with the case say. Yet he hasn't spent a day in prison in the past 20 years—and he served only about a year behind bars before that. His most recent criminal conviction came in 1991; he received probation. While the Securities and Exchange Commission has ''permanently'' enjoined Mr. D'Onofrio from future violations of securities laws, it has done so *seven* different times. Meanwhile, he has left unpaid about $11.5 million in fines and civil judgments.

BILLIONS IN UNCOLLECTED FINES

Mr. D'Onofrio isn't alone. Hundreds of career swindlers, many of whom have infiltrated legitimate industries ranging from securities to health care, are laughing all the way to the bank—with other people's money. ''If you have the aptitude and you're enough of a sociopath, there are few places where the pickings are as easy'' as swindling, says Scott Stapf, investor-education adviser for the North American Securities Administrators Association, a group of state regulators.

Data gathered from government agencies show that it takes far longer to bring white-collar criminals to justice than perpetrators of other crimes. Once apprehended and convicted, swindlers generally receive light sentences—frequently nothing more than probation and a fine. Often, as with Mr. D'Onofrio, they aren't compelled to pay back what they have stolen; extraordinarily, about $4.48 billion in uncollected federal criminal fines and restitution payments is currently outstanding.

While nobody argues that high-priority battles against drugs and street crime should be neglected, many white-collar-crime investigators contend that the devastating impact of fraud isn't sufficiently appreciated. Rough estimates by government agencies and others indicate that white-collar crime costs Americans more than $100 billion annually. And increasingly, free-lance stock swindlers are joining forces with organized crime, to the benefit of both.

VICTIM COMMITTED SUICIDE

''These are people who are stealing millions from working-class Americans. These are people who ruin lives,'' says John Perkins, until recently Missouri securities commissioner. The former regulator still recalls a Thanksgiving Day nearly 20 years ago when a local farmer, after having mortgaged his property and lost the money in an investment swindle, committed suicide by shooting himself in the head. Quinton Darence Cloninger, who was convicted of helping run that swindle, was out of prison after three years—and back in the investment business. He couldn't be located for comment.

Over the years, Mr. D'Onofrio and his ilk have benefited richly from the fact that civil authorities don't have much enforcement clout without the backing of the criminal-justice system. Criminal prosecutors, in turn, aren't always interested in white-collar offenses—and may be becoming less so.

Consider the SEC civil injunctions that Mr. D'Onofrio and others so often ignore. Violations of such injunctions—which often bar the individual from working in the securities industry—can lead to criminal-contempt charges and jail time. But, SEC officials concede, contempt is a rarely used weapon. Records supplied by the SEC show that only a handful of criminal-contempt cases have been brought in the past five years.

RELUCTANT PROSECUTORS

For one thing, the agency has to persuade a U.S. attorney's office to prosecute a contempt case. The chances of that happening are usually ''slim to none,'' says one SEC attorney, particularly since criminal-contempt cases usually don't produce long sentences. Many prosecutors are loath to put in time on a case where the potential payoff is small.

In 1990, at the SEC's request, the U.S. attorney's office in Salt Lake City did bring a criminal-contempt case against Mr. D'Onofrio. According to a complaint filed in federal court there, Mr. D'Onofrio violated a 1982 court injunction requiring disclosure of his significant stock holdings, an order that resulted from an earlier SEC lawsuit over stock manipulation. Mr. D'Onofrio pleaded guilty, was given probation and continued his career unimpeded.

Mr. D'Onofrio declined numerous requests for an interview for this article. ''Some people do talk to the press and some people don't,'' says his attorney, Ira Sorkin, the former head of the SEC's New York regional office. Mr. D'Onofrio ''falls into the latter category,'' adds Mr. Sorkin, who won't talk about his client either. (As an assistant U.S. attorney in New York 20 years ago, Mr. Sorkin helped prosecute a criminal case in which Mr. D'Onofrio was an unindicted coconspirator.)

Contempt isn't the only criminal charge available in swindling cases; frequently, scam artists can be prosecuted criminally under fraud or racketeering laws. But Philip Feigin, a Colorado regulator and current president of the North American Securities Administrators Association, bemoans a ''vicious cycle'' in which securities regulators, investigators and prosecutors often relegate criminal statutes to an ''afterthought.''

BURIED BY DOCUMENTS

One reason is that white-collar criminal cases often eat up enormous amounts of time and resources. Stewart Walz, a veteran federal prosecutor and former head of the criminal section of the U.S. attorney's office in Salt Lake City, recalls one complex white-collar case several years ago that required a quarter of his section's attorneys for a five-month trial. Although multiple convictions resulted, Mr. Walz asks: ''How many other cases went unprosecuted?''

On average, it takes more than 10 months for a white-collar criminal case to be filed in court from the time it is referred to a federal prosecutor's office, according to national statistics gathered by the Transactional Records Access Clearinghouse at Syracuse University in New York. That is nearly three times as long as for the average drug case. Complex, document-laden white-collar cases frequently take years to complete.

When prosecutors do bring fraud charges, they often end up disappointed with the sentences that result. The latest federal prison statistics show that the median jail term for fraud is just 12 months; even violators of pornography and prostitution laws receive 33 months behind bars, while drug traffickers are sent away for a median of 60 months. A check of state sentencing statistics in California and Florida, two centers of white-collar crime, also shows large disparities in sentences between fraud and drug trafficking.

James Sepulveda, a prosecutor in the district attorney's office of Contra Costa County in Northern California, says he has helped convict hundreds of white-collar criminals during the past 14 years. Some 90% of them, he estimates, received probation: ''The bad guys are winning,'' he says.

Such experiences have made prosecutors increasingly reluctant to take on many potentially promising cases. These days, if a case is worth less than $1 million, some big-city prosecutors won't even touch it, experts say.

A major factor is the nation's war on drugs, which has been overwhelming prosecutors' offices, courts and prisons. In 1985, for instance, only 34% of the federal prison population was serving time for drug-related crimes. Today, the figure is 62%. As recently as the early 1980s, the average federal prosecutor handled about the same number of white-collar and drug cases each year, according to the Syracuse University group. By 1993, that same prosecutor was handling nearly twice as many drug matters as white-collar cases.

Of the thousands of white-collar cases filed by the federal prosecutors annually, only several dozen involve alleged securities fraud, according to records of various government agencies. The SEC keeps only what an agency spokesman terms a ''spongy'' count of such cases.

POOR RECORD KEEPING

Though Justice Department officials agree that drug cases have been getting more and more attention, they insist that the agency's commitment to prosecuting white-collar cases hasn't diminished. They note that in recent years the department has focused increasingly on particularly complex and time-consuming white-collar cases. While not great in number, these prosecutions tend to have a significant impact, they say.

Nonetheless, the scarcity of government record keeping in this area seems to underscore the relatively low priority given to white-collar crime. The Federal Bureau of Investigation, for example, annually gathers from more than 16,000 local and state law-enforcement agencies detailed statistics on crime ranging from murder to auto theft. That survey doesn't include fraud, for which much less detailed information is assembled. FBI officials say they are working on a new reporting system that will gather more information on white-collar crimes, but they don't expect it to be in place before the end of the decade.

For its part, the SEC has established no formal system for identifying or tracking repeat offenders. Nor does it always know their whereabouts. During a recent interview, Thomas Newkirk, an associate director for enforcement, proclaims that Thomas Quinn is safely ensconced in a European jail. But Mr. Quinn, one of the major stock manipulators of the 1980s—who regulators say was responsible for as much as several hundred million dollars in investor losses worldwide—has been out of jail for months and is living on Long Island, N.Y. Mr. Quinn says he isn't involved in the securities business and ''never will be again. I am just trying to get on with my life.''

William McLucas, the SEC's enforcement chief, says there ''should be a place in the system'' to deal ''harshly'' with securities-law recidivist, and that the agency does its best to make sure they are brought to justice. But he also notes that the SEC has to regulate thousands of public companies and investment advisers and a vast mutual-fund industry. ''We have a whole lot of market realities we are trying to keep pace with,'' he says. ''So we must make some hard judgments about where to put resources.''

CASES MOVE SLOWLY

Some of these judgment calls have made life easier for Mr. D'Onofrio. The two most recent SEC lawsuits against him—one filed in Los Angeles federal court in 1993, the other in New York federal court last September—were years in the making and involve alleged stock manipulations that occurred, in some cases, more than a half-decade earlier.

Such time lags aren't uncommon, SEC officials say. The continuing criminal investigation, which involves some of the same activities as the two civil cases, also seems to be moving at a glacial pace. Hovhanness ''John'' Freeland, an alleged D'Onofrio confederate in one of the civil cases, pleaded guilty to criminal stock fraud in a related case in New York federal court. He entered that plea more than two years ago but hasn't been sentenced yet. Mr. Freeland, who is back in the business world, declines to be interviewed, and prosecutors won't comment on the criminal case.

When charges are brought against Mr. D'Onofrio, he is as likely to quit as to fight.

Indeed, Mr. D'Onofrio's success with the law has stemmed partly from his willingness to cooperate when caught. This has helped keep his incarceration time to a minimum, even though by the early 1970s he was clearing as much as $1 million annually in stock manipulations, according to one court ruling.

In one early instance of cooperation, Mr. D'Onofrio agreed to be the main witness against his former business associate and onetime state-court judge, Joseph Pfingst, in a bankruptcy-fraud case in Brooklyn, N.Y. Mr. D'Onofrio was sentenced to probation after helping get Mr. Pfingst convicted; the former New York judge got a four-month term.

MAKING ''A LOT OF MONEY''

In another case against an alleged co-conspirator, Mr. D'Onofrio testified readily to his own role as a ''manipulator of stocks'' who causes ''the price of the stock to rise by fraudulent means and in the process makes a lot of money,'' according to a federal-court opinion. But Mr. D'Onofrio has always been extremely secretive concerning anything that might interfere with his continuing prosperity. In one case, he was jailed 22 days for contempt rather than discuss his overseas bank accounts.

Lately, Mr. D'Onofrio has been dabbling in new business ventures, aided by a 1990 SEC rule change. ''Regulation S'' allows a company to sell stock overseas without going through the time-consuming and expensive disclosure procedures normally required to sell new stock in the U.S. The idea is to give companies a tool for raising capital. Such is the latitude of Regulation S that the SEC doesn't even track which firms do such transactions.

Law-enforcement officials say they believe Mr. D'Onofrio and others have been using Regulation S to obtain millions of shares of stock, which they fail to pay for or buy at a deep discount, then resell to the public before the price of the stock crashes.

The SEC has voiced concern about possible Regulation S abuses but has done little to curb them. In 1991, the agency did file suit in Washington, D.C., federal court against several defendants in a Regulation S transaction involving a small Tucson, Ariz., company, Work Recovery Inc. The SEC obtained injunctions and disgorgement orders against the defendants, whom the agency charged with failing to pay for 1.5 million Work Recovery shares and then illegally selling a substantial number of these shares to U.S. investors.

Though one of Mr. D'Onofrio's firms was Work Recovery's investment banker, the SEC didn't name him or the firm in its suit. The agency declines to say why. Work Recovery later sued Mr. D'Onofrio and others in Denver federal court and won a default judgment of nearly $9.5 million in April 1993. It remains unpaid.

In a 1992 interview, Work Recovery President Thomas Brandon recalled being impressed by Mr. D'Onofrio's plush office suite, chauffeured limousine and seeming dedication to helping small companies such as his raise capital through Regulation S transactions. Mr. Brandon said the pitch ''was almost evangelical in tone.''

Mr. D'Onofrio and his associates recently latched onto another small publicly traded company, Madera International Inc., a Calabasas, Calif., firm with a bizarre past that included plans for an automatic-weapons factory in China. By last year, Madera had a new business—exporting timber from Nicaragua—and a new investment banker, First Capital Network Inc.

Mr. D'Onofrio has been operating from First Capital's Santa Monica office. According to several individuals who have done business with the firm, he was involved in financing and stock transactions for First Capital, despite an outstanding court order barring him from ''acting as a promoter, finder, consultant, agent or other person who engages in . . . the issuance or trading of any security.'' Repeated requests for comment from company officials, left by phone and in person at the firm's office, received no response.

MADERA STOCK COLLAPSED

Madera Chairman Daniel Lezak says of Mr. D'Onofrio that ''it was my impression that he helped run the firm.'' Mr. Lezak says, and SEC filings confirm, that First Capital arranged the transfer of millions of new shares of Madera stock to itself or offshore buyers at no cost or at deep discounts through Regulation S and other transactions. Mr. Lezak says he believes much of that stock was quickly dumped in the U.S., a move he believes contributed to Madera stock's dropping to about 10 cents a share from a high last year of more than $3. Mr. Lezak says he fired First Capital as Madera's investment banker, but says he still sometimes consults with firm officials,

Mr. D'Onofrio has had serious heart problems of late, law-enforcement officials say. But he appears to be passing his accumulated knowledge to others, including his 34-year-old son Mark, who for the past several years has been working with his father.

Already, the younger Mr. D'Onofrio has been the subject of three SEC injunctions for alleged securities-law violations. He recently pleaded guilty in connection with federal conspiracy and fraud charges filed in Los Angeles federal court as part of the criminal investigation that also involves his father. Mark D'Onofrio remains free pending sentencing, scheduled for later this year. His attorney, Mr. Sorkin, says the son, like the father, doesn't talk to the press.

But Mr. Brandon, the Work Recovery executive, recalls a dinner conversation where Mark D'Onofrio talked of how he ''was proud of his father's doggedness'' and wanted ''to follow in his father's footsteps.''

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

[From Crain's New York Business, Dec. 4–10, 1995]

NEW SCAMS FOR A NEW GENERATION

DRIVEN BY HIGH-TECH RIP-OFFS, FINANCIAL FRAUD IS SOARING

(By Judy Temes and Geri Willis)

John Chilelli believed in two things: technology and radio talk show host Sonny Bloch.

Looking for a way off the rough-and-tumble docks of Bayonne, N.J., the longshoreman, 37, plunged nearly half his savings—$22,000—into a high-tech investment in paging systems last fall. His dream was to earn enough to leave his 90-hour-a-week job operating a crane to buy a Pizza Hut franchise.

''I figured if Bloch had his own show all these years, and he's telling people to buy this, it's gotta be on the up-and-up,'' explains Mr. Chilelli.

But federal authorities say Mr. Bloch lined his own pockets working in collusion with a number of advertisers to hustle ill-advised and fraudulent high-tech investments to loyal listeners, ultimately stealing $21 million.

Mr. Bloch says he is innocent of any wrongdoing, but today he sits in jail awaiting trial.

The Bloch case is emblematic of how technology has unleashed an unprecedented wave of investment fraud that is ripping off consumers for billions of dollars. Investors are attracted to technology because they have seen the way it has changed their own lives. Many are also searching for the next Microsoft Corp. Instead, they are being lured into phony deals in interactive video, mobile telephones, pager systems and wireless cable.

Technology is not only transforming the products sold by these investing hucksters; it is also dramatically changing how they do business. Today's snake oil salesmen are reaching more people than ever by broadcasting their message over the Internet, as well as radio and television. They bounce their offers off satellites and communicate via conference calls, 900 numbers and late-night infomercials.

Carefully mimicking legitimate providers of investment advice, scam artists have mastered direct mail techniques, lifting new headlines and even stories to make their appeals sound authoritative.

Mr. Bloch went one important step further. He co-opted legitimate media, employing 200 radio stations, satellite technology and a telemarketing operation to broaden his reach. Once in investors' living rooms, he studded his show with noted experts. A string of book titles and frequent public appearances cemented his credibility with listeners desperate for a trustworthy, accessible financial adviser.

By some estimates, people like Mr. Bloch are costing Americans $100 billion a year. The Securities and Exchange Commission's caseload has climbed 30% in five years, while at the same time, criminal convictions by state regulators have quadrupled. Investment fraud complaints to state and federal agencies are soaring, with 50,000 logged by the Federal Trade Commission in the past three years.

AMERICANS FACE LIFE WITH FEWER FINANCIAL GUARANTEES

Behind this rise in financial fraud is a sea change in personal investing patterns. A new generation of Americans is facing life with fewer financial guarantees. Many no longer believe that Social Security will provide for their retirement. Medicare programs are under siege. The number of workers with fully company-funded pensions is dwindling. Home values, once the foundation of a typical family's net worth, are eroding.

Facing the prospect of outliving their savings, more people are buying stocks, bonds and mutual funds—one in three American families, compared with only one in 17 in 1980. Each week, these newly minted investors plow some $9.6 billion into mutual funds alone.

But most are ill-prepared for this new burden. Lacking investing skills, the postwar generation confronts an array of complex products and is dazzled by thousands of options. For example, there are now twice as many mutual funds—5,600—as there are stocks listed on the New York Stock Exchange.

Investors are confused because even legitimate firms can't be entirely trusted. Big brokerages still pay incentives to salesmen to hype products. The media adds to this charged environment by tantalizing investors with the possibility of high returns. ''Quit young and enjoy the rest of your life,'' beguiles a recent Money magazine cover.

''Investors are clearly more vulnerable,'' says Arthur Levitt, chairman of the SEC.

At stake is nothing less than the future prospects of millions of investors: their retirement funds, their children's college education money and the resources to care for their aging parents.

The longshoreman, Mr. Chilelli, has been forced to put his dreams on hold. ''I feel foolish,'' he says. But, he asks, ''How do you tell what to invest in? Who do you trust?''

TECHNOLOGY BLINDS INVESTORS

Bob Shifman was getting a sick feeling in the pit of his stomach as he listened to a slick promoter pitch wireless cable television to a roomful of retirees last June.

Richard Horne described wireless as the cellular telephone of the 1990s, a technological miracle capable of providing better service at lower costs. Why, he asked, would reasonable people invest in an unpredictable stock market or in real estate with such a ''tremendous opportunity'' available?

''This is an excellent place to park your money,'' Mr. Horne concluded.

Even as the room erupted into applause, Mr. Shifman thought of the $15,000 in savings he had sunk into the enterprise. The Jersey City retiree had planned to give the money to his two adult children and six grandchildren.

Eleven months later, the U.S. Attorney's office filed an indictment charging the operators of the wireless venture, known as Greater Columbia Basin, with defrauding consumers of a total of $21 million.

Among those implicated were Sonny Bloch, James Barschow, Joseph Glenski, Bruce Schroeder and Milton Sonneberg. Five others have pleaded guilty to felony charges that they worked with Mr. Bloch, including Steven Wiegner. Mr. Wiegner, who was president of Mr. Bloch's Independent Broadcasters Network, pleaded guilty last week and is cooperating with the government.

Mr. Horne, meanwhile, has been named as a defendant in an investor suit against Columbia, but lawyers representing investors have been unable to track him down.

Crooks are selling schemes and products with a high-tech spin to a generation that has eagerly watched laptop computers, cellular phones and interactive multimedia change the way people work and play.

Con artists use this fascination to lure investors into a variety of ploys that use interactive video, mobile telephones, pager systems and wireless cable. But the smartest ones don't stop there. They pitch Wall Street's own computer-based products and trading techniques—derivatives and arbitrage—to a gullible public eager to emulate the securities industry's savviest traders.

''Technology has the interest of people,'' says Stephen Gurwitz, an attorney at the FTC. ''The schemes follow the headlines.''

PERSONALLY ENDORSED BY SONNY BLOCH

Wireless cable fraud alone costs investors half a billion dollars each year, the FTC estimates. The SEC has filed 21 wireless cases in the past three years. The FTC, which investigates instances of misrepresentation, has filed 14 high-tech cases since 1990, five this year alone.

Such a scam cost Ray LaCava $30,000—money he received from a car accident that disabled him for life. Well invested, Mr. LaCava thought, that money could buy his daughter an annuity, or perhaps even set her up in business.

A paging license seemed ideal. The Long Island resident had made a successful high-tech investment before; he says he netted half a million dollars a decade earlier on a cellular phone license.

''I knew paging was up and coming,'' recalls Mr. LaCava. ''I was noticing more and more people with beepers.''

When salesmen from Manhattan-based Breakthrough Technologies Inc. called last fall, Mr. LaCava was primed to listen. For $7,400 per license, Breakthrough would conduct engineering studies and file an application for Mr. LaCava to ensure him of a prime operating area. The company was personally endorsed by Sonny Bloch, who described Breakthrough President Michael Taylor as his ''good friend.'' Says Mr. LaCava. ''That clinched it for me.''

Salesmen from Breakthrough took Mr. LaCava and a dozen other investors to a legitimate conference at the Newark Marriott hotel held by paging equipment manufacturer Motorola, which knew nothing about Breakthrough. A limo ride and dinner were part of the package.

Mr. LaCava forked over $22,200 that night in a five-for-three deal, buying licenses in Kansas City, Mo., Louisville, Ky., and three other cities.

BIG FEES FOR USELESS LICENSES

He never received the licenses. Principal Michael McGuinness, using the name Michael Taylor, put off Mr. LaCava for two months, cancelling meetings and blaming the delays on government bureaucrats. Investors finally stopped buying the excuses and reported Breakthrough to postal inspectors last December. Mr. McGuinness pleaded guilty to charges of mail fraud earlier this year.

Like Mr. LaCava, many investors have made millions off such new technologies as cellular telephones, heightening interest in high technology. Holding out the promise of similar huge returns, hustlers charge unsophisticated investors as much as $7,500 to file a license application that could be filed with the Federal Communications Commission for as little as $50. They justify the expense by promising engineering, and population studies.

Often, the studies are never delivered. When they are delivered, they usually prove worthless. And that's just the beginning of the subterfuge.

Investors are often misled about the capability of the technology or simply the location of the licenses that they apply for. Little is said about the heavy responsibilities that accompany the ownership of a license, such as a requirement that owners build transmission towers and stations costing hundreds of thousands of dollars.

Investors in Manhattan-based Metropolitan Communications Corp. were told that their specialized mobile-radio licenses would become part of a nationwide wireless telephone network, according to an FTC complaint. For an initial investment of $7,000, investors were allegedly told, they could make as much as $58,000 a year before expenses.

In less than two years, roughly 2,500 investors funneled $28 million into the deal. About half of them signed separate agreements to lease their licenses to a manager, expecting the manager in turn to pay them a stream of income that would resemble an annuity.

The manager was really a sister company of Metropolitan. Both companies, authorities say, lacked the capital to properly build the towers that would make the system work.

The company tired to mislead regulators by building at least 300 temporary towers, according to Danny Goodman, who was appointed by the U.S. District Court to take over the company last year. In each location, the company would broadcast for a day or two, pull down the tower, shove it into a van and move it to the location of the next license, where workers would go through the same motions.

''Metropolitan thought it would fool investors,'' says Mr. Goodman. It did—until the FTC stepped in. The agency filed a complaint against Metropolitan in January 1994 and froze the assets of its central players.

Metropolitan principal Sheldon Jackler signed a consent order last year agreeing to cease operations. But he has since decided to fight the government's case and disputes some of the government's claims. His lawyer, Stephen Hill, says Metropolitan had every intention of making the system operable, but its plan was interrupted by the court-imposed receivership.

TARGETING THE SAVINGS OF RETIREES

Some investors are so mesmerized by the promise of high-tech products that they even entrust their retirement money to these products.

In an elaborate ruse, Jerry Allison and Qualified Pension Investments Inc. of Scottsdale, Ariz., convinced retirees to sign over their entire retirement accounts to the ''IRA approved'' pension administrator.

''There is no such legal statement as 'IRA approved,' '' says Kenneth Lench, SEC branch chief, whose Washington office filed a QPI complaint.

QPI should have acted as a disinterested third party in administering the accounts. Instead, Mr. Allison's company allowed backers of phony wireless cable operations to mail QPI brochures to prospects alongside their own promotional materials. In return, the Scottsdale company stuffed those retirement accounts full of worthless wireless cable investments. The company took in $270 million of retirement money from 14,500 people nationwide between 1991 and 1994.

Mr. Allison faces a trial on the SEC complaint that he misappropriated at least $4.5 million in retirement funds. A subsequent receiver's report shows that as much as $9.5 million may be missing.

SCAM ARTISTS IMITATE WALL STREET

Scam artists also have followed Wall Street into complex financial instruments. Chuckles Kohli of Princeton-based Sigma Inc. said he could make investors returns of 10% a month using derivatives and exchange-traded options to develop lucrative currency arbitrages.

''All the banks are getting rich doing swap derivatives,'' an elderly investor later told authorities. ''I wanted to share in it.''

Another individual pumped more than $100,000, just about all of his retirement fund, into a portfolio managed by Mr. Kohli.

''There were these people I knew who were living a lot better than I was, driving nicer cars, without the income I had,'' says the 52-year-old father of three. ''I said, 'Oh shoot, I could live like that, too.' ''

Mr. Kohli took in about $40 million from investors, according to court documents filed by the Commodity Futures Trading Commission and the U.S. Attorney's office in Newark.

He allegedly violated a host of securities rules: He never registered as a commodity pool operator, and he mingled investor dollars. During his four years in business, he never filed a single tax return. And to top it all off, he lost $20 million of investors' money while telling them they were reaping huge returns.

He squandered another $5 million on expenses, which included a personal limo driver, go-go dancers and a strip bar.

He was indicted for mail fraud and is now in jail awaiting trial.

THE UNDERSIDE OF THE INTERNET

Forget the old boiler rooms were high-pressure swindlers pitched penny stocks and other risky investments. Today's hustlers have jettisoned the phone banks for computers, modems and the Internet to broaden their audience and lower their costs. They're using computer-generated mailing lists, satellite transmissions and radio networks to appeal to millions of potential targets.

The new scam artist appears on late-night television and uses desktop technology to produce pitches that mimic those of legitimate personal investing experts.

These tools have made financial fraud so easy to perpetrate that one search for cybercrooks nabbed a 19-year-old hacker peddling an investment in eel farms. His tools: a personal computer and an active imagination.

Nowhere does the possibility for abuse loom larger than on the Internet and on-line services, where investor chat lines burn 24 hours a day with stock tips and ideas.

While activists criticize on-line services for their unwitting role as purveyors of pornographic pictures, the real smut is often financial. A recent visit to America Online found these dubious offers:

Stop Paying Income Taxes Legally . . . Get a letter from the IRS stating: ''You are not liable for income taxes.'' This is honest, legal and REAL.

$250,000 by Christmas or Sooner!!! Call the World's Most Profitable Number.

Get out of the DEBT Cycle! . . . Stop putting your banker's kids through school or paying for his new swimming pool!

Investors who would be wary of a telemarketer are less suspicious of an electronic pitch—particularly when it is personalized.

''There is a clubby mentality. It's like hanging out at the campfire at Malibu,'' says Mark S. Herr, New Jersey consumer affairs director.

A recent SEC case shows how electronic schemers get close to their prospects. The initial hook was an ad on Compuserve, where subscribers were promised ''High Returns for Investors!!'' last July. People who responded to that pitch were mailed an authentic-looking contract describing a $12,000 ''prime bank'' investment.

Gene Block, a Durham, N.C., business consultant, gained the trust of investors by chatting with them through e-mail. He promised that their investments would double in just six months and were protected by top bank guarantees, says the SEC in a complaint.

But Mr. Block was really a member of an international ring that marketed these phony investments, scoring $1 million for their efforts. So far, the SEC has recovered $250,000 from the bank accounts of the scheme's originator, Renate Haag, who is believed to have fled to her native Germany.

But the scheme is noting new. The SEC has 24 other prime bank cases on the books, and more are on the way.

''In the old days, you had the boiler rooms where you had to hire 20 people to make thousands of phone calls to sell fraudulent securities. Now one person can do this by the push of a button,'' says James B. Adelman, former head of enforcement of the SEC's Boston office.

Mr. Block faces a trial on the SEC complaint. His attorney, Paul Prew, doesn't deny that his client participated, but says, ''He was used as a pawn by people who knew better or should've known better.''

Con artists are combining PC power with other technology. Richard Welch, formerly the operator of a fantasy telephone sex line, drew on his knowledge of 900 numbers to develop a Ponzi scheme in which people were invited to invest in a worldwide lottery service said to be sponsored by North American Indian tribes.

The con was a one-two punch that started with telephone and fax solicitations. Early investors in the ruse then used e-mail and computer bulletin boards to recruit others, according to a complaint filed by the SEC.

By harnessing the power of these technologies, Mr. Welch and his coconspirators drew in 20,000 people in a four-month period. The agency is still trying to locate Mr. Welch, who has not responded to the complaint.

SCAM ARTISTS DIALING FOR DOLLARS

But crooks don't have to be experienced Net surfers to benefit from technology: Simple PC desktop publishing software allows stock front-runners, for example, to design professional-looking newsletters to push up the prices of the stocks they hold.

Others are also using computers to find and track good targets. In one of the fastest-growing telemarketing ploys, ''recovery rooms,'' fraud artists use computers to build lists of people who have already been defrauded so they can be tapped again.

According to an FTC complaint, Meridian Capital Management Inc. promised to recover money that victims had lost in telemarketing schemes, sometimes passing itself off as a regulatory agency. For 10% of their original loss, the Las Vegas firm told investors, it would launch a class-action suit, or tap a performance bond said to be posted by the first round of crooks.

''The idea was to entice consumers to send good money after bad,'' says FTC staff attorney James Reilly Dolan.

Meridian collected $1.6 million from 800 people, many of them New Yorkers, in just eight months.

Acting on a request from the FTC, a court froze Meridian's assets in August, and the company is no longer in business.

Mr. Dolan says such pitches are particularly convincing because the swindlers know details about the victims, often including the exact amounts they have lost.

Lists of potential targets cost $5 a name for initial leads, but $15 for the names of people who've already been fooled once.

Hackers' use of technology is also giving them a leg up in evading their trackers. Once a cyber-huckster gets a hint that someone is on his tail, he can easily move on.

''You cancel your account with your online service and vaporize,'' says Richard Lee, assistant regional director in the SEC's New York office.

Regulators lack the tools to go after some of the more subtle misrepresentation that occurs on the Internet. Investor bulletin board postings are singed only by names similar to CB handles. Because of the anonymity, people can easily camouflage their identities. A stock touter, for example, can be a broker, a savvy penny-stock promoter or even the president of the company.

Mr. Herr, the New Jersey consumer affairs director, concedes that regulators are playing catch-up.

''We are in the embryonic stage,'' he says. ''Right now, the bad guys are ahead of the good guys.''

Mr. BRYAN. With that background, one might rightly inquire, why should the Congress be considering legislation that makes it more difficult for defrauded investors to bring and win cases? The simple answer is that those who advocate this conference report in its present form, in my judgment—and I say this with all due respect—are legislating by anecdote and clearly lawyer bashing.

I understand that lawyers are a difficult group to love. I fully acknowledge that some of my lawyer friends have been guilty of misconduct and that there are indeed frivolous lawsuits filed. But in our effort to focus on frivolous lawsuits, in my judgment, the provisions of this piece of legislation effectively emasculate private investor protection.

During the debate today, we will hear repeatedly how often our high-technology companies are sued. What we will not hear a lot about is suits brought by one company against another. Mr. President, this legislation does nothing and says nothing about one company's right to sue another company. The sole focus of this legislation is lawsuits brought by private investors as part of a class action proceeding.

Let me again invoke the Wall Street Journal, if I may. This was an article that appeared in December 1993. Its premise was ''Suits by Firms''—that is other companies—''Exceed Those by Individuals.'' Let me just read one paragraph, if I may, that I think illustrates the thrust of this article.

Preliminary data in the first-ever study of litigation patterns of Fortune 1000 companies show that businesses' contract disputes with each other constitute the largest single category of lawsuits filed in federal court.

Let me repeat that because I know that it tends to run counter to the prevailing myth about what is actually occurring in the so-called litigation explosion.

Preliminary data in the first-ever study of litigation patterns of Fortune 1000 companies show that businesses' contract disputes with each other constitute the largest single category of lawsuits filed in federal court.

I know that is not the accepted view, and it goes contrary to the conventional wisdom that is being espoused on the floor that there is this explosion of class action lawsuits. But that is what the Wall Street Journal has to say.

Mr. President, I ask unanimous consent that the Wall Street Journal article to which I have made reference, of Friday, December 3, 1993, be printed in the RECORD.

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

[From the Wall Street Journal, Dec. 3, 1993]

SUITS BY FIRMS EXCEED THOSE BY INDIVIDUALS

(By Milo Geyelin)

Businesses may be their own worst enemies when it comes to the so-called litigation explosion.

Preliminary data in the first-ever study of litigation patterns of Fortune 1000 companies show that businesses' contract disputes with each other constitute the largest single category of lawsuits filed in federal court. Trailing behind are personal-injury suits and product-liability cases brought by individuals.

This result—while limited to federal courts—seems to challenge companies' frequent claims that personal-injury plaintiffs' lawyers are the main engines of litigation in America. And it may force some companies to review their own penchant for using the courts to resolve commercial disputes.

The finding is part of an ongoing study by University of Wisconsin sociologist Joel Rogers and RAND Institute for Civil Justice senior researcher Terence Dunworth. Ultimately, by looking at 1,908 companies that have been ranked among the Fortune 1000 from 1971 to 1991, the study will chart federal trends industry by industry and company by company.

The results so far, presented in draft form at a symposium at the University of Wisconsin's Institute for Legal Studies two weeks ago, also show that the once-steady annual increases in overall legal filings involving Fortune 1000 companies peaked in 1987 and have declined 21% since then. Similarly, business litigation involving smaller companies and individuals peaked in 1986 and has since dropped 12%.

When cases are broken down by category, the study shows that labor and civil-rights claims have increased in recent years. So have filings involving a single product such as asbestos-related injuries. Otherwise, product-liability suits against Fortune 1000 companies have actually dropped, from a high of 3,500 in 1985 to 1,500 in 1991.

''I know that business doesn't want to hear that, but these data don't seem to lie,'' says Mr. Rogers.

The reasons for the various litigation patterns are far from clear, however. For example, says Mr. Rogers, the high incidence of commercial legal disputes among businesses may be the result of their litigiousness or may just reflect the increase in the number of contracts in effect—and thus potentially subject to dispute—in a growing economy.

In either event, the results suggest that by pointing the finger at plaintiffs' lawyers, business leaders and advocates of legal reform may be bypassing other contributors to the overburdened civil-justice system, at least in the federal courts.

In response to the study's finding, legal-reform advocates voiced skepticism about what the federal-court results may mean. ''The overwhelming majority of product-liability claims are filed in state courts,'' says Victor Schwartz, a lawyer-lobbyist in Washington, D.C., who represents backers of a proposed federal law to rein in some product-liability claims.

State courts are generally regarded by plaintiffs' lawyers as friendlier forums for personal-injury and product-liability claims than federal courts, and most suits against local businesses and manufacturers would more likely be filed in local courts. But comprehensive state-court data are nearly impossible to compile. So studies of state systems have been confined to a limited number of courts. Thus, few useful comparisons can be made with the federal numbers.

Responds RAND researcher Mr. Dunworth: ''It's better to light a candle than to curse the darkness. Even if that's all you're doing by looking at federal courts, you're further ahead than you were.''

Messrs. Rogers and Dunworth relied on a computer database of more than four million federal lawsuits between 1971 and 1991 to identify 2.48 million suits that involved at least one business entity. Fortune 1000 companies were involved either as plaintiffs or defendants in 457,358 of those suits, or nearly 20%, according to the study. Not surprisingly, they were defendants in virtually all personal-injury cases (95%) and in most labor and civil-rights cases (85%). In contract disputes, Fortune 1000 companies sued each other as often as they were sued.

To get a more detailed look at how Fortune 1000 companies compared with other litigants—such as other businesses, governments and individuals—the study examined 405,908 cases that landed in federal court solely because the parties came from different states, thus creating so-called diversity of jurisdiction. Since 1985, records in such cases have indicated whether either party is a corporation, large or small.

According to these records, 43% of the civil lawsuits involving Fortune 1000 companies between 1985 and 1991 were contract disputes. For smaller corporations, the percentage was even higher—51%. Taken together, business disagreements, whether among individuals, companies or corporations, made up nearly half of all federal litigation in this sample. Federal suits over contracts outpaced any other single category of litigation.

Yet even these cases are on the decline now. Contract lawsuits peaked at 10,253 in 1987 and dropped 30% to 7,182 in 1991. A key reason, corporate legal experts say, is companies' growing willingness to settle disputes through arbitration and mediation. ''When you have businesses suing businesses,'' says Shelby R. Rogers Jr., general counsel for the Texas Medical Association, in Houston, ''you find that getting to the courthouse takes a number of years . . . and as a result we see many more businesses going to different forms of alternative dispute resolution.''

But Mr. Rogers, of the Texas Medical Association, says he is yet to be persuaded that federal litigation trends bear any relation to what's happening in jurisdictions such as the Texas state courts, long regarded as among the most pro-plaintiff in the country. And even Mr. Dunworth concedes there's ''a great deal of uncertainty about what's taken place in state courts.'' But he adds: ''if there are significant trends at work (generally), they surely must be evident in federal courts.''

Lawyers at big firms nationwide rank Cravath, Swaine & Moore as their toughest competitor, followed by Skadden, Arps, Slate, Meagher & Flom and Wachtell, Lipton, Rosen & Katz. The three New York-based firms are followed by Wilmer, Cutler & Pickering, of Washington, D.C.

The survey of about 1,300 large-firm lawyers at 158 firms was conducted by Global Research, an arm of London-based Euromoney Publications PLC, as part of a larger study of law-firm management practices.

In addition to leading the overall rankings, Cravath was first choice in three of the 19 subspecialties in which respondents also were asked to nominate blockbuster competitors. The hard-charging Wall Street firm, whose partners have been known to boast that its cafeteria is as crowded at dinner as it is at lunch, was seen as dominating in tax, securities and asset finance.

Skadden eclipsed others in mergers and acquisitions, while Wachtell led in banking; the second-ranked firm in both categories was New York-based Shearman & Sterling. Other champions included Fulbright & Jaworski, Houston (arbitration and litigation); Weil, Gotshal & Manges, New York (bankruptcy); Simpson, Thacher & Bartlett, New York (antitrust); O'Melveny & Myers, Los Angeles (corporate); and Sidley & Austin, Chicago (environment).

(Mr. CAMPBELL assumed the chair.)

Mr. BRYAN. Mr. President, there are a number of reasons why I oppose this legislation, and I would like to very briefly make reference to some of the primary reasons. My colleague, Senator SARBANES, indicated in a very thoughtful and very comprehensive statement why he was opposed, and I share and associate myself with his comments.

If this was designed to be balanced legislation, something that fairly dealt with the frivolous lawsuit problem in America, and yet at the same time protecting private investors who have been defrauded, I think it would be very easy to craft a piece of legislation.

Every regulating body that I know of, from the Securities and Exchange Commission to the North American Association of Securities Administrators, all have urged upon us to deal with a serious problem concerning an unduly restrictive and shortened statute of limitations. The Lampf case of 1991 shortened the statute of limitations for class action suits to 1 year from the point of discovery, a 3-year bar. Everyone who is involved in protecting investors from fraud acknowledges that this is too short, and, indeed, when we discussed changes in this legislation in 1993, my colleagues on the Banking Committee said, ''Yes, we would be willing to go along with this change in the statute of limitations, but it must be done in the broader context of overall reform.''

Mr. President, that is what we are purporting to do today. Disagree as I may with the thrust of much of which, in my judgment, undermines the ability of innocent private investors to recover from fraud, this is a comprehensive review, but I think it is indicative of the bias that infects this legislation, that this has nothing to do with protecting investors, this purports in no way to be fair and balanced. This is simply designed to immunize perpetrators of wrongdoing from legal responsibility, from their reckless misconduct that has caused great loss to individual investors, to pension funds, to securities portfolios held by cities, counties, States, and universities and colleges in America, because although we have tried, there has been an unwillingness, a refusal to right the statute of limitations problem.

That has nothing to do with being frivolous—nothing to do with being frivolous. The statute of limitations bar that currently operates prevents the most meritorious of cases from being brought if it exceeds the current 1 year from the point of detection, 3 years overall bar. The Securities and Exchange Commission has testified that even with the enormous resources brought to bear by the Federal Government, all of the investigators, all of the staff, that it takes them more than 2 years to conduct such an investigation before they are prepared to bring an action involving investor fraud under the Securities Act. How much longer does it take a private investor without all of the resources available to the Federal Government to, indeed, conduct such an investigation and make a determination whether individually or as a class they have been subjected to investor fraud.

Aiding and abetting. The great case, and we will say more about this later this afternoon, but the Keating case is one that has become a symbolic case involving the amount of investor fraud by Mr. Keating's actions. Ultimately, $262 million was recovered in that case on behalf of investors. That is recovered. That means that there has been a determination that, indeed, investor fraud occurred and that the individuals bringing that action were, indeed, damaged to that extent.

Seventy percent of the recovery in that case—70 percent—was by those who are aiders and abettors. Mr. Keating himself, having become bankrupt, or judgment proof, was unable to respond in damages. That is, plaintiffs filing against him could not recover from Mr. Keating because he did not have any money, and yet there were those who were involved in this very crafty, complicated, extensive, comprehensive and pervasive fraud—lawyers, accountants, and others—whose actions substantially contributed to this fraud who would be aiders and abettors who, under this legislation, are now immunized.

We sought to restore the provisions of aiding and abetting, having nothing to do, Mr. President, with a frivolous lawsuit. We are talking about individuals who have been determined to have been guilty of reckless misconduct that caused damage to private investors; they are now going to be immunized from this liability. That has nothing to do with the frivolous action, the proportionate liability that Senator SARBANES talked about extensively.

Again, the whole theory of our system of American jurisprudence is one of balancing the scales of justice. On one hand, we are talking about individuals who are totally innocent. All they did was to respond to an entreaty or a sales approach to buy securities, subsequently finding themselves defrauded as a result of the purchase of those securities, and, subsequently, it is determined that individuals who are reckless in their actions—ordinary negligence, there is no liability for ordinary negligence. So those simple mistakes, mishaps that all of us are aware of in life, we are not talking about that kind of conduct. We are talking about reckless misconduct.

We are now saying that in terms of balancing, who should accept the benefit, who should bear the burden, we are now saying, Mr. President, that those individuals who are guilty of reckless misconduct, that their liability is limited only to the proportion that the court finds them to be responsible.

The practical consequences of that, as in the Keating case, for example, where you have the primary perpetrator bankrupt, is that the innocent investor is unable to secure full recovery, because what we are talking about in this legislation is to limit that liability to the proportionate amount.

So if the determination is made that there is only a 20-percent liability or fault found with respect to the reckless defendant and that the 80-percent liability under this hypothetical would be the primary defender and the primary defender is bankrupt, that is it. That is it, even though it is the conduct of the reckless defendant that contributed to the loss. That, Mr. President, has absolutely nothing to do with a frivolous lawsuit. That is a value judgment as to who ought to be protected: the innocent investor or the individual whose reckless conduct contributed to the loss.

For eons of time under the common law, in those situations the public policy has always been weighing these scales of justice that the burden ought to fall on the individual whose reckless conduct contributed to the loss rather than to have that burden borne by the innocent investor who was not responsible in any way at all. Again, this has nothing, absolutely nothing, to do with a frivolous lawsuit.

Rule 11 is the provision under the Federal Rules of Civil Procedure that is available to sanction lawyers who bring frivolous lawsuits. I believe that the proponents of this legislation, in the Senate version, hit it right on the mark. Whether one is a plaintiff's lawyer or a defendant's lawyer, if that lawyer is involved in frivolous action, the full sanction of the law ought to attach, and that lawyer ought to pay the cost as a result of undertaking that frivolous action. I have no quarrel with that at all. That is the way it was when it left the Senate, Mr. President. But what has occurred is part of this ongoing and skewing process, having nothing to do with frivolous lawsuits. Everything is weighted in this legislation toward protecting those who perpetrate fraud and those attorneys who represent them, because now the full force of the sanction only applies to plaintiffs' lawyers. Defendants' lawyers who are guilty of frivolous actions are not subjected to the same standard. It has been pointed out by Senator SARBANES that the pleading requirements are more difficult. That, too, has nothing to do with frivolous lawsuits.

Finally, although it is a bit arcane, are the so-called safe harbor provisions. I want to comment for a moment on safe harbor. Prior to 1979, one could not make what is called a forward-looking statement—that is, predictive conduct about the security because such and such is going to happen next week, next month, or next year. The reason why that is the rule is that because those kinds of future predictions have been the subject, historically, of overstatements, making it very easy to mislead people by false encouragement: "Buy this stock and you are going to be a big-time winner"—that type of thing.

In 1979, for the first time, they permitted forward-looking statements. I do not come to the floor as a Member of this institution as an expert in securities law. Whether that was a good provision in the law, I do not know. But in doing so, the SEC did recognize that there was great risk and great danger because those people who sell and offer these securities oftentimes get carried away and make such optimistic and rosy predictions that people are misled. And so the standard that was employed was that you could make these forward-looking statements and you were protected from liability if your statements were made, first, in good faith and, second, with a reasonable basis.

As I say, I am not an expert in this area, but that strikes me as being a pretty reasonable standard. There is no liability, even though the statements may be inaccurate or misleading, if they were made in good faith and with a reasonable basis.

Now, Mr. President, as a result of the action taken by the conference, even statements that are false, totally false—we are not talking about misleading or inaccurate; we are talking about totally false statements—are protected. That is, those who offer those statements now enjoy no liability if they simply add cautionary language. "Yes, this stock is going to triple, but there may be a contingency out there in the future that if the economy goes sideways on us, that may not happen." Just cautionary language. That is pretty outrageous, in my view, once again, this having nothing to do, in my view, with frivolous lawsuits but having everything to do with protecting those individuals who make statements that turn out to be inaccurate and misleading and immunizing them from liability.

Now, our securities investor protection system in America is really predicated on three individual pillars—two of them governmental, one in the private sector. Clearly, the Securities and Exchange Commission at the Federal level has the ability to assist in protecting the marketplace from fraud and to provide the measure of investor confidence that has characterized the American securities market. Many of my colleagues who have had State experience know that each of the States have securities offices which also serve as an adjunct to protect the public from investor fraud. But recognized as being extremely important in policing the market and providing for that investor confidence that characterizes and distinguishes the American securities market as no other securities market in the world is the ability of private investors, through class actions, to bring cases themselves. The SEC fully acknowledges that, and so it is that protection which is being undermined by this legislation.

In fact, the Congressional Budget Office, which is invoked with a level of respect and devotion that I have not seen in my previous 6½ years here in this institution, has estimated that as a result of what this piece of legislation does in terms of preventing access by private investors who are victimized by fraud, it would require another $25 to $50 million a year in addition to the existing budget of the SEC to offset that loss. That is, it is recognized under the current system that the SEC cannot adequately police the securities market, and its philosophical predicate is that the private investor, through the class action mechanism, is a very important function. We now, in my judgment, render that private class of action much less viable in protecting the marketplace. Some 11 attorneys general have complained about these changes and have characterized this as an unfunded mandate.

We hear repeatedly, and we will hear during the course of the day, that this legislation is absolutely necessary because the mainspring of the private enterprise system that all of us respect and acknowledge as having created the highest standard of living for us in America, or anyplace in the world, is that as a result of these lawsuits, private investor actions, the securities market has been limited in terms of the ability of the entrepreneur, the startup company, to generate the kind of capital needed to bring new products and services into the marketplace. We will hear that ad nauseam.

Here are the facts. The Dow Jones industrial average recently exceeded the 5,000 mark. In 1995, we have seen the Dow Jones rise higher in 1 year than at any previous year in its history. Initial public offerings—that is, the mechanism used to generate this capital by new companies and other companies who are wishing to develop a new product or service—have risen by 9,000 percent in the last 20 years. The capital raised as a consequence of those new offerings has increased by 58,000 percent. That is good news for Americans. I am pleased to hear it. I think all of my colleagues should be. But it does not make the argument that the proponents of this bill assert that this legislation—to immunize this whole category of malefactors—is necessary in order that businesses can generate the kind of capital needed to bring new products into the marketplace.

We will also hear that investors invariably sue every time the stock drops to any degree, regardless of their reasons. Let me again make the point, Mr. President, that the evidence simply does not support this.

In fact, the University of California study of 589 stocks that dropped more than 20 percent in 5 days showed that only 3 percent were sued by investors. This is a far cry from the perception that proponents of this legislation will try to paint.

We will also hear investor suits are filed just to get a quick settlement. Here again, the evidence is to the contrary. The SEC testified that surveys show most judges in these cases believe frivolous litigation is not a major problem and could be dealt with adequately through prompt dismissals.

We have also heard there has been an explosion of these class actions. Mr. President, that is simply not true. Of all of the civil actions brought in the Federal court system—all of them, from soup to nuts, all of them—about 0.1 percent involve class action security cases—0.12 percent is the precise number.

If you look at a table over the last 20 years from 1974 to 1993, you will see that the number of cases filed have remained essentially the same. This is a document prepared by the Office of the U.S. Courts, indicating that about 270, 260 are actions filed a year—no change—even though in the past 20 years the population in America has grown substantially.

Of the 14,000 companies listed on the exchange, about 120 each year find themselves being sued; about 120.

I think we just need to put that in perspective as we go through legislation here that radically changes the system that has worked essentially well for us in America, admittedly requiring the fine tuning I alluded to in those provisions that, in my opinion, deal legitimately with the frivolous lawsuits.

This is a meat ax approach. Make no mistake, its purpose is not to protect against frivolous lawsuits. It is to limit liability or to insulate liability from a whole category of persons whose conduct caused the investor loss.

The conference report would preclude many consumer institutions and State and local governments from recovering their losses in Federal courts when they are defrauded in the financial market.

The conference report takes the worst features of the Senate bill and combines them with many of the most dangerous provisions in the House version.

This legislation will harm consumers, consumers who have savings in retirement funds, stocks, bonds, mutual funds, or other investments. In fact, it will harm taxpayers who depend on the financial stability of their State and local governments in places like Orange County, as an example.

That is why, notwithstanding the efforts of the proponents of this bill to portray this—if you are for starting entrepreneurial companies, if you are for eliminating frivolous lawsuits in the marketplace, you should support this legislation; if you want to help the trial lawyers, you should be opposed to it. That is not what this is all about.

That is why the National Association of State Financial Officers—those would be the State treasurers, comptrollers, however the State financial portfolio is managed—the national association of these groups has expressed its strong opposition. So, too, has the National Association of County Treasurers and Financial Officers. The national association that deals with municipal financial officers and the national association that deals with the portfolios and securities managed by America's universities and colleges also oppose this legislation.

Also, the National Council of Senior Citizens, the National League of Cities, the National Association of Counties—I will not belabor the record with all of these—the Fraternal Order of Police, all have expressed their strong opposition, and for the same reason that I have alluded to, because it is far, far beyond what is needed to address the legitimate concern of frivolous lawsuits as it relates to securities actions.

I know there are a number of my colleagues who need to speak. I will just be very brief. Let me say I will comment in more detail. Some of you who voted for this legislation when it passed the Senate—some said on the floor and to a number of us, ''Look, if this thing moves in the wrong direction in conference, I will reconsider my position.'' To those of my colleagues who voted albeit somewhat reluctantly for this legislation when it passed the Senate, let me say that it is materially worse now than it was as it left the floor of the Senate.

With respect to the provisions dealing with the safe harbor provisions, the pleading requirements, the balance of equity and fairness of rule 11, the proportionate liability provisions have been made much more onerous. All of these provisions, including the RICO provisions which, as the bill left the Senate, concluded that, if any individual were convicted of a RICO fraud, then all that were involved would be subject to RICO sanctions in terms of the measure of damages that can be recovered—that has been greatly eliminated.

Perhaps even more perniciously, the provision that left the Senate dealt with the Securities Act of 1934. Now we have brought in the Securities Act of 1933 which deals with a whole different category of actions and we have applied many if not all of the provisions of that. I invite my colleagues' attention to that.

I yield the floor.

Mr. BENNETT. Mr. President, I will allow my colleagues to proceed, but I did want to respond briefly to some of the comments made by the Senator from Nevada, having been on the floor through his entire statement. I think there are a few points we need to make and then I will sit down and let my colleague proceed.

As I took notes from the comments of the Senator from Nevada, his first point listed how difficult it is to prove fraud. He gave us seven things he said are hard to prove. I agree with him completely. These are hard to prove. They are also very easy to allege and an alleging of these things is what leads to the settlements out of court that are the problem for many of the companies we are dealing with.

Second, he quotes from the Wall Street Journal. He quotes from Crain's, saying fraud is soaring; the Wall Street Journal headline, ''The Bad Guys are Winning.''

My only comment is if indeed that is so, why are not the Bill Lerach's of this world going after those bad guys instead of conducting the kind of practice that we have seen described here on the floor in the previous debate?

Third, he makes the point that the biggest number of suits are between companies, not class action suits on behalf of the individual investors. He says this bill does not address that.

I agree with him, this bill does not address that. If he feels that is a problem that needs to be addressed, he can file a bill that addresses that. The fact this bill does not address that does not mean that the issues the bill does address are not meritorious and need not be addressed.

Then he talks about the statute of limitation. There has been a lot of debate about that. I only make the point that this bill does not change the present level of the statute of limitation. We are not talking about putting a heavier statute of limitation burden than currently exists. We are talking about allowing the current law to continue.

Fifth, he talks about the great loss to cities and pension funds that cannot be recovered if we cannot go after the aiders and the abettors. Earlier in his statement he said we are being given evidence by anecdote on the part of those of us in support of this bill, but he gives us no anecdote to show the great loss by cities and pension funds except the anecdote that we hear again and again—and he brought it up under these circumstances—of Charles Keating.

Well, I take some time to make the record very clear on Charles Keating, because we hear that again and again as the anecdote of what we will lose if this bill is passed. I will make these points, Mr. President.

Most of the losses from the savings and loan scandal did not result from securities fraud. They resulted from outright criminal activity and looting the assets of the companies. They do not fall under the purview of this bill at all. They are simply irrelevant to this discussion. Even those S&L losses that did result in part from securities fraud would have been recoverable under this bill. It does not in any way, ex post facto, go back and say, if this bill had been in law at the time, you could not have gotten this recovery, you could not have gotten this recovery.

Why do I say that? Here are the reasons. Statements by Keating and his cohorts would have failed every one of the stringent preconditions in the conference report safe harbor provision for forward-looking statements. Every one of Keating's statements and his people's statements would have been actionable had this report been law.

Second, the conference report would not have immunized the alleged aiders and abettors because the conference report authorizes the SEC to take enforcement action against aiders and abettors, and the Keating investors would have recovered fully even without those aiding and abetting claims.

Third, the conference report would not have rendered Keating's actions time barred. It would have no impact on the statute of limitations in those areas because, as I say, it does not change current law, and all of the actions under Keating were brought within the applicable timeframe. Therefore, the Keating thing does not apply there as an anecdote.

We must understand that Keating's fraud did not apply to forward-looking statements. They made flat statements of error about the past. They lied flat out about what had been done. This bill does not protect anybody who is going to lie flat out about the past.

The conference report would not have empowered Keating's cohorts to control the litigation. Under this bill, they would be as liable as they were in previous law. It would not have delayed or imposed any obstacles to the actions that were taken. The conference report does not, as some claim, inflexibly require courts to stay discovery every time a motion to dismiss is filed. It would have had no effect if this bill had passed—it would have no effect on the damage awards. Joint and several liability would still have been available under the fact circumstance of Keating.

I could go on and on. The point I want to make is very clear. It is a red herring in this debate to talk about Charles Keating and the S&L disaster because this legislation would have had no impact whatsoever on the Government's ability to proceed in criminal action or an individual investors' ability to proceed in class actions against Charles Keating.

The comment was made that the safe harbor will now allow people to lie. No, it will not. If you make a false statement, the one referred to as an example by the Senator from Nevada, "The stock is going to triple," this bill does not protect you because you cannot make a prediction about what is going to happen to the stock under current SEC regulations and not be called in violation of those regulations for that.

What you can say is we believe we will be able to make the marketplace with our widget on such and such a date, and that we will have X numbers of copies of that widget.

But why would any executive make that statement if he did not believe it were the case? Nothing could be more damaging to his company or his reputation or his credibility as an executive than for him to make that kind of statement, meeting in front of securities analysts at the time of an IPO. You want to be very careful to preserve your credibility with the investment community.

No, this is not the problem, CEO's making statements to securities analysts. I will tell you what the problem is and why we need a safe harbor. Let us say, within your company you have two engineers who are examining your product. Engineer A says, "I do not like the way this thing works. I would like to fine tune it." Engineer B says, "I disagree with you. I think it works just fine and it is ready for market." Along comes one of these strike suits and the discovery starts and the lawyer gets ahold of engineer A's position and immediately he stands up and says, "Mr. Chairman," speaking to the CEO of the company, "you have within your files a document where one of your employees told you absolutely this product was defective." He is quoting engineer A. He conveniently does not quote engineer B, who disagrees with him. And, there you are, you have made a false statement. And, "If you did not know the product was defective, you should have known the product was defective."

That is the problem. That is the kind of thing that happens over and over again in these circumstances, and that is why people settle. We are not talking about CEO's standing up and predicting the stock will triple when we talk about a safe harbor. We are talking about safe harbor for people who make statements that they believe are true at the time and then will get trapped in this kind of activity that I have described later on.

Finally, we come to the point where the Senator from Nevada says there is no need for this. There has been no explosion of these strike suits. This is not a phenomenon that has suddenly hit us.

I close by quoting. He quotes from appropriate publications. I have a few that I would like to quote from. The first one, the Washington Post on the 18th of November, 1995. Referring, in an editorial, to this bill it says:

The bill was a response to a genuine outrage. A small number of lawyers have developed a technique of pouncing on any company whose stock price suddenly drops sharply. They then comb through past statements by the company to find the conventional expressions of hope for the future—and sue on grounds that those statements have misled and defrauded investors. That's a highly strained definition of fraud, but the present state of law makes this kind of suit very dangerous to a company. Although these are nominally shareholders' suits, they generally are instigated and controlled entirely by the lawyers. The companies most vulnerable to this destructive tactic are a particularly valuable kind—small, recently established high-tech firms whose stock prices tend to be volatile.

And then from the Economist magazine dated December 2, 1995, in another editorial, "Suits or Straitjackets," the subhead says "The American Congress wants to make it harder for some shareholders to sue companies for fraud. This would be a good thing."

The editorial says the following:

Class-action lawsuits, in which a bunch of investors join together to sue a firm whose shares have fallen sharply, are a growing problem for America's high-tech companies. More than 650 such suits have been filed in the past four years alone, including ones against each of the ten biggest firms in Silicon Valley. There is nothing wrong with investors using the courts to protect their rights. But a growing number of these suits are being brought by those who are victims not of corporate misinformation, but of their own (and their lawyers') greed. As a result, many managers now hesitate to offer investors any predictions at all, lest they end up in court.

That is why Congress is about to pass a measure that would make frivolous securities lawsuits harder to bring. Among other things, the bill, which should clear both the House and Senate easily, does three things. First, it allows firms to issue forecasts to investors providing that they list all of the important factors—a change in interest rates, say, or a slump in the consumer-electronics industry—that could affect them. Second, a defendant's auditors and equity underwriters would no longer be liable for the full extent of shareholders' losses, but only for those that are caused by their own misbehavior. Third, the bill encourages judges to slap fines on lawyers who bring groundless suits.

The final paragraph of the editorial summarizes it very well. It says:

As a general rule, it is a good idea to allow shareholders to protect themselves. This would not change under the proposed legislation. And in exchange for reform, they would get more (and better) corporate information on which to base their investment decisions. Mr. Clinton faces a choice. Either he can veto the bill on the mistaken ground that he is protecting shareholders' rights, or he can sign it and help put more money in their pockets.

Mr. President, I ask unanimous consent that the full text of both editorials be printed in the RECORD.

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

[From the Washington Post, Nov. 18, 1995]

ANTIDOTE TO THE STRIKE SUIT

It started off last winter as a flamboyant ideological statement. But the bill to curb shareholders' strike suits has now been whittled and sanded by many hands into a truly useful piece of legislation. An intemperate initiative is turning out to be much more promising than seemed possible last March, when the House originally passed it.

The bill was a response to a genuine outrage. A small number of lawyers have developed a technique of pouncing on any company whose stock price suddenly drops sharply. They then comb through past statements by the company to find the conventional expressions of hope for the future—and sue on grounds that those statements have misled and disfrauded investors. That's a highly strained definition of fraud, but the present state of the law makes this kind of suit very dangerous to a company. Although these are nominally shareholders' suits, they generally are instigated and controlled entirely by the lawyers. The companies most vulnerable to this destructive tactic are a particularly valuable kind—small, recently established high-tech firms whose stock prices tend to be volatile.

The new Republican majority in the House rushed to defend them. It was one of the promises in the Contract With America. But they overdid it. In their zeal to do away with constraints on the entrepreneur, they wrote sweeping language that would have protected a lot of real fraud—and would also have protected those lawyers and accountants who earn fees by turning a blind eye to it.

The Securities and Exchange Commission objected vigorously. To their credit, the congressional Republicans slowed down and took another look. After months of negotiation the SEC's chairman, Arthur Levitt, has now given his assent to a much-modified version of the bill. It would succeed in making spurious fraud suits much riskier to the plaintiff, but without hampering investors who have real grievances.

Before President Clinton signs it, the administration needs to address one remaining point. The statute of limitations in these cases is now only three years. With highly complex investments increasingly common, it can easily be a matter of years before customers discover a fraud. Five years is a more reasonable limit. With that further improvement, this bill would make securities law much fairer both to companies and to shareholders.

[From the Economist, Dec. 2–8, 1995]

SUITS OR STRAITJACKETS?

It is a familiar story. Soaraway Shares Inc, a budding Silicon Valley firm, launches a sexy new software product for the Internet. Its managers predict booming sales and boundless profits. Suitably impressed, investors pile in and the firm's share price takes off. But a year later the product flops, the shares plummet—and disgruntled investors head for the nearest courtroom.

Class-action lawsuits, in which a bunch of investors join together to sue a firm whose shares have fallen sharply, are a growing problem for America's high-tech companies. More than 650 such suits have been filed in the past four years alone, including ones against each of the ten biggest firms in Silicon Valley. There is nothing wrong with investors using the courts to protect their rights. But a growing number of these suits are being brought by those who are victims not of corporate misinformation, but of their own (and their lawyers') greed. As a result, many managers now hesitate to offer investors any predictions at all, lest they end up in court.

That is why Congress is about to pass a measure that would make frivolous securities lawsuits harder to bring. Among other things, the bill, which should clear both the House and Senate easily, does three things. First, it allows firms to issue forecasts to investors providing that they list all of the important factors—a change in interest rates, say, or a slump in the consumer-electronics industry—that could affect them. Second, a defendant's auditors and equity underwriters would no longer be liable for the full extent of shareholders' losses, but only for those that are caused by their own misbehaviour. Third, the bill encourages judges to slap fines on lawyers who bring groundless suits.

Although the bill has broad support in Congress, President Clinton may still be tempted to veto it, party because it is bitterly opposed by two of his biggest supporters: consumer advocates and trial lawyers. Not only will the bill give managers a license to lie, these groups say, but firms' auditors and underwriters will no longer have any incentive to catch them in the act. The bill's critics also fear that when shareholders do have a legitimate gripe against a company, lawyers may be deterred from bringing the case by the threat of a penalty if it is ultimately thrown out.

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These fears sound reasonable enough. But they ignore a crucial fact: financial markets thrive on information. The more investors know about what managers are thinking, the better they are able to gauge the risk of investing, and to commit their resources accordingly. They need not (and should not) treat the views they receive as gospel. Indeed, firms' shareholders have proven time and again that they can be better than managers at deciding what is important. The problem with the explosion of frivolous lawsuits is that it is discouraging companies from giving out much-needed information. As a result, the entire market suffers.

Admittedly, striking the right balance between protecting shareholders' rights and encouraging more openness is tricky. But the bill's trade-off is a good one. Although the reforms make it harder to bring groundless lawsuits, they do not prevent regulators from prosecuting swindlers. Nor do they let auditors and underwriters off the hook—though by limiting their liability they make it harder for class-action lawyers to win settlements from firms that have simply fallen on hard times. A mere drop in a company's share price usually is not evidence of fraud but the consequence of plan bad luck.

As a general rule, it is a good idea to allow shareholders to protect themselves. This would not change under the proposed legislation. And in exchange for reform, they would get more (and better) corporate information on which to base their investment decisions. Mr. Clinton faces a choice. Either he can veto the bill on the mistaken ground that he is protecting shareholders' rights, or he can sign it and help put more money in their pockets.

Mr. BENNETT. Mr. President, I thank the Chair. I thank my colleagues. The distinguished Senator from Connecticut, one of the original cosponsors of this bill and one of leaders of this fight for more years than I have been in the Senate, is now on his feet, and I am delighted to yield to him such time as he may require.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, first of all, I would like to thank my colleague from Utah for his eloquent statement in response to some of the charges that were raised about this piece of legislation and the inclusion of editorial comment and note of major publications about the worthiness of this legislation.

Mr. President, let me begin by laying out for our colleagues some idea of the amount of labor and work that has gone into this bill. We are here today debating a conference report, the final step in the legislative process before this bill is either sent to the President for his signature or veto. I think it is important to note how much effort and how much work have gone into producing this bill that our colleagues will be asked to vote on later today.

Mr. President, Senator DOMENICI and I began this effort more than 4 years ago. In fact, the effort and discussion began even earlier than that, but the first bill was introduced 4 years ago, and the House bill was introduced at roughly the same time. So we have been at this for some 1600 days, if you want to put it in category of days. This is not something that just sort of came up a few weeks ago. I know that it was mentioned in this so-called Contract With America, but the bill has a history that predates that by several years. It has been considered, in fact, Mr. President, in three Congresses now. This will be the first time in three Congresses we are actually going to vote on a bill that will allow it to go to the executive branch.

We have had 12 congressional hearings on the bill before us. We have heard from almost 100 witnesses on this legislation. We have almost 5,000 pages of testimony that have been accumulated. We have had a total number of six staff reports totaling 300 pages. We have had some 103 submissions to the record, and we have had testimony from eight Members of Congress both pro and con on this. The SEC, the Securities and Exchange Commission, has testified on 13 different appearances. The Chairman of the Securities and Exchange Commission has testified four times and his predecessor has testified four times.

So, Mr. President, what we are talking about here today is a piece of legislation that has been considered in great detail. The bill passed the U.S. Senate by a vote of 69 to 30 several months ago and by a vote of 325 to 90 in the other body after extensive hearings there. And obviously, with those vote totals, it was passed on a bipartisan basis in both Chambers.

So I think it is important for our colleagues and the public at large to know that this is how the Congress ought to do its business. This bill has been changed, it has been worked upon, it has been reformed, it has been analyzed, and in 1,000 different ways, over the past 4 years.

We have put a great deal of time and effort into producing a bill that we think—those of us who have authored it and supported it—by and large deals with what everyone now admits and acknowledges is a serious problem. Prior to this, Mr. President, when we first offered the legislation, there was the threshold debate of whether or not there was any problem at all. In fact, many of the people who have spoken here today against this bill argued initially very strenuously that there was no problem at all—none whatsoever.

So I am encouraged at least that we have put aside the debate and discussion about whether or not we are addressing a legitimate problem. Even the opponents of this legislation now admit that there was a serious problem that needed to be addressed. They disagree with certain provisions here. Most of their disagreements deal with what we were not able to include in the legislation. I will get to this in more detail in a moment.

But as one who offered a number of the suggestions, two particularly that did not make it into the bill, you do not make the good the enemy of the perfect here. We have a very sound piece of legislation that deals with a legitimate issue, and that does not deal with every single problem Members would like. But there is certainly no reason whatsoever to disregard and to reject this legislation in its entirety. That would be a huge mistake. Even editorial comment that disagrees with the bill, Mr. President, acknowledges the tremendous work product and the positive things included in this legislation.

So, Mr. President, again, because at the end of these debates sometimes the people who have done such a tremendous amount of work are rarely noted or recognized, let me begin by thanking my colleague from New Mexico with whom I have worked so very, very closely on this legislation, our colleague and the chairman of the Banking Committee, Senator D'AMATO, for his leadership on this and moving aggressively in this Congress to see to it that we complete the hearing process and the legislative business of the Senate, and, of course, my colleague from Utah, who has been tremendously helpful on this bill as well.

Let me also compliment and thank my colleagues who disagree with us. Senator SARBANES has been tremendously cooperative and helpful in seeing to it that we would have a debate and has not engaged in the kind of procedural tactics that were available to him to delay consideration of this legislation. Senator BRYAN, whom our colleagues had the privilege of hearing just a few moments ago, while he disagrees with this bill, has brought very worthwhile ideas and suggestions and note to the legislative process; Senator BOXER of California, as well, who disagrees with the bill but who has offered some positive insight as to how we might proceed.

I also would be remiss if I did not recognize those people who work for these Members, who spent literally hundreds of hours in negotiations. I mentioned the amount of time spent at hearings and pages of testimony. I cannot even begin to calculate the number of legislative staff hours spent in negotiations and efforts to work on this product that now is before us in this conference report. Certainly, Andy Lowenthal of my office, who is seated to my left, has done a tremendous job on this bill, along with Diana Huffman of my office and Courtney Ward; from Senator D'AMATO's office, Howard Menell, Bob Guiffra, and Laura Unger have done a tremendous amount of work; and Senator DOMENICI's office, Denise Ramonas and Brian Benczkowski have done tremendous work; Mitchell Feuer in Senator SARBANES' office, along with Brian McTigue in Senator BOXER's office.

There are many others. I apologize for not referencing all of them, but I want our colleagues to know and others that, again, in addition to the work the Members do, the staff's participation and involvement has been significant.

So, Mr. President, I am very pleased to be standing here this morning as the Senate begins the final consideration of the conference report on S. 240 and the House companion bill, H.R. 1058, the Private Securities Litigation Reform Act. This legislation is fundamentally important not only for thousands of American businesses, but more importantly I think to literally tens of millions of American investors. That is what this bill is all about. It is not about the businesses. It is not about the trial bar. It is about the investors, the people who take their hard-earned money and invest it in American business and industry that provide the quality of life and growth in this country that we have seen over the past number of decades.

Passage of this legislation, we believe, will help restore integrity and fairness to the country's private securities litigation system. And through this reform, Mr. President, the bill will defer, we believe, abusive and frivolous lawsuits that needlessly drain millions—in fact, billions—of dollars out of our emerging industries, the biotech industries, the high-tech firms that are the businesses and industries that drive the engine of this country's economy in the 21st century.

These are not just small questions. Each dollar that a company must spend on responding to America's meritless securities lawsuits, known as strike suits, is a dollar that could instead go to improving investor return, increasing research and development, expanding plants and, most importantly, creating the jobs in this country, the good-paying jobs that are critical for the health and well-being of this Nation.

In other words, Mr. President, the consequences, in my view, of failing to approve this conference report could not be higher. Mr. President, we have gone well beyond the day, as I said earlier, when we must argue about whether the securities litigation system is broken. It is painfully clear, Mr. President, to almost everyone, including the opponents, that the idea that there are no problems is just wrong, and there are massive flaws in the system as it is currently operating.

In fact, just last January, Mr. President, Arthur Levitt, the Chairman of the Securities and Exchange Commission stated—this is last January at one of our hearings: ''There is no denying,'' he said, ''that there are real problems in the current system—problems that need to be addressed not just because of abstract rights and responsibilities but''—listen to this, Mr. President—''because investors in markets are being hurt by litigation excesses.''

The problems in private securities litigation have become so deep, Mr. President, and so deep rooted that we do not have the luxury, in my view, of idly waiting for the courts or some regulatory body to fix them for us. Everyone who knows anything about the present system—everyone—will tell you it must be changed, that it does not work, except for a few of the attorneys who benefit as a result of the current system.

One of the core problems, Mr. President, afflicting private actions under rule 10(b) is that such actions were never expressly authorized by the Congress. This is not based on some laws we passed here but instead have been construed, if you will, and refined by the court systems in this country, with Congress sort of going along because we never acted to change it. It was not as a result of legislation passed through long and extensive debates but rather interpretations by the courts over the years.

We all know what that leads to, Mr. President. It is precisely the lack of congressional involvement that has created conflicting legal standards for bringing such actions and has created so many holes within the foundation of the private action that it threatens the very system itself—unequal justice, a patchwork. Just watch where a lot of the lawsuits are brought, and you will understand exactly what I am talking about.

There is forum shopping going on all over the country because the trial bar in this particular area of law knows that in certain jurisdictions they are favored and others they are not. So you have this tremendously unequal system all over the country because we have not acted over the years to try and clarify the situation as to how investors ought to be treated regardless of where they live in this country. That is one of the core problems that we attempt to address with this legislation, for us as a body, the legislative body, to speak clearly and intelligently as to how this system ought to work across the country.

So, I would submit, Mr. President, to my colleagues, that Congress is the only institution that is equipped to comprehensively address these myriad problems in a thoughtful and moderate manner. My confidence in the legislative process, Mr. President, is borne out by this conference report before us today and the years we have spent in putting it together. This legislation carefully and considerably balances the needs of our emerging high-growth industries with the rights of investors, large and small, Mr. President.

I am proud of the spirit of fairness and equity that permeates this bill. In order to understand why so much time and effort is being expended to fix the securities litigation system, I think it is important to remember the vital role that private securities litigation plays in ensuring the integrity and success of America's capital markets. And I take no back seat to anyone in my determination to see to it that the private litigation system is maintained, because it is a vital ingredient to protecting consumer and investor confidence.

The private securities litigation system is far too important to allow a few entrepreneurial lawyers to manipulate—that is what they do—to manipulate and abuse the system to the degree that they have done over recent years.

Let me be clear, Mr. President: Private securities litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely on Government intervention. It is precisely, Mr. President, because of this important role that the legislation does not impinge on the ability of legitimate aggrieved investors to file suits and, if successful, collect judgments or settlements from the parties that defrauded them.

I have maintained from the outset, Mr. President, of this reform effort that securities lawsuits brought by private investors are critical to ensuring public and global confidence in our capital markets. That is not the issue here. And it is to this high standard which this conference report seeks to return private securities litigation actions.

But, Mr. President, the current system has drifted. It has drifted so far from its original goal that we see more opportunistic lawyers profiting from abusive suits that take advantage of the system than we see corporate wrongdoers exposed by it. While some have charged that the beneficiaries of this legislation are just thousands of American companies, the people who will be most harmed by our failure the enact reforms will be the millions of investors who do not participate in these class action lawsuits.

As Kenneth Janke, president of the National Association of Investors Corp., which I might point out represents more than 325,000 individual investors, said recently in a letter to President Clinton, "Too many times, class action suits are initiated against companies which result in filling the coffers of lawyers with little or no benefit to shareowners. Those types of 'nuisance' suits," he says, "do little to enhance a return for shareowners." He says, "The money spent by corporations on frivolous lawsuits would better serve all shareowners if it remained in the company, resulting in higher net profits and earnings per share."

Or take, if you will, Mr. President, the statement of Ralph Whitworth of the American Shareholders Association, who told the Securities Subcommittee more than 2 years ago in his testimony, "The winners in these suits are invariably the lawyers who collect huge contingency fees, professional 'plaintiffs' who collect bonuses, and, in cases where fraud has been committed, executives and board members who use corporate funds and corporate-owned insurance policies to escape personal liability. The one constant," he says, "is that the shareholders pay for it all." And that is what we try to stop here.

Even institutional investors, Mr. President, who invest on behalf of millions of individual Americans—in fact, most investors invest through their institutional investor—these individuals, municipal, State, or private pension funds, have expressed their concerns as well.

Mary-Ellen Anderson of the Connecticut Retirement & Trust Funds testified before our committee that the participants in the pension funds—and I quote her here:

> . . . are the ones who are hurt if a system allows someone to force us to spend huge sums of money in legal costs . . . when the plaintiff is disappointed in his or her investment.

Our pensions and jobs, she says, depend upon our employment by and investment in our companies. If we saddle our companies with large unproductive costs, "* * * we cannot be surprised if our jobs and our raises come up short as our population ages."

(Mr. ASHCROFT assumed the chair.)

Mr. DODD. Mr. President, one of the biggest vulnerabilities of the securities class action lawsuits is that plaintiffs' attorneys appear—appear—to control the settlement of the case with little or no influence from either the named plaintiffs or the larger class of investors. For example, during the extensive hearings on the issue before the Subcommittee on Securities, a lawyer for one of these firms cited one case, and I quote him, as "a showpiece"—those are his words, not mine—"a showpiece of how well the existing system works."

This particular case settled before trial for $33 million, Mr. President. The lawyers asked the court—they asked the court—for $20 million, the lawyers did, of the $33 million settlement. Remember, this is a lawyer saying this is a showpiece case. He picked this one out. I did not pick it out. This is the attorney talking now. And $33 million was in the settlement. They asked the court for $20 million of the $33 million. That is what they asked for. And they are claiming this is a system that does not need to be fixed.

My God, what are they talking about here? So $20 million in request of $33 million. They got $11 million, by the way. That is what the courts gave them: $11 million. They asked for $20 million but got $11 million. Of course, the attorneys for the defense, they got $3 million. The investors recovered 6.5 percent of the recoverable damages—6.5 percent—and this is a case identified by the trial bar as a showpiece example of how well the system works. That is the best piece of evidence they may offer, that is what they think. This kind of settlement might well be satisfactory for the entrepreneurial attorneys, but it does little to benefit companies, investors, or even the plaintiffs on whose behalf these suits have been brought.

The second area of abuse is frivolous litigation. Companies, particularly in the high-technology and biotech industries, face groundless securities litigation days or even hours after announcements are made. In fact, the chilling consequence of these lawsuits is that companies, especially new companies, in emerging industries, in my view the industries of the 21st century in this country, frequently only release the minimum of information required by law so that they will not be held liable for any innocent forward-looking statements that the corporation may make.

These predatory lawsuits—and there is no other way to describe them—have had the result of thwarting 15 years of efforts by the Securities and Exchange Commission to encourage companies to provide more information about their future expectations for earnings and products. I refer my colleagues to the comments made by our colleague from Utah in talking about the importance of these forward-looking statements. It is precisely this kind of information that is demanded, and rightfully so, by investors who are looking to make the most prudent investment decisions.

The conference report, we think, provides a mechanism for investors not only to obtain this positive information but to also obtain information about what the company views as its important risk factors in the coming months of their plans.

Let me quote the recent comments of J. Kenneth Blackwell, the State Treasurer of Ohio. I might point out since the Presiding Officer—excuse me, the Presiding Officer is not from Ohio, he is from Missouri. That is the second time I made that mistake, but he may be interested in this. J. Kenneth Blackwell manages more than $105 billion in pension funds. These are his statements. He said:

Intelligent investment strategy requires maximum possible disclosure, and if I'm not offered frank assessments of various companies' potential, how can I rest assured that Ohio's pensioners' money is being invested wisely?

That statement, I think, deserves being listened to. In fact, the safe harbor for forward-looking statements contained in the conference report is strongly supported by the Securities and Exchange Commission itself.

Let me quote a letter which we received from Arthur Levitt. It says:

The current version of this bill represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while at the same time it limits the opportunity for abuse.

The Supreme Court, in Blue Chip Stamps versus Manner Drugstore, has also voiced serious concern about the vulnerability of securities class action suits to abusive practices. Let me quote from the Supreme Court decision in that case:

In the field of Federal securities laws governing disclosure of information, even a complaint which by objective standards may have very little success at trial has a settlement value—

Has a settlement value.

to the plaintiff out of any proportion to its prospect of success at trial.

The decision goes on to say:

The very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit.

Mr. President, a third area of abuse is that the current framework for assessing liability is simply unfair and creates a powerful incentive to sue those with the deepest pockets, regardless of their relative complicity in the alleged fraud.

The current system of joint and several liability encourages plaintiffs' attorneys to seek out any possible corporation or individuals that may have extensive insurance coverage or deep pockets. That is why they are brought in. It is not because even the plaintiffs' attorneys think they are necessarily culpable, but it is because they have the deep pockets, they have the insurance behind them that they are brought into the lawsuits. That is why they are brought in—there is no illusion about it—even if they have nothing to do with the claimed alleged fraud.

Although these defendants could frequently win the case if it were to go to trial, the expense of protracted litigation makes it more economical for them to settle with plaintiffs' attorneys. That is what they do, they settle, because going to court would be far more costly down the road over an extended period of years.

One example was chronicled in a recent Wall Street Journal just this past June. I quote from that story:

The jury ruled in Peat Marwick's favor in 1993, but the firm spent $7 million to defend itself.

The court ruled in their favor. And what was this about? It was about a $15,000 contract that Peat Marwick had to do some accounting for a business—a $15,000 contract to do some accounting for the firm. They ended up expending $7 million to defend themselves against a $15,000 contract. Of course, what has happened is these accounting firms are not taking on these clients any longer. So you do not get the accounting from the big seven or reputable accounting firms because of this kind of problem. The minute they take on a client for $15,000, they can look to end up paying a bill of $7 million, or more in some cases.

The current Chairman of the SEC, Arthur Levitt, as well as two former Chairmen, Richard Breeden and David Ruder, have all spoken out against abuses of joint and several liability. Chairman Levitt said at the April 6 hearing of our committee that he was concerned "about accountants being unfairly charged for amounts that go far beyond their involvement in particular fraud."

Again, this is borne out in a recent article in the Wall Street Journal which chronicled the stunning number of audit clients dropped by the big six accounting firms over the past few years. I quote the article:

Peat Marwick, the fourth largest American accounting firm, is dropping approximately 50 to 100 audit clients annually, up from zero 5 years ago. . .

Arthur Anderson has either dropped or declined to audit more than 100 companies over the past 2 years.

Does anyone believe that is sound, that is good, that is the way we ought to be doing business, how to encourage these accounting firms to be involved with these new industries starting up? I hope not.

Again, the current system has devolved to the point where it favors those lawyers who are looking out for their own financial interests over the interests of virtually everyone else.

As was the case with S. 240 that was passed by this body, the conference report contains a number of significant and balanced initiatives to deal with these complex problems. Let me address what we attempt to do with this bill.

First, the conference report empowers investors so that they, not their attorneys, have the greater control over the class action cases by allowing the plaintiffs with the greatest claim to be named plaintiff and allowing that plaintiff to select their counsel.

What an outrageous and radical thought this is, the idea that we might insist that at least to offer—you do not have to force it—but you offer to the plaintiff who is going to be most affected by the lawsuit to have an opportunity to become the lead plaintiff. All you have to do is offer it, Mr. President. We are not demanding, we are encouraging, and they might be able to decide which law firm would represent them.

That is considered a radical idea here, needless to say opposed by the trial bar. They do not want that to happen at all.

Second, this legislation enhances existing provisions designed to deter fraud and restores enforcement authority to the Securities and Exchange Commission. That was lost, Mr. President, in the 1994 Supreme Court case, the Central Bank case. We, in this bill, restore what the Central Bank took away from the SEC here.

Third, the conference provides a meaningful safe harbor for legitimate forward-looking statements so that issuers are encouraged to—instead of discouraged from—make much-needed disclosures.

Fourth, it makes it easier to impose sanctions on those attorneys who violate their basic professional ethics.

Fifth, it rationalizes the liability of deep-pocket defendants, while protecting the ability of small investors to fully collect all damages awarded them through a trial or settlement.

Let me go over the points in a little more detail. First, on empowering investors. The conference report—this bill—takes a number of steps to guarantee that investors, not their marauding attorneys, decide whether to, one, bring a case, two, whether to settle the case and, three, how much the lawyer should receive. Again, I do not think it is a terribly radical idea that we would allow them to decide whether or not to bring a case—after all, they are the injured parties, we are being told—or whether they want to settle it all or not. Maybe they do not want to settle. Maybe they think they have such a good case they would like to go to trial. That ought to be their decision, not the lawyer's.

Third, how much the lawyers get, rather than being decided by the lawyers, let the plaintiffs decide what their attorneys should be receiving.

The conference report strongly encourages the courts—"encourages," I emphasize that—to appoint the investor with the greatest financial interest in the case—often an institutional investor like a pension fund—to be the lead plaintiff. After all, they are the ones who are at the greatest risk. If there is real fraud, they have the most to lose. If the lawsuit is frivolous and millions are going to be spent to defend the suit, they lose as well. This plaintiff will have the right to select their own counsel and to pursue the case on behalf of the class.

So for the first time in a long time, Mr. President, securities litigation attorneys will have a real client to answer to. We are beginning to end the days when a plaintiff's attorney can crow—again, I will quote such a plaintiff's attorney. In Forbes magazine, listen to what this attorney said: "I have the greatest practice of law in the world because I have no clients." "I have the greatest practice in the world," he said, talking about securities litigation cases, "because I have no clients." "I bring the case," he says. "I hire the plaintiff. I do not have some client telling me what to do. I decide what I want to do.'' That is what this is all about. That is why this bill is important. That is what we want to stop here—we want to stop these situations in which a bunch of attorneys decide what they are going to do, and we want to have the aggrieved plaintiffs deciding what they are going to do. That is why this bill is important. Of course, this presumption can be challenged, as I said earlier—the presumption of the most injured plaintiff being the lead plaintiff, if other class members feel that the lead plaintiff is not fairly or accurately representing the class. So we are not insisting or legally requiring it. We are just asking the courts to step forward and ask the most injured party to come forward.

This change, we feel, Mr. President, will also end the unsavory practice of rushing to the courthouse. That is what happens under the present system. The first person to show up in the courthouse gets the case—the first person. This is a hallmark of the current system of the securities class action litigation.

Last June, I received a letter from Raytheon Co., one of the Nation's largest high technology firms. Raytheon, Mr. President, made a tender offer of $64 a share for E-Systems, Inc., another company. That is a 41 percent premium over the closing market price. Putting aside whether or not you think that is fair or not, nonetheless, most people thought it was a pretty fair offer. But I am not here to argue the fairness or unfairness of the offer. Let me allow, if I can, Raytheon to explain what happened next in a letter that I received from them:

> Notwithstanding the widely held view that the proposed transaction was eminently fair to E-System's shareholders, the first of eight purported class action lawsuits was filed within 90 minutes after the courthouse doors opened on the day that the transaction was announced.

An hour and a half later, one of eight lawsuits was filed in court. I do not care how good a lawyer you are, you do not go around and find plaintiffs in an hour and a half with a public announcement about an offer to buy another company. That is exactly what we are talking about here, racing to the courthouse. Do not look at the facts and examine whether or not it is right or wrong; file the lawsuit and immediately trigger the kind of costs associated with it. What about investors in that case, Mr. President? What happens to them in that case—the investors in Raytheon, the investors in E-Systems? Do the lawyers think about them at all, or the cost to those particular firms, and just answer the pleadings once a lawsuit is filed? Does anybody care about them at all under the present system? It does not appear so.

Mr. President, the conference report requires notice—a radical idea here again—of settlement arrangements that are sent to investors, who must clearly spell out important facts, such as how much investors are getting or giving up by settling, how much their lawyers will receive in the settlement. Again, let me emphasize here, in many cases, settlement is the wrong conclusion. An aggrieved plaintiff may want to go to court. They ought to have the right, these investors. Plaintiffs ought to have the right to decide whether or not they want a settlement and make the decision themselves after listening to intelligent arguments about what is the best course of action.

This means, under this bill, plaintiffs will be able to make an informed decision about whether or not the settlement is in their best interest or in their lawyer's best interest. Currently, the actual plaintiffs only receive, on average, 14 cents or less of every settlement dollar. But the plaintiffs' attorneys receive 33 cents, on average, of each settlement dollar. That is 14 cents for the shareholders, the investors, and 33 cents for the lawyers. You do not need to be a rocket scientist to understand that this system is broken, when plaintiffs, investors, are getting that minor return in these cases and the lawyers are collecting more than twice what they are getting.

The conference report puts an end to this outrageous practice, called the ''lodestar'' approach, by encouraging courts to award attorney's fees based upon a reasonable percentage of the total amount of the settlement or judgment.

The New York Times stated just 2 weeks ago in an article entitled ''Math of Class Action Suits; Winning $2.19 Cents Costs $91.33.''

It says:

> Many class actions end with plaintiffs winning meager awards, while their lawyers walk away with millions of dollars in fees.

Taken together, Mr. President, these provisions should ensure that defrauded investors are not cheated a second time by a few unscrupulous lawyers who skim their exorbitant fees right off the top of any settlement. One of the areas of the conference report that has received too little attention, in my view, is the effort to deter fraud. We have been talking about how you deal with it when fraud has arisen, when there is an allegation of fraud. What we try to do with this bill that we have worked on for more than 4 years now, through the number of hearings we have held and the witnesses we have heard from, is determine how we deter fraud from occurring in the first place so that investors are really protected? One of the areas, as I said, that received very little attention, in the midst of all of the hot air blowing from the plaintiffs' bar are those provisions that provide new protections, Mr. President, that have never existed before for investors against fraud.

I commend my colleague, Senator DOMENICI, and others, for really working to see to it that we have these provisions in the bill. For the first time, Mr. President, auditors, under this bill, are required to take additional new steps to detect fraud, and if they find fraud, they must—not may, but must—be reported to the Securities and Exchange Commission. They must look for the fraud—the auditors, the private companies—and if they find any, they have to report it. That has never been required before. That is a new standard, a new bar that we have raised here to try and deter fraud in the first instance. Nobody has mentioned that part. If they do, it is in just a passing way.

The conference report maintains current standards of joint and several liability just for those persons who knowingly, Mr. President, engage in a fraudulent scheme, thus keeping a heavy financial penalty for those who would commit knowing securities fraud.

Perhaps most significant, the bill restores the ability of the Securities and Exchange Commission to pursue those who knowingly aid and abet securities fraud. My colleagues who oppose this bill talk about our failure to get all of the aiding and abetting back in it. I do not disagree.

But what we have been able to do in this bill which could not get done—you would not get it done if you just had a freestanding aiding and abetting provision. I do not think it would pass. I disagree with that. I think we should.

To hear my colleagues say how bad this bill is because we do not deal with all of the things they would like in aiding and abetting, yet we get the class actions covered after the Supreme Court rules against us. Instead of denouncing this bill, they ought to be adding far more support to what we were able to accomplish here and make a major step forward.

This is a power diminished by the Central Bank decision of last year's Supreme Court case. In fact, some recent SEC enforcement actions have been dismissed, Mr. President, because Federal courts are ruling that the Commission had its aiding and abetting authority taken away by the Central Bank decision. We are restoring that in this bill and giving the SEC the power that they are being denied by lower court rulings around the country.

The conference report clarifies current requirements that lawyers should have some facts—again, a radical idea here—should have some facts to back up their assertion of security fraud by adopting most of the reasonable standards established by the U.S. Second Circuit Court of Appeals.

This legislation, therefore, is using a pleadings standard that has been successfully tested, Mr. President, in the real world. This is not some arbitrary standard pulled out of a hat. Again, this is a standard that has been used and tested and been tried. We include that in this bill, as well.

Mr. SPECTER. Will the Senator yield?

Mr. DODD. Let me finish my remarks, and I will be glad to yield. I am almost through.

Furthermore, Mr. President, the bill requires the court's settlement to determine whether any attorney had violated rule 11 of the Code of Civil Procedure, which prohibits lawyers from filing claims that they know to be false or frivolous.

Of course, the lawyers want the status quo for business and no standards at all for themselves in this area.

In the event of a violation of the complaint, the bill requires that the court find a substantial violation of rule 11 to have occurred in order for any sanctions to be triggered.

Mr. President, let me emphasize what this does. This is in the filing of a lawsuit. It turns out it is a tough standard to meet. But if the court determines that the attorneys knew that this was a frivolous lawsuit, that the allegations are false, then it can go after those attorneys that bring the lawsuit.

Now, the same standard applies in the defense attorneys' response to the pleadings. And they say that is unfair. It is not unfair at all. It is the plaintiff's attorneys that are bringing the case in the first instance. We are saying that if, in fact, the lawyers knew this was frivolous and false, then they ought to be held accountable for doing that. If attorneys on the other side in the filing of pleadings also engage in any false or frivolous allegations, then, they, too, will be held accountable for those statements. We think this is a fair and adequate standard to be applied to the attorneys.

The conference report does not change existing standards of conduct. It does put some teeth, however, into the enforcement of these standards. I point out what has happened over the years. While the rules have existed, nothing has ever been done with them in the past. In fact, they have been sitting there almost as idle pieces of paper with no real meaning at all.

The conference report provides a moderate and thoughtful statutory safe harbor for predictive statements made by companies that are registered with the SEC.

Mr. President, this is one of the most contentious parts of the bill. It provides no such safety for third parties, like brokers, or in the case of merger offers, tenders, rollups or issuance of penny stocks. That is not where the safe harbor applies.

By adopting this provision, the Senate will encourage responsible corporations to make the kind of disclosures about projected activities that are currently missing in today's investment climate.

Since the safe harbor has been the subject of so much attention, Mr. President, it is worth spending a little time to delve into the details of these provisions.

This reconfigured safe harbor that is in this conference report has two parts to it. The first is that any forward-looking statement may be accompanied by "meaningful cautionary statements that identify important factors that could cause" the prediction not to come true, or if a company or officer fails to meet that test, all that a plaintiff must do is prove that the person actually knew that the statement was false or misleading.

Mr. President, that is the very scienter standard written by our good friend and colleague from Maryland, Senator SARBANES, and proposed by him during the Senate floor consideration of S. 240 in June.

Quite honestly, it is hard for this Member to envision how anyone could lie in their predictive statements and still be covered by this safe harbor; this insulation from abuse is no doubt a key reason why the safe harbor is strongly supported by the Securities and Exchange Commission in their letter of support of this bill.

As the Commission stated:

> The need of legitimate businesses to have a mechanism for early dismissal of frivolous lawsuits argues in favor of a codification of the bespeaks caution doctrine that has developed under the case law. While the tradeoff requires that class action attorneys must have well written and carefully researched pleadings at the outset of the lawsuit, we feel this is necessary to create a viable safe harbor. Given that it does not prevent Commission enforcement actions, and excludes the greatest opportunities for harm to investors.

The idea that this conference report contains any license to lie is simply and totally untrue and, particularly in light of the strong support of the Securities and Exchange Commission, represents just a last, in my view, desperate attempt by opponents of this legislation to derail the process.

The legislation before us, Mr. President, preserves the rights of investors whose losses are 10 percent or more of their total net worth of $200,000. These small investors will still be able to hold all defendants responsible for paying off settlements regardless of the relative guilt of each of the named parties.

This is the modification for the joint and several sections. This threshold, I think, should more than protect the vast majority of individual investors participating in the markets today.

Let me tell you why I say that. A 1993 census report stated that the average net worth, Mr. President, of an American family was about $47,000. That is their net worth, $47,000. While in 1990, the New York Stock Exchange study found the median income—the income, now, the median income—for individual investors was $43,800 a year, which, according to the census data extrapolates to a net worth of roughly $150,200.

Let me explain that again. The words can be confusing. The average American family has a net worth of something in excess of $47,000 a year; the average of the median investor in the New York Stock Exchange has an income of $43,000 a year; the Census Bureau extrapolates an income of $43,800 to a net worth of those investors of $150,000.

That is why we chose the $200,000 level and below, so that the majority of investors—the majority of investors, the small investors—would not be adversely affected by the proportional liability standards included in the bill. We tried in this bill to see to it that those smaller investors would not be adversely affected.

While the bill will fully protect small investors so they will recover all of the losses to which they are entitled, the bill establishes a proportional liability system to discourage the naming of the deep pocket defendants that I talked about earlier.

The court would be required to determine the relative liability of all the defendants, and thus deep-pocket defendants would only be liable to pay a settlement about equal to their relative role in the alleged fraud. What a radical idea that is as well. A defendant who is 10 percent responsible for the fraudulent actions would be required to pay 10 percent of the settlement amount. That is just fair. That is equitable.

I would say, quickly, again, we protect smaller investors. We say, for them we are going to have a different standard, but for those who are above that line, to go after someone who is only fractionally involved and say that you ought to pay the whole amount here ought to strike every person in this country as fundamentally unfair, and that is what we try to change in this bill. However, as I said, in the event of an insolvent defendant, all the other defendants would be required to contribute as much as an additional 50 percent of their proportional share of a settlement to ensure that investors receive as close to 100 percent of their just settlements as possible. By creating a two-tiered system of both proportional liability and joint and several liability, the conference report preserves the best features of both systems.

Having spent so much time on what is in the conference report, let me briefly spend a few minutes, if I can, discussing a few of the things the conference report does not do.

The PRESIDING OFFICER. The Chair will advise the Senator from Connecticut, under the previous order, the hour of 12:30 having arrived, the Senate would stand in recess until 2:15 p.m.

Mr. DODD. Mr. President, I ask unanimous consent to proceed for 5 additional minutes, if I could, to complete the statement.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object, under the procedural statement, I ask unanimous consent that debate on the bill be extended for 15 minutes beyond. I know that is an imposition on the Presiding Officer. I have 15 minutes reserved, and I have been here for most of the morning, a good part of the morning, waiting to speak.

The PRESIDING OFFICER. Is there objection?

Mr. FEINGOLD. Reserving the right to object, I ask if we could extend that to 25 minutes so we could go straight to 1 o'clock?

Mr. LEAHY. Reserving the right to object, and to make life easier for the distinguished Presiding Officer, I ask unanimous consent that unanimous-consent request be amended to allow me to be recognized for no more than 6 minutes at 2 o'clock, which I understand is the time we are coming back in?

The PRESIDING OFFICER. The hour of 2:15 is the previously agreed upon time.

Mr. LEAHY. I ask unanimous consent that unanimous-consent request be amended so that I am recognized for 6 minutes at 2:15.

The PRESIDING OFFICER. Is there objection? Hearing no objection, the following will be the order: an additional 5 minutes will be extended to the Senator from Connecticut, and then 15 minutes will be extended to the Senator from Pennsylvania, after which 10 minutes will be extended to the Senator from Wisconsin, and, at 2:15, 6 minutes will be extended to the Senator from Vermont.

Mr. BRYAN. Mr. President, I have no objection, just a parliamentary inquiry. Those who are speaking with reference to the pending matter, that will be in accordance with the practice that those speaking on behalf, their time will be charged to the distinguished Senator from Utah, the time of those speaking in opposition will be charged to the time remaining of the Senator from Nevada; is that correct?

The PRESIDING OFFICER. That is correct.

The Senator from Utah.

Mr. BENNETT. Mr. President, I ask unanimous consent the unanimous-consent agreement be modified further, that Senator HATCH be recognized to speak following Senator LEAHY when we come back after lunch, for 15 minutes.

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

The Senator from Vermont.

Mr. LEAHY. Mr. President, for clarification, my 6 minutes will be as in morning business, so it will not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The unanimous consent is so modified.

Mr. DODD. Mr. President, I think I just lost my 5 minutes so I will ask you to be slow with that gavel.

First and foremost, Mr. President, here is what the bill does not do. It is nothing like the legislation that was adopted in the House. Let me say, had the House bill come back in this area, I would have voted against it and spoken vehemently against it. This bill was much closer to the bill that passed this body earlier this year and, in fact, strengthens the legislation, as I mentioned earlier, with the inclusion of language by our distinguished colleague from Maryland, Senator SARBANES. In my view, the House bill would have been a tragedy.

For instance, we do not have loser pay provisions here. My colleagues know what that means. We took that out of the bill. That was part of the House bill. The House legislation established pleading standards that were so high, I would say—and I know my colleague from Pennsylvania is interested in this—that it would have been impossible to bring a suit, in my view, had the House language been adopted. We, as I said earlier, adopt the Second Circuit Court of Appeals standard.

The House legislation contained no safety net for small investors. As I have just described, we do. The conference report maintains joint and several liability for small investors and requires, even in proportional cases, where you have a totally insolvent plaintiff, the conference report requires that defendants pay a total of 150 percent of their proportionate share in the event of insolvent people. The House legislation had a safe harbor provision that, frankly, you could have parked the entire 7th Fleet in, if you had wanted to. That is not the case here. We have strengthened safe harbor. The conference report creates a narrow safe harbor that is strongly supported by the Securities and Exchange Commission.

So, this conference report is a far cry from the intemperate measure passed by the House. Instead, it reflects the moderate and balanced approach adopted by the Senate when it passed this body by a margin of 69 to 30. In fact, a dramatic change from the original House bill was recently noted in an editorial by the Washington Post, which is entitled ''Antidote to the Strike Suit.''

''It started off,'' the editorial said, ''last winter as a flamboyant ideological statement. But the bill to curb shareholders' suits has now been whittled and sanded by many hands into a truly useful piece of legislation. An intemperate initiative is turning out to be much more promising than seemed possible last March when the House originally passed it.''

So I think we put together a good package here. I urge my colleagues to support this legislation. We are not writing the Ten Commandments here. We are trying to address a serious problem. Time will tell whether or not particular provisions here have done everything we would like them to do. But, clearly, the system is broken and it needs to be changed.

This bill has been well thought out. It has been worked on in a bipartisan way. We have listened to the best experts in the country who helped us put it together. And the Securities and Exchange Commission endorses this bill and has worked with us to make it a good bill.

So, Mr. President, I urge my colleagues to be supportive of it. I urge the President to sign it. I know he is considering whether or not to lend his pen to this bill. I think he will sign it. I think we can make a strong case that we have put together a sound piece of legislation that will truly make a difference, particularly for those businesses which must be the future economically for our country in the 21st century, those high-technology firms, those startup industries that are the ones who are the prey of these attorneys who go out and take advantage of their being in flux, that they are not quite stable yet, that they are getting their legs. They are the ones that are preyed upon. That is what we need to stop here. This bill does that, we think, in a significant way, and I urge its adoption.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I had sought to ask my distinguished colleague from Connecticut a question relating to the pleading standard when he had said, in his presentation, that the standard in this statute is a tested standard. Then, later in his presentation, he made reference to this Senator on the pleading issue.

The question that I have for my colleague from Connecticut turns on what the pleading standard of the bill is, as having come back from conference, which is significantly different from that which left the Senate. The amendment which this Senator offered had incorporated into the statute the second circuit language which would have clarified the language in the Senate bill, which provided that, ''In any private action arising under this title, the plaintiff's complaint shall, with respect to each act or omission alleged to violate this title, specifically allege facts giving rise to a strong inference that the defendant acted with the required state of mind.''

That was the tough second circuit standard. This Senator offered an amendment, which was accepted on the Senate floor, to incorporate what the second circuit said was the way of establishing that strong inference, to provide it by ''alleging facts to show the defendant had both motive and opportunity to commit fraud, or by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness by the defendant.'' The conference report struck out the language which my amendment had inserted which would have given guidance to how plaintiffs could meet that very stringent standard.

In addition, the conference report added that these facts had to be ''stated with particularity,'' which is an even tougher standard than the language which had gone from the Senate bill.

So when the distinguished Senator from Connecticut talks about, in his words, and he referred to the House measure as ''intemperate''—I will not seek to characterize it, but I do know his characterization of the House measure was ''intemperate''—contrasted with what he said the Senate action was, ''moderate,'' that the bill that has come back from conference is a lot different than the bill which the Senate sent out. I think there is an enormous difference.

So the question that I have for my colleague from Connecticut is, where has this language in the conference report on the pleading standard for state of mind been tested in light of the fact that the toughest standard in existence to this moment is the second circuit standard, and this conference report toughens up the second circuit standard in two important respects by striking out the way you plead that tough state of mind standard and also by adding the requirement of pleading with particularity?

Mr. DODD. Mr. President, let me respond to my colleague. I know he has a great deal of interest in this whole area of competing standards. Basically, what we intended to do here was to codify the second circuit's pleadings standards, not to indicate disapproval of each individual case that came before it. What we were driving at here was to insist that facts be pleaded, that there be an explanation of where these facts come from in these lawsuits that are being brought.

Indeed, the Banking Committee reported with its bill—and included similar language in support—and said the committee does not intend before we consider the bill to codify the second circuit's case law interpreting this pleading standard, although courts may find this body law instructive.

So, in response to my colleague from Pennsylvania, even before we brought the matter up, we made it quite clear that we were, as I say, taking every case that had come before the second circuit but rather applying the pleading standard requirements there. That had been tested.

Mr. SPECTER. I challenge that.

Mr. DODD. Let me respond. Even my colleague's amendment goes beyond that in a sense. So you cannot, on the one hand, have us stick with it rigidly and have the Senator's in the amendment.

Mr. SPECTER. I challenge that. If I have the floor, I challenge that.

In what respect does my amendment go beyond this? That simply is not true.

What my amendment does is to take the second circuit language under which a plaintiff can meet the tough state of mind standard, and put that in the statute. This body agreed to that. And now it has come back from the conference report deleted.

In what respect did my language go beyond the second circuit?

Mr. DODD. The Senator's amendment adopted the guidance of the second circuit, but the amendment of the Senator from Pennsylvania completely omits a critical qualification in the case law. The courts have held that ''where motive is not apparent, a plaintiff may plead scienter by identifying circumstances'' indicating wrongful behavior, but ''the strength of the circumstantial allegations must be correspondingly greater'' from the number of cases. If I may respond, the Senator's amendment seriously, in the view of the——

Mr. SPECTER. From where is the Senator reading? In a circuit court opinion?

Mr. DODD. The Senator's amendment seriously—

Mr. SPECTER. Where is the Senator reading from? Is it in a circuit court opinion?

Mr. DODD. Yes.

Mr. SPECTER. From where?

Mr. DODD. There are several here.

Mr. SPECTER. Tell me where the citation is, because I have the opinions here. I challenge that any language appears from the second circuit opinion which was not incorporated in my amendment.

Mr. DODD. I am quoting here three different cases.

Mr. SPECTER. Tell me where.

Mr. DODD. The Three Crown Limited Partnership versus Caxton Corporation.

Mr. SPECTER. What page?

Mr. DODD. Does the Senator want to go to 817 Federal Supplement 1033, Beck versus Manufacturing Hanover Trust? There are two right there.

Mr. SPECTER. Mr. President, the language handed down by the second circuit was articulated by Chief Judge Jon Newman as follows:

> These facts or allegations must give rise to a strong inference that the defendants possess the requisite fraudulent intent. A common method for establishing a strong inference of scienter is to allege facts showing a motive for committing fraud and a clear opportunity for doing so. Where motive is not apparent, it is still possible to plead scienter by identifying circumstances indicating conscious behavior by the defendant, though the strength of the circumstantial allegations must be correspondingly greater.

The amendment which this Senator offered and was adopted by the Senate followed the pleading requirement by saying that the required state of mind may be established either by alleging facts to show the defendant had both motive and opportunity to commit fraud or by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness by the defendant.

I submit that the amendment which I offered and was adopted by the Senate tracked the second circuit's language directly, and that by striking the amendment which the Senate agreed to, by conceding to the House, the conference report omits a very critical factor in giving guidance as to how a plaintiff meets this tough standard for pleading state of mind.

I would ask my colleague from Connecticut whether it is not true that the conference report came back with an additional toughening factor requiring that the facts going to state of mind be pleaded with particularity.

Mr. DODD. I say to my colleague, what we are attempting to do here, again, I think, is instead of trying to take each case that came under the second circuit, we are trying to get to the point where we would have well-pleaded complaints. We are using the standards in the second circuit in that regard, then letting the courts—as these matters will—test. They can then refer to specific cases, the second circuit, otherwise, to determine if these standards are based on facts and circumstances in a particular case. That is what we are trying to do here.

I say to my colleague that I supported my colleague's amendment when he offered it here in on the floor of the Senate back when the bill was considered. Again, as I say, personally, it says the statute of limitations and a few others. But we are dealing in conference here, and the bulk of what came back from the conference report was what was in the Senate bill.

My colleague would have preferred, I know, to have his amendment kept in its entirety here. We are trying to strike a balance. As he knows, he has been to conferences as often as I have been in the past and knows the nature of well-pleaded complaints. That is the standard we are trying to hold to that came out of the second circuit, not on a case-by-case basis where they differed in some degree in interpretation.

The PRESIDING OFFICER. Does the Senator from Pennsylvania reclaim his time?

Mr. SPECTER. I do.

The PRESIDING OFFICER. The Senator has 4 minutes and 50 seconds.

Mr. SPECTER. I thank my colleague from Connecticut for responding. When you have a dialog in debate it is invariably more instructive than the speeches we make, however eloquent our individual speeches may be. But I have very limited time remaining.

The point that I wanted to make is that regardless of what the conference report intends—and the Senator from Connecticut talks about what we are trying to accomplish—the plain truth of the matter is that this is an impossible pleading standard, that where you take what was a tough standard by the second circuit on pleading state of mind, and then you delete the ways you prove state of mind, and then add in addition a particularity requirement, you simply do not have a way that a plaintiff realistically can go into the Federal court under the securities acts and have a fair chance to state a case.

I say that with some substantial experience in the practice of law, as a trial lawyer for some 10 years in the civil field and with substantial practice in the criminal field, which has some bearing, and my work in the past 15 years on the Judiciary Committee, that where you have a situation here where there is a mandatory stay of discovery when a motion to dismiss is filed, that you simply do not give an opportunity to plaintiffs to go into court and have a chance to articulate a case.

We are dealing here, Mr. President, with enormous sums of money. In 1993, the most recent year available from the New York Stock Exchange and NASDAQ, there was some $3.6 trillion traded, not even taking into account the American Stock Exchange, more than half of the gross national product of the United States. And we have had an enormous number of very, very important fraud cases. The Keating case involved some losses in excess of $4.4 billion. The Drexel Burnham case, the Quorum case, the tremendous matter now pending involving the losses incurred by Orange County.

So we are talking about gigantic interests. The bill that has come back from conference, Mr. President, virtually forecloses a realistic opportunity to bring a suit under these pleading standards. And what we are not trying to do is what specifically has been done here. The standard of review is especially problemsome in the context of the mandatory rule 11 review required by the conference report.

In earlier argument on June 27 of this year, at page S9165 of the RECORD, I put in an extensive listing of letters from judges who did not want to have this mandatory rule 11 review, the Federal judges who practice in it.

Then the conference report has a presumption that, after the mandatory review, if there are sanctions against the complaint, the costs of litigation and lawyers' fees will be imposed upon the plaintiff. This is realistically more than a chilling effect. It will have the effect really to virtually discourage litigation in an important field where these private lawsuits have had a very important impact on policing the field. The Securities and Exchange Commission cannot possibly undertake it by themselves. The distinguished Senator from Connecticut concedes that in his speech about the importance of private rights of action to enforce the securities laws. But I am concerned, as a person who has had experience in the field in representing, under the Securities Act, defendants as well, that this bill in its present form simply is unrealistic and unreasonably restrictive——

Mr. DODD. Will my colleague yield on this point?

Mr. SPECTER. Not on my time. I will be glad to if we can get an extension.

Where you have especially the problem compounded by the short statute of limitations, which is 1 year from discovery and 3 years from commission. Efforts were made to extend the time to 2 and 5 years, favored by the Securities and Exchange Commission, but they failed. And where you have the safe harbor provisions which have come back here contrary to what has been asserted here, that there is no liability for forward-looking statements with cautionary statements no matter what the intent. The Senate bill said, if there was a knowing misstatement, that it not be covered by the safe harbor. That has been turned around by the conference report. What has come before us, Mr. President, I submit, is unreasonable, unrealistic, and imposes restraints which do not protect investors. It does not strike an appropriate balance.

I would be glad to yield to my colleague from Connecticut.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. I thank my colleague. I was going to point out with regard to my colleague——

The PRESIDING OFFICER. The Senator from Wisconsin has 10 minutes.

Mr. DODD. Will my colleague yield for 30 seconds?

The point we made from "particularity" to "specificity"—we can lose an audience here quickly in debate—that was recommended by the judicial conference. They are really responding to what they thought was a better use of language there than what we incorporated in the bill. It was not a slight at all intended to be aimed at our colleague from Pennsylvania. The judicial conference recommended that word change. They felt it would be better. That is why we adopted it.

Mr. SPECTER. If my colleague would yield to me.

When you talk about particularity, it may not mean a lot on the Senate floor, but it means a lot in litigation, and billions can be affected by that kind of a pleading change.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I rise in opposition to H.R. 1058, the Private Securities Litigation Reform Act, and do so because voting against the conference report, I think, is in the best interests of the average investor, not only in my home State of Wisconsin but all across the country.

Mr. President, I think it is important to note that this bill was proposed with the worthy goal of trying to limit frivolous litigation. In particular, the goal was to stop the so-called strike suits that we have heard so much about. I think there is no question that trying to stop that is a legitimate goal that we can all support. However, the evolution of this bill starting from its introduction to its modification and initial passage in this body, to the conference report before us today has, Mr. President, been marked by a steady and unwarranted erosion of the basic protections the average investor in this country expects and, in my opinion, deserves.

Simply calling this or any other piece of legislation a reform act does not make it so. The term "reform" implies that change is taking place that will serve the greater good. Sadly, this measure fails to achieve this worthy goal. In fact, when one looks closely, it becomes evident to me that this bill will work to the detriment of hard-working Americans who depend upon the securities laws to protect their savings and retirement and investments.

As many of my colleagues have noted, this bill seemingly gets worse with each subsequent version that is placed before us. For example, the conference report expands the already flawed safe harbor provision which passed this body in July. The language of this bill protects forward-looking statements by insulating the maker of those statements from liability even if they are deliberately false, provided the statement is accompanied by what is termed "cautionary" language. Therefore, in the face of a disclaimer, investors will be left with no recourse against a corporate insider who makes predictions which were deliberately false.

Furthermore, the conference report includes language contained in the House bill which explicitly states that there is absolutely no duty for any individual to update a forward-looking statement. What that means is even if it becomes apparent that a previously made forward-looking statement is false, the person who made the statement has no legal obligation to inform anyone of this new knowledge. It is difficult to imagine that this provision can provide the average American investor with any level of comfort or confidence.

Mr. President, beyond this baseless inequity, the bill also fails to remedy the inadequate statute of limitations period for bringing these very complex cases of securities fraud. The failure to extend the statute of limitations in the face of evidence that these cases often take a great deal of time to discover and develop and prosecute is, in my view, counter to the notion that securities law exists to protect the investor.

The practical result of this failure will be that legitimate plaintiffs, through no fault of their own, will be turned away at the courthouse door. This again, is hardly the kind of result you would expect from something that has the label "reform."

There are other flaws in this legislation as well, including the failure to hold liable those professionals, such as lawyers, accountants and underwriters, who aid and abet in the perpetration of securities fraud.

Additionally, the bill sets forth pleading thresholds that are very difficult to attain. The effect is to require the establishment of certain facts at the outset of a case, although the plaintiff, Mr. President, has had no opportunity to conduct any discovery. In setting this unusual standard, the conference elected to drop an amendment offered by my colleague from Pennsylvania, Senator SPECTER, which passed this body with 57 votes. It would have clarified that what was required to constitute a well-pleaded complaint was evidence that the defendant had motive and opportunity to defraud, not actual proof of intent at that point.

The conference report, in making the plaintiff prove the case even before the case has begun, goes a lot further than eliminating frivolous suits. What it will do is have an adverse and potentially detrimental effect on legitimate cases as well.

The fee-shifting provisions of this bill will actually establish a harsher consequence for plaintiffs than for defendants who violate the Federal rules.

As Ed Huck, the director of the Alliance of Cities, in the Wisconsin State Journal, said:

> Imagine city or county officials being swindled out of millions of taxpayer dollars—and learning that they'll have to risk millions more if they want to pursue a lawsuit. That's what the ''loser-pays'' provision of this legislation means—And, in a word, that's ''intimidation'' of crime payers.

Mr. President, we should be wary of any legislation that has the effect of intimidating victims of fraud.

In short, Mr. President, this bill is unbalanced, misguided, and will harm thousands of Americans who bear no relation to the frivolous lawsuits that this bill is supposed to target.

There is no doubt that frivolous litigation, in any area of the law, is detrimental to our system of justice and to the society at large. However, the answer to these types of suits is not to foreclose the ability of legitimate plaintiffs to protect themselves against fraud, nor is it to deprive them of the right to seek recovery in court when they are defrauded.

In my opinion, the negative consequences of this unbalanced bill will be significant and far reaching.

Mr. President, I note that the report that accompanied the original S. 240 pointed out the simple, but important, goal of American securities law, and that is to promote investor confidence in the securities market. Sadly, the provisions of this bill fall very short of attaining that fundamental goal.

We must be vigilant in our efforts to seek out and eliminate frivolous litigation. However, equally as important is our obligation not to lose sight of the average American investor, the person investing for retirement or to put children through college or simply to have a little better quality of life.

In our zeal to reform, it is protection of these people which must guide and inform our efforts.

So it is unfortunate that the provisions of this bill provide little more than hollow comfort to the American investor, but such is the case with H.R. 1058. In my opinion, the bill offers its alleged reform at a price that cannot be justified. Protecting the American investor should not be sacrificed in the misapplied name of ''reform.''

The securities laws of this Nation are essential to hard-working men and women all across America. Given that this conference report fails to uphold the tradition of protecting these hard-working men and women, I simply cannot support it. I intend to vote against this conference report.

I thank the Senator from Nevada for his strong leadership on this issue. I yield back the remainder of my time and yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I understand that under the previous order, we now stand in recess for lunch?

The PRESIDING OFFICER. We stand in recess until 2:15.

UNANIMOUS-CONSENT AGREEMENT

Mr. BENNETT. Mr. President, prior to that action, I ask unanimous consent that following Senator HATCH's presentation this afternoon, that the senior Senator from South Carolina, Senator THURMOND, be recognized for 15 minutes on a nongermane matter. This, I might note, is the senior Senator's 93d birthday, and he has asked for this time. I think anyone who lives to that age and retains the faculties that the senior Senator from South Carolina has ought to be given whatever it is he asks for on his birthday.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Mr. President, I have no objection, but I would further like to amend the unanimous-consent request that following the 15 minutes of the distinguished senior Senator from South Carolina, to put Senator BOXER for 30 minutes, I am told, although it is not on our time. And I just seek to clarify, Senator REID has sought time.

Mr. BENNETT. I ask unanimous consent to include Senator REID for 15 minutes following Senator BOXER.

The PRESIDING OFFICER. The Chair inquires, is the time of Senator BOXER and Senator REID to be charged against——

Mr. BRYAN. Senator BOXER's time will be charged to the Senator from Nevada; Senator REID's time, as I understand, will be charged to the Senator from Utah.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BENNETT. I ask the Chair, how much time remains on each side?

The PRESIDING OFFICER. There are 2 hours and 24 minutes remaining for the Senator from Utah; 2 hours and 13 minutes remaining for the Senator from Nevada.

Mr. BENNETT. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 1:03 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KEMPTHORNE).

The PRESIDING OFFICER. Under the previous order, the Senator from Vermont [Mr. LEAHY] is recognized for up to 6 minutes.

TELECOMMUNICATIONS CONFERENCE PROPOSALS FOR REGULATING SPEECH ON THE INTERNET

Mr. LEAHY. Mr. President, in some ways parody is becoming reality. I refer to the debate that is going on in the telecommunications conference over how we are to impose Government regulation over constitutionally protected speech on the Internet.

Last year, the magazine PC Computing published an April Fool's parody. Let me tell you a little bit about it. It said that I introduced a bill, No. 040194—for April 1, 1994—to ban drinking on the information superhighway. According to the article, this bill that I supposedly introduced would prohibit anybody from using a public computer network while intoxicated. They also said there was a rider on this bill to make it ''a felony to discuss sexual matters on any public access network, including the Internet, America Online, and CompuServe.'' Senators were chided for thinking there is a physical highway and that a permit was required to ''drive'' a modem on the information highway. The article noted that complaints about the imaginary bill are ''getting nowhere'' because ''who wants to come out and support drunkenness and computer sex?''

The parody concludes on a gloomy note, with the following words:

> There is nothing to stop this bill from becoming law. You can register your protests with your Congressperson or Ms. Lirpa Sloof in the Senate Legislative Analyst's Office. Her name spelled backwards says it all.

I enjoy using a computer, as a lot of us do, but sometimes some who use them do not have a tremendous sense of humor, just as some Members of Congress do not. They did not notice that the name spelled backward is ''April fools.'' The bill number was April 1, 1994. It should have told somebody something. But some actually thought this was real, and I started getting calls over the phone and messages over the Internet to my office saying, ''What are you doing about this drunk driving on the information superhighway bill?'' But that was then, and that was a joke. Today, unfortunately for all Internet users, the debate taking place in the telecommunications conference about imposing far-reaching new crimes for indecent speech over the Internet is not a parody but very real.

The conferees have been meeting and going over this enormous task determining how parts of telecommunications would work, how you regulate cable operators, wireless systems, and how you protect universal service. You would think they would not have time to look at something like cyberporn, but that seems to be one major consideration they have. Even though there are no members of the Senate Judiciary Committee at that conference, they are trying to figure out how to make new Federal crimes as part of the telecommunications bill.

The Senate, of course, passed the Exon-Coats Communications Decency Act, which would punish with a 2-year jail term any Internet user who posted a message with indecent language or used a four-letter word in a message to a minor. As originally written, it would make it illegal to receive indecent material whether or not the user knew the material was indecent at the time he downloaded it. Service providers would also risk criminal liability and fines for their subscribers' use of indecent language.

Now, we have to ask ourselves if this makes such sense. We saw what happened in Vermont last week. A Vermonter from Underhill, VT, found that her personal profile on America Online had been deleted. She asked why it was deleted and was told it was because vulgar words were used on it. So she checked to see what was the vulgar word. The word ''breast'' was used. Why? Because she was a breast cancer survivor and was using America Online to correspond with other breast cancer survivors. So, this word came up and because of hypersensitivity over Congress being worried about words used on the Internet, she was yanked off. This is ridiculous in this day and age.

One wonders if, in the future, recipes for chicken cacciatore sent online will only call for dark meat to avoid using the ''B-'' word.

We should understand there are plenty of laws on the books that apply to the Internet by banning obscenity, child pornography and threats from being a distributed. What we are talking about is regulating constitutionally protected speech. One proposal under consideration by the conference would impose penalties on anybody who transmits protected speech if it is considered indecent.

In addition to effectively banning indecent speech, the conference is considering proposals to impose criminal liability on both the speakers of indecent content as well as online service providers. The result would be to draft the service providers into the role of Net police. Service providers like America Online and Prodigy, telephone companies providing modem connections, and libraries and schools hooking our Nation's children up to this brilliant new medium would face the risk of being fined and even jailed.

To avoid liability, service providers, libraries, and schools would bear the onus of asserting complicated defenses to prosecution. The implications of being hauled into court in the first place—especially for schools and libraries—should not go unnoticed. Many providers will seek to avoid the risk of litigation altogether by censoring all online speech to that appropriate for kindergarten children, or refusing to serve children at all.

These extreme proposals on the table in the telecommunications conference would leave online communications in a severely disadvantaged position in our society. While Newsweek magazine's recent cover story trumpeted the vision of the computer mogul Bill Gates, the U.S. Congress is simultaneously poised to shut down this new medium and vastly change the landscape of the information age. We must stop being paternalistic Luddites and embrace our new communications potential.

Because indecency means very different things to different people, an unimaginable amount of valuable political, artistic, scientific and other speech will disappear in this new medium. What about, for example, the university health service that posts information online about birth control and protections against the spread of AIDS? With many students in college under 18, this information would likely disappear under threat of prosecution.

I understand that Representative WHITE will make an alternative proposal to the telecommunications conference tomorrow. His proposal avoids regulating constitutionally protected speech, and limits any regulation to materials harmful to minors. This is a step in the right direction, but still leaves Internet users guessing at what may be considered harmful to minors in different areas of this diverse country.

The Internet and other computer networks hold enormous promise for enhancing our lives in ways that would have been unthinkable only a brief decade ago. But the growth of this network will no doubt be chilled if users fear that they risk criminal liability by using particular words that might, in some jurisdictions, be considered indecent. Or, if service providers simply refuse to provide Internet access to children under 18 years of age, due to the risk of criminal liability.

I have written, along with several other Members, to the chairman and ranking member of the Senate Commerce Committee urging the conferees to appreciate the implications that these proposals will have for the Internet. They should not rush consideration of these weighty issues. This is a great new communications medium and the conference should deliberate carefully before it gives its blessing to new crimes for saying things that some people, some where in this country, may deem to be indecent for children.

We should all be concerned lest the parody becomes reality.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak for 10 minutes as in morning business.

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

CENSORING THE INTERNET

Mr. FEINGOLD. Mr. President, I am pleased to be able to follow the Senator from Vermont who spent a few minutes to address a matter which was reported by the news media throughout the country this weekend in which the Senator from Vermont referred to and has a great relevance to legislation which the Senate passed this summer and will consider soon again.

The telecommunications conferees may within the next 24 hours decide whether this Congress is going to take the unwise step of censoring the Internet.

I am speaking of the Communications Decency Act which passed the Senate overwhelmingly as an amendment to the telecommunications deregulation bill in June. The Communications Decency Act contained criminal penalties for the transmission of constitutionally protected speech over computer networks. The penalty for transmitting indecent speech which might be accessed by a minor was up to 2 years in prison and fines of up to $100,000. Indecency, unlike obscenity, is constitutionally protected. Indecent language has thus far, only been defined by the FCC in regard to the time, place, and manner in which it may be transmitted. The definition includes the so-called seven-dirty words including what some might call mild profanity.

When this legislation was offered as an amendment in the Senate, I objected for a number of reasons. My fundamental concern was, and continues to be, that prohibitions on speech labeled indecent are unconstitutional. While courts have upheld restrictions on indecency to minors on other some forms of media, the Communications Decency Act would restrict communications between adults as well. The legislation, as passed by the Senate, could subject consenting adults communicating over a public USENET group to criminal penalties if their conversation took place in a forum that was accessed by a minor. I believe that not only is that unacceptable, it is also unconstitutional. Adults should not have to self-censor their words over public information forums. A profane exchange between two adults on a street corner which is overheard by a child would not subject those adults to criminal sanctions. However, if that exchange occurred on a public forum over the Internet and a child accessed that forum, those same adults could land in jail.

During the floor debate, I raised serious concerns that the Communications Decency Act would have a chilling effect on computer networks, forcing adults to self-censor their words to what is appropriate for the youngest of children in the most conservative communities in the country. I, along with my colleague from Vermont, Senator LEAHY, suggested that this type of censorship would also have a chilling effect on the many socially valuable forums that exist via the Internet. There exist currently many on-line support groups for child abuse victims, rape victims, victims of disease, for those coping with AIDS, and other social issues. In addition, there exist chat groups, bulletin boards and USENET groups to discuss presumably adult topics which might contain the seven dirty words or other adult language. I suggested that the Communications Decency Act would suppress those types of forums, limit the content of the discussions within those forums, and ultimately result in their termination.

The proponents of the Communications Decency Act assured the Senate that such was not the intent of the amendment. In fact, Mr. President, some suggested that these types of concerns were raised in an effort to spin the issue. They suggested these fears were not real and were not likely to be realized.

I suggest to Members of this body that news reports over the weekend confirm just how quickly those fears could be realized if the Communications Decency Act became law. One of the companies providing on-line services to consumers, America Online, in an effort to screen out filthy, vulgar and obscene language, apparently included the word ''breast'' in the list of prohibited words on AOL's services.

Mr. President, the word ''breast'' has been used many times on the Senate floor with respect to health care legislation, is not even among the so-called seven dirty words. It is not indecent. It is not profane. Yet it was screened out by a service which has been under tremendous fire for not policing its networks carefully enough.

Of course, the deletion of the word breast was met with an enormous outcry by women who participate in a breast cancer survivors online support group. According to press reports the deletion of the word breast from allowable AOL language became known when an AOL subscriber created her member profile identifying herself as a breast cancer survivor. She received a message from AOL indicating she could not use ''vulgar words.'' AOL soon was barraged by complaints by other users of the breast cancer survivors chat room. The word ''breast'' was subsequently allowed back on the service. However, an AOL spokesperson caveated that with ''as long as it is used in an appropriate manner.''

I mention this incident not to fault America Online. They are responding to a series of calls by interest groups, Members of Congress, and others to police speech over their services and to keep AOL family friendly. AOL like other on-line service providers is anticipating additional Government restrictions on speech over the Internet. When under the threat of Government imposed speech restrictions and potential criminal sanctions, it is quite reasonable to overreact, to be overly cautious, and to restrict more than that which is necessary.

Mr. President, this is exactly what I fear will happen if the Communications Decency Act becomes public law. Words will be banned. Speech will be restricted. This, Mr. President, is the chilling effect that Senator LEAHY and I referred to on the Senate floor just 5 months ago. Perfectly reasonable and acceptable language will be restricted and prohibited.

Mr. President, while it may seem ridiculous that the word ''breast'' was, at least for a short period of time, considered vulgar, it would not be unreasonable for a company like AOL to restrict such words if the Communications Decency Act becomes law. Indecency is a largely undefined term. We know how the FCC has defined indecency for broadcast, but it is unclear what would be indecent on computer networks. If such restrictions are imposed, people will err on the side of caution in their speech. Under the Communications Decency Act, to protect themselves from criminal liability, on-line services will likely find themselves prohibiting the word ''breast'' as well as many other words. Adults with direct Internet access will also be forced to self-censor their speech, guessing what might be indecent, and guessing who might access their communications.

In Saturday's Chicago Tribune, Barbara LeStage, a member of the American Cancer Society, commented on the AOL prohibition on the use of the word ''breast''. Her comments, I think are fairly insightful. She stated

I don't have any problem with AOL trying to keep dirty words off their service. But I don't consider breast to be a dirty word. If you have people who see it as dirty, for whatever reason, then this [prohibition on use] is going to continue to happen.

Mr. President, Ms. LeStage is exactly right. If indecency is going to be outlawed and the term therefore defined by community standards and the courts, this will continue to happen. People differ in their beliefs about what is appropriate for children, about what is dirty, vulgar or indecent. To some individuals even extreme profanity may not be indecent, to others, perhaps the word ''breast'' is indecent. When AOL determined that ''breast'' would be allowed under appropriate circumstances, we must wonder under what circumstance would it be inappropriate and who decides.

This is the danger of government censorship of the Internet. Who defines what can be said without criminal sanctions? Who defines what is indecent? Who defines when certain terms are used appropriately and when they are not?

Mr. President, Congress has entered a very dangerous area in its attempt to restrict constitutionally protected speech on the Internet. In the next 24 hours, the Telecommunications conferees will decide which road to take—that of Government excess or that of caution.

I urge the conferees to err on the side of caution and to protect first amendment rights of Internet users. Such a goal is not inconsistent with our overriding objective of protecting children. Technology exists now to allow parents to screen out materials they find objectionable for their children. Obscenity, child pornography, and solicitation of minors via the Internet is already a violation of criminal law and is being aggressively prosecuted by the Department of Justice.

I urge my colleagues not to take the step toward censorship. I believe we will immediately regret it.

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina is to be recognized to speak.

Mr. SIMON. I have the consent of my colleague from South Carolina to speak for 2 minutes, if there is no objection, and I ask unanimous consent to speak.

Mr. DOMENICI. Reserving the right to object, I have to be at a negotiating session at 3 o'clock. I introduced this bill 4 years ago, so I ask if maybe I could have some time before 3 o'clock, 10 minutes or something?

Mr. BENNETT. Mr. President, I suggest that we grant the unanimous-consent request of the Senator from Illinois, during which time—not to be disrespectful to his announcement—we sort out the time on this side.

The PRESIDING OFFICER. The Chair must clarify that under the previous order, the Senator from Utah is to be recognized, then the Senator from South Carolina.

Mr. SIMON. I ask my colleague from Utah if he would permit me to speak for 2 minutes.

Mr. HATCH. I yield to the Senator.

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

CONGRATULATING THE NORTHWESTERN UNIVERSITY WILDCATS

Mr. SIMON. Mr. President, I send a resolution on behalf of Senator MOSELEY-BRAUN and myself congratulating Northwestern University's football team. It has been cleared on both sides.

Let me just say, after 24 losing seasons, they are going to go to the Rose Bowl. They now rank No. 3 in the Nation. Even more interesting, of all the division 1A schools in the Nation, they are No. 2 in scholastic aptitude tests.

I offer this resolution, and I ask unanimous consent for its immediate consideration. It has been cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 197) to congratulate the Northwestern University Wildcats on winning the 1995 Big Ten Conference football championship and on receiving an invitation to compete in the 1996 Rose Bowl, and to commend Northwestern University for its pursuit of athletic and academic excellence.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

Without objection, the resolution is agreed to.

So the resolution (S. Res. 197) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 197

Whereas the Northwestern University Wildcats are the 1995 Big Ten Conference football champions and have been invited to participate in the Rose Bowl on January 1, 1996, in Pasadena, California;

Whereas the winning of the 1995 Big Ten Conference football championship by the Wildcats completes an unprecedented 1-year turnaround of the Northwestern University football program; and

Whereas Northwestern University is committed to athletic competitiveness without diminution of scholastic standards: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Northwestern University and its athletes, coaches, faculty, students, administration, and alumni on the winning of the 1995 Big Ten Conference football championship by the Wildcats and on the receipt by the Wildcats of an invitation to compete in the 1996 Rose Bowl; and

(2) recognizes and commends Northwestern University for its pursuit of athletic as well as academic excellence.

The PRESIDING OFFICER. The Senator from Utah.

SENATOR THURMOND

Mr. HATCH. Mr. President, I congratulate my colleague from South Carolina as well. There has never been anybody in the history of this body who has meant more to me personally than the distinguished Senator from South Carolina.

Mr. President, I ask unanimous consent we go to the distinguished Senator from South Carolina and then the distinguished Senator from New Mexico for their remarks.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Mr. President, reserving the right to object, my understanding is our distinguished colleague from New Mexico needs 10 minutes?

Mr. DOMENICI. That will be adequate, I think.

Mr. BRYAN. I have no objection.

The PRESIDING OFFICER. The Senator from South Carolina.

THE DEPLOYMENT OF UNITED STATES MILITARY FORCES TO IMPLEMENT THE BOSNIA PEACE AGREEMENT

Mr. THURMOND. Mr. President, last week, the Senate Armed Services Committee conducted a hearing with national security, foreign policy and intelligence experts, who were all former executive branch officials under Presidents Bush, Reagan, and Carter. All three witnesses supported deploying United States military forces to Bosnia to implement the peace plan because they believe it is critical to preserve the credibility and reliability of the United States as a world leader and as a member of the North Atlantic Alliance. While the three witnesses endorsed the deployment of U.S. military forces to implement the agreement, they also highlighted their concerns about the likelihood of disaster and questioned the ability of the implementation force to achieve any meaningful mission objectives. In fact, the witnesses all agreed that the best that could be hoped for would be to sustain the ceasefire for the time period that NATO forces are in the region.

Last week, the President traveled to Europe to visit with our allies, and speak with the young men and women of the 1st Armored Division stationed in Germany who are to be deployed to Bosnia very shortly. One Sunday, President Clinton was briefed on the NATO implementation plan, and gave his conditional approval to the concept. Following that conditional approval, the President authorized the deployment of around 700 United States troops who will lay the goundwork for the arrival of the main body of the NATO Implementation Forces, who will deploy to Bosnia once the peace agreement is formally signed in Paris next week.

President Clinton spoke to the troops, informing them of the United States national interests that warrant their deployment to Bosnia to enforce the peace agreement. The President assured the troops that their mission is clear, limited and achievable and that the risks to their safety will be minimized. According to the director for strategic plans and policy in the office of the Joint Chiefs of Staff, Gen. Wes Clark, all U.S. forces should be in the region within 30 days of the formal signing of the agreement in Paris on December 14.

According to the Department of Defense, the overall concept of the mission of the implementation force will be to monitor and enforce compliance with the military aspects of the Dayton peace agreement.

The military tasks of the Dayton agreement include: Supervise the ceasefire lines and zones of separation; monitor, and if necessary enforce the withdrawal of forces to their respective territories within the agreed time periods; establish and man the 4-kilometer zone of separation; establish liaison with local military and civilian authorities; and create joint military commissions to resolve disputes between the parties.

All implementation forces, NATO and non-NATO, will operate under NATO rules of engagement. Those rules of engagement will permit the right to use force up to and including deadly force for self-defense to protect against hostile acts or hostile intentions, and, in order to accomplish the mission.

Despite a briefing by the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, as well as congressional hearings this past week with administration officials, I continue to have grave concerns and questions about the clarify of the mission, and whether the goals and objectives of the mission can be achieved within the limited deployment framework.

I know that our young military men and women are well-trained, the best equipped in the world and ready to go. What I am most concerned about is whether all their training and equipment will have prepared them for the sniper fire, the landmines, the terrible terrain and weather in which they will have to live. I am also concerned about possible kidnapings that could occur and how our troops will be treated. Will they be treated as prisoners of war, or political or legal detainees.

In 1945, United States military forces were sent into to an area near Tuzla to keep Yugoslavian partisan out of Trieste. We were not officially at war, but the partisans resented the presence of the U.S. forces and ambushed U.S. patrols and aircraft with sniper fire, landmines, and booby traps. It took 9 years for an agreement to be reached before the 1 year mission was completed and U.S. forces came home.

Mr. President, there are already signs of dissensions among the parties to the agreement. The Serbs continue to press for a renegotiation because the agreement would require Sarajevo to come under control of the Moslem-Croat federation and Serbian civilians feel they will not be protected. Our French allies have raised concerns that their troops could become trapped if there is renewed fighting. Additionally, the United States is being viewed as being partial to the Bosnians as a result of their support and there is a feeling that United States military forces will not be impartial.

As I stated earlier, in statements on the floor and in hearings, I continue to have grave concerns about the vital interests that have lead the President to commit U.S. military forces to implement this peace agreement. I am not yet convinced that we have a vital national interest in Bosnia that requires the deployment of United States military forces, or that our national security interests are being threatened.

On Wednesday, Secretary of Defense Perry, Assistant Secretary Holbrooke and General Shalikashvili will appear before the Senate Armed Services Committee. I intend to ask more questions about the mission, objectives of the mission and the timeframe, the exit strategy; why it is necessary to have over 60,000 heavily armed military forces with armored vehicles as peacekeepers; how the implementation forces will separate the opposing forces; and how the U.S. military forces will avoid taking on nonmilitary tasks, when it appears that the civilian humanitarian services and operations will take at least 6 months to begin operation.

Mr. President, I do not intend to rubberstamp a commitment by the President. I will reserve final judgement until after the hearings have taken place, and then make a final decision.

I yield the floor.

PRIVATE SECURITIES LITIGATION REFORM ACT—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. HATCH. Mr. President, I rise today to speak in favor of the conference report to H.R. 1058, the Private Securities Litigation Reform Act of 1995. I was an original cosponsor of the Senate bill, S. 240, and am a strong supporter of the conference report.

This legislation will protect investors and consumers, while remedying abuses that have plagued securities issuers and companies—particularly in cases in which attorneys have used class action lawsuits to force settlements on parties that have done no wrong.

It is my hope that President Clinton will defend the interests of the American people by signing this legislation, rather than favor the trial lawyers who would benefit from his veto.

In my view, this conference report represents a significant step towards addressing some of the egregious litigation abuses seen in the legal system today. On a related front, the Senate's product liability bill is going to conference, and it is my hope that in the future Congress will pass more broad-ranging litigation reforms that will affect the entire civil justice system.

I would like to extend my gratitude to Senator D'AMATO, Senator DODD, and Senator DOMENICI for their hard work in bringing this significant and well-drafted legislation to fruition. This bill has been perfected over several congresses and is the result of a strong bipartisan effort.

Abusive securities litigation lawsuits have imposed a high and harmful tax on American businesses. Because of the fear of being sued—and the high costs associated with securities lawsuits—many companies have declined to go public. Other companies have declined to make innovations or disseminate certain information.

The unfortunate irony is that, while securities litigation laws were designed to safeguard investors, in reality the current system ends up hurting investors.

The current system hurts investors who could have invested successfully in those companies that decided not to go public due to fears of litigation.

It also harms investors who could have earned greater profits on their shares had the companies they invested in been more profitable—for example, if those companies had been able to invest more money in research and development rather than wasting it on securities litigation costs. Not only have investors gotten hurt, but certain lawyers have raked in exorbitant fees.

Companies have all too often been reluctant to disclose information for fear that doing so will provoke a lawsuit. That goes completely against the grain of the securities laws, which are designed to encourage openness and full information in the securities markets.

The conference report addresses some of the worst abuses that have been seen in securities litigation. At the same time, the Report preserves and reinforces the core values of the American stock market—integrity, openness, and the free exchange of information.

The conference report does so through a number of specific measures.

The legislation provides that discovery is stayed whenever a motion to dismiss is pending in a securities action.

Discovery costs have been estimated to account for 80 percent of the costs of defending a lawsuit in a securities action. The burden of this time-consuming and expensive discovery process will accordingly be significantly reduced. That should remove some of the skewed incentives that have frequently forced companies to settle securities lawsuits even when they have done no wrong.

The conference report specifically addresses abuses involving the use of so-called professional plaintiffs as lead plaintiffs in securities action lawsuits. Many plaintiffs have been motivated to file suit to receive a bounty payment or bonus.

There has also all too often been a race to the courthouse by plaintiffs' lawyers seeking to be the first to file a complaint in a securities action. Lawyers representing a class are often appointed by the court on a first come, first serve basis: the first lawsuit filed determines who will serve as lead plaintiff and who will be the lead attorney.

In many cases, the professional plaintiff has not even reviewed the complaint filed against the defendant. This legislation will require the lead plaintiff to file a sworn certified statement along with the complaint, stating: First that the plaintiff has reviewed and authorized the filing of the complaint; second that the plaintiff did not purchase the security involved at the request of an attorney or to be a party to the securities action; and third that the plaintiff is willing to serve as the lead plaintiff for the class.

A lead plaintiff may not serve as a lead plaintiff in a securities action more than five times in 3 years. The legislation also limits the class representative's recovery to the lead plaintiff's pro rata share of the settlement or final judgment. These provisions limit some of the skewed incentives that have led to the rise of professional plaintiffs.

Once a securities litigation class action lawsuit has been filed, the court will then determine separately which plaintiff is the most adequate plaintiff. Any party who has received notice of the suit may petition the court to serve as lead plaintiff within 60 days of when the suit was filed. In determining which plaintiff is the most adequate plaintiff, the court determines which party has the greatest financial interest in the lawsuit.

The most adequate plaintiff selects the lead attorney and negotiates attorneys' fees. That plaintiff also weighs in on settlement decisions and other significant decisions pertaining to the lawsuit.

The legislation also provides improved settlement notice to class members. Class members will have to be provided notice of a proposed settlement and specified information. That information would include, if the parties agree on a figure, the average amount of damages per share that would be recoverable or, if the parties do not agree an a particular amount, a statement from each party as to why there is disagreement.

Notice must also include an explanation of the attorneys' fees and costs involved; the name, telephone number, and address of the class lawyer; and a brief statement explaining the reasons for the proposed settlement. Those provisions will improve the information provided to individual shareholders and increase the involvement of individual class members in litigation decisions.

The conference report also limits attorneys' fees to a reasonable percentage of the amount of recovery awarded to the class.

On a separate note, this legislation creates a modified system of proportionate liability, under which each co-defendant is generally responsible for only the share of damages that that defendant caused to the plaintiff.

To balance plaintiffs' needs, however, there is a provision to protect plaintiffs from insolvent codefendants. Where defendants have committed a knowing securities violation, those defendants will be jointly and severally liable for damages. Also, in the case of an insolvent codefendant, a proportionately liable codefendant would provide additional damages to up to 150 percent of its share of the damages.

There is even an additional, special protection for small investors: all defendants will be jointly and severally liable for uncollectible shares of insolvent codefendants for plaintiffs whose damages are more than 10 percent of their net worth, and whose net worth is less than $200,000.

This legislation is proconsumer and protects small investors.

In a separate measure, the legislation adopts the second circuit pleading standard so that, in a securities action, plaintiffs must state facts with particularity, and those facts must give rise to a strong inference of scienter or intent. This should help weed out at an early stage lawsuits filed against innocent defendants.

The bill also includes a cocalled safe harbor provision to protect forward-looking, predictive statements.

It structures damages so that they will reflect real losses rather than fortuitous market fluctuations.

Finally, the proposed legislation would establish new civil penalties against independent public accountants who fail to inform corporate officers of any illegal acts they discover while performing audits. That further protects investors.

In short, this legislation should protect individuals and free up resources that have imposed substantial and needless litigation costs on American businesses in Utah and all across this country.

As I noted, I would like to see Congress take a more comprehensive look at litigation abuses across the civil justice system. This legislation is certainly a significant step in that direction. I look forward to working with my colleagues to achieve broader reforms.

The PRESIDING OFFICER. Under the previous order, as modified, the Senator from New Mexico is recognized for up to 10 minutes, to be followed by the Senator from California for up to 30 minutes, to then be followed by the Senator from Nevada for up to 15 minutes.

The Senator from New Mexico is now recognized.

Mr. DOMENICI. Mr. President, I thank my friend from Utah, the floor manager, for arranging the time and for his diligent work.

Let me, right up front, indicate that there are many Senators and many Members of the House who deserve credit for getting this bill before us in this conference report. I personally want to thank the chairman of the Banking Committee, Senator D'AMATO, because without his guidance and total commitment we would not be here.

I want to thank my original cosponsor, Senator CHRIS DODD. Actually, the two of us fought a lonesome battle until this year. It looked like this would never happen. But with the change in the Congress, and the White House making some changes in the way they thought about this, we are here today with a bill that I understand the President may very well sign.

What are we doing here and why are we here? First of all, let me talk a little bit about an industry in America. In recent days there has been much conversation about the executive officer of Microsoft Corp. That is a high-technology industry, an industry that is involved in computers and everything that goes with it and the entire high-technology community of interest.

The high-technology, high-growth companies are the backbone of the America's economy and are vital to our ability to compete in a growing global market. We can no longer allow abusive lawsuits to stifle these companies' abilities to pursue new technologies and create new jobs.

The high-technology companies contribute about $400 billion in goods and services in the United States. They employ 2½ million people, which is 14 percent of the total manufacturing jobs in America. High-technology jobs are some of the best jobs also. The average salary is $42,000 per worker, and high technology is a larger segment of our economy than transportation, aviation, and the auto industry combined. It is a rapidly growing part of our economy and it is our future.

In my small State alone, there are 305 electronics firms with 16,000 high technology, high-paying jobs with a total payroll of $609 million, and they produce approximately $2.5 billion in goods and services.

From my standpoint, this bill will make their jobs more secure. It will make those companies that I have just described as a backbone of a new kind of industrial revolution in America more successful rather than less, and no one will be hurt in the process.

Let me right up front refer to four letters. It does not look like several letters because it is enormously thick, but there are four letters signed by about 1,000 chief executive officers and presidents of electronics and high-technology firms. The letters are not directed to the Senator from New Mexico or to the Senator from Utah or to the Senator from Nevada. They are directed to the President of the United States. In short, these letters are urging the President to sign this bill because it is good for their growth and the jobs and the well-being of the thousands of workers they represent.

Mr. President, Federal securities law that we are considering here today provides a comprehensive legal framework designed to do three things:

First, protect investors in the securities market. Let me repeat that. First, protect investors in the securities market.

Second, provide ground rules for companies seeking to raise money in our capital markets.

And, third, to encourage disclosure of more accurate information about publicly traded companies.

The trend is opposite to that third point because of the lawsuits that follow when information is disseminated.

This bill updates our securities laws to better achieve these objectives and in a better, balanced way. When the U.S. Supreme Court created the implied right of action—the class action—it noted that ''litigation under rule 10(b)(5) presents a danger of vexatiousness different in degree and kind from that which accompanies litigation in general,'' citation of the case, close quote.

''Vexatiousness'' is not a word that I use very often, nor do I hear it used very often. It comes from the verb ''to vex,'' which means to harass, to torment, to annoy, to irritate, and to worry. As a noun, it is synonymous with troublesome. In the legal context, it means a case without sufficient grounds in order to cause annoyance to the defendant or proceedings instituted maliciously and without probable cause.

In these frivolous securities class action cases, the lawyer hires the client instead of the other way around. It sounds a lot like modern-day champerty. In law school we studied about this thing called champerty. That is another word that is not heard very often. But it existed where a person assisted another with money to carry out his lawsuit. In times past, someone who would pay for, in whole or in part, the cost of litigation was engaged in champerty, including doing things that tend to obstruct the course of justice or to promote unnecessary litigation. It was such a serious offense that not too many years ago it was against the law.

This bill will hopefully curb this modern-day champerty, stop the vexatiousness and restore integrity to our security laws by filtering out abusive, frivolous class action lawsuits that harm investors and only benefit the class action attorneys. Senator BENNETT made a very good point earlier today: The company is the investors. We can no longer allow entrepreneurial lawyers to squeeze the research and development budgets, to depress dividend yields to all investors for the benefit of a few professional plaintiffs. We can no longer allow lawyers to muzzle the chief executive officers from making predictions and statements about the future of their companies.

Professional advisers, like accountants and outside directors, should not be held 100 percent liable just because they are deep pockets. This bill will force lawyers to be good lawyers and lawsuits to have merit.

This bill recognizes that stock volatility is not stock fraud. Let me repeat that. This bill recognizes that stock prices go up and down—that is stock volatility—it is not stock fraud. It recognizes that all investors benefit when there is more disclosure of information. It recognizes that predictions about the future are valuable information to investors. It recognizes that predictions may not come true. Such statements are predictions, not promises.

In the safe harbor provision that is currently in the bill before us, there are really three safe harbors. I will not go through all of them, but I will refer to the third one which has received most of the attention. It is a variation of the ''bespeaks caution'' doctrine. We tried to make it workable and not too cumbersome. The chief executive officer needs to identify the statement as a forward-looking statement, needs to provide meaningful cautionary statements and needs to identify some important factors that tell the audience why the prediction may not come true.

This bill retains the two-tiered liability. We wanted to change the economics of these cases so that the merits will once again matter. People should not be sued because they have deep pockets or a lot of insurance. We created special rules so that small investors will be made whole in the event of an insolvent codefendant who cannot pay investors for their losses.

We required disclosure of settlement terms and lawyers fees in plain English so that investors will know what they might recover and how much of the settlement fund the lawyers are asking for. And, in a sense, this makes the system much better in 12 ways:

First, it puts investors with real financial interests, not lawyers in charge of the case. It puts investors with real financial interests, not professional plaintiffs with one or two shares of stock in charge of the case.

The provisions that accomplish this include most adequate plaintiff; plaintiff certification; ban on bonus payments to pet plaintiffs; settlement term disclosure; attorney compensation reform; sanctions for lawyers filing frivolous cases; restrictions on secret settlements and attorneys fees.

Second, it provides for notification to investors that a lawsuit has been filed so that all investors can decide if they really want to bring a lawsuit.

It is likely that the people trusted to manage pension funds and mutual funds [the institutional investors] will get more involved. (Most adequate plaintiff provision).

Third, it puts the lawyers and his clients on the same side. This is accomplished by reforms that change economics of cases, in particular, proportionate liability, settlement terms disclosure.

Fourth, it prohibits special side-deals where pet plaintiffs get an extra $10,000 or $15,000.

It protects all investors, not just the lawyers' pet plaintiffs, so that settlements will be fair for all investors.

Fifth, it stops brokers from selling names of investors to lawyers.

Sixth, it creates environment where CEO's can, and will talk about their predictions about the future without being sued.

It gives investors a system with better disclosure of important information. (Safe harbor).

Seventh, better disclosure of how much a shareholder might get under a settlement and how much the lawyers will get so that shareholders can challenge excessive lawyers fees.

Eighth, no more secret settlements where attorneys can keep their fees a secret. (Restrictions on settlements under seal).

Ninth, it limits amounts that attorneys can take off the top. Limits attorneys' fees to reasonable amount instead of confusing calculations. (Attorney compensation reform, limiting lodestar method of calculating fees).

Tenth, it provides a uniform rule about what constitutes a legitimate lawsuit so that it will no longer matter where a case is filed. Investors in Albuquerque will have the same rules as investors in New York. (Pleading reform).

It stops fishing expeditions where lawyers demand thousands of company documents before the judge can decide if the complaint is so sloppy that it should be dismissed on its face. (Discovery stay).

Eleventh, it makes merits matter so that strong cases recover more than weak cases. Makes sure people committing fraud compensate victims. Improves upon the current system so that victims will recover more than 6 cents on the dollar.

Twelfth, by weeding out frivolous cases, it gives the lawyers and judges more time to do a good job in protecting investors in meritorious cases. High-technology companies' executives can focus on running their companies and growing their businesses. Investors will get higher stock prices and bigger dividends.

America needs securities litigation reform for many reasons. One reason we need this legislation is because the system as it currently operates encourages a race to the courthouse to file poorly researched, kitchen sink complaints by entrepreneurial class action lawyers unconcerned with the merits of their cases. These lawyers know that it is very easy to allege securities fraud, and they often use the current system's liberal pleading rules to extort settlements from innocent companies.

Entrepreneurial plaintiffs' lawyers favorite targets are usually high-technology, start-up firms which cannot bear the costs of fighting even the most frivolous lawsuit. Over the past 4 years a total of $2.5 billion has been paid in settlements in securites class action cases. This is money that could have been better spent on enhanced research and development, product development and high paying job creation.

Even when small, high-technology companies are forced to surrender and settle abusive suits without much of a fight, they still must divert important scarce resources toward the lawsuit and away from job creation and product development. Testimony at congressional hearings on securities litigation reform indicated that the typical frivolous securities lawsuit costs $8.6 million and 1,000 hours of management time just to settle the case.

John Adler, president and CEO of Adaptec, Inc. told the Senate Banking Committee that the money his company spent fighting a frivolous securities lawsuit would have paid for 20 additional engineers. Intel spent $500,000 in 1991 just to have two abusive cases withdrawn. That money would have paid for 10 production workers or 5 engineers at its facility in my home State. Legent Computer Corp. spent nearly $2 million in legal fees and several million dollars to comply with the plaintiffs' lawyers request for 290,000 pages of documents, even though a judge eventually dismissed the lawyers' complaint. Numbers like these make me realize that we need to change the current winner pays system, where innocent companies must expend vast amounts of time and resources just to get an abusive suit dismissed.

High-technology and high growth companies form the backbone of our economy and the foundation of our ability to compete in the growing global marketplace. They create jobs and grow the economy. We can no longer allow these abusive lawsuits to stifle our companies' ability to pursue new technologies and create new jobs. The general counsel of Intel Corp. told us during a hearing that had Intel been sued when it was a startup company, the lawsuit likely would have decimated its research and development budget and prevented it from inventing the semiconductor. Thousands of jobs would be in Japan instead of America.

Entrepreneurial lawyers also like to sue deep-pocketed professional advisers, like accountants and lawyers, even if they are only marginally involved in the alleged fraud. Under the current law rule of joint and several liability, these advisers can be made to pay the entire multimillion dollar judgment, even if they were unaware of any wrongdoing. That is because the current law says that if you conduct an audit or sign an opinion letter for a client who violates the securities laws, then you should have known of the wrongdoing. Because they face potentially massive liability for their relatively innocent conduct, auditors and lawyers often settle rather than fight the abusive lawsuit. Studies show that naming an accountant in a lawsuit adds 30 percent to its settlement value. Rather than continue to face unfair joint and several liability, auditors and lawyers have begun to refuse to advise startup firms most susceptible to abusive lawsuits. This hurts the companies and ultimately their shareholders.

Part of the problem is the race to the courthouse by entrepreneurial class action lawyers, who file lawsuits within hours of news that a company came up short on an earnings projection or will be forced to delay the introduction of a new product. Information provided to the Senate Banking Committee by the National Association of Securities and Commercial Law Attorneys [NASCAT] reveals that 21 percent of the cases are filed within 48 hours of the triggering event. The stock price drops after the company makes an announcement, and the lawyers quickly file lawsuits with little or no due diligence done to investigate whether the suits have any merit. In fact, I would guess that the lawyers do not really care whether the suits possess much merit. This is because courts rarely exercise their authority to impose sanctions on attorneys who file frivolous securities suits.

Abusive lawsuits not only drain scarce resources away from important company activities, but they also have a profound impact on the willingness of corporate executives to speak freely about their company's plans and expected future performance. Several corporate executives and general counsels told the Banking Committee that they had adopted a policy of not making public forward-looking statements out of fear that they would be sued for securities fraud if their predictions did not materialize. We should encourage companies to make forward-looking statements, because they contain precisely the type of information investors most desire—information about where the company is headed in the future. But we must remember, predictions are not promises of future performance, and executives who make forward-looking statements should be protected from lawsuits unless they intended to deceive investors.

I have spoken a great deal about how abusive lawsuits affect companies and their professional advisers. Even more egregious than the way the current securities class action system treats them is the way it treats investors. When attorneys file frivolous cases, investors eventually bear the costs of the lawsuit. When lawyers pursue meritorious cases, they often seek settlements that benefit them and leave investors with pennies on the dollar of their losses.

Often lost in the debate over securities litigation reform is the fact that not just companies, but investors are harmed by frivolous securities lawsuits. Former SEC Chairman Richard Breeden testified that ''the people who are most badly hurt—by abusive securities lawsuits—are the company's shareholders, who indirectly pay all the costs'' of the lawsuit. Current SEC Chairman Arthur Levitt also has correctly noted that investors are being hurt by litigation excesses.

When plaintiffs' lawyers engage in the predatory practice of filing an abusive securities lawsuit, shareholders eventually must bear the costs of the suit. When companies are forced to divert resources from research and development budgets to litigation budgets, stock prices drop and shareholders suffer. When companies must make a charge to earnings to pay the costs of settling an abusive lawsuit, dividends are lower and shareholders suffer. When corporate executives refuse to discuss the company's future plans out of fear that they will be sued, markets are denied access to the information investors need most to make informed investment decisions, and shareholders suffer.

During the 12 congressional hearings held on securities class action litigation, the most shocking thing I learned was the way plaintiffs' lawyers treat investors in cases of real fraud. According to studies and testimony presented at the hearings, in the typical settlement of a securities fraud lawsuit, investors receive around 6 cents on the dollar of their claimed losses, while plaintiffs' lawyers take the lion's share of the settlement fund as their fee award. This is because the current system allows attorneys to negotiate their settlement with little or no input from their purported clients, the injured investors. One of the most prominent securities class action lawyers claims to have the best practice in the world because he has no clients.

This same attorney once settled a class action for $12 million and asked for the entire amount as his fee award. This would have left his clients with nothing. When asked whether he had a duty to his clients to justify his fee request, this lawyer responded that his only responsibility was to justify his fee request to the court. A system which allows this sort of abuse needs to be changed. Investors deserve better.

THE SOLUTION

While I have spent some time talking about the problem, I would like to spend the remainder of my time discussing the solution we have developed. Our goal in crafting this legislation was to balance the interests of defrauded investors with those of the companies and professional advisors who are often the subject of abusive, meritless lawsuits. I believe that we have developed a balanced bill that provides relief from abusive suits while giving investors greater control and a larger recovery in cases of real fraud.

It contains provisions which place investors, not lawyers, in control of the lawsuit. Unlike the current lawyer-driven system, under this new law the investors with the greatest stake in the outcome of the litigation will control the case. Usually this will mean that pension funds and mutual funds, which represent thousands of small investors, will determine whether to pursue a lawsuit, who will be their lawyers, and when and for how much to settle the case. Because they have an interest in protecting their small investors by discouraging frivolous suits and pursuing cases of real fraud, institutional investors are in the best position to decide whether to go forward with a lawsuit.

Unlike the current system where the first lawyer to file the lawsuit controls the case, this legislation also will allow the investors to pick their lawyers and negotiate up front what their fee will be. This will result in reduced attorneys' fees and will leave more money in the settlement fund for defrauded shareholders. It will eliminate situations where the attorneys request significant portions of settlement fund as their fee and leave investors with pennies on the dollar of their claimed losses.

The conference report also requires that settlement notices to class members contain clear and concise disclosures of the terms of the class action settlement. Under the current system, investors often receive settlement notices shrouded in legalese, which give them little or no idea what the lawyers have agreed to do. Only after they have consented to be part of the class and accept the settlement do they realize that the lawyers have taken most of it and left them with next to nothing. Under the new law, lawyers will be required to explain to shareholders in clear terms the total amount of the settlement, the amount of attorneys' fees and costs sought, and the amount per share class members will receive. With this new information, investors will better be able to determine whether to accept the terms of the settlement.

The new system also will be good for investors because it eliminates many of the unfair practices currently associated with generating a securities class action. Lawyers will no longer be able to pay bonuses out of the settlement fund to individuals who lend their name to the lawsuit and act as the named plaintiff. Nor will they be allowed to pay bonuses to brokers or dealers for referring potential clients. These practices are unfair to the shareholders not afforded the luxury of acting as named plaintiff and should be eliminated. Their elimination will keep more money in the settlement fund for all investors, not a select few.

The conference report also will benefit companies, as well as investors by utilizing reasonable means to eliminate abusive frivolous lawsuits. Despite what opponents say about this bill, it will not protect the Charles Keatings of the world or prevent victims of egregious fraud from obtaining relief. No Senator would vote for a bill which allowed that to happen. Instead, the conference report contains provisions which will weed out frivolous cases early in the litigation process and impose fair liability standards on companies and their professional advisors to reduce the tremendous pressure on them to settle even the most abusive cases.

To weed out frivolous cases early in the process, the conference report adopts the pleading standard utilized by the second circuit court of appeals, where a large number of securities fraud lawsuits are brought. This court-tested standard requires plaintiffs to plead facts in their complaint which give rise to a strong inference of securities fraud.

The conference report also adopts the State-law trend of proportionate liability—liability based upon the degree of responsibility of each defendant. It retains joint and several liability for the really bad actors, those who knowingly defraud investors. It holds all others proportionately liable for the harm that they have caused. This will reduce the pressure to settle on professional advisors who may not even have been aware of the fraud, but who under the current system could be held responsible for the entire amount of damages.

Proportionate liability is not a novel concept—it's one many States concerned with a fair application of liability have used for years.

There are three provisions in this bill which provide additional investor protection, particularly for the most vulnerable small investors. First, the bill contains a provision specifically designed to improve fraud detection in the areas of auditing and financial reporting. Auditors will now be required to report instances of corporate fraud and this reporting often will take place before the fraudulent information makes its way into financial disclosure documents disseminated to investors.

The bill also contains language which will ensure that investors get compensated if the main perpetrator of the fraud is bankrupt. The conference report requires proportionately liable defendants to pay up to an additional 50 percent of their liability into the settlement fund in cases where the primary, knowing violator is insolvent. It also requires that small investors be fully compensated in all cases by holding all defendants jointly and severally liable for their entire losses.

The bill also contains a fair safe harbor for predictive statements which will allow companies to provide the forward-looking information investors desire without the fear of a lawsuit if the projections do not materialize. Under the current system, if one person in a company is aware of information which might contradict the company's projection, the company can be held liable for fraud. This forces companies to adopt a policy of not making predictive statements.

The new safe harbor, endorsed by the Securities and Exchange Commission, protects predictive statements in two ways. First, projections are protected from lawsuits as long as they are accompanied by meaningful warnings which identify important business factors which could cause the prediction to fail. This provision is based on the bespeaks caution doctrine, a concept in the securities laws which says that if a predictive statement is surrounded by sufficiently cautionary language discussing some of the reasons why the prediction may not come true, then the statement cannot form the basis of a lawsuit. Under this new rule, companies which desire the protection of the safe harbor will be required to disclose certain information to investors about the factors which might undermine their predictions. Companies need not disclose every factor, nor must they disclose the factor which eventually causes the prediction to fail. They simply must discuss some of the important business factors which could affect their prediction.

There has been much discussion about this first part of the safe harbor. Early drafts said that companies must disclose substantive factors, rather than important factors. In this Senator's opinion, these words are interchangeable and impose the same requirement on companies: discuss some of the important business factors which could affect your prediction. It imposes no hindsight state of mind requirement on companies regarding which factors they believed were most important. Nor should this provision be used by courts in a way which allows the current system's abusive discovery practices to continue. Courts should not read the word important to mean that plaintiffs are entitled to large-scale discovery on the issue of which factors the company believed were important. Courts should simply look at the four corners of the predictive statement, as well as the information about the company already in the market, and determine whether investors should have relied on the predictive statement.

Under this safe harbor, courts also may continue their practice under current law and find forward-looking statements immaterial on other grounds. There is an abundance of case law which says that soft forward-looking statements containing optimistic opinions without any factual representations cannot serve as the basis for one of these lawsuits. The conference committee wisely chose to leave this law intact. This sort of sales talk or puffing has no effect on a company's share price and courts should continue to quickly dismiss cases based on these types of statements. As well, courts also should continue to consider public information provided by sources other than the company or public information from the company not contained in the forward-looking statement when determining whether a predictive statement meets the securities laws' test of materiality. These concepts also are found in the cases, and the conference committee certainly did not intend to have any effect on this area of the law.

Should a predictive statement not contain sufficient cautionary language to fall into the first safe harbor, then a second safe harbor is available. Under the second safe harbor, the statement is protected unless it was made with actual knowledge that it was false. If a business entity made the statement, then the plaintiff must prove that the statement was made or approved by an executive officer with the actual knowledge that it was false. This will prevent the situation under current law which permits lawsuits to go forward based upon the existence of a memo or electronic mail by a low-level employee who disagrees with management's projection. This provision is based upon the standard Senator SARBANES proposed on the floor during the Senate debate, and I believe that this is an effective compromise.

Investors should have increased access to the company's thoughts about where it is headed in the future, and the current lawsuit-driven system discourages executives from talking about the future. The conference report's balanced safe harbor provision encourages companies to speak by recognizing that predictions are not promises, while prohibiting outright lies by corporate executives. Again, this is a provision supported by the Securities and Exchange Commission. Let me read into the record what the Commission says about the safe harbor in the conference report:

While we could not support earlier attempts at a safe harbor compromise, the current version represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.

Finally, this bill addresses the fact that attorneys and courts are unwilling to pursue sanctions against entrepreneurial lawyers who file abusive suits. This legislation requires courts to review the record at the end of each case to determine whether any of the attorneys violated rule 11 of the Federal rules. If the court finds a violation, then it must impose sanctions. Requiring courts to impose sanctions against attorneys who file frivolous cases will reduce the number of abusive lawsuits without discouraging individual plaintiffs from seeking redress in the courts.

Mr. President, I hope my colleagues will vote for this conference report. This legislation is substantially similar to the legislation we passed in July by a wide margin. I believe that the Senators who supported the bill in July should have every reason to vote for this conference report today. It is a well-balanced bill that protects investors from intentional fraud, gives them greater control of their cases and addresses many of the abuses inherent in our currently broken securities class action system.

I ask unanimous consent to have printed in the RECORD following my remarks a list of those from my home State of New Mexico who support securities litigation reform. The list includes several State senators and representatives, as well as Gary Johnson, the distinguished Governor of New Mexico.

I also ask unanimous consent that a copy of a series of letters from a group of high-technology and high-growth company CEO's, and venture capitalists to President Bill Clinton also be printed in the RECORD.

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

(See exhibits 1 and 2.)

Mr. DOMENICI. Mr. President, I want to especially recognize the extraordinary commitment Senator DODD has made to this legislation. When he was chairman we started the hearings, compiled a thorough report and together we developed legislation. He has steadfastly worked to make the bill a better bill for small investors, for all investors, for our capital markets and the companies using our capital markets. This knowledge of the securities laws helped craft the answers to the problem that we all saw.

I thank my colleagues Senators DODD and D'AMATO, as well as the rest of the conferees for all of their hard work on this important legislation. This is comprehensive reform, and companies as well as our legal system will work more efficiently because of it. Senator GRAMM pioneered the most-adequate-plaintiff provision and I thank him for his input.

I must thank several members of the House who have worked so hard to help bring about securities litigation reform. The chairman of the Commerce Committee, Mr. BLILEY and his distinguished subcommittee chairman, Mr. FIELDS, have worked tirelessly to ensure that this legislation is effective and actually works in the real world. I realize how difficult it can be to craft a complicated piece of legislation like this, and I appreciate their help. I also would like to thank Representative CHRIS COX from California, who practiced in this area prior to coming to Congress. His practical experience and expertise has helped make this a better bill. Finally, I thank Representative BILLY TAUZIN, a new member of the Republican Party who fought for many years as a Democrat to bring this legislation to the floor of the House. Mr. TAUZIN's hard work attracted over 200 cosponsors to his original bill at a time when there was very little interest by the House leadership in even bringing up the issue of securities class action reform. Mr. TAUZIN has worked on this issue since the beginning, and his dedication to this issue is to be commended.

SEC Chairman Levitt and Commissioner Wallman made constructive suggestions throughout the process. I am very pleased that they support the safe harbor provisions that have been worked out and that we were able to address their principle concerns about the entire bill.

Mr. President, I urge that Senators adopt this bill today and I urge the President to sign it. As we look back at this year, this will be one of the most significant pieces of legislation that attempts to rid the American economy and the entrepreneurial system from unneeded drag and unneeded cost so that it retains more of its vibrancy and growth potential.

I yield the floor.

EXHIBIT 1

NEW MEXICO SUPPORT FOR S. 240

GOVERNMENT

New Mexico Governor Gary Johnson.
State Senator Patrick Lyons.
State Senator Virgil Rhodes.
State Senator E.M. Jennings.
State Representative Robert Wallach.
State Representative Ted Hobbs.
State Representative Anna Marie Crook.
Santa Fe City Manager Isaac Pino.
Lovington City Manager Bob Carter.
State Secretary of Finance and Revenue David Harris.

BUSINESS AND INDUSTRY

Santa Fe Chamber of Commerce.
Greater Albuquerque Chamber of Commerce.
Roswell Chamber of Commerce.
New Mexico Association of Commerce and Industry.
Intel Corp.,—Rio Rancho.
Motorola—Albuquerque.
Specialty Constructors, Inc.—Cedar Crest.
Neff & Co.—Albuquerque.
Correa Enterprises Inc.,—Albuquerque.
Larribas & Associates, P.A.—Albuquerque.

We also have received many letters from private citizens, including many retirees who support securities litigation reform.

THE CEASS COALITION IN NEW MEXICO

SUMMARY

The Coalition to Eliminate Abusive Securities Suits (CEASS), an alliance of over 1,450 U.S. companies, professional firms and organizations representing high-technology, financial services, basic manufacturing sectors and others, is seeking federal legislative remedies to the rising threat of unwarranted securities litigation. CEASS member companies rank among the nation's fastest-growing and most innovative companies. CEASS supports the reform measures embodied in S. 240, the Private Securities Litigation Reform Act of 1995, introduced in the U.S. Senate by Senators Pete Domenici (R–NM) and Chris Dodd (D–CT).

In New Mexico, there are 24 CEASS members that are either headquartered or have facilities in the state. Together, these organizations employ over 11,000 residents. Included are many of the state's largest private sector employers—Intel Corporation, Motorola Inc., US West Communications and many more. Below is a detailed breakdown of CEASS members in New Mexico.

CEASS MEMBERS AMONG LARGEST NEW MEXICO EMPLOYERS (500 OR MORE EMPLOYEES)

Chevron Corporation.
Intel Corporation.
Johnson & Johnson.
MCI Communications, Inc.
Motorola Inc.
Phelps Dodge Corp.
US West Communications.

CEASS MEMBERS HEADQUARTERED IN NEW MEXICO

Diagnostek, Inc., Albuquerque.
Indian Motorcycle Manufacturing Inc., Albuquerque.
Mesa Airlines, Inc., Farmington.
Neff & Company, Albuquerque.
Specialty Teleconstructors, Inc., Cedar Crest.
Sunsoft Corporation, Albuquerque.

ALL OTHER CEASS MEMBERS WITH FACILITIES IN NEW MEXICO

AlliedSignal Inc., Las Cruces.
Arthur Andersen LLP, Albuquerque.
Baxter International, Albuquerque.
Borg-Warner Security Corp., Albuquerque.
Chevron Corporation, Gallup.
Chevron Corporation, Raton.
Eagle Industries, Inc., Albuquerque.
FHP International, Inc., Albuquerque.
Intel Corporation, Rio Rancho.
Johnson & Johnson, Albuquerque.
KPMG Peat Marwick LLP, Albuquerque.
MCI Communications, Inc., Albuquerque.
Motorola Inc., Albuquerque.
The Olsten Corporation, Albuquerque.
Phelps Dodge Corp., Lordsburg.
Phelps Dodge Corp., Tyrone.
Smith's Food & Drug Centers, Inc., Albuquerque.
Smith's Food & Drug Centers, Inc., Farmington.
Sun Microsystems, Inc., Albuquerque.
The May Department Stores Co., Albuquerque.
US West Communications, Albuquerque.

MEMBERS OF NEW MEXICO HOUSE DELEGATION WHO VOTED FOR SECURITIES LITIGATION REFORM (H.R. 1058)

Steven Schiff.
Joe Skeen.
Bill Richardson.

EXHIBIT 2

AMERICAN ELECTRONICS ASSOCIATION,
Santa Clara, CA, October 17, 1995.

Hon. WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As California members of the American Electronics Association, we are writing to strongly urge your support for securities litigation reform legislation which we expect to emerge from Conference Committee early this fall.

For nearly four years the California High Technology community has been pursuing meaningful reform of the securities litigation system. We have worked closely with the White House, the Securities and Exchange Commission, and the U.S. Congress. As a result of these efforts, both the House of Representatives and the U.S. Senate overwhelmingly passed securities litigation reform, by votes of 325–99 and 70–29, respectively. We believe these margins clearly demonstrate the consensus for reform and now we need your affirmative support to bring this effort to a successful close.

We want to stress our belief that U.S. capital markets function efficiently and effectively because of a strong and balanced enforcement system. We also want you to understand that the current system is no longer functional, promoting inefficient markets, costing jobs, and harming investors.

In Silicon Valley, California, nearly 53% of technology companies have been sued under Section 10(b)(5) of the Securities Act of 1934. Every single one of the top ten Silicon Valley Corporations—world class multinational competitors—have been accused of violating the anti-fraud provisions of the U.S. Securities laws. The current state of affairs was described best by a prominent Silicon Valley CEO who stated: "There are only two kinds of California technology companies—those that have been sued, and those that are about to be sued."

We want to emphasize that the provision most critical for technology companies is a strong, effective safe harbor for forward-looking statements—statements made by companies and others about the future prospects of earnings, products, technologies or the like. But the key to a safe harbor is that it must be safe. Properly constructed, a true safe harbor will promote maximum disclosure by corporate executives and provide investor protection. Under current law, if a company fails to meet management's projections or analysts' expectations it often finds itself faced with a lawsuit. Frequently, these lawsuits are based on changes of fraud, allegedly for false and misleading past statements of future expectations. And because of our inherent stock volatility, rapid product development, and economic and technological uncertainties facing technology companies, high technology firms are easy prey for these merit less lawsuits.

The California Public Employees Retirement System (CalPERS), which provides retirement benefits to nearly 1 million beneficiaries fully understands the ramifications of the current system. CalPERS argues that "the current safe harbor has failed to encourage sufficient disclosure of forward-looking information, principally because the rule is unable to assure issuers that they will not be subject to shareholder suits upon disclosing projections."

Unfortunately, as with many issues in Washington, the safe harbor has been the subject of a smear campaign designed to preserve the status quo for those that are profiting from the current system. Some have characterized the safe harbor as providing issuers with a "license to lie." This is either a misrepresentation or a misunderstanding of the proposals. Providing safe harbor protection—that is, a greater degree of protection than provided for in law—has been the established policy of the Securities and Exchange Commission for 15 years.

Others have suggested that the safe harbor would protect fraudulent wrongdoers. Again, this is simply not correct. Truly fraudulent activity would still be fully actionable by private parties under any safe harbor construction. It is simply not possible to confine fraudulent activity to forward looking statements without also, at some point, mis-stating present fact. Moreover, nothing in any proposal would prevent the Securities and Exchange Commission from bringing an enforcement action against any person on the basis of a forward-looking statement. The safe harbor would only curb abusive lawsuits based on a revisionist view of future events.

Mr. President, by giving companies the comfort they need to talk about plans for the future—without risking a lawsuit when they simply miss the mark—the safe harbor will maximize disclosure of forward-looking information, improve the efficiency of the market, and permit investors to make sound decisions based on maximum information.

Once again, we want to stress the need for litigation reform, including for a strong safe harbor.

Sincerely,

Wind River Systems, Tekelec Corporation, Venture Management Associates, Information Storage Devices, Inc., HiTech Equipment Corporation, Poly-Optical Products, Inc., VALOR Electronics Inc., Fidelity Palewater, Inc., Sage Management Group, Radio Therapeutics Corporation, Elpac Electronics, Inc., Uptime Computer Solutions, Inc., ShareData Inc., TEAL Electronics Corporation, Aurum Software Inc., Magnetic Circuit Elements, Inc., Aurora Electronics, Inc., Weitek Corporation, BEI Electronics, Inc., Shelly Associates, Inc.

Data Instruments, Inc., TAU Corporation, Nextwave Design Automation, ACCEL Technologies, Inc., Emuiex Corporation, Optimum Optical Systems, Inc., VertiCom Inc., Comdisco Electronics Group, TeleSensory Corporation, Physical Optics Corporation, Endgate Corporation, Wells Fargo Bank, Catapult Communications Corporation, Orthodyne Electronics, Alzeta Corporation, Printonix, Inc., Leasing Solutions RNC (LSSI), Embedded Performance, Inc., Escalade Corporation, Autek Services Corporation.

Presence Information Design, INTA, TTM Inc., Graham-Patten Systems, Inc., Oxigraf, Frequency Products, Inc., Paragon Environmental Systems, Inc., Radian Technology, Illustra Information Technologies, Dynamic Network Solutions, Inc., Data/Ware Development, Subscriber Computing, Inc., Paragraph International, El Dorado Ventures, Petillon & Hansen, NFT Ventures, Inc., Pioneer Magnetics, Platinum Software, BioMagnetic Technologies, Inc., Lexical Technology.

ACT Networks, Inc., 3D Systems Corporation, WEMS Electronics, The Automatic Answer, Inc., Transport Solutions/RTC, Lumonics Corporation, Silicon Valley Group, Inc., The Cerplex Group Inc., Interlink Electronics, Baan Company, Nanometrics, Viasat, Inc., HSQ Technology, Qlogic Corporation, Silicon Systems, Inc., Giga-Tronics Incorporated, HNC Software Inc., ParcPlace Digitalk, Inc., DCP Technology Inc., Vitesse Semiconductor Corporation.

Canro Scientific Instruments, Router Wave, Xircom, Inc., Level One Communications, Inc., International Lottery & Totalizator, Onstream Networks, Inc., Wiz Technology Inc., Tandem Computers, Inc., ProBusiness, Inc., Innocal, InCirt Technology, Logical Services Incorporated, Com 21, Microsource, Inc., Scientific Technologies, Inc., Pacific Recorders & Engineering, Kofax Image Products, Allied Telesyn International Corp., Molecular Dynamics, Motion Engineering, Inc.

Trillium Consumer Electronics, Inc., ATG Cygnet, Inc., Semiconductor Systems, Inc., Reset Inc., Triconex, StrataCom, Inc., Quantic Industries Inc., Advanced Matrix Technology, Inc., Netsoft, Motion Engineering Inc., Inhale Therapeutic Systems, Continuous Software Corporation, Xilinx, Inc., RJS, Inc., Measurex Corp., Sonatech, Inc., MasPar Computer Corporation, Paracel, Inc., Fisher Research Laboratory, Inc., Network General Corp.

Gamma-Metrics, Expersoft, D.S. Technologies Inc., Liconix, Creative Computer Solutions, Inc., 3Com Corporation, Condor Systems, Inc., Atmel Corp., Proxim, Inc., Network Equipment Technology, Inc., American Telecorp, Inc., InfoSeek, DiviCom Inc., Remedy Corporation, Harmonic Lightwaves, Inc., TopoMetrix Corporation, Dionex Corporation, Orbit Semiconductor, Inc., Opti, Inc., MicroSim Corporation.

Kavlico Corporation, Absolute Time Corporation, DJC Data Technology Corporation, WireLess Data Corporation, California Amplifier, Inc., Dynamic Instruments, Inc., Savi Technology, Inc., Komag Incorporated, Megapower Corporation, Spatializer Avoid Laboratories, Inc., Newpoint Corporation, Redwood MicroSystems, Inc., Harmonic Lightwaves, Inc., Unisen, Inc., California Microwave, Inc., SEEQ Technology, Inc., Quantum Materials, Inc., Sierra Semiconductor Corporation, Alpharel, Inc., Titan Electronics, Uniax Corporation, De La Rue Giori of America, Liikkuva Systems, Brooktree Corporation, GammaLink, Calimetrics, Inc., Tyecin Systems, Inc., AccSys Technology.

SILICON VALLEY, CA,
November 3, 1995.

Hon. WILLIAM J. CLINTON,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We wish to state unequivocally that securities litigation reform legislation is of critical importance and interest to our companies. We understand from numerous sources within the White House that this Administration believes that Silicon Valley companies do not consider securities reform a pivotal issue.

By delivery of this letter to you. Mr. President, we wish to underscore the degree of our intensity in support of meaningful reform.

For almost four years we have devoted substantial energy and efforts toward making common sense changes in the nations securities laws, thereby hoping to end the relentless onslaught of frivolous lawsuits against our companies. As a result of discussions with your staff we have acted in good faith and have moderated our position to meet your concerns.

The high technology companies are united on this issue. The signatories of this letter represent the leading companies of Silicon Valley, and speak with confidence that we reflect the views of thousands of technology companies nationwide.

Mr. President, believe us, this is a definitive issue for our industry.

Sincerely,

National Semiconductor Corporation, Quantum, 3COM, DSV Partners, Institutional Venture Partners, LSI Logic Corporation, Cadence Design Systems, Symantec Corporation, Oracle Corporation, Sybase, Inc., New Enterprise Associates, Silicon Graphics Inc.

Sun Microsystems, Inc., Intel Corporation, Applied Materials, Inc., Varian Associates Inc., Kleiner Perkins Caufield & Byers, Hewlett-Packard Company, Raychem Corporation, Advanced Micro Devices Inc., Adaptec, Inc., Centigram Communications Corporation, Apple Computer, Inc., Tandem Computers, Trimble Navigation Limited, Xilinx, Inc., Adobe Systems Inc.

AMERICAN ELECTRONICS ASSOCIATION,
Santa Clara, CA, October 13, 1995.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We are writing to urge your support for securities litigation reform legislation which we expect to emerge from Conference Committee early this fall.

For nearly four years the U.S. high technology community has been pursuing meaningful reform of the securities litigation system. As a result of these efforts, both the House of Representatives and the Senate overwhelmingly passed securities litigation reform, by votes of 325–99 and 70–29, respectively. We believe these margins clearly demonstrate the consensus for reform. We need your affirmative support to bring this effort to a successful close.

We were pleased to read the report during your recent Silicon Valley visit that you would ''gladly sign'' legislation to eliminate frivolous lawsuits. At the same time, we gather you do not fully support the legislation passed by the Senate, the legislation most likely to reach your desk.

In Silicon Valley, more than half the technology companies have been sued under Section 10(b)(5) of the Securities Act of 1934. Inherent stock volatility, rapid new product development, and economic and technological uncertainties make high technology firms easy prey for these meritless and costly lawsuits. According to the American Electronics Association (AEA) every one of the top ten Silicon Valley companies—world-class, multinational competitors—has been accused of violating the anti-fraud provisions of the U.S. securities laws.

The provision most critical for technology companies, like ours, is a strong safe harbor for forward-looking statements—projections made about the company's future prospects. Failing to meet the expectations of analysts who follow the technology industry is inevitable. However, it is hardly intentional and it is certainly not fraudulent. Yet plaintiffs' lawyers seize upon the inherent volatility in our industry to create a false picture of ''fraud'' where none in fact exists.

The proliferation of class action lawsuits has prompted companies to conclude that the legal risks of providing projected earnings, revenue and market information to Wall Street analysts or the investing public are too high. As such, many companies no longer release future oriented information and refuse to comment directly on analysts' projections, resulting in less public information, less efficient markets, fewer jobs, and in the end less informed investors.

Except for those who profit from the current system, there is nearly universal agreement that the current regulatory safe harbor is no longer functional. Nonetheless, the beneficiaries of the status quo have launched an aggressive campaign to kill the safe harbor. They have suggested that the proposed safe harbor would be a ''license to lie,'' or that it would ''protect'' fraudulent wrongdoers. The fact is that fraudulent activity would continue to be fully actionable by private parties under either bills' safe harbor construction. Moreover, nothing in any proposal would prevent the Securities and Exchange Commission from bringing an enforcement action against any person on the basis of a forward-looking statement. The purpose and goal of the safe harbor is not to provide a ''license to lie'' but to provide a forum in which companies can safely provide valuable information to the investing public.

Mr. President, it is important for us to have you understand our position. Without strong, clear safe harbor protection—similar to that enacted by either the Senate or the House—reform efforts will be virtually meaningless. We need your active support to ensure that the legislation enables corporate executives to speak candidly about the future and to ensure that investors receive the information they need. In so doing, businesses will win, investors will win, and the marketplace will win.

Sincerely,

Adaptec, Inc., National Semiconductor Corporation, Quantum, 3COM, LS Logic Corporation, Oracle Corporation, Raster Graphics, Silicon Graphics Inc., Sun Microsystems, Inc., Intel Corporation, Applied Materials, Inc., Varian Associates Inc., Hewlett-Packard Company, Cypress Semiconductor, Raychem Corporation, Advanced Micro Devices Inc., Centigram Communications Corporation, Apple Computer, Inc., Tandem Computers, Trimble Navigation Limited, Xilinx, Inc.

AMERICAN BUSINESS CONFERENCE,
Washington, DC, November 1, 1995.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Shortly, you are likely to receive from Congress legislation designed to reform our nation's system of securities-related litigation. We are writing to urge you to sign that legislation when it reaches your desk.

As you know, bills designed to curtail speculative securities litigation—so called strike suits—passed the House and Senate by wide, bipartisan margins earlier this year. The House and Senate conferees will be meeting presently and a draft conference report has already been written. That draft report has been warmly endorsed by Senator Dodd, who called it a ''balanced, moderate bill that addresses the needs of legitimately defrauded investors, while protecting our nation's businesses from frivolous lawsuits.''

We, and the organization we co-chair, the American Business Conference (ABC) agree with Senator Dodd's assessment. For far too long, America's entrepreneurial, growth companies have been harassed by speculative lawsuits brought by a small coterie of lawyers in the name of investors who often are unaware that a suit has been filed. These suits are initiated for the purpose of securing a settlement; they amount to little more than perverse transfer payments from one group of investors to another with a large slice going to the plaintiffs' lawyers.

Those companies that manage to escape being sued suffer as well. They know that the promulgation of so-called forward-looking information is an open invitation to a lawsuit because statements about future prospects are uncertain and therefore vulnerable to legal assault after the fact.

This means less communication of forward-looking information to investors, a less efficient securities market, and, ultimately, a higher cost of capital for entrepreneurial firms unable to explain fully why investors should seek them out. Our economy cannot afford this absurd situation to continue; it is costing jobs, it is hampering new business development, and, ultimately, it is a tax on our future standard of living.

Having spoken at length with our colleagues in ABC and with other business leaders from California to Massachusetts, we can assure you that no business-related issue is being more closely watched by America's entrepreneurs than is the fate of this reform legislation. It deserves your wholehearted support.

Sincerely yours,

GEORGE N. HATSOPOULOS,
Chairman and President, Thermo Electron Corp. Waltham, MA.
Co-Chairman, American Business Conference.

CLARK A. JOHNSON,
Chairman and C.E.O., Pier 1 Imports, Inc., Fort Worth, TX.
Co-Chairman, American Business Conference.

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COALITION TO ELIMINATE ABUSIVE SECURITIES SUITS,
Washington, DC, November 1, 1995.

Hon. CHRISTOPHER DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: Earlier this year, overwhelming majorities in both Houses of Congress (325–99 in the House and 69–30 in the Senate) passed legislation that would reform our nation's securities litigation system. The overwhelming margins of support attained in these votes clearly reflect a bi-partisan consensus that the current securities litigation system needs to be fixed, and fixed quickly.

In short, the status quo is stifling our nation's growth companies while padding the pockets of plaintiffs' attorneys. Over the past four years, a total of $2.5 billion has been paid in settlements in securities class action cases analyzed by National Economic Research Associates, Inc.—a ''disproportionately large number'' of which involve suits against high-technology companies—with plaintiffs' attorney fees averaging 32% of the settlement.

As concerned leaders of the American business community, we urge you to capitalize on this display of legislative solidarity and move this important legislation swiftly through conference committee and to President Clinton's desk.

Sincerely,

Abbott Laboratories; Banc One Corp.; American Greetings Corp.; The Carlyle Group; Ceridian Corp.; Chrysler Corp.; Household International, Inc.; Beneficial Corp.; Carolina Power & Light Co.; Chevron Corp.; Eastman Kodak Co.; Nashua Corp.

Gilbert Amelio, National Semiconductor Corp.; James A. Unruh, Unisys Corp.; John East, Actel; Allen Weintraub, The Advest Group, Inc.; Robert N. Pratt, Alta Gold Co.; Eric Benhamou, 3Com Corp.; Edward Abrams, Abrams Industries, Inc.; John G. Adler, ADAPTEC, Inc.; Randall Wagner, Agatheas & Wagner, P.A.; Kurt Wiedenhaupt, American Precision Industries, Inc.; Wayne G. Vosik, American Travellers Corp.; James C. Beardall, Anderson Lumber Co.; Pier C. Borra, Arbor Health Care Co.; Safi Qureshey, AST Research, Inc.; Lawrence Lefkowitz, Ampal-American Israel Corp.; Lawrence J. Young, Angelica Corp.; Frank Christianson, Arctic Circle Restaurants; George F. Pickett, Jr., Atlantic Southeast Airlines, Inc.

David K. Chan, Auravision Corp.; Robert Spies, Berol Corp.; Michael P. Bick, Biopool International; James A. Bixby, Brooktree Corp.; Larry J. Weber, Bauer Built, Inc.; Kenneth A. Olson, Berry Petroleum Co.; William W. Neal, Broadway & Seymour Inc.; Michael B. Crutcher, Brown-Forman Corp.; David H. Gunning, Capitol American Financial Corp.; John E. Jones, CBI Industries Inc.; David Thiels, Century Telephone Enterprises, Inc.; John West, CIMLINC Inc.; Robert Bogin, Capitol Multimedia, Inc.; D. Tad Lowrey, CenFed Bank, A Federal Savings Bank; John Stevens, CIMCO Inc.; Thomas H. Lowder, Colonial Properties Trust.

Van B. Honeycutt, Computer Sciences Corp.; Robert J. Paluek, Convex Computer Corp.; J.J. Finkelstein, Crymedical Sciences, Inc.; J. Bruce Baily, Cyclopss Medical; S. Duane Southerland, Conso Products Co.; Denny Callahan, Crowley's; Roy A. Myers, Curtice Burns Food, Inc.; Gerald D. Rogers, Cyrix Corp.; Michael W. Pope, Dionex Corp.; David H. Wiggs, Jr., El Paso Electric Co.; Michael C. Ruettgers, EMC Corp.; Donald M. Vuchetich, Detroit & Canada Tunnel Corp.; Robert J. Dickson, Dynamet Inc.; Thomas E. Sharon, Electromagnetic Sciences, Inc.; Steve Sarich, Jr., 321 Investment Co. Quentin J. Kennedy, Sr., Federal Paper Board Co., Inc; Dan Queremoen, Fluoroware, Inc.; Joseph Franklin, Frequency Electronics, Inc.; Mark A. Hofer, Genzyme Corp.; Michael E. McKee, First Federal Savings & Loan Association of Montana; Darrell G. Knudson, Fourth Financial Corp.; James E. Herring, Friona Industries, L.P.; Tony Tako, Gerrad & Co.; John T. Williams, Gray Communications Systems, Inc.; Melvin J. Melle, The Hallwood Group Inc.; Anthony Graffia, Hartford Computer Group. Inc.; Hans Helmerich, Helmerich & Payne Inc.; Umang Gupta, Gupta Corp.; Derek C. Hathaway, Harsco Corp.; Robert J. Purger, Health Care REIT, Inc.; John Herzog, Herzog Surgical Inc.

Tracey T. Powell, Home Access Health Corp., Richard L. Molen, Huffy Corp. David W. Scar, Integrated Circuit Systems, Inc.; Frank Deverse, International Microcircuits; Robert W. Hampton, Hornbeck Offshore Services, Inc.; Gerald S. Casilli, IKOS Systems, Inc.; E. Michael Thobew III, Interlink Electronics; Peter H. Van Oppen, Interpoint Corp.; James H. Morgan, Interstate/Johnson Lane; David L. Angel, ISD; Vince Martin, Jason Inc.; Robert Johnston, Johnston Associates Inc.; W. Richard Ulmer, Invitro International; Ivey Jackson, Jackson Insurance Agency, Inc.; Gerald M. Gifford, John G. Kinnard & Co., Inc.; Lawrence J. Cawley, Kaydon Corp.

Dale Gonzalez, KIT Manufacturing Co.; Michael J. Koss, Koss Corp.; Carl R. Wiley, Lane Plywood, Inc.; Frank H. Menaker, Jr., Lockheed Martin Corp.; Richard M. Ferry, Korn/Ferry International; C. Scott Kulicke, Kulicke and Soffa Industries, Inc.; Ronald B. Cushey, Live Entertainment, Inc.; Thomas E. Sharon, LXE, Inc.; Robert Watson, The Managers Funds L.P.; Michael Ricci, Marco Mfg., Inc.; Debra Coleman, Merix Corp.; Thomas Hiatt, Middlewest Ventures; Diane R. Torney, Marcam Corp.; William N. Alexander, McGladrey & Pullen; Greg C. Zakarian, MicroCarb Inc.; Clair G. Budke, Minnesota Society of CPAs.

Kerry Budry, Qual-Effic Services Inc.; Allen Becker, Reflection Technology, Inc.; Robert L. Montgomery, Reliv International, Inc.; Ronald H. Kullick, Ribi Immuno Chem Research, Inc.; Gary Conradi, Raven Industries; Robert M. Steinberg, Reliance Group Holdings Inc.; Gary L. Crocker, Research Industries; Shan Padda, Sabratek Corp.; Jack Masters, Modagrafics, Inc.; John M. Nash, National Association of Corporate Directors; William F. Coyro, Jr., National TechTeam Inc.; Brian D. McAuley, Nextel Communications, Inc.; S. Jay Stewart, Morton International, Inc.; E. Michael Ingram, National Data Corp.; George A. Needham, Needham & Company, Inc.; J. Clarke Price, Ohio Society of CPAs.

John Schlosser, St. Francis Bank; Robert W. Philip, Schnitzer Steel Industries, Inc.; William G. Malloy, Scientific Games, Inc.; Charles F. Valentine, Security Federal Savings & Loan Assoc.; Peter Nisselson, SBM Industries Inc.; Lyndon A. Keele, Science Dynamics Corp.; Don R. Scifres, SDL, Inc.; Anthony M. Marlon, Sierra Health Services, Inc.; Maxell Fox, Silent Radio Inc.; John J. Gillway, Jr., Sizeler Property Investors, Inc.; James C. Bly, Jr., Source Capital, Ltd.; Paul Richman, Standard Microsystems Corp.; Terry L. Kirch, Resource Information Management Systems, Inc. (RIMS); Grady R.

Hazel, Society of Louisiana CPAs; Michael Budagher, Specialty Constructors, Inc.; Douglas R. Starrett, L.S. Starrett Co.; Thomas Goldrick, Jr., State Bank of Long Island; Thomas L. Elliott, The Sunbelt Companies, Inc.; Lawrence J. Fox, Symix Systems, Inc.; David F. Simon, U.S. Healthcare, Inc.; Ryal R. Poppa, Storage Technology Corp.; Patrick L. Swisher, Swicher International, Inc.; M.A. Self, Tioga International, Inc.; Daniel Ogita, Unibright Foods, Inc.; Gene Koonee, United Cities Gas Co.; Thomas P. Stagnaro, Univax Biologics, Inc.; Steven J. Appel, Value Merchants, Inc.; Bruce S. Chelberg, Whitman Corp.; C. Edward Mordy, United Wisconsin Services, Inc.; MacRay A. Curtis, Utah Association of CPAs; Frank Fischer, Ventritex, Inc.; James E. Wilf, Wilf & Henderson, P.C., CPAS.

Edward W. O'Connell, Wiss & Co.; J. Oliver McGonigle, The YES Group Inc.; Addison Piper, Piper Jaffray Companies, Inc.; William A. Valerian, Home Bank, F.S.B.; C. William Thaxton, YES Financial Inc.; Frederick A. Stampone, Pep Boys; DeLight E. Breidegam, Jr, East Penn Manufacturings Co.; Raymond V. Glynn, TELCORP; Jean C. Tempel, TL Ventures; J.W. Bernard, Univar Corp.

The PRESIDING OFFICER. Under the previous order, the Senator from California is now recognized for up to 30 minutes.

Mr. BRYAN. Mr. President, my distinguished colleague needs another minute or two. I thought perhaps, with the acquiescence of the distinguished floor manager, we might get some additional unanimous consent—I know he has several colleagues who asked to speak, or at least I saw his list. I am perfectly agreeable that we might do that now. If he is not prepared to do so, we would——

Mr. BENNETT. I do not wish to interrupt the Senator from California. I do not have the list in front of me, so why does she not go ahead.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. BOXER. Mr. President, I rise to speak against the conference report. This legislation claims to reform private litigation under the Federal securities laws. I believe there is a clear need for reforms in the securities laws. For example, we need to ban the payment of bonuses by a small minority of unscrupulous lawyers to professional plaintiffs. We need to prevent lawyers from dipping into Securities and Exchange Commission disgorgement funds. These are funds created by Government agency litigation, not by the private lawyers' litigation, and private lawyers should not be paid from those funds.

We should also ban the payment of referral fees to stockbrokers who drum up plaintiffs and litigation for plaintiffs' attorneys. Securities lawsuits should redress real wrongs and not promote strike suits to shake down innocent defendants.

This conference report prohibits those three practices I just described. I support those provisions. But the legislation goes much, much further. It uses, in my view, legitimate problems as an excuse to gut securities protections for the average American. I cannot be a party to that. I feel it is very important that this debate be as inclusive as it can be of all aspects of this because I believe someday, as Senator BRYAN has said, this vote is going to come back to haunt people. And I want the RECORD to be clear as to where this Senator from California stood.

The real effect of this legislation, absent those three good parts that deal with frivolous lawsuits, the real effect of this legislation is to unleash con artists and swindlers to prey on the investing public and bilk them out of hundreds of millions, perhaps even billions of dollars. Because of this, I call on my colleagues to vote no. And I call on the President, if this legislation passes, to veto it. If you are fighting for the average American, you have to veto this bill because it is going to hurt the average American.

Mr. President, we are in a time when the middle class, especially the elderly middle class, is being asked by the majority in this Congress to give up, in my opinion, basic old-age protections. This Republican Congress wants to deeply cut Medicare, to give a tax break to the rich, and they even repeal Federal nursing home standards.

So the middle class, the elderly middle class are getting hit. We must remember that securities fraud is aimed at the elderly—there are many studies that show this—aimed at the elderly. So this is a double whammy. In other words, what we are doing here today cannot be divorced from the budget battle we are waging. On the Democratic side of the aisle, we are fighting to protect the middle-class elderly. But we do not control the votes. They are going to get hurt somewhat. Why offer them this double whammy?

I tried to get special safe harbor protections for the elderly in this bill, but I could not. I could not win that fight. So the elderly are at risk here. As a matter of fact, all of us who invest, all of us are at risk here. But who will get hurt the most? Not the wealthiest of the investors, because if you are worth millions and millions of dollars you can take a hit and wind up on your feet. Not the poorest of the poor, because if you are the poorest of the poor, you do not invest. So the wealthiest and the poorest are probably going to be all right.

But it is the middle class that is going to get hit. This bill is antimiddle class and it is antisenior citizen. It would jeopardize the retirement funds and old age security of millions of our citizens, and for that reason, I hope colleagues will vote no.

The conference report is named, or I should say misnamed, "securities reform." But the conference report does not reform the Federal securities laws, nor does it reform litigation under those laws. It does exactly the opposite, in my view. It encourages securities fraud, fraud on the most innocent and vulnerable investors.

I remember being visited by the victims of fraud, the victims of Charles Keating, and they said, "Senator, you have to stand on that floor, and you have to tell your colleagues to prevent that from happening to anybody else." Those victims of Keating were able to recover $200 million plus because of the laws we have in place today. Not after this bill. Not after this bill.

This legislation would even hurt business. Why do I say that? If you make the securities laws less protective of the vast majority of investors, what will happen is people will have doubts about the safety of securities. So they are going to wind up not investing in securities, not lending their money to start up, holding their capital back, maybe just buying Government bonds, a safe investment, and, therefore, these honest companies, because of the fraudulent ones, will have to pay a premium when they sell their securities. It will wind up being kind of like a fraud tax because people will say, "I'm very worried, I'm not going to give you my money. There has just been a scandal." And they say, "OK, we'll pay more interest." So in the end, the honest companies will get hurt.

I am a former stockbroker, and I have had the experience and honor of helping people with their investments. For the most part, they happened to be elderly people who entrusted me at that time many, many years ago. I know how they hung on every price change, because they relied on their dividends and they knew some day if they had a family emergency, they would have to sell those securities. They also relied on the honesty of the companies. If we ever ran into a situation where there was a company that was not being honest when they made projections or they talked about their company, we saw those stock prices go down.

It seems to me we owe it to the investors and to the good companies and to the good stockbrokers to keep a very strong and very powerful securities law, because I really believe after the first scandal—and there will be such a scandal, in my view, if this goes through—people will just be afraid, afraid to invest their money.

Mr. President, this conference report would make losers of millions of people, particularly small investors with IRA's—that is individual retirement accounts—pension plans, mutual funds. It is these average Americans who will be the first victims of the fraud which will be unleashed by this legislation. The legislation effectively repeals much of the Nation's antifraud laws passed in the thirties in response to the rampant fraud that contributed to the stock market collapse of 1929. My goodness, can we not learn from history around this place? Do we have to see it happen again?

This legislation really could be called a roadmap to swindlers and con artists who will use it to defraud the public and undermine the public's faith in the markets. That is why organizations representing millions of average investors oppose the legislation.

Let me name a few. In my own home State of California, the California Congress of Seniors is opposed. ''We feel,'' they say, ''this legislation puts all elderly Americans who save their money in jeopardy because it would make it practically impossible to sue a swindler for securities fraud.''

State and local governments would lose under the legislation.

The California Association of County Treasurers and Tax Collectors is opposed. This is a conservative group of Americans entrusted with making sure that county funds are invested wisely. What did they say about this? ''We strongly urge you to oppose the Securities Litigation Reform Act. In recent years, local California governments have lost more than $2 billion in the securities markets, partly due to derivative investments. Some of these governments have pending securities fraud cases. Others are still deciding whether to use the courts to pursue the recovery. Now is not the time to weaken defrauded investors' rights,'' they say, and this comes from the local people.

I thought this crowd in Congress respects the local people. I thought they respect the people at the county level, the State treasurers, the States attorneys general. I guess they only respect them when they finally agree with them, but if they do not agree with them, they do not respect them.

This is dangerous legislation, and that is what it is called by the California State organization.

As the city and county treasurers and tax collectors point out, State and local governments, as investors of public funds, bring many securities fraud suits. We know about Orange County where they are trying to recover from unscrupulous brokers. The city of San Jose in 1984 nearly went bankrupt because it unknowingly purchased risky securities. Now they were able to sue. Their city attorney who pursued that case came before the Banking Committee on which I serve, and I am proud to serve on it, and she said, ''Don't change the laws. We had a very hard time under current law recovering our money, but we were able to do it. Don't weaken those laws.''

That fell on deaf ears.

Government agencies that have been defrauded and forced to use the Federal antifraud laws are not confined to California. There are many examples: Ohio and Florida where local government agencies lost millions through securities frauds.

Taxpayers are the ultimate losers, so not only are you putting individual investors at risk, I say to my colleagues, but you are putting taxpayers at risk who pay local taxes because local governments buy securities, too.

(Mr. SANTORUM assumed the chair.)

Mrs. BOXER. Mr. President, I talked about the fact that one of my major concerns is the impact of this legislation on senior citizens who are the clear targets of fraud. Why is that? They count on their pension plans. They have little ability to replace their lost investments other than to sue for fraud, and they need protections that this bill would take away.

Senior citizens save for a lifetime. They often invest, as I say, a significant part of those savings in securities. Their pension plans are usually full of securities. These invested savings must carry them through old age and retirement, and this bill makes it easier to get away with securities fraud. So it is going to be, among others, senior citizens and their pension plans that will be the major victims.

Many of our seniors are old, they are frail. They cannot return to work like some of us who can come back if somebody perpetrates a fraud on us. We have years ahead that we can work, although I am getting older every day and have fewer years myself.

The fact is, the seniors cannot go back to the workplace, so if they are bilked of their money, they have to take it on the chin, they have to lose their dignity as they go to their children or really live in abject poverty.

That is why the American Association of Retired Persons is against this bill—AARP. They sent a letter to the Banking Committee and said:

For many older people, the money at stake represents a lifetime of savings, a lump sum pension payout, or proceeds from the sale of a home. Private lawsuits brought by victims of fraud often represent the only legal recourse available to redress the wrongs committed by unscrupulous financial practitioners.

The AARP is not alone. The National Association of Public Employee Retirement Systems is also opposed. If you start listening to the people who oppose this bill, what you will realize is that it is most people. It is the special interests who favor the thing. Those are the people who are being protected. The aiders and abettors of fraud are being protected and the perpetrators of fraud are being protected, but the people who are responsible for protecting other people's money, such as county treasurers and attorneys general of various States, these people—the AARP, who protect seniors—are opposed. The AARP says that the President should veto this bill.

Newspaper editorials. I think it is important to take a look at these newspaper editorials, Mr. President, because they do not have an ax to grind. They are looking at the legislation. As a matter of fact, newspapers are considered, in many cases, to be more conservative than the average person. Let us hear what the Chronicle in the bay area has to say about this. It is called Opening the Door to Fraud.

''Securities fraud lawsuits are the primary means for individuals, local governments and other investors to recover losses from investment fraud—whether that fraud is related to money invested in stocks, bonds,'' et cetera. And they say, under the conference report, investors would be the losers.

Dozens of other newspapers and magazines have editorialized against this legislation, calling for it to be defeated or vetoed.

Let us look at the largest paper in my State, the Los Angeles Times. The Los Angeles Times had this to say about the legislation: ''This isn't reform—it's a steamroller.''

It is a steamroller. They are very, very critical.

The Oakland Tribune summarized the conference report this way. They say:

President Clinton should veto the measure because it leaves individual investors and an array of institutional investors like pension funds, municipalities, and other government units without enough protection from manipulators like Charles Keating, Ivan Boesky, and Michael Milken. . . .

Where are the people here in this institution? Do they not remember these names from the 1980's? Do they not remember reading about the Great Depression? Do they not remember the S&L scandal, which was caused by the deregulation that was so wild that there was rampant fraud?

Let me say this. According to the Oakland Tribune:

If this law had been if in effect when thousands of investors, many of them Californians, had sued Charles Keating over the Lincoln Savings and Loan scandal, the plaintiffs would have recovered only $16 million. Under current securities-fraud laws, they were able to recover $262 million.

I ask, do you think the people who were bilked by Charles Keating had a right to recover their losses? If you say yes—and I would be surprised if you did not—how on Earth can you vote for this bill which would have made it impossible for them to recover any more than $16 million when the losses were in the $200 million range?

The Muskegon, MI, Chronicle had this to say:

How come GOP's contract allows ripoffs of investors?

. . .Let the bill's backers explain to the rest of us why stock swindlers need to be ''protected'' from lawsuits.

In the Republican GOP Contract With America, there is a very specific reference to changing the securities laws. As a matter of fact, I had a huge debate with the author of the original bill, who then backed off some of the provisions, like making it retroactive, when he realized it might hurt his own district. But I am glad that the Muskegon Chronicle in Michigan—and I have never been there and I do not know anyone who writes this—caught on. This is directly coming from the Republican contract. ''Let the bill's backers explain to the rest of us why stock swindlers need to be 'protected' from lawsuits.''

I do not think anybody has answered that. They talk about frivolous lawsuits, but they neglect to talk about these basic problems with the bill, which is that it strips away important protections that investors rely on.

Money magazine has run four editorials calling for the defeat of this legislation. Money magazine. Here it is. Could you ever write a more apt title? It is, ''Congress Aims at Lawyers and Ends up Shooting Small Investors in the Back.'' That is exactly what happened with this bill. A laudable purpose, where you get a 100-to-0 vote on the three provisions that deal with cutting back on frivolous lawsuits. But they use that as an excuse to open up all the securities laws, undo the protections and ''end up shooting investors in the back.''

They say:

At a time when massive securities fraud has become one of this country's growth industries, this law would cheat victims out of whatever chance they may have of getting their money back. . . . In the final analysis, this legislation . . . would actually be a grand slam for the sleaziest elements of the financial industry at the expense of ordinary investors.

My colleagues, if you are watching this in the comfort of your offices, if you are not tied up in a meeting or a committee, just look at this. Money magazine. What is their purpose? To help investors. They say, ''Congress Aims at Lawyers and Ends up Shooting Small Investors in the Back.'' The next scandal that we have, you will all be on the floor saying, ''My God, I did not think that, and I did not know that, and I did not read the fine print, and so on and so forth.'' You have a chance today to stick with the Senator from Nevada and stick with the Senator from Maryland and stick with this Senator from California and vote with us against this conference report. It is hurtful to the average investor.

USA Today editorialized:

The bill's sponsors claim this step is needed to rein in an explosion of frivolous litigation. But the facts don't back them up. . . . These bills are a blatant payoff to the corporations, brokers, accountants, and others who give millions to congressional campaigns.

That is a pretty tough indictment of what they view—USA Today—as special interest legislation.

The Miami Herald goes so far as to call this bill ''a license to steal.'' They say: ''. . . Senate bill bars lawsuits against many who bilk investors. How does this help the economy?'', the Miami Herald asks. ''This is licensed larceny, and it's unconscionable.''

Then we have an interesting letter I want to share. The Fraternal Order of Police have written a very good letter to President Clinton. They call on him to veto this bill. They drew an interesting parallel to the war on crime.

They say:

On behalf of the National Fraternal Order of Police, I urge you to veto the ''Securities Litigation Reform Act''. . . . The single most significant result of this legislation would be to create a privileged class of criminals. . . . Our 270,000 members stand with you in your commitment to a war on crime. . . . I urge you to reject a bill which would make it less risky for white collar criminals to steal with police pension funds while the police are risking their lives against violent criminals.

There are a lot of different kinds of crime. White collar crime. You look at the guy and he looks terrific, but he is stealing your money because he does not tell you the truth about investment, and this bill would take away your protection. I think it is very interesting that the Fraternal Order of Police felt it important to talk about this kind of crime—white-collar crime.

The National Council of Individual Investors is also opposed. They wrote the President:

We are writing to express our strong opposition to the recent draft conference report on securities litigation reform. The conference report fails to treat the American investor fairly. For example, as currently drafted, the bill would have cost the victims of the Keating savings and loan fraud over $200 million more than they otherwise lost. In the interests of protecting individual investors from fraud, we strongly urge you to oppose, and if necessary, veto this legislation.

Now, I have to say if BARBARA BOXER stands on the floor of the Senate and gives her views, because I usually line up with consumer groups you might say BARBARA BOXER always lines up with the consumers. But my goodness, you have got every respected investor advocacy organization, senior citizen organization, consumer organization, local elected people, States attorney generals, it goes on and on and on. They are all telling us ''Don't fall for this bill.''

There is a lot of discussion about a safe harbor. The SEC was right in the middle of developing a new safe harbor provision. But, no, we could not wait. It reminds me of when Congress got in the middle of deregulating the S&L's and said, ''We know better.'' Look what happened.

We are doing the same thing here. Why not let the professionals deal with this. They say, well, the SEC now likes this safe harbor. I read the letter. I think, frankly, there was a lot of pressure put on people over there. That story will come out another day.

When you read the fine print of this legislation, any swindler can cover himself, make some cautionary statement about a forward-looking prediction, and find cover in this new safe harbor.

Mr. President, the Senate should not be a party to this kind of lawmaking. It should not be a party to this kind of lawmaking.

This bill even says that the lawyer in a securities fraud case has to be picked by the wealthiest investor—the wealthiest.

Now, it is one thing to go after professional plaintiffs, and I am ready to do that any day of the week. Sign me on. It is another thing to say in each and every case the wealthiest investor is the one who will be involved and be responsible, and choose the attorneys and all the rest. Talk about wealth being power—maybe that wealthy individual could care less about the circumstance. And other smaller investors care more because proportionately they are more hurt. The wealthy one gets the opportunity to control the lawsuit.

I ask, what are we doing here? I think this bill is much worse than when it left here. It went to conference and it got much worse. I hope some people who voted for it, sent it off to conference, will reconsider.

This conference report stacks the deck against the investor—anyone and everyone who has respect and objectivity in this Nation has come out against this bill.

Even an excellent amendment by Senator SPECTER was dropped, a very important amendment. It applies to complaints filed at the initiation of a securities lawsuit. It had to do with the burden of proof necessary to file a case dealing with motive and opportunity to defraud. It was dropped in the conference. Close the door, you drop the progressive provision that would have protected investors. That was a very bad change in this bill. This bill is worse, much worse now, than when it left here.

Mr. President, in conclusion, this legislation will hurt the public. Everyone says in America that we have the safest securities markets in the world. Everyone is so proud, so proud. Yet they are cutting the heart out of these protections.

It will do the public great harm. It is not reform. It is repeal. It is repeal—repeal of protections that have made our securities markets the safest in the world. This bill will hurt investors and ultimately honest companies that sell securities.

The only winners, in my view, will be those crooks who get away with it. Before we come back here and say, ''My God, what have we wrought,'' we should go back. In the end, this legislation will erode the confidence and efficiency of the Nation's securities markets. Our Nation will be the loser.

What the conference committee did is they took legitimate problems and they used them as an excuse to destroy the very protections that small investors need.

I hope that people will vote ''no'' on this. Barring that, I hope that the President will veto it. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Nevada is recognized for 15 minutes.

Mr. REID. Mr. President, I received a call from a reporter from Nevada, and the big news in Nevada is the two Senators in Nevada disagree on something. We normally agree on almost everything. This is one of the rare issues where the two Senators from Nevada disagree.

Mr. President, I was 1 of the 69 Senators that voted for this bill when it came the first time. I am going to be one of those Senators that will vote to confirm the conference report that we just received. I think this is an important piece of legislation.

Mr. President, in my legal career, I have had about 100 jury trials. I understand the trial practice. I think this is an area of the law that has been abused by trial lawyers. I think the small group of lawyers has abused the license they received to protect the consumers of this country. They have become more concerned about protecting themselves and not the consumers to which they allege they protect.

This legislation, Mr. President, should pass. It is important, I believe, to the integrity of this aspect of the law.

It is often said that the truth is the first casualty in a war. I believe this adage to be particularly appropriate to the debate over the bill now before this body. I realize that there is a great deal of money at stake with this legislation. I am aware that a small but shrewd group of plaintiffs' lawyers stands to lose a lot of money because of the reforms brought through this legislation.

That does not, however, excuse the frightening fictions that I believe are being paraded in some aspects by this bill—by the people trying to kill this conference report.

I first became suspicious about the opposition to this legislation when I met with a group of people who were attempting to defeat it. In my conference room, in my office here in Washington, I met with a group of people, most of whom were from Nevada but some from other parts of the country, and they were in here to tell me how bad this legislation was. I proceeded to listen to them. Everything they talked about was not in the Senate bill but was in the House bill.

I listened to them and, trying to shake the fact that sometimes I like to cross-examine people that come to visit me, I could not overcome the temptation on this occasion. I said to the group, ''Who paid your way here?''

A number of faces turned very red and they said the name of one of the lawyers, plaintiffs' lawyer, who has made a fortune in this litigation.

I asked the next question, ''Where are you staying?''

And they said, ''The Willard Hotel.''

And I said, ''Who pays for that?''

The same red faces, the same affirmative answer, ''The plaintiffs' lawyers were paying for this.''

They have every right, but I think the record should be very clear. There is a small group of plaintiffs' lawyers attempting to maintain a lock they have on part of the litigation world that I think has gone too far.

Mr. President, I am sorry my friend from California has left the floor, but the same is true about the Money magazine that was referred to. Money magazine has previously editorialized on the bill without considering the legislation as a whole. Indeed, there seemed to be an almost exclusive focus on the House bill. They were writing about something that was fictionalized as being here.

It is the House bill that was part of the Contract With America. Today, we have a bill almost identical to that which this body passed earlier this year.

Some of their editorials claimed that the legislation would potentially force investors and the lawyers who lose a case to pay the winner's entire legal fees. Of course, the facts are totally different from that. The compromise agreement drops the fee-shifting agreement of the bill.

Money magazine's claim is that the legislation would ''allow executives to deliberately lie about their firm's prospects.'' Facts: Executives who deliberately lie about their company's prospects would be liable under the compromise.

Another claim they made is that the legislation will ''prohibit the investors from suing the hired guns who assist a fraudulent company, the so-called aiders and abettors, including accountants, brokers, lawyers and bankers.'' That is not true.

They go on to say the legislation ''would ratify a court ruling that throws out any suit that isn't filed within 3 years after the fraud took place, even if no one discovers the crime until after the deadline.'' The compromise, as I understand it, does not address the statute of limitations. It merely leaves current law generally as it now is.

Money magazine's claim is that in order to bring a lawsuit, plaintiffs may be ''forced to post a prohibitive, multimillion-dollar bond to cover the defendant's legal fees just in case the suit is later thrown out of court.'' The provision in the House bill requiring the posting of a security bond prior to bringing the suit has been dropped.

Mr. President, I ask unanimous consent that the entire text of the refutation of one of Money magazine's editorials be printed in the RECORD.

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

RESPONSE TO MONEY MAGAZINE EDITORIALS

Recent Money magazine editorials object to securities litigation reform legislation on the bases of provisions that have been amended in the compromise agreement, or because of grossly distorted characterizations of the effect of the provisions. Stripped of their rhetorical excesses, the complaints in the editorials have little substance and even less relevance to the current compromise agreement. In fact, the compromise is good for America's investors—which is why both individual investors and institutional investor organizations are strongly backing the bill. Below are responses to every one of Money's claims in both the September and November editorials.

Money's claim: The legislation would ''potentially force investors and their lawyers who lose a case to pay the winner's entire legal fees, if the judge later rules the suit was not justified.''

The facts: The compromise agreement drops the fee-shifting provision of the House bill. The compromise makes evenhanded procedural revisions to the Federal Rule of Civil Procedure 11. Rule 11 requires that attorneys and unrepresented parties have some factual and legal basis for filing any claim or defense. It already authorizes (but does not require) sanctions against those who violate its mandates. The compromise requires courts to make a finding after a case is adjudicated as to whether either side—either the plaintiff or defendant—violated the Rule. The same substantive rule applies to every other action brought in federal court. If the court finds a violation, and it is not de minimis, then the court must impose sanctions. The court has the discretion not to award attorneys fees and costs if it determines that such a sanction would impose an undue burden on the party that violated Rule 11. The compromise does not sanction a party merely because they lost their case. Every case that is not settled has a loser, but courts rarely find Rule 11 violations. Opponents of this provision apparently do not support Rule 11 or do not trust federal judges to appropriately exercise discretion in awarding sanctions.

Money's claim: The legislation would ''allow executives to deliberately lie about their firm's prospects.''

The facts: Executives who deliberately lie about their company's prospects would be liable under the compromise. The new safe harbor in the compromise has been carefully drafted to ensure that there is no ''license to lie.'' Thus, projections made without adequate risk disclosure are not protected by the safe harbor if they are made with ''actual knowledge'' that the statements are false or misleading—a standard proposed by Senator Sarbanes during floor debate over the Senate bill to ensure that corporate executives who lie to investors would be covered by the save harbor. Forward-looking statements made with sufficient, specific non-boilerplate risk disclosure are protected by the safe harbor. This is a codification of the ''bespeaks caution'' doctrine already being applied by the courts. In addition, the compromise retains the limitations on the scope of the safe harbor contained in the Senate bill, such as the exclusion of any issuer who has been convicted of a securities law violation in the past three years. In addition, there is no safe harbor protection for projections made in connection with blank check companies, penny stock offerings, initial public offerings, partnership offerings, roll-ups, tender offers, and going private transactions.

This compromise safe harbor language balances two important public policy objectives: encouraging increased voluntary corporate disclosure to investors, and ensuring the liars are not protected. Money magazine and others that take an extreme position simply ignore half of the objectives of the safe harbor.

Money's claim: The legislation would ''prohibit investors from suing the fired guns who assist a fraudulent company, the so-called aiders and abettors, including the accountants, brokers, lawyers and bankers.''

The facts: Aiders and abettors are not immune from liability. The compromise agreement authorizes the SEC to bring enforcement actions against those who aid and abet a securities fraud, thus reversing the Supreme Court's Central Bank decision as it applies to the SEC. For private actions, where there has been significant abuse of aiding and abetting liability by ''strike suit'' lawyers seeking to increase the settlement value of a case, the bill leaves current law as it is. However, nothing prohibits investors from suing so-called ''aiders and abettors'' as primary violators, and in fact, many cases were simply refiled after Central Bank alleging a primary violation of the securities laws. This balanced provision ensures that no wrongdoer will escape liability, but prevents aiding and abetting liability to be used as a dragnet to sweep in ''deep pocket'' defendants to 10b–5 claims, regardless of their culpability, merely to coerce settlements.

Money's claim: The legislation ''would ratify a court ruling that throws out any suit that isn't filed within three years after the fraud took place, even if no one discovers the crime until after that deadline.''

The facts: The compromise agreement does not address the statute of limitations in current law. It merely leaves current law as it is. Despite dire predictions that the Supreme Court's one and three year statute of limitations would end all private 10b–5 actions, these actions have flourished since the 1991 decision.

The current statute of limitations has governed express causes of action under the securities laws for more than 60 years, and 10b–5 actions for more than four years. There is absolutely no evidence that legitimate 10b–5 cases have been frustrated.

As one court has observed, ''[p]rudent investors almost always can smoke out fraud (or enough smoke to justify litigation) within three years. [The three-year statute of repose] cuts off only the claims of the most trusting or somnolent—or the most wily, those who wanted to wait as long as possible.'' *Short* v. *Belleville Shoe Mfg.*, 908 F.2d 1385, 1392 (7th Cir. 1990). A longer period would allow speculators too much time to wait and see how their decisions to buy or sell securities turned out, permitting them to use lawsuits to cover their losses in the market. The current law curtails their ability to institute fraud claims ''based on wisdom granted by hindsight.'' *Short*, 908 F.2d at 1392.

Money's claim: In order to bring a lawsuit, plaintiffs may be ''forced to post a prohibitive multimillion dollar bond to cover the defendants' legal fees just in case the suit is later thrown out of court.''

The facts: The provision in the House bill requiring the posting of a security bond prior to bringing suit has been dropped. The new provision gives the court *discretion* to require an undertaking from the plaintiffs *or* defendants in a class action, and/or their attorneys. The court may decide that no undertaking is warranted. This is not a novel or unprecedented provision. Other sections of the securities laws already have similar undertaking provisions. Plaintiffs have not been deterred from bringing lawsuits under those sections.

Mr. REID. Mr. President, we are here today considering the compromise legislation agreed to by the conferees yet the bill's opponents are still running ads in opposition to the House bill. The House bill is gone, history. We have never given it any credence here. But they are doing this in an effort to slant and improperly cite what this bill really stands for. These ads are replete with half truths, hyperbole, and outright distortions. Indeed, it is as if the opponents have failed to read the compromise agreement and have chosen instead to repeat the earlier criticisms of a different bill, the House bill.

Interestingly, this is not unlike their actions in the class action suits they file alledging meritless claims. I believe the status quo makes a mockery of the judicial system.

The much-debated safe harbor provision of the conference report provides investors with protection. It increases corporate disclosure on forward-looking information and ensures that investors are protected against fraud.

I ask the bill's opponents how the compromise can be so pernicious if it received support from Arthur Levitt, Chairman of the Securities and Exchange Commission. In a recent letter, Mr. Levitt said, ''The current version represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.''

It seems pretty clear. These words are from a man charged with protecting the rights of all investors—big investors, small investors, medium-size investors.

Another red herring commonly referred to and flouted by some opponents of this legislation is it will allow for another Charles Keating. They add this to their Parade of Horribles, but it is without foundation. Most of the losses from the Keating case did not involve securities fraud and would not be affected by this legislation. But even for those losses caused by securities fraud, a number of the fully solvent defendants would be jointly and severally liable under the compromise because they committed a knowing fraud.

There are also provisions that everyone on this floor understands that protect small investors. If you have $200,000 or less, you lose 10 percent of it. The same rules apply. Small investors are protected in the legislation in this compromise, in this conference report.

So the Charles Keating talk that we hear so much about is a red herring.

Importantly, this bill includes a provision that requires auditors to take additional steps to detect fraud and report illegal acts directly to the Securities and Exchange Commission.

Mr. SPECTER. Will the distinguished Senator yield for a moment for a unanimous-consent request?

Mr. REID. I am happy to.

UNANIMOUS-CONSENT AGREEMENT

Mr. SPECTER. Mr. President, I make this request on behalf of Senator DOLE, so all Senators may be advised as to what the schedule will be.

I ask unanimous consent that the vote on the conference report occur at 4:45 p.m., with the time between now and then divided as follows: Senator HEFLIN, 7 minutes; Senator GRAHAM, 7 minutes, Senator GRAHAM of Florida; Senator SHELBY, 7 minutes; Senator BIDEN, 7 minutes; Senator WELLSTONE, 7 minutes; Senator COHEN, 5 minutes; Senator SARBANES, 5 minutes; Senator BRYAN, 10 minutes; Senator DODD or his designee, the remainder of the time which, who knows, may be zero, like this morning.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, this provision will help prevent fraud before investors' assets are lost, thereby eliminating the need for litigation.

Another myth commonly put forth by the opponents is that it includes a loser-pays provision. We have talked about that before regarding the Money magazine assertion. That was simply without foundation. The truth is that no one will be required to pay the other side's fees because they simply lose a case. What it does, is tighten rule 11 sanctions against attorneys who file frivolous lawsuits. Rule 11 merely requires that attorneys have some factual and legal basis for filing any claim. This does not seem unreasonable. It already authorizes rule 11 sanctions against those who violate its mandates.

This conference report is a balanced and a fair representation of what this Senate said that it wanted. I, like my friend from Connecticut and others, said we are not going to support legislation that is more in keeping with the House than the Senate. We will vote against it. But I think the 69 Members of the Senate who voted for this legislation the first go-around should vote for it again.

This is good legislation. It is fair. It is balanced. It may hurt the small minority of attorneys reaping a windfall—and that is an understatement, under the current laws—but it provides much-needed protection to investors and restores some sanity to our already overburdened courts.

Mr. President, I ask unanimous consent any time I have remaining be delegated to the Senator from Connecticut.

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

The Senator from Utah.

Mr. BENNETT. Mr. President, I yield the Senator from North Carolina 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for 1 minute.

Mr. FAIRCLOTH. Mr. President, I rise in strong support of the conference report on H.R. 1058. I was pleased to be an original cosponsor of this bill in the Senate.

Mr. President, securities litigation reform is a rather ominous title for a bill. It certainly is not an issue well known to many Americans. But the fact is, this legislation is very important for our economy, and very important for job creation in our country.

This legislation is really part of a larger issue—legal reform. Too many lawsuits are crowding our court system and they are sapping the productivity of many companies. Last year, over 220,000 civil lawsuits were filed in Federal court.

Since 1980, there has been a 73-percent increase in the number of civil suits filed in Federal court.

It is estimated that securities class action suits have increased threefold in just the last 5 years. Yet, a small number of lawyers are pushing these suits.

In fact, every 4 working days, one particular law firm files a securities class action lawsuit.

The cost of these suits is no small matter. At the end of 1993, over 700 class action suits were seeking $28 billion in damages.

Very simply, this bill will attempt to put an end to frivolous class action lawsuits that are filed against America's publicly traded companies.

These strike suites often have little merit, but they are filed for the sole purpose of blackmailing companies into settling rather than going to court.

Everyone of us knows that it is less expensive to settle a lawsuit up front than it is to go all the way to trial. Of course, once the suits are settled, the attorneys that brought them, keep most of the money.

The impact of these suits is having a detrimental effect on our economy. Many companies are afraid to go public and sell stock.

By remaining private, they can avoid these kinds of suits, but they also sacrifice an increase in growth and jobs that can come from going public. This is costing America jobs.

Some have even suggested that companies from overseas are afraid to establish businesses in America out of fear that they too will fall victim to these suits.

Money that would otherwise be spent on new job growth, or on research and development is being paid to lawyers to settle these suits or—worse yet, money is wasted fighting them.

The cost to U.S. companies is not caught in a vacuum. As is always the case, excessive litigation costs are passed along to consumers in the form of higher prices. All of this has a ripple affect on our economy. Mr. President, it is making America less competitive.

In my home State of North Carolina—116 companies have contacted me and asked for my help in passing this bill. They are united in their effort to end these abusive lawsuits.

Together these companies employ 118,000 in North Carolina. This is why this bill is so important for jobs in my State and in this country.

These suits are often targeted at emerging high-technology companies. This is a particularly disturbing development.

America is the undisputed world leader in technology. Germany, Japan, France, England, none of these countries or other countries even comes close to what this country is doing in terms of technology and innovation. Eighteen of the thirty largest high-technology firms in Silicon Valley have been sued since 1988. It has cost them $500 million to settle these suits.

Yet, this small pool of lawyers, like sharks in the ocean are just circling—waiting for the stock prices to fall—then they move in with the strike suite. They are waiting to attack these companies and transfer the wealth to themselves.

We cannot let this happen. America's leadership role in technology is too important to have it fall prey to disreputable attorneys.

Mr. President, let me give a few examples of just how bad the situation has gotten with these suits.

One individual has filed lawsuits against 80 companies in which he held stock. One Federal judge suggested that maybe his investment results were a matter of design to pursue a lawsuit. The investor wanted us to believe that he was just the world's most unlucky investor. I have my doubts.

Another individual has filed 38 lawsuits, 14 of them with the same law firm.

Another man—a retiree—since 1990 has filed 92 lawsuits—one for every one of his 92 years of age.

Further, these lawsuits have so little merit, they are often filed within hours after a stock price drops. Many times the drop is due to simple movement in the markets, yet, the lawyers only have to file a preprinted complaint alleging fraud and race to the courthouse.

The trick is that this allows them to become the lead attorney on the class action case. And by this—they make the most money.

The National Law Journal reported that of 46 cases studied, 12 were filed within 1 day, and another 30 within a week of publication of unfavorable news about a company.

A good example is the Philip Morris case. This case has been discussed often, but it bears repeating.

After Philip Morris announced that it would reduce the price of its Marlboro cigarette by 40 cents a pack—a lawsuit was filed within 5 hours—by a plaintiff who held just 60 shares.

Four more suits were filed the same day, and five the next day. Two of the lawsuits contained identical complaints.

In fact, one suit came so fast from a computer generated legal form—that the attorney forgot to change the form in parts—so he misidentified Philip Morris as a toy company.

This is kind of frivolity that America's companies are fighting—and, regrettably, having to pay for.

Mr. President, the conference report is an attempt to put an end to these outrageous legal practices.

Mr. President, let me assure you that nothing in this bill will prevent anyone from filing a legitimate fraud case against any company.

If it did, I do not think 50 Members of the Senate would have cosponsored the bill. I don't think 69 Senators would have voted for it when it passed the Senate.

For those that oppose this bill in the name of the consumer, I think are not fairly representing the consumers of this country.

Mr. President, a point that is not often made is that consumers, and the plaintiffs in the class action suits rarely benefit from these lawsuits. Study after study shows that lawyers get the lions share of the settlements.

We had testimony that the average investor receives 6 or 7 cents for every dollar lost in the market because of these suits—and this is before the lawyers are paid.

Mr. President, in my opinion, consumers and investors will be helped by this bill. Any consumer that has a job—or wants a job—or wants to keep a job will be helped by this bill.

With this conference report, more of America's capital will be put to job creation and not wasted on one sector of the legal profession. That is really the principle issue here.

Mr. President, the conference report will do a number of things to curtail the abuses in our legal system.

First, the bill allows the courts to determine who the lead plaintiff will be. The conference report will also put some teeth behind the rule that attorneys cannot file frivolous lawsuits.

Mr. President, the conference report will also help investors by allowing companies to dispense more information to the public without the fear of being sued. This is the ''safe harbor'' provision.

This is critically important to the flow of information for investors.

It is a shame that due to the actions of a small cadre of lawyers—that the free flow of information has been cut off. Now investors can only get carefully written legal gibberish that is meaningless. This is wrong, and this bill changes that.

Mr. President, let me conclude by saying that I would strongly urge my colleagues to support the conference report. This is the beginning of meaningful legal reform. I think this bill is a good, fair, and balanced bill, protecting the rights of investors as well as companies.

Mr. HEFLIN. Mr. President, I rise today to discuss the conference report on H.R. 1058, the Securities Litigation Reform Act. After months of secret negotiations from which supporters of small investors, consumers, senior citizens, and public officials who invest taxpayer money were excluded, the proponents of the bill have agreed upon the conference report.

Now that the light of day has been shed on the results of the negotiations it is clear that the conference report is far more devastating for investors than the bill which the Senate passed earlier this year. The conference report fails to fix the glaring inequities between investors and unscrupulous corporate insiders. It has taken some of the worst provisions from both the House and the Senate bill and combined them to form this unacceptable report.

Unlike the Senate bill, the conference report now broadly immunizes oral or written forward-looking statements by corporate insiders with only a requirement that there be ''cautionary'' language to accompany the statement. The determination of what is ''cautionary'' invites litigation, but for those who have already lost their life savings based on this safe harbor this litigation is too late.

Pursuant to the conference report the individual investors who have been victimized by an unscrupulous broker, or fraudulent statement will probably never have their day in court. This is due to the inclusion of a House provision which allows the court to impose a bond requirement to cover the payment of fees and expenses, with no limitation on the amount of the bond. If an individual investor attempts to seek justice from a large corporate defendant, such a bond would probably be unattainable.

Another change from the bill passed by the Senate is the financial risk imposed on investors of having to pay the full legal fees of big corporate defendants if they lose. The new penalty for a plaintiff for a violation of the Federal rules requires that he or she pay all of the corporate defendant's legal fees and expenses for the entire case. This full fee-shifting sanction would be calculated after the case has been completed, when the court must make findings. By the way, if the defendant is found at fault, he is fined only the fees and expenses that are a direct result of a frivolous filing. This English rule, fee shifting, could virtually eliminate all securities claims, the meritless along with the meritorious.

In another move away from the Senate bill the conferees dropped proinvestor language which clarified the burdensome pleading requirements of the bill. In a blow to investors, the proponents have retained an extremely difficult pleading requirement. The report will require plaintiffs to allege facts giving rise to a strong inference that the defendant acted with the required state of mind. This state of mind or intent requirement must be obtained before any discovery or testimony has even taken place. Most courts have rejected this high standard as being in conflict with the purposes and express language of the Federal rules. The report not only adopts this language but raises the requirement even more.

Furthermore, the conference report fails to correct some of the major problems in the Senate bill. These problems include the extremely short statute of limitations and the abrogation of joint and several liability in all but a very limited number of circumstances. The report retains the immunity for aiders and abettors which would have been a boon to the defendants in the Lincoln Savings failure case. The report also retains the requirement that the court appoint a most adequate plaintiff, thus eliminating the issues of concern to smaller investors and inserting the concerns of the wealthiest investor.

I have recently received letters from organizations expressing their concern with this report and legislation. The Fraternal Order of Police state that this legislation would create a privileged class of criminals, by immunizing many of those involved with the markets from civil liability in cases of securities fraud. The UAW describes the legislation as one-sided and contends that it will allow for limited remedies to be available for the investor and pension funds which lose money due to fraudulent investment schemes. I believe that if a more balanced approach to securities law reform could be reached, the proponents could gain the support of these groups and hundreds of others.

The stock market recently broke 5000 and is as robust and active as at any time in our Nation's history. Small investors driven away from the markets due to the crash in the early eighties are starting to return to the markets. This is not the time to pass legislation which will erode public confidence in the integrity of the markets. I strongly urge my colleagues to vote against this report and send it back to the conferees, demanding a more balanced approach to securities law reform.

Mrs. MURRAY. Madam President, I am pleased to come to the Senate floor today to express my support for a bill I cosponsored, the Private Securities Litigation Reform Act of 1995. I commend Chairman D'AMATO and Senators DODD and DOMENICI for their work on this bill. They have done a fine job of crafting a strong bipartisan measure and then guiding it successfully through conference—and I have been pleased to work with them on this issue over the past 3 years.

Madam President, this is an important day for many of the small investors in Washington State and throughout the country. This bill takes the power out of the hands of a few lawyers and puts the power back in the hands of the investors. We all know that in many of these class action lawsuits, the investor often recovers as little as 10 percent of the damages caused by fraudulent activity while their lawyer takes millions.

Madam President, I recently heard from a constituent who received a settlement in a suit against a high technology firm in Washington State. This particular investor received a prorata share of the damages amounting to 3 cents per share, or just $30, while the lawyer in that suit walked away with the rest. The individual in this suit told me, ''my investment was hurt much more by my lawyer's actions, and his extortion of $1 million from the firm, than by any alleged actions on the part of the company's management.''

Madam President, this is neither what our investors want nor expect. It is outrageous and needs to be corrected.

The legislation before us will reform our securities law so that investors will have more of a say in the outcome of their suit. It will restore the plaintiff's role and enable them to exercise traditional plaintiff functions—including the selection of lead counsel, negotiating fees, and determining the distribution of settlements. Quite simply, it puts some common sense back into our legal system.

Madam President, I've seen the ads denouncing this legislation, and I've heard the arguments opposing this legislation. This bill has inspired some very intense, focused, and well-funded opposition.

The bill's opponents claim this legislation will harm small and elderly investors. Well, I believe that assertion is completely false. In no way does this bill take away one's ability to file suit. Nor does it undermine the Securities and Exchange Commission's ability to sue for damages in securities fraud. In fact, the legislation enhances the SEC's ability to do so.

Madam President, Americans have a right to know their investments are secure—that our money has been invested in good faith. Today, investors are denied valuable information because companies are reluctant to disclose forecasts in fear of litigation. This serves nobody well; and it especially hurts investors that are trying to make sound, well-educated investments.

I am pleased to note that the SEC has endorsed the safe harbor provision in this bill. SEC Chairman Arthur Levitt has written, ''the current version represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.'' I agree with Chairman Levitt and I value his opinion. This safe harbor provision will be good for both investors and corporations.

Ultimately, if an investor has been the victim of fraud—no matter how big or how little—they have a right to equal treatment under the law. This legislation ensures that will happen, better than under today's laws.

And, Madam President, Congress has a unique role in promoting investor confidence. We must encourage investments; investments that are needed for capital formation, economic growth, and job creation.

This is especially true in Washington State—which is home to many high technology and biotech companies. And investors in Washington State like to invest in these companies.

Unfortunately, Washington State's investors are well aware of the damage that is caused by unwarranted court cases. They know these cases inhibit job creation and slow economic growth.

They know how companies are forced to waste resources and settle suits with capital that could have been used for the research and development of a new product.

I have heard from many of these companies in my home State. Companies such as these—new, growing, forward-looking—are a point of pride in the Pacific Northwest. They reflect the high technology, high wage economy of the future.

Nobody likes to see these companies attacked by a few overzealous lawyers. These companies lose millions of dollars each year fighting the allegations of fraud—while the actual investor receives just pennies on the dollar when a settlement is finally reached.

Madam President, this system needs reform, and Congress is obligated to correct the situation. And, I want to make it very clear—this bill retains an investor's right to bring suit if they are victims of securities fraud.

At the same time, it will clamp down on the abusive suits they prey on investors and small business owners. It is honest effort to reduce the excessive costs that burden our investors and our economy.

Madam President, let me conclude by recalling the first Senate vote on this bill. When I voted for this bill in June, I said I would not support a conference report if it contained some of the more onerous provisions in the House bill. Well, not only is this conference report almost identical to the Senate bill, it is even stronger in some respects. It is a good compromise and it restores some common sense to our legal system. I urge my colleagues to support this legislation.

SAFE HARBOR

Mr. FRIST. Mr. President, I would like to briefly discuss with Senator DOMENICI one important issue concerning the section 102 ''Safe harbor for forward looking statements.'' It is the clear intention of the conference committee that reckless conduct cannot constitute actual knowledge for purposes of the safe harbor, isn't it?

Mr. DOMENICI. Yes. It is the clear intention of the conference committee that reckless conduct will not constitute either actual knowledge or be construed to constitute a knowing commission of a violation of the securities laws for purposes of section 102 safe harbor provisions of the Private Securities Litigation Reform Act of 1995.

Mr. KYL. Mr. President, I rise to support the Securities Litigation Reform Act of 1995. I thank Senators DOMENICI, DODD, and D'AMATO for their sponsorship of this bill, and their leadership in reforming securities class actions. I am pleased to support this bill, which will reform the legal process by which injured parties can recover damages for securities fraud and negligence. It reduces abusive litigation that clogs our judicial system and results in reduced recoveries to the plaintiffs. Too often the attorneys, not the investors, are the primary beneficiaries of these securities suits.

The Senate Banking Committee passed a version of H.R. 1058 by a vote of 11 to 4 this spring. The full Senate passed this version on June 28 by a vote of 70 to 29. Clearly there is a bipartisan consensus for change. I supported this bill because I believe it modernizes our securities class action litigation system by reducing the potential for frivolous securities lawsuits, while assuring that defrauded securities investors receive a greater share of the settlements or awards in their cases.

H.R. 1058 contains several important reform provisions. It eliminates referral fees currently paid by some attorneys to plaintiffs who successfully recommend them to represent all the plaintiffs in a class action. It requires the courts to appoint, as lead plaintiff, the party willing to serve who has the greatest financial interest, thus doing away with the so-called professional plaintiff who shops for cases to file—frequently as the agent for a lawyer—with little financially at stake. The bill would allow the small investor to recover completely through joint and several liability. And it imposes an affirmative duty on auditors to disclose financial fraud to the Securities and Exchange Commission [SEC], unless the fraud is properly addressed by management.

In many cases it is the attorneys, not the investors, who are the primary beneficiaries of these securities suits. For example, National Economic Research Associates, Inc. reported that, in a 12-month period ending July 1993, the average settlement in securities class actions amounted to $7.36 million. Attorneys earned an average of $2.12 million per settlement, roughly 30 percent of the total. Investors recovered only about 7 cents on the dollar when compared with the amount of losses alleged.

Some argue that the small investor will not be able to find relief under this legislation; that, for example, the victims of the Lincoln Savings & Loan bond fraud would not have recovered their losses. This is incorrect. First, the final bill includes a provision that requires the SEC to determine whether investors who are senior citizens, or those groups with qualified retirement plans, require greater protection against securities fraud. If so, the SEC must submit a report to Congress containing recommendations on protections that the Commission determines to be appropriate to thoroughly protect such investors.

Second, H.R. 1058 retains joint and several liability recovery for small investors with securities claims. Even if the Lincoln S&L investors had sued only for those claims covered under H.R. 1058, many of them would have been fully compensated. H.R. 1058 specifically provides that, if one defendant is insolvent, the remaining codefendants will remain both jointly and severally liable to investors whose net worth is under $200,000, and who lost more than 10 percent of their net worth. All of the Lincoln investors who met this standard would have been fully protected had H.R. 1058 been law. In fact, those investors may have been able to recover more under H.R. 1058. This bill imposes statutory restrictions on the size of lawyers' fees in securities actions. Perhaps, had the plaintiffs' lawyers been prevented from taking more than the $65 million in fees off the top of the settlement fund, the Lincoln S&L investors would have received full compensation for their losses.

H.R. 1058 provides investors who have been injured as a result of the negligence of another the opportunity to file suit. At the same time, it reduces abusive litigation, which clogs our judicial system and hurts those plaintiffs with meritorious claims. It is important that recoveries go to the plaintiffs and not to cover court costs, attorneys' fees, and other transaction expenses.

Mr. President, the Securities Litigation Reform Act will eliminate frivolous securities class actions. I urge my colleagues to support this bill.

Mr. FRIST. Mr. President, I speak today in support of the conference report to H.R. 1058, the Private Securities Litigation Reform Act of 1995. The conference report is a moderate and carefully balanced compromise bill that permits investors in securities to continue to file and win legitimate lawsuits. However, the bill does something that is much needed at this time: It gives issuers of securities the ability to quickly dismiss meritless and abusive lawsuits.

The current system of securities litigation is clearly broken. Why? Because it makes millionaires out of attorneys who repeatedly file frivolous lawsuits. As a matter of fact, securities litigation costs American industry $2.4 billion a year, with one-third of this amount being paid to plaintiffs' attorneys. This results in companies being forced to lay off worker and consumers paying higher prices for goods and services.

The bottom line is that the current system of securities litigation does not benefit investors or consumers: it benefits a handful of attorneys.

Here is how the perverse system of securities litigation currently works: There are a handful of plaintiffs law firms in this country that specialize in filing securities class action lawsuits. This is shown by the fact that seven plaintiff law firms in this country receive 63 percent of the legal fees generated by securities class action cases. These law firms monitor the stock prices of businesses with computers. When a corporation's stock price suffers a major drop, the plaintiff's law firm immediately files a lawsuit. Some 20 percent of securities lawsuits are filed within 48 hours of a major drop in the stock price.

The reason that these law firms are able to file their lawsuits so quickly is that they are suing on behalf of professional plaintiffs, who receive a fee for permitting themselves to be named in the lawsuits. The Securities Subcommittee of the Senate Banking Committee found that there were plaintiffs who had as much as 14 securities action lawsuits filed on their behalf.

These law firms justify the filing of these lawsuits by generally alleging that the drop in the stock price was caused by the corporation or its management acting fraudulently or recklessly. The lawsuits seek for the corporation to pay to its shareholders damages in the amount of the difference between the stock price before and after the stock's drop in value.

Even if the lawsuit is meritless, the corporation is forced to settle. Why? First, litigating a lawsuit is costly, even if your only goal is to get the lawsuit dismissed for failing to state a cause of action. This is because it is very difficult to dismiss such lawsuits, and defense expenses for complex securities class action lawsuits can total between $20,000 and $100,000 a month. Second, the depositions and extensive document review associated with these lawsuits are so time consuming that they disrupt the management of the business. On average, companies that are sued devote 1,000 management and employee hours per case.

The end result is that it is worthwhile for a business to settle a frivolous securities lawsuit, because there is rarely ever any cheap way of dismissing it.

Now, opponents to securities litigation reform are going to tell you that, notwithstanding all of the foregoing, investors still benefit from the current system of securities litigation. But I'd submit that this system actually harms investors.

The first problem, as stated by former SEC Commissioner Carter Beese, is that the current system encourages ''counsel to settle for amounts that are too low or fees that are too high.'' The plaintiffs in a securities class action have a conflict of interest with their lawyers. The lawyers' incentive is for an uncomplicated settlement and an avoidance of trial. This is because the difficult and time-consuming work for the plaintiffs' lawyers comes at the trial phase; if it can be avoided by a settlement, the lawyers still get their percentage for relatively little effort. Thus, the lawyers-driven nature of these lawsuits tends to shortchange investors who have truly been defrauded and would benefit from litigating the lawsuit to conclusion.

The second problem is that in securities class action lawsuits, when a corporation makes a settlement payment to a class of shareholders, the shareholders who still own the corporation's stock are not really getting any tangible benefit in return. If the settlement amount is coming from the corporation's money, then it is no more than a quasi-dividend, with a law firm taking an average of 33-percent cut for giving the shareholder the privilege of having the quasi-dividend occur. This will generally cause the corporation's stock price to drip, which nullifies the benefit of the settlement. If the settlement amount comes from the corporation's directors' and officers' liability insurance, the corporation will be faced with partly paying it back through a staggeringly high premium the very next year. Either way, an investor who continues to own a share of stock in a sued corporation does not gain much from settlement of the lawsuit.

The third and final problem is that investors can no longer get useful forward-looking information about corporations. As former SEC Commissioner Carter Beese testified before the Securities Subcommittee of the Senate Banking Committee, ''companies go out of their way to disclose every conceivable bit of innocuous information, but very little useful forward-looking information. At the same time, legion of lawyers scrub required filings to ensure that disclosures are as milquetoast as possible, so as to provide no grist for the litigation mill.''

With all of the problems that we have with our current system of securities litigation, the moderate relief offered by the conference report is necessary to protect investors, in necessary to protect consumers, and is necessary to protect jobs. I urge all of my colleagues to support it.

I thank the Chair, and yield the floor.

Mr. BURNS. Mr. President, I rise today in support of the Private Securities Litigation Reform Act of 1995. The conference report is a big win for all America's investors, our Nation's businesses, and our overall economy.

The conference report offers a balanced bipartisan bill that restores fairness and integrity to our securities litigation system by protecting innocent companies as well as the rights of the legitimately defrauded investors. The filtering out of the abusive, frivolous class action lawsuits that harm investors and only benefit class action attorneys will restore integrity to securities lawsuits. We will protect investors and at the same time emerging companies will be able to grow and create jobs without the financial burden of abusive litigation.

The legislation we have before us today will go a long way toward curbing abuses in securities litigation. It will provide a filter at the earliest stage of a lawsuit to screen out those that have no factual basis. A complaint needs to outline the facts supporting the lawsuit and not just the simple conclusion that the defendant acted with the intent to defraud. If the complaint does not outline and present all the facts supporting each of the alleged misstatements or omissions, the lawsuit will be terminated.

Many times, securities class action suits are characterized by the ''sue them all and let the judge sort it out'' mentality. In order for a judge to sort it out, the defendants are required to spend numerous hours and expense to defend against a securities class action lawsuit. This bill corrects that problem by requiring plaintiffs to specify the statements alleged to have been misleading.

Securities laws are intended to help investors by ensuring a flow of accurate and pertinent information regarding public traded companies. However, the present system reduces the amount of information required and companies limit their public statements to avoid allegations of fraud. In fact, an American Stock Exchange survey found that 75 percent of corporate CEO's limit the information disclosed to investors out of fear that greater disclosure would lead to an abusive lawsuit. To encourage disclosure of information by companies, the conference report will create a safe harbor. It will provide a procedural mechanism for companies who make predictive statements to be protected from frivolous litigation if their prediction does not materialize.

Mr. President, we have heard a lot of speculation that this legislation would adversely impact small investors. Nothing could be further from the truth because this comprehensive measure will protect the rights of investors who have been legitimately defrauded, while providing new protections for the millions of Americans investors who have been harmed by the recent explosion of abusive and frivolous litigation. While there are many provisions in the measure to deter meritless suits, the bill also requires that the auditors inform the SEC of any suspicions of fraudulent activity and restores the authority of the SEC to bring aiding and abetting cases for knowing violations of securities laws. The measure includes a system of proportionate liability to reduce the pressure to settle frivolous claims and so that companies pay only their fair share of a settlement, while retaining full joint and several liability for small investors and for all defendants who knowingly participate in securities fraud.

In conclusion, Mr. President, this securities legislation reform is fair, balanced and passed with strong bipartisan support. I encourage my colleagues to support the conference report and I once again want to commend Senator DOMENICI and Senator DODD for their work on this bill.

Mr. BOND. Mr. President, the conference report to H.R. 1058 addresses an issue of great concern to many Americans—securities litigation reform. While this is a subject that I believe needs to be addressed and one I have some personal views and experiences in, I will not be participating in the debate or votes on the floor.

I have previously informed the Senate that I am engaged in securities litigation of the kind this legislation seeks to reform. Given the status of this suit and the pending legislation, I will again recuse myself from the proceedings on the matter.

I thank the President and fellow Senators for their understanding of my personal situation.

Mr. DOLE. Mr. President, I am pleased that we are able to consider the conference report to the Private Securities Litigation Reform Act today. I want to commend my colleagues, the chairman of the Banking Committee, Senator D'AMATO, and the chairman of the Budget Committee, Senator DOMENICI, for their leadership in working out the necessary compromise allowing us to bring this bill to the floor. I also want to commend my colleague from Connecticut, Senator DODD, whose involvement in this issue is proof that there is nothing partisan about securities litigation reform.

Our securities markets provide the fuel that drives our economy. When these markets run efficiently, allocating capital to established companies and to newer, emerging businesses, we all win with more economic growth, more jobs, and a stronger economy.

Unfortunately, a handful of lawyers today devote their professional lives to gaming the system by filing strike suits alleging violations of the Federal securities laws—all in the hope that the defendant will quickly settle in order to avoid the expense of prolonged litigation. The lawyers who file these suits often rely on professional plaintiffs, shareholders with only a small stake in the company, but who are nonetheless willing to stand on the sidelines ready to lend their names to the litigation.

Needless to say, these strike suits are often baseless. If a stock price falls, these lawyers will file a class action suit claiming that the company was too optimistic in their projections. If the stock price soars, these same lawyers will file suit saying that the company withheld information that caused shareholders to sell too early. In effect, the lawsuits act as a litigation tax that raises the cost of capital and chills disclosure of important corporate information to shareholders. High-tech, high-growth companies are particularly vulnerable to these baseless strike suits because of the volatility of their stock prices.

This bill will reduce the number of meritless securities fraud cases, while protecting investors, by proposing several commonsense reforms:

First, it diminishes the likelihood that these cases will be driven by lawyers, instead of real plaintiffs by allowing the most adequate plaintiff to be the party with the greatest financial interest.

Second, it clamps down on skyrocketing attorney's fees by requiring that fees be awarded as a percentage of the actual recovery based on the efforts of the attorney.

Third, it retains joint and several liability for those who knowingly commit fraud, but establishes a system of proportionate liability for other, less culpable defendants.

Fourth, it adopts the second circuit's pleading standard. This requires plaintiffs to point out specific statements that are supposed to be misleading, and removes the ''sue them all and let the judge sort it out'' mentality.

Fifth, it encourages companies to disclose information to their shareholders by granting limited protection to predictive statements made in good faith. Statements that are knowingly false, however, are not protected by this safe harbor.

Mr. President, with this bill the Republican-led Congress sends a clear message. We have fulfilled our responsibility to provide companies and investors protection from frivolous lawsuits, ensuring that America will be able to compete in the global marketplace.

President Clinton has not indicated whether or not he will support this bill. But the choice is clear. In my view, if he supports this bill, he supports creating jobs for Americans. If he opposes it, he only supports enriching the pockets of wealthy trial lawyers at the expense of consumers and investors.

In closing, I again commend Chairmen D'AMATO and DOMENICI, and Senator DODD for their work on this critical legislation and I urge my colleagues to support it.

Mr. KERRY. Mr. President, one of my priorities is to foster a competitive business environment in Massachusetts and throughout the Nation that will lead to the creation of skilled, family-wage jobs. A significant factor in creating a favorable business environment is the ability to generate capital. The conference report before us today addresses the question of the so-called securities strike suits that have had a chilling effect on both the business climate and the generation of capital for Massachusetts' vanguard technology industries.

This legislation has been the subject of intense debate. Some argue that in its attempt to end frivolous strike suits, it will deny investors the opportunity to recover losses from companies that engaged in fraudulent securities actions. This is a legitimate concern in view of some of the cases in Massachusetts in which companies repeatedly misrepresented sales, senior officers had to resign and some companies had to declare bankruptcy.

Others have countered that the legislation does not go far enough to prevent frivolous strike suits based solely on stock fluctuations or missed earnings projections and that the attorneys who bring such suits should face the threat of a loser pays provision.

As the Senate has considered various proposals to reform our Nation's securities laws in this area, I have been mindful of the fact that, indeed, there are investors on both sides of this issue. My principal goal—and the yardstick I have used to measure this legislation—is whether it achieves a balance between discouraging truly frivolous strike suits while ensuring companies and individuals are liable for actual fraud. Though not prefect, I do believe this legislation has struck a reasonable balance between protecting investors' rights and reducing the possibility that companies will be subject to frivolous strike suits.

One factor that was extremely important in helping me reach a decision on this legislation was the Securities and Exchange Commission's evaluation of the conference report. The SEC, throughout the legislative process, had withheld its endorsement of the legislation. I am pleased that the SEC stated in a letter of November 15, 1995, that: ''We believe the draft conference report responds to our principal concerns.''

Of particular importance to me is the safe harbor language that is the product of months of consultation with the Securities and Exchange Commission. In my view this provision is the crux of the entire matter. The safe harbor affects a potential investor's decision of whether to purchase securities and it affects a company's ability to paint a rosy scenario to attract investors. It also directly affects the value of the benefits packages of the company's officers and employees. The conference report codifies the judicial ''bespeaks caution'' doctrine and will not allow a company simply to use boilerplate cautionary language.

I am also pleased that the conference report adopts as title III legislation I sponsored originally with Representative WYDEN to require audits of public companies designed to detect illegal acts. It places on accountants and company auditors a clear responsibility for early detection and disclosure of illegal actions by management. This title requires auditors to inform immediately the management and/or the SEC of illegal acts having a material impact on the issuer's financial statements. I believe these procedures for early detection and disclosure of fraud by the accountants and auditors will serve the interests of both investors and businesses.

The conference report should lead to the creation of a more favorable climate for investors and businesses. Investors should gain better information about the marketplace, more control over securities strike suits and more leverage in recovering a larger share of their losses in strike suits. Businesses should gain the freedom to provide statements about the business outlook that investors and the SEC have encouraged and a more favorable climate for raising capital.

I especially want to commend Senator DODD, who has worked tirelessly on this tough issue, and Senator DOMENICI for their effort in achieving a reasonable and balanced bill.

Ms. MOSELEY-BRAUN. Mr. President, I support the conference report on H.R. 1058, the Securities Litigation Reform Act. It is a reasonable bill, one that deserves prompt enactment into law, and it provides the right kind of reform to help create jobs and the economic growth our country needs.

The need for reform is clear. The Russian roulette of securities strike suits adds a cost to job creation and a chilling effect on investment. Every single one of the top 10 Silicon Valley high-technology firms has been sued for securities fraud—every single one. And 27 of the top 40 high-technology firms have been sued. These firms, and many others like them, have to spend hundreds of thousands of dollars—and even more—to defend frivolous suits, an additional cost no startup company should have to bear. And, while it cannot be quantified, there is no doubt that a number of companies never get born in the first place because of the incalculable litigation threat.

There are 2,536 electronics companies in my own State of Illinois, companies that employ 112,000 people, and have an annual payroll of $4.9 billion, that are also among the beneficiaries. These companies provide 12 percent of the total manufacturing jobs in Illinois, and the value of their annual production is over $17 billion.

Of course, it is not just high-technology firms in Illinois and elsewhere that need this bill. I have concentrated on high-technology firms because they are so important to the future of our economy and because their stocks tend to be volatile, which makes them prime targets for these kinds of securities lawsuits. The fact that so many leading high-technology firms have been sued in an indication of the scope and extent of the frivolous litigation problem, a problem this bill will correct.

The fact is that investors need reform, too. The current system does not benefit them. The damages investors receive in a successful case amount to as little as 10 to 14 cents on the dollar of alleged losses. Clearly, the litigation explosion has not helped investors a whole lot.

Much more important than damages, however, is information. Most investors have not been part of any securities litigation class action lawsuit, at least not directly, but every investor that is active in our capital markets depends on information—and the more information an investor has, the better the information an investor has, the better off that investor is.

Enactment of this conference report will reverse the current trend of companies providing less and less information to investors. Instead, because of greater confidence that they will not be subject to frivolous suits, companies will be providing more information to the market. That, in part, is why small investors like the Beardstown Ladies, and the National Association of Investors Corp. an organization representing over 340,000 investors and investment clubs, supports this legislation.

Many investors also support this bill because it gives them, rather than the lawyers who are supposed to be working for them, control of any class action suits filed. It is the client, rather than the attorney, that is supposed to control a lawsuit, and part of the reason this bill is so necessary is that this simple principle has somehow gotten lost in recent years.

However, more is at stake than just the interests of companies and investors, as important as those interests are. The interests of our overall economy, and of our country at large, are also very much at issue. The interests of every person who works, or is looking for a job, is at stake.

The world economy is more and more competitive. Our future prosperity depends on our ability to meet and beat that international competition. That means we need a continuing supply of new ideas, new products, and new companies that can produce the jobs of tomorrow. And that also means that our capital markets must work efficiently to provide capital in the amounts needed to the companies that will provide the jobs and the economic growth that will make the future brighter and more prosperous for all of us.

These global concerns may seem a long way from the securities law issues that are the subject of the bill now before the Senate, but the connection is both strong and direct.

American corporations are all too often intensely focused on the short-term price of their stock, instead of the long-term growth and prosperity of the business. This short-term focus, which the current state of our securities laws helps foster, distracts senior management, makes too many of our businesses less creative, and undermines the ability of American businesses to make the investments that have the long-term payoff. By addressing the frivolous lawsuit problem, this conference report will free managers to focus on managing their businesses for the long term, rather than managing to minimize their short term legal exposure. It will give entrepreneurs more time to innovate, and to focus on the future, rather than concentrating on their legal defense. Companies will be able to concentrate on creating new products and new jobs, because they won't have to devote so much time and attention to lawsuits, and the threat of lawsuits.

Moreover, because frivolous lawsuits, and even the threat of frivolous lawsuits, are an impediment to the smooth functioning of our capital markets, removing that impediment will make our capital markets more efficient. And that will also help produce more economic growth and more new jobs.

I cosponsored S. 240, the original bill that passed the Senate in modified form last June, because that bill was based on a recognition of all of these facts. S. 240 was designed to maintain strong investor protection, while making it more difficult to file frivolous or abusive lawsuits. It was designed to help ensure that new businesses that create new jobs and new products have a better chance to get the capital they need, while ensuring that defrauded investors have the right to recover their damages. The bill attempted to reduce transaction costs, so that investors who are harmed see a smaller portion of their recoveries consumed by attorney's fees and other costs. And it was designed to help our capital markets create more jobs and greater long-term economic growth—something that is good for every American.

I am pleased that the conference report now before the Senate very strongly resembles the bill the Senate sent to conference, rather than the original unbalanced House bill that I do not and could not support. In one key issue area after another, the conference bill follows the Senate bill, rather than the House bill. For example, in the area of liability standards, the original House bill abolished liability for reckless conduct; the Senate bill did not, and the Senate position prevailed in conference.

The House bill abolished liability for fraud on the market. The Senate bill left that doctrine unchanged, and the conference bill adopts the Senate approach.

In the area of pleading, the House bill adopted a standard that was significantly higher than the second circuit standard, which was the standard adopted in the Senate bill. The Senate position prevailed at conference.

In the area of fee shifting, the original House bill included a pure English rule approach; the Senate bill adopted a rule 11-based approach, and the conference bill adopts the Senate position.

The House bill included a $10,000 named plaintiff provision; the Senate-passed bill did not, and the conference adopted the Senate position.

In the area of aiding and abetting, the original House bill did not reverse the Central Bank case; the Senate bill restored the ability of the Securities and Exchange Commission to institute enforcement actions against a person or persons who ''knowingly provides substantial assistance to another person in violation of this title.'' The conference bill includes the Senate provision.

I do not contend, Mr. President, that the bill before us is perfect. It is a compromise. If I had controlled the conference, there would be some issues that would have been resolved somewhat differently. It is clear, however, that the bill is a good faith attempt to protect the public interest, investors' interests, and companies' interests, and looking at the overall bill, I think it does a reasonable job of meeting the interests of all three.

It is worth keeping in mind what the bill does—and does not—do, and what this area of law is all about. What we are here talking about is ''private rights of action'' for fraud under Section 10(b) of the Securities Exchange Act and rule 10b–5 of the Securities and Exchange Commission. That statute did not expressly provide private parties with a right to sue corporations or other parties involved in the issuance and sale of securities; this right evolved out of a long series of judicial decisions, not Congressional actions.

Some argue that the conference report is somehow unbalanced because it does not fully overturn the Central Bank case involving aiding and abetting, or the Lampf case relating to the statute of limitations in private 10(b) cases. However, it is worth keeping in mind that defeating the bill would do absolutely nothing to overturn either of these cases, that it would in fact leave the SEC with less, rather than more, authority than the bill provides, and that it would leave investors and the public in a situation where the courts, rather than the Congress and the President, are making the law in this area.

The bill has also been controversial because, in some situations, some defendants are only proportionately liable, rather than jointly and severally liable. The conference report however, holds everyone who commits knowing securities fraud jointly and severally liable. Other defendants who are less culpable are proportionately liable, that is, they are responsible for the share of harm they cause. That ensures that parties who may be only 1 percent or 2 percent responsible for the fraud are added as defendants to cases simply because they have deep pockets.

Proportionate liability is far from a new concept. We have had it in the tort area in my own State of Illinois for a number of years. It is an important and necessary change. Without it, many people will not deal with the small, entrepreneurial, startup companies that are most likely to be sued, because the potential liability is so much greater than the profit they can earn from doing business with these companies. Many companies are increasingly unable to find accounting firms and law firms willing to do business with them, and are having increasing difficulty in attracting the best people to sit on their boards of directors. And the result of that is less information and less protection for investors, and greater hurdles for the new companies on which our economic future depends. And the result of that is less of the new, good, well-paying manufacturing jobs our economy and our country needs.

Of course, in some cases, the parties most responsible for the fraud are judgment proof; they have no assets that can be found. In that situation, the conference report provides additional protections for small investors. First, it says that defendants that are proportionately liable have their share of responsibility increased by up to 50 percent of their proportionate share, so that all investors are better compensated for the losses they suffered. Second, for small investors, those with a net worth of under $200,000 who suffer a loss of at least 10 percent of their net worth, every defendant is jointly and severally responsible for paying those damages.

Some object to the rule 11 provisions of the conference report. However, the conference report simply requires the judge to look at rule 11 of the Federal Rules of Civil Procedure—which calls for sanctions for frivolous lawsuits, to determine whether any party violated Rule 11 in the complaint, responsive pleadings, or dispositive motions relating to the case, and if so, to impose sanctions. That simply puts some teeth into the application of rule 11, and it is teeth that are needed, because frivolous suits filed with little thought as to their merit can cost the defending companies hundreds of thousands of dollars in legal fees, and in the time of the companies' executives. And even those fees are not a good investment for the company, even when they win, because they divert money that should be going into creating more jobs and growth.

Finally, the most controversial part of the bill involves the so-called safe harbor. This provision in the conference report has the support of the SEC and, in some ways, offers more protection for investors—and less for issuers of securities—than do some leading court decisions in this area. The heart of what is at issue here is what are known as forward looking statements: statements that describe future events or that estimate the likelihood of selected future events occurring. Rule 175 of the SEC, which currently partially governs this area, states that forward looking statements made with a reasonable basis and in good faith cannot be used for as a basis for a fraud action. However, as a practical matter, the safe harbor it provides turns out not to be very safe.

What added real protection was a third circuit case that recognized the ''bespeaks caution'' doctrine, a doctrine that is now law in at least five circuits. Under this doctrine, forward looking statements accompanied by meaningful cautionary statements—that is, statements that indicate the specific risks that the forward looking statements will not come true—are, as a matter of law, immaterial and therefore cannot be used as a basis for a fraud action.

The conference report essentially codifies the bespeaks caution doctrine. Moreover, in response to concerns raised by the distinguished ranking Democratic member of the Banking Committee, Senator SARBANES, the conference report does not provide protection for statements not covered under the bespeaks caution provisions made with the actual knowledge that they are false.

I am pleased to be able to say that the SEC supports the safe harbor language in the conference report. Chairman Levitt, in a November 15 letter, said that the provision ''represents a workable balance that we can support since it should encourage companies to provide valuable forward-looking information to investors while, at the same time, it limits the opportunity for abuse.''

The SEC, in endorsing this part of the conference report, demonstrated an understanding that action is necessary in the safe harbor area, and that the current state of the law results in companies providing less information to investors than they would like to. A recent report by the American Stock Exchange documented the Commission's concern. It found that 75 percent of corporate CEO's limit the information disclosed to investors out of fear that greater disclosure would make them more vulnerable to abusive securities lawsuits.

Mr. President, there is a lot more in this bill, and there is a lot more I could say about it. I will conclude, however, by simply repeating what I said at the outset of my remarks. This is a good bill. It does not fully satisfy me, and it probably does not fully satisfy any other Senator. But it does provide the kind of reforms that are badly needed and that are long overdue. And the bill accomplishes its reform objectives in a way that protects investor interests, including the interests of small investors like the Beardstown Ladies.

I want to congratulate the distinguished chairman of the Banking Committee, Senator D'AMATO; my good friend from Connecticut, Senator DODD; and the distinguished Senator from New Mexico, Senator DOMENICI—who has now rejoined the Banking Committee—for their leadership and for all of their hard work. This bill would not be possible without the contributions that each of them have made. I also want to commend the distinguished Senator from Maryland, Senator SARBANES, the ranking Democratic member of the Banking Committee, for improving the bill, even though he opposes it.

In my view, this legislation addresses a set of issues that need to be addressed. It is good for investors, companies, our capital markets, our economy, and for the American people generally. It will help generate additional economic growth and new jobs. I therefore urge my colleagues to join me in voting for the conference report on H.R 1058, the Securities Litigation Reform Act.

Mr. LAUTENBERG. Mr. President, I am going to vote against this conference report.

Mr. President, the legislation before us is described as a bill to protect investors and to maintain confidence in our capital markets. In my view, however, it does neither. Instead, the legislation would shield too many wrongdoers from being held accountable for their misdeeds, and it could ultimately reduce investor confidence in our markets.

When this bill was before the Senate, Mr. President, I expressed special concern about the so-called safe harbor provision of the bill. This provision has been improved in the conference report, but it is still problematic. For example, it eliminates any duty to update forward-looking statements. This means that if a business projects earnings of a certain amount and 1 month after making this statement, it becomes apparent that the projected earnings will be significantly less, or perhaps the company will even lose money, the company is not obligated to correct those statements. I do not understand why we would want to encourage this behavior.

As some of my colleagues know, prior to coming to the U.S. Senate, I worked in the private sector. I co-founded a company with two others that today employs over 20,000 people. After the company went public in 1961, I filed countless statements with the SEC as its CEO. As the CEO, I believe it was important for investors to have as much information as possible.

Each year, I made it a practice to project earnings for the following year. And if those projections needed modification due to a changed circumstances, I quickly went to the public to alert them to any revision. This process had significant rewards because investor confidence in my former company caused our stock, which is traded on the New York Stock Exchange, to sell at among the highest price-earnings ratios of all listed securities on any exchange.

Mr. President, I recognize that there are abuses in securities litigation, and I believe those abuses should be addressed. That is why I supported amendments to improve the legislation when it was before the Senate. Among other things, these amendments would have provided aiding and abetting liability in private implied actions; inserted a safety net to ensure that small investors are able to fully recover their losses; and extended the status of limitations period on these claims, thus making it more difficult for bad actors to hide their fraud.

In opposing these amendments, the sponsors of the bill cited some of the more egregious practices of professional plaintiffs and certain lawyers. What they do not mention is that this behavior would have been curbed by less controversial provisions contained in this bill, such as prohibitions against referral fees and attorney conflicts of interest; requirements that the share of the settlement awarded to the name plaintiffs be calculated in the same manner as the shares awarded to all other members of the class and that the name plaintiff certify that he did not purchase the security at the direction of his attorney; a prohibition against excessive attorney's fees; and an assurance that all members of the class have access to information held by counsel of the name plaintiff.

The sponsors of this legislation cite compelling anecdotal evidence of abuse by the so-called professional plaintiffs and their unscrupulous attorneys. I agree there are abusive securities class actions suits filed every year. I also agree that we need to protect companies, and even other shareholders, from these people. But in our zeal to tackle this problem, we should take care not to stifle legitimate claims and to harm our markets, which are the strongest they have ever been in our history.

Mr. President, I would like to support legislation to curb frivolous securities lawsuits because I believe there are problems. However, I cannot in good conscience vote for a bill that I believe will insulate fraudulent conduct, prevent investors injured by fraud from fully recovering damages, and chill meritorious litigation.

Ms. MIKULSKI. Mr. President, I rise today in support of the securities litigation reform legislation that has now returned from conference.

Legal reform is complex. We have to protect the interests and rights of consumers while ensuring the law does not allow frivolous lawsuits. I believe this conference report achieves that balance. I originally cosponsored the bill because I concluded there has been a problem in the area of securities law. In Maryland, my constituents have told me there is a race to the courthouse door to file a lawsuit. The victims of these practices include high-technology companies, their accountants and others.

We cannot afford this race to the courthouse because it ultimately means a loss of jobs, a loss of opportunity. Money spent on liability insurance premiums and expensive litigation is money that cannot be spent on investments and jobs.

While I want to end abuses in the system, I also want to keep the courthouse door open for the little guy, for the consumer. I am not interested in protecting crooks or swindlers. That is why I support this legislation. It protects both consumers and honest companies while allowing the law to go after fraud and abuse.

I am pleased that, with the enactment of this legislation, we will have safe harbor rules endorsed by the Securities and Exchange Commission. I commend the conference committee for working with the SEC on this matter. These rules will allow companies to provide valuable information about their future plans. I am pleased investors will have the information they need to make important financial decisions. At the same time, this provision does not cover company projections that defraud investors. Judges will be able to make sure that a company qualifies for safe harbor protection.

This debate is about the U.S. economy in the 21st century. Much of our economic future is in new and developing industries such as high technology and bio-technology. These emerging jobs are created only when companies generate capital to allow them to move into new fields. Without a balanced legal system these companies will spend too much on litigation costs, and not enough on investments to generate jobs.

I am pleased that this legislation has moved forward with bipartisan support. The bill that passed the Senate received overwhelming votes from both parties. In conference it would have been easy to steer this bill toward extremism, but the conferees worked toward a bill that we can all continue to support. I especially commend the efforts of long time supporters Senator DODD and Senator DOMENICI.

Mr. President, I hope any future legal reforms will meet the same test of balance and moderation that this reform does.

Mr. ABRAHAM. Mr. President, in June 1995, I addressed the Senate to offer my support for securities-litigation reform as embodied in H.R. 1058. Today, I am pleased to support the bill that the House-Senate conference committee has produced. Today's bill draws on the key provisions of S. 240 to make many important reforms to prevent abusive litigation connected with the issuance of securities. These changes will be made without in any way undermining protection for investors against genuine fraud or other misconduct by issuers. To the contrary, they will improve the investment climate in this country, which will make it easier to start businesses which create jobs.

Today I would like to focus on one set of reforms the bill will make. The bill will require courts to sanction attorneys who file frivolous pleadings. This reform will apply both to lawyers who file frivolous pleadings on behalf of plaintiffs and those who file frivolous pleadings on behalf of defendants. This is a sound proposal which should command strong support from both sides of the aisle.

Under current law, Federal Rule of Civil Procedure 11 requires all attorneys to have some factual and legal basis for filing any claim or defense. If attorneys violate this requirement, courts may impose sanctions against the violator. Right now, however, the courts do not have to consider sanctions.

Today's bill makes three changes.

First, it requires courts to find at the end of all securities actions whether any attorney violated rule 11 in filing any complaint, responsive pleading, or dispositive motion.

Second, the court would have to impose sanctions if it found such a violation.

Third, the presumption is that the district court will sanction attorneys violating rule 11 by requiring them to pay the other side's attorneys' fees. Under the bill, it will be a little harder for a district court to impose this sanction on those who file complaints than on those who file responsive pleadings or dispositive motions. Those who file responsive pleadings or dispositive motions will be subject to this sanction if the responsive pleading or dispositive motion fails to comply with rule 11(b). By contrast, those who file complaints will be subject to this sanction only for substantial failure to comply with rule 11(b).

Regardless of the party affected, the court may select another sanction if First, the presumptive sanction imposes an unreasonable burden on the sanctioned party, second, that sanction is unjust; and third, declining to impose such a sanction would not impose a greater burden on the party in whose favor sanctions would be imposed. In the alternative, the party against whom sanctions would be imposed may rebut the presumption of sanctions by demonstrating that the rule 11 violation was de minimis.

We should particularly note two important features of this reform. First, the district court will have to impose a sanction only on someone who filed a frivolous pleading—that is, a pleading wholly lacking a legal or factual basis. Thus, this reform will not deter legitimate litigation. Second, the sanction is paid by the person signing the frivolous pleading—that is to say, as a general matter, by the attorney responsible for it—not by the party the attorney is representing.

It was suggested, Mr. President, that S. 240's changes to rule 11 were really a back-door means of shifting fees. That was incorrect. It is equally incorrect as to the rule 11 provisions in the conference report. These are not loser-pays provisions. They will not sanction all those who come up short in court. They will sanction only those who violate the minimal requirement of having some factual and legal basis for arguments in complaints, responsive pleadings, and dispositive motions. Such frivolous behavior clogs our courts, drains economic resources from parties, kills current jobs, and hinders the creation of new ones.

Moreover, the substantive rule of attorney conduct in this provision is the one which exists under rule 11 now. The change from the current rule 11 is procedural, not substantive. Today's bill simply requires the district court to determine whether that rule, which already applies, has been violated, and to impose sanctions if it has.

The Supreme Court itself has observed that securities litigation has been especially prone to misuse as a tool to extort settlements. It is Congress's responsibility to do something to put an end to this abuse. The rule 11 provisions are one mechanism this legislation puts in place to do just that.

Some on the floor have expressed concern that the Federal judiciary may abuse its power to impose sanctions pursuant to this provision. I simply do not believe that is going to happen. From my position on the Judiciary Committee, I have the occasion to talk to many judges and judicial nominees. I have questioned judicial nominees on many topics, including their ability to exercise their powers impartially toward both plaintiffs and defendants. I firmly believe that the individuals this Senate is confirming, and those that have been confirmed in the past, will exercise this power wisely and prudently for the betterment of our legal system. Mr. President, the bill we are voting on today is an outstanding piece of legislation. Its sponsors, proponents, and the conferees deserve all of our thanks for producing something that will strengthen our economy and it will benefit all Americans. I offer my wholehearted support to the bill before this Senate and urge my colleagues to vote for it.

Mr. BENNETT. Mr. President, I understand the opponents of the bill are gathering their forces, and as we are waiting for that to happen, rather than spend the time in a quorum call, I would simply make an observation that I have made previously in response to the Senator from California which is, first, that none of the losses that occurred as a result of the Keating S&L circumstance to which she referred so often would be affected by this legislation. All of the remedies that were available to those people in the Keating circumstance would still stay in the law. The newspaper editorials which she quoted that implied to the contrary are incorrect. This has nothing to do with the Keating S&L circumstance.

The other point that I would make again is that when we are talking about protecting investors, we are talking about the owners of the company—that is what investors are—and anything that damages the company, or damages the investors. So it is unfair to try to pit companies against investors as has been implied in some of the articles which she quoted.

I say to my friend from Nevada that I am prepared to yield at any point that an opponent to the bill might arrive.

Mr. BRYAN. Mr. President, I appreciate, as always, the accommodation of my friend, the distinguished Senator from Utah. We have worked to accommodate leadership I think on both sides of the aisle by these time agreements that we previously entered into. I do not see anybody from our side.

If I might respond very briefly to the distinguished Senator's comment, there is in my view a fundamental disagreement here. The Keating case is highly relevant, relevant in the sense that its $262 million recovery was based upon a violation of the very act that we seek to amend here, which is the Securities Exchange Act of 1934.

I ask unanimous consent that a caption of the lawsuit filed in the U.S. District Court, District of Arizona, which is the Keating lawsuit, be printed in the RECORD. So that the recovery of some $262 million in the Keating case was based upon a securities violation.

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

[United States District Court, District of Arizona, In re American Continental Corporation/Lincoln Savings & Loan Securities Litigation, MDL Docket No. 834, This Document Relates To: Civ–90–0566 PHX RMB, Civ–90–0567 PHX RMB, Civ–90–0568 PHX RMB, Civ–90–0569 PHX RMB, Civ–90–0570 PHX RMB, Civ–90–0574 PHX RMB]

SARAH B. SHIELDS, ET AL., PLAINTIFFS, *vs.* CHARLES H. KEATING, JR., LINCOLN SAVINGS AND LOAN ASSOCIATION, FIRST . . .

[Caption continued on following page.]

Sixth consolidated amended class action complaint for violations of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Racketeer Influenced and Corrupt Organizations Act.

Mr. BRYAN. Mr. President, very briefly by way of comment I say it is my view—and I think the view of those who have analyzed the bill—that of the $262 million that was recovered in the Keating case, $121 million was recovered against aiders and abettors; that is, accounting firms, law firms, and other professionals.

The conference report fails to restore that liability. So that at least for private causes of action—that is the thrust of the curtailments that this legislation imposes—there would be an inability for the 23,000 plaintiffs in the Keating case that recovered $121 million. That would not be possible under the status of the law today because this legislation does not restore the aider and abettor. It may very well be true that the SEC can move against aiders and abettors. But even that has been somewhat obfuscated. I believe that those who are far more expert than I would tell you that it is not clear even if the SEC would be able to seek recovery against the Keating situation of which there are aiders and abettors. But clearly those who bring private causes of action would not.

Again, we have this informal colloquy with my friend from Utah. He is, I think, suffering from the same disability as I. We have tried to protect time for those who wanted to speak. But they are not on the floor. I would certainly be delighted to engage him in a colloquy or discussion or let him continue to speak until someone returns to the floor.

Mr. BENNETT. Mr. President, as I look at the time allocated under the unanimous-consent agreement, the Senator from Nevada [Mr. BRYAN] has 10 minutes. If he wishes to take that 10 minutes now, that could get us at least that much farther down the road.

Mr. BRYAN. The suggestion of my friend from Utah is always compelling and intriguing and tempting. May I graciously decline his kind offer, which I know is offered in the spirit of trying to accommodate and move this process forward as is his want and intent in every case. But I think I will respectfully decline that. We are not going to be able to protect all of the 7 minutes we have for each of the speakers. We will have to make those adjustments because the time continues to run. I understand that we have more time on this side, those of us in opposition, than he does in support. That time is going to continue to run.

Mr. BENNETT. Under those circumstances, Mr. President, I would suggest the absence of a quorum, and ask unanimous consent that it be charged to the opponents—I withhold.

Mr. DODD. Mr. President, I realize the time is running with a vote at 4:45. I have time reserved. I know our colleague from Nevada, our other colleague, Senator HARRY REID, yielded whatever time he had remaining to me.

Let me underscore a point here, Mr. President, while we are waiting. I will yield the floor the minute I see a colleague arrive.

Let me get back to the bottom line, if I can. We are talking about a group of attorneys on one side who are vehemently opposed to this bill. They are doing everything to stop it. I point out categorically what we are looking at here for every dollar is 14 cents that goes to the investors and about 33 cents going to the attorneys in these matters. You do not need to know much more than that. It is a system that is out of control and out of whack. It needs to be brought back into line of the original intent.

That is really what this is all about. We have included provisions that require auditors to check for fraud and to report fraud; set up a system that protects small investors for proportionate liability matters.

The suggestion has been made—I say this with all due respect—that this is somehow a Keating matter. Nothing could be further from the truth; or trying to suggest that somehow Dillinger may have been involved. This is ridiculous. The Keating matter had little or nothing to do with securities. It was mostly to do with S&L's. And this bill will not change the outcome one iota because it was out-and-out fraud and lies. It was not about some future statements but about present facts. Mr. Keating was suggesting that the Federal Government was going to back all of the investments that were made by people. That, of course, was a complete falsehood. There is no comparison here.

That is really I would say sort of an effort to try to desperately convince people that somehow this legislation is harmful to the interests of investors. What it does is strengthen the hand of investors tremendously by giving them the right to choose the attorneys, giving them the right to decide what the settlement will be, if there is going to be any settlement, and giving them the right to determine what the attorney's fees would be. That is what we are trying to do here.

These investors have been taken to the cleaners by hired professionals. Plaintiffs who own one or two shares of stock in many cases are brought in and given big bonuses for the outcome and set up as the plaintiffs in these cases. This is really a scam. One lawyer said, ''I have the best practice in the world when it comes to securities litigation. I have no clients.'' In fact, he was the attorney and the plaintiff in these matters.

That is what we trying to go correct here. We spent 4 years at it with a strong bipartisan approach that has drawn us to the point where we are about to adopt a conference report and send it to the President. I am hopeful he will sign it. I think it is right, it is balanced fairly, and it is moderate. It attempts to deal with a situation that most people today agree needs to be corrected, including even the opponents of the legislation.

As someone who has been involved in this for almost 5 years, when we first brought up the legislation we were told that there was no need for my bill at all.

At least the opponents are admitting there is a need. They just do not like all the provisions of the bill. So I am hopeful that our colleagues, the 69 who supported this legislation back several months ago—we have improved this bill. We improved the safe harbor provisions to such an extent that the SEC, which was reluctant to support the bill when it first came out of the Senate, today says those safe harbor provisions are provisions which do provide the kind of balance we are talking about. That is their analysis and not mine. There are enough editorial comments here that indicate that this bill makes sense.

So, again, given the strong vote in the House, which was a totally different bill, by the way—and Senator REID of Nevada is absolutely correct. The ads are running, paid for by these affluent lawyers frightened to death they may lose a little business. You are talking about a House bill. That bill is gone. This is now the Senate version that was basically adopted by the conference.

So I am hopeful at 4:45, less than an hour from now, the Senate will give us a good, strong, bipartisan vote reflecting the work that has been done—hundreds and hundreds of hours, 5,000 pages of testimony, almost 100 witnesses, 12 sets of hearings through three Congresses. That is the way a bill ought to be adopted here, where you bring people together, Democrats and Republicans, fashioning a good piece of legislation and endorsed by the major regulatory agency of the country that believes we have done a good job here.

I think on balance this is a piece of legislation which is going to improve the quality of life in this country, and particularly for those industries and businesses that have been the primary targets. One-half of all the firms in Silicone Valley have been subjected to securities fraud suits in the last 4 or 5 years. That just gives you an indication of what is going on here. These new startup, high-tech firms, they are the ones who are victimized by this. Those are the firms of the future.

Mr. President, I see our distinguished colleague from Florida has arrived here. We were trying to fill in a little time until someone arrived.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. I will yield the floor.

If my friend from Florida is prepared to go——

Mr. GRAHAM. Would you like——

Mr. DODD. I am going to reserve a couple minutes at the end. I was just trying to fill in a little gap here while we waited for the opponents of the bill to come on over and express their views.

Mr. BRYAN. Mr. President, if I may, in the spirit of comity, accommodation, fairness, and respect, even though the distinguished Senator from Connecticut has exhausted his time, and if we were trying to adhere to the rules rigidly, he would not have an opportunity to comment further, I would yield from our side of the aisle 2 minutes of the time heretofore allocated to the distinguished senior Senator from Florida, Senator GRAHAM, to my friend, the senior Senator from Connecticut.

Mr. DODD. Well, I am always appreciative of my colleague.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 2 minutes.

Mr. DODD. Mr. President, no. I will reserve the 2 minutes. In the meantime, our colleague from Florida has arrived. I know the opponents want to be heard on this. I appreciate the gracious allocation, at the appropriate time, of 2 minutes. And I will make particular reference then of the fine job that the Senator from Nevada has done on this legislation.

Mr. BRYAN. In the interest of fair and full disclosure, the Senator has not 2 minutes to reserve. He has exhausted his. If he needs it, I will tender it to him.

I yield the full 7 minutes to the distinguished Senator from Florida. He can yield any part of that he feels he does not need.

Mr. GRAHAM. Mr. President, it is ironic that we are having this debate today. This debate coincides with the last month of the existence of the Resolution Trust Corporation. The Resolution Trust Corporation was a congressionally created corporation to deal with the second largest financial crisis in the history of the United States of America, second only to the Great Depression.

That crisis, of course, was the savings and loan debacle. That debacle was not an accident. It had very specific origins. It had identifiable causes. And, sad to say, Mr. President, many of those origins, many of those causes emanated from this Chamber.

It was this Chamber which in early 1980 passed ill-considered legislation that, among other things, dramatically increased the level of Federal guarantee of savings and loans accounts, without making appropriate adjustments to the premiums we paid to support those guarantees, and made other changes which facilitated the ability of those who wished to gain by plundering these institutions of trust the opportunity to do so.

As a consequence of those actions, which started here, we had one of the great financial crises and one of the most expensive financial crises in our Nation's history. As I say, Mr. President, it is ironic that we recognize this month, December 1995, as the last month of the Resolution Trust Corporation's efforts to try to extricate ourselves from that crisis, and in this month we now take up legislation which I believe has the potential of laying the groundwork for another great financial crisis in America.

Another irony, Mr. President, is that there has been no time in our Nation's history when our stockmarkets were more in public favor. Recently, for the first time in their history, the Dow Jones passed the 5000 mark and continues to grow beyond that. The reason for the strength of our stock market is fundamentally the confidence that the investing American has in our stockmarkets. That is an asset of our free enterprise system, Mr. President, that we need to guard zealously.

Mr. President, I am afraid that the action that we are being asked to take today moves away from that close guarding of the confidence of the American investor in the American stock market.

Let me just mention a few areas of particular concern to me. I am concerned about the provision that will make it easier, will almost provide immunization for oral and written statements of expectation as to corporate activity. The whole purpose of this legislation—and I think a legitimate purpose, Mr. President—was to eliminate frivolous lawsuits, to eliminate a practice in which firms were subjected to litigation, not with the expectation of a jury or other judicial verdict indicating that the company had behaved in an inappropriate way, but in order to be able to negotiate a settlement based on that settlement being less expensive than the cost of defense and the adverse effect which the litigation would have on the image of the corporation.

But this legislation goes far beyond what is required in order to sort out the frivolous from the serious. And one of the best examples of that is what has happened in this so-called safe harbor provision. When this left the Senate it contained some protections. It contained a protection that stated that statements which were knowingly made with the expectation, purpose, and actual intent of misleading investors would not secure the benefits of the safe harbor. As hard as it is to believe, Mr. President, that provision has been eliminated from the legislation as it now comes back from the conference committee.

Mr. President, there are other examples of where the conference committee has taken action that has made this bill less protective of investors without adding to the benefit of sorting out the frivolous from the serious litigation. I am concerned, Mr. President, about the fact that we have continued to have the unreasonably short statute of limitations of 3 years, a period of time in which for many of these real cases of fraud and abuse they would not even be known, much less be known in time to do the necessary investigation prior to the bringing of litigation.

Mr. President, we have made it extremely difficult, after an award is granted, after it has been determined that, in fact, there was fraudulent activity and a judgment is entered on behalf of the plaintiff, we made it very difficult for the plaintiff to be able to recover, particularly, as is frequently the case, when one or more of the major parties turns out to be insolvent.

So, Mr. President, in the spirit of attempting to achieve one very focused objective, we have engaged in broad-scale amputation of the ability of private litigants to maintain the integrity of our securities law. And we do this, Mr. President, at the same time we are about to take up a conference report which will freeze the budget of the Securities and Exchange Commission. So both of the arms which are used in order to contain fraudulent activities in the securities sector, private litigation and the Securities Exchange Commission, are about to be severely restrained.

So, Mr. President, for those reasons, I urge my colleagues to defeat this conference report in hopes that we will then focus on legislation that will accomplish this narrow objective.

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

Mr. GRAHAM. Mr. President, I ask unanimous consent to have printed in the RECORD statements made by one of my constituents, Mr. F.K. Glasbrenner of Longwood, FL, a resolution by the Florida Association of Counties, and an editorial from the Miami Herald, all of which bemoan the inadequacies of this legislation to achieve the purpose stated.

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

LONGWOOD, FL,
October 23, 1995.

Senator BOB GRAHAM,
Hart Senate Office Bldg,
Washington, DC.

Senator CONNIE MACK,
Hart Senate Office Bldg,
Washington, DC.

Representative JOHN MICA,
Cannon Bldg,
Washington, DC.

Representative BILL MCCOLLUM,
Rayburn Bldg,
Washington, DC.

GENTLEMEN: The managing editor, Frank Lalli, of MONEY magazine has informed his readers, and I am one, that the securities litigation reform bills, H.R. 1058 and S. 240, are certainly not in the bests interests of the investor in the United States.

The original intention of the bills were to discourage frivolous securities suits but in the end they really did something different. In their present form they legalize securities fraud. The bills protect company executives who deliberately misrepresent their firm's prospects. If an invester sues to right a wrong and he loses, the judge can force him to pay the winners legal fees. In addition both bills failed to reinstate fundamental investor protections stripped away by recent Supreme Court decisions which were:

Defrauded investors can be longer sue hired guns who assist a dishonest company officer. This would include accountants, brokers, lawyers and bankers.

Investors cannot sue at all if they fail to file within three years after the fraud occurs, even when the crime is not discovered until after the deadline.

I implore all of you to have the House-Senate conference committee correct the final bill to vastly improve the United States investor's rights. Don't allow white collar crime to the legalized, there is too much of it already.

Sincerely,

F.K. GLASBRENNER.

FLORIDA ASSOCIATION OF COUNTIES,
Tallahassee, FL, October 24, 1995.

Re H.R. 1058/S. 240, Securities Litigation Reform Act.

Hon. BOB GRAHAM.
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: On Behalf of Florida's 67 counties, I would like to thank you for voting against final passage of H.R. 1058/S. 240, the Securities Litigation Reform Act. While the Florida Association of Counties favor efforts to deter frivolous securities lawsuits, I strongly believe that legislation to accomplish this worthy goal must also ensure rights of investors to seek recovery against those who engage in securities market fraud. H.R. 1058/S. 240 not only fails to protect investors' rights, but seriously limits investors' ability to seek recovery from those who help to commit fraud.

Since the provisions of the House bill, H.R. 1058, go even further than the Senate bill in undermining the ability of investors to seek recovery in securities fraud cases, it appears that there is virtually no chance for a final bill that protects the rights of investors and that it is likely the House & Senate conference report will be worse than the original Senate bill. I urge you, therefore, to vote against the conference report on H.R. 1058 when it comes before the Senate for a vote.

Respectfully,

JOHN WAYNE SMITH,
Governmental Liaison.

[From the Miami Herald, Nov. 14, 1995]

LIARS' BILL OF RIGHTS?

While most of the country is paying attention to the feud over the federal budget, a sinister piece of legislation is making its way through Congress unnoticed. This bill lets companies report false information to investors. That's right, it essentially licenses fraud. It has passed both houses in slightly different forms. A compromise bill will be written soon. If it passes, President Clinton ought to slay it in its tracks.

This bill is a story of good intentions. Some companies have been plagued by frivolous lawsuits from investors who aren't happy with the company's performance. The investors allege, in essence, that the company had forecast good results and then didn't deliver. That, say the plaintiffs, constitutes fraud.

Well, often it doesn't. Investing has risks, including market downturns. When investors sue over mere bad luck, they cost companies money, clog courts, and drain profits from other investors.

Trouble is, by trying to stop this abuse, Congress mistook a simple answer for the right answer. Its solution, in plain terms, was to declare virtually all promises by all companies to be safe from legal challenge. Under this ''remedy,'' company executives now can promise investors anything they like, with not so much as a nod to reality.

They can't legally lie, about the past, but if their claims are ''forward-looking,'' they can promise you the moon to get you to invest, and no one can sue them later for being misleading.

Well, almost no one. The bill would allow legal action in the case of egregious, deliberate fraud, but you'd have to prove that it was intentional. And you'd have just three years to discover the fraud and furnish your proof.

It's rare enough to prove outright intent under the best circumstances, but under this bill, if executives can stiffarm you for just 36 months (not a big challenge), they'd be home free. And then—in another hair-raising provision of the bill—you'd be stuck for the company's entire legal bill. Facing such a risk, no small investor, no matter how badly cheated, would ever dare sue.

This bill evidently struck many members of Congress as a simple answer to a nagging problem. It's nothing of the kind. The problem is real enough, but its solution isn't simple. And it certainly doesn't reside in a law authorizing phony statements to investors.

President Clinton should veto this blunder. Then, when the fight over the budget is over, Congress can take time to think up a more rational solution to the problem.

Mr. GRAHAM. Thank you.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Nevada is recognized.

Mr. BRYAN. I thank the Chair.

Mr. President, I suspect not many opinions are going to be changed at this late hour in the debate, but let me make an observation about what this debate is not about.

It is not about frivolous lawsuits. If this legislation dealt only with frivolous lawsuits, we would be acting by voice vote, and this Senator's voice would be among the loudest of the chorus of votes in support. Indeed, the provisions in this legislation that deal with the frivolous lawsuit issue are essentially provisions that this Senator has previously offered in a piece of legislation, so I am fully supportive of that.

What this legislation does, in my opinion, is systematically and pervasively dismantles the system of investor protection against securities fraud and undermines the confidence in the world's safest securities market: the United States of America. It does so for several reasons. Everyone who is involved in the regulatory process, whether the SEC, the States securities administrators and others, all acknowledge that the statute of limitations is too short—too short. They have urged this Congress to change the current law from 1 year from point of discovery to a 3-year date of occurrence cutoff to 2 years and 5 years. The reason for that is, the SEC says, because of the complexity of securities investigations. It requires more than 2 years when they do it with all of the resources of the Federal Government available.

Aiders and abettors: Aiders and abettors are not, under the current interpretation of the Supreme Court's ruling in private causes of action, are not subject to liability for reckless misconduct—not subject to liability. We have urged our colleagues to make them subject to liability, and they have declined to do so. In point of fact, there is substantial question as to whether the SEC itself as the enforcer has the power to recover against aiders and abettors.

So by failing to take that action, we immunize an entire class of wrongdoers. The accountants, the lawyers, the people who aided and abetted some of the great securities frauds in America would not be liable under the current state of the law.

Unlike the earlier Senate version of this bill, we do great damage to the fairness of imposing upon attorneys, whether they be plaintiffs' lawyers or defense lawyers, the full sanction of rule 11. As this bill left the Senate, the sanctions applied equally to plaintiffs' lawyers and to defense lawyers.

Let the planets, let the stars, let everything in God's universe fall upon those who continue to pursue frivolous lawsuits. I am with my colleague from Utah on that. But in terms of revealing the bias that is reflected throughout this legislative process, those sanctions only apply now to the plaintiffs' lawyers, and the defendants' lawyers who are guilty of frivolous actions have a much lesser sanction.

The issue is frequently framed, are you with Silicon Valley or are you with the trial lawyers? That is a false premise. Let me just read some of the opinions that have been expressed on this.

The Akron Beacon Journal, December 1, 1995:

The legislation would close virtually all avenues available to investors who reasonably seek to recover money lost in securities fraud cases. President Clinton can begin the effort to improve this bill by using his veto.

The San Francisco Chronicle, November 27 of this year:

Despite the worthwhile aim, the provisions of a draft conference report—

The one that we are dealing with.

go far beyond curbing trivial court action and instead would wipe out important protections against hustlers of fraudulent securities.

Mr. President, can I ask you to give me an indication when I have 4 minutes left of the time allocated to me?

I thank the Chair.

The Miami Herald, November 14 of this year:

A sinister piece of legislation. It essentially licenses fraud. President Clinton should veto this blunder.

The Wisconsin State Journal:

The bill allows deceitful corporate executives, securities brokers, accountants and lawyers out there to thumb their nose at the justice system.

The Chattanooga Times, October 30, the home State of the distinguished occupant of the chair:

The bill would immunize most stock and bond fraud from civil liability. This fraudulent reform could not have come at a worse time. Securities fraud enforcement actions have increased 118 percent and criminal convictions for such fraud leaped 176 percent.

The Daily Times Call:

Charles Keating could wish this were the law when he squandered millions of dollars from the savings and loan industry.

The St. Louis Post Dispatch:

Those protected by this legislation would not only be companies free to make reckless predictions about their future, the accountants who detect fraud and keep quiet about it also would be helped.

I could read on and on and on.

I do want to say something about the editorial that appeared in Money magazine.

The PRESIDING OFFICER. The Senator has 4 minutes left.

Mr. BRYAN. I thank the Chair.

It has been suggested that Money magazine editorials were issued prior to the conference report. It is true for the first time in their history, in September, October, and November of this year, they editorialized strongly against it. Mr. President, they reaffirmed their opposition in December of this year after the conference report, indicating that this legislation, in their view, would do great harm to private investors.

Let me also point out that among the groups that oppose this are the Associations of Municipal Financial Officers, State Financial Officers, County Financial Officers, and others.

I want to read the excerpt of a letter that was sent to the Las Vegas Sun by the treasurer of Clark County, NV, which includes Las Vegas.

As Clark County's treasurer, I am responsible for taxpayer funds collected and invested on behalf of three-quarters of Nevada's population.

I am writing because legislation passed by Congress could effectively eliminate Clark County's ability to file private securities fraud lawsuits—the primary method for governments and individuals to recover losses from investment fraud.

He speaks for hundreds of county officials throughout America, irrespective of political party. That is why the National Association of Securities Administrators, and others, have strongly condemned this legislation as going far, far too far.

Mr. President, let me say that in 1982, the Congress ill-advisedly, in my judgment, passed Garn-St. Germain that opened up a wave of fraud that cost the American taxpayers, in terms of the savings and loan industry, $450 billion when those costs are amortized.

What Garn-St. Germain did for the savings and loan industry in 1982, it is my view this legislation will do for the securities industry. Those who support this legislation, if enacted and signed by the President, will rue the day. We have not seen the last of fraud. Indeed, the evidence is to the contrary that fraud is growing.

This legislation goes far beyond what is needed to address the legitimate issue of frivolous lawsuits, which I fully associate myself with those efforts. This legislation effectively emasculates the right of private investors to bring causes of action against those who perpetrate fraud that results in losses throughout the country.

In the Keating Five, and I know that people do not like the reference to the Keating case, but it was a securities action filed under the 1934 law. This is a classic case in which $171 million were recovered against aiders and abettors, those attorneys and brokers and advisers who were responsible.

Because of our failure to correct the current interpretation of the Court's opinion, we immunize and give those folks a clean bill of health, a pass to continue. For those who voted for the Senate version earlier, let me indicate that this piece of legislation emerging from the conference is far worse. It eliminates the provisions Senator SPECTER offered with respect to RICO. It heavily imbalances the sanctions that are imposed against lawyers who file frivolous lawsuits by making the burden whole and entire on plaintiffs but not so with defendants. It enhances the pleading requirements, which makes it much more difficult to bring. It fails to address the statute of limitations issue. It fails to correct the deficiency in the law which allows aiders and abettors to go home free. It reverses hundreds of years of judicial precedent in common law in limiting the right of recovery balance between an innocent investor and those whose conduct was reckless. It says under the proportionate liability that only the proportionate responsibility shall be made payable to that innocent investor, when the actual perpetrator is judgment proof or without money to respond.

Finally, let me say that the conference report even diminishes that ability to recover even further. I thank the Chair.

Mr. President, I am just informed that the distinguished Senator from Illinois wants to speak as in morning business for 2 minutes. I do not have any objection.

I ask unanimous consent that she may speak for 2 minutes as in morning business.

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

CONGRATULATIONS TO THE NORTHWESTERN UNIVERSITY FOOTBALL TEAM

Ms. MOSELEY-BRAUN. Mr. President, I wanted to take a moment to congratulate Northwestern University's football team, the Wildcats, who, in Senate resolution 197, offered by Senator SIMON and me, are being honored and congratulated for one of the greatest underdog-to-champion stories in the history of sports. The Northwestern team is now being called ''the miracle on Central Street.'' What they have done here is to celebrate their first conference championship in some 60 years.

Coach Barnett has taken this team from really a very low profile in the conference to being a top contender, now in the Rose Bowl. They are going to go to Pasadena. He fulfilled his pledge to take the Purple to Pasadena. That rallying cry has taken this team to a 10–1 season, a No. 3 national ranking, and with defeats over Notre Dame, Penn State and Michigan, a feat which has, frankly, not been accomplished by any one team in over 30 years.

Northwestern really proved that it is possible to produce a football champion as well as Nobel Prize winners and Pulitzer Prize winners and academicians throughout the world. They have captured, by their actions, the hearts of fans all over the country. They have made all of us from Illinois very proud of them. If nothing else, the football team, in their perseverance, hard work, and dedication, have proved once again in this Christmas season that miracles do happen.

I thank my colleagues for their time.

Mr. BRYAN. Mr. President, I join in congratulating Northwestern. I was 11 the last time they went to Pasadena. So it is time for the Purple not only to go to Pasadena but to win in Pasadena.

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I rise today to oppose, in the strongest terms possible, H.R. 1058—inappropriately titled the ''Private Securities Litigation Reform Act of 1995.'' This bill has nothing to do with reform in the normal sense of the term. Rather, the bill is about protection from liability for fraud—pure and simple. The bill is the worst kind of special interest legislation that the American public is sick and tired of.

It will give corporations a license to lie to investors and will severely restrict the ability of defrauded investors to recover their hard-earned dollars from the unscrupulous and reckless individuals and corporations who swindled them.

Six months ago, I stood on the Senate floor and urged my colleagues to oppose this bill in its earlier incarnation because—put simply—it was a bad bill. Because it was a bad bill, every major consumer group, State attorneys general, State and county treasurers, mayors, finance officers, labor unions, the American Association of Retired Persons, the National League of Cities, educators, and hundreds of other nations, State, and local organizations, opposed the bill.

It is easy to understand why when you consider that a city like San Francisco has over $8 billion in pension funds and other investments and when more than 60 State and local governments nationwide have lost more than $3.6 billion in securities markets, partly due to derivative investments.

Despite the tremendous opposition to H.R. 1058, which was a bad bill in June, it is a worse bill now. Therefore, I strongly urge my colleagues to oppose it.

What is most disturbing about this bill is the impact that it will have on what are often the forgotten Americans—that is, average middle-class Americans.

At a time when job and wage insecurity are at all-time highs, and family budgets are straining at the seams, middle-class Americans have begun investing their hard-earned dollars in stocks in record numbers. In fact, as the Washington Post reported just a few days ago, securities have supplanted real estate as the No. 1 source of family nest eggs.

Middle-class Americans believe they must invest because there may not be a decent pension when they retire—either they will be let go too soon because of corporate down-sizing or their company, to which they have been loyal, will not be there 20 or 30, or even 10 years from now.

Middle-class Americans also want to invest for the future because they aren't sure that Social Security or Medicare will be there for them in their later years when they are most vulnerable.

Last, middle-class Americans believe they must invest to ensure that their children are able to receive an education that provides them with the essential skills to enable them to become productive and integral participants in what will be an extremely competitive and global work force in the 21st century.

Because middle-class Americans recognize the need to secure and protect their financial futures, they have entered to stock market directly—or through mutual funds—to such a degree that the most significant asset held by American families today is not their home, but their 401(k) plan. Today, assets in 401(k) plans total more than $500 billion. Assets in investment retirement accounts total more than $1 trillion. The majority of these funds are in stocks.

Under these circumstances, this Nation's two primary securities laws—the Securities Act of 1933 and the Securities and Exchange Act of 1934—have become even more, not less, important.

The principal philosophy governing these two laws—enacted more than 60 years ago after the stock market crash of 1929, caused largely by a crisis of confidence due to unregulated fraudulent stock promotion—is that investors and prospective investors should have access to all material information about corporations that offer securities so that the public can make informed investment decisions and that honest markets should be maintained by strong antifraud enforcement.

At a time when middle-class Americans are investing in record numbers because they believe they must, the U.S. Congress should be strengthening the most fundamental protections for investors in our securities laws, not gutting them. Yet, gutting these laws is exactly what this bill does.

This bill strikes a severe blow to the heart of the middle class. Let me tell you about just a few of the devastating provisions in this bill.

One of the most outrageous provisions in this bill is the safe harbor provision. This provision, by providing broad immunity from liability for fraudulent corporate predictions and projections, essentially gives corporations a license to lie. This provision is much worse than the safe harbor provision in the Senate bill.

The Senate bill language that made knowingly fraudulent defendants ineligible for the safe harbor was eliminated. Now, under this bill, deliberately fraudulent statements, written or oral, as long as they are accompanied by cautionary language, will be immunized from private liability. Let me repeat—this bill protects deliberately fraudulent statements.

Let me give you a frightening but likely scenario that could occur under the safe harbor provision in this bill: In an effort to entice unsuspecting consumers to purchase stock, company X makes a bunch of optimistic and fraudulent predictions about how great a new product will perform and how the company's profits will increase because of the manufacture of this new product. The company gets its lawyers and accountants to vouch for the representations.

Based on these rosy predictions, your uncle, your grandmother, your sister's teacher's union, your church, and the State of California decide to purchase the stock. All of them wind up losing their money when the fraud is exposed. Your grandmother believes the company should not be able to get away with lying to her. The company's lawyers argue, however, that even though there were fraudulent statements, there was a paragraph of cautionary language in some filing at the Securities and Exchange Commission. Under this bill, grandma loses, all the swindled investors lose, and the fraudulent company and its lawyers and accountants win.

This is absolutely outrageous. And it's just one example of the many anti-investor provisions in this bill.

To add insult to injury, this bill also fails to restore traditional aiding and abetting liability for securities fraud in private actions. Thus, lawyers, accountants, and others who turn a blind eye to the fraudulent activity of their clients, or who recklessly aid and abet their clients, will be let off scott free.

The bill also dramatically erodes the doctrine of joint and several liability and moves to a system of proportionate liability. The bottom line for an investor is that under this bill, if a corporate defendant is found guilty of fraud and goes bankrupt, the victim will not be able to recover all of his losses. In essence, what this bill does is determine, as policy matter, that it is more important to protect adjudged wrongdoers from having to pay more than their strict proportion of the harm than it is to protect the innocent victims of fraud.

Another of the troubling provisions in this bill, is the one which adopts a higher pleading standard than was in the Senate bill—higher in fact than the standard adopted by the second circuit—which is currently the highest standard in the land.

As my colleague Senator SPECTER discussed earlier, it was Senator SPECTER who offered an amendment that clarified that the heightened pleading standard in the Senate bill could be satisfied by evidence of a defendant's motive and opportunity to commit securities fraud. The current version of this bill, however, eliminates the language in the Specter amendment.

This bill is also worse than the Senate bill because it imposes a mandatory loser-pays fee shifting penalty under rule 11 of the Federal Rules of Civil Procedure that is harsher on plaintiffs than on defendants.

Under current law, rule 11 gives courts the discretion to impose sanctions for pleadings and motions that are unwarranted, without evidentiary support, or otherwise abusive.

The Senate bill required courts to determine whether any party violated rule 11 and to presume that the appropriate penalty for violating rule 11 is fee shifting. Under the Senate bill, the party who violated rule 11 would have to pay the opposing party's legal fees incurred as a direct result of the violation.

The bill on the floor today is worse than the Senate bill because it unfairly increased the penalty imposed against plaintiffs who are found to have violated rule 11 while not doing so for defendants who are found to have violated rule 11. The presumptive penalty for plaintiffs is have to pay all of the defendant's legal fees and costs incurred in the entire action.

Proponents of this bill claim that the bill is balanced and fair. Is this provision balanced or fair? Not by any stretch of the imagination.

This bill, unlike the Senate bill, also adopts a provision, modeled on the House bill, that may require plaintiffs to post a bond to cover a possible fee-shifting penalty. Moreover, there is no limitation on the amount of the bond. This could be a major obstacle for individual victims or their attorneys in bringing a meritorious action against a large corporation defendant. The bill also fails to restore an adequate statute of limitations for private securities fraud actions, and gives the greatest control in cases to the wealthiest plaintiffs.

Lastly, as someone who has long sought to do what he could to combat crimes of all kind, I also find it incredible that language in the Senate bill concerning the application of our RICO laws in securities fraud cases has been almost eliminated entirely.

Under an amendment I offered, the Senate bill allowed the RICO statute to be used in a securities fraud civil case if at least one person in the civil case has been criminally convicted. Under this bill, RICO could only be used in the civil case against the person who was actually criminally convicted.

The safe harbor, proportionate liability, pleading, aiding and abetting, fee-shifting, and RICO provisions, are bad enough alone, but together, they will actually encourage the kind of conduct our securities laws were designed to eliminate.

I am sure that there is not one Member in this body who does not want to bring an end to all frivolous lawsuits, not just shareholder lawsuits. Yet, the legislation before us today is not the answer—it is far from it.

Indeed, the managing editor of Money magazine, the largest financial publication in the United States, with over 10 million, largely middle-class readers, said it well when he stated, and I quote:

> At a time when massive securities fraud has become one of this country's growth industries, this law would cheat victims out of whatever chance they may have of getting their money back . . . in the final analysis, this legislation . . . would actually be a grand slam for the sleaziest element of the financial industry, at the expense of ordinary citizens.

The president of the Fraternal Order of Police said it best, however, when, in his letter to the President urging him to veto the bill, he stated:

> Mr. President, our 270,000 members stand with you in your commitment to a war on crime; the men and women of the Fraternal Order of Police are the foot soldiers in the war. On their behalf, I urge you to reject a bill which would make it less risky for white collar criminals to steal from police pension funds while the police are risking their lives against violent criminals!

I urge my colleagues to heed these words.

Mr. BRYAN. Mr. President, I thank the distinguished senior Senator for his statement and for his insight.

Mr. COHEN. Mr. President, I am well aware of the hazards of abusive class action lawsuits and unethical attorney conduct.

Just before Thanksgiving there was an article on the front page of the New York Times about a constituent of mine who received a benefit of $2.91 from a class action suit concerning overcharges in mortgage escrow accounts, but had $91.00 removed from his account to pay the attorney's fees of class counsel. I will soon be introducing legislation to protect consumers from these types of abuses.

There are undoubtedly abusive securities class actions as well. But the key to reforming this area of the law, like all litigation reform, is to devise remedies that will weed out the frivolous lawsuits while allowing the meritorious ones to go forward.

The conference report under consideration contains a number of necessary and well-crafted reforms. It requires that class members receive intelligible notices explaining the terms of class action settlements, prohibits secret settlement agreements, and promotes enforcement of rules sanctioning attorneys for unethical behavior.

Unfortunately, the conference report also contains provisions that will prevent potentially meritorious cases from being pursued. In some instances, those who knowingly and intentionally mislead investors will be fully immunized from liability. Consequently, I will vote against this conference bill as I did when it was first considered by the Senate.

I am especially concerned about the consequences that the bill will have on the elderly. The Special Committee on Aging, which I chair, has held a series of hearings on fraud against small, unsophisticated investors.

The committee's investigation revealed that in an era of low interest rates, when retirees are seeking out higher yield investments, the elderly are particularly vulnerable to securities scams. Fraud against the elderly is particularly odious because their savings cannot be replaced by new earnings—losses resulting from fraud can affect middle-income seniors' standard of living for the rest of their lives.

The safe-harbor contained in the conference report shields issuers of securities, or those working on their behalf, from lawsuits based on predictive statements they make about the future performance of a stock. The immunity is absolute, so long as the predictions are accompanied with cautionary statements indicating that actual results may differ from those predicted.

The effect of this safe harbor is that corporate officials are immune from suit even if they make factual statements that they know to be false and that are intended to mislead investors. At least under the Senate bill, knowing and intentionally misleading statements would have been actionable. I am disappointed that the conference committee chose to broaden, rather than narrow, this provision.

I am also concerned about the cumulative effect of some of the procedural changes made to the bill.

The bill requires that before initiating a suit a plaintiff must be able to allege specific facts giving rise to a strong inference of the defendants' state of mind. A Senate amendment clarifying how plaintiffs could meet this burden was dropped by the conference. In addition, the bill prohibits plaintiffs from taking any discovery before it must defend a motion to dismiss the lawsuit.

Together, the pleading standard and the bar on discovery will make it extraordinarily difficult to maintain a lawsuit because it is virtually impossible to prove the state of mind of a party until you have an opportunity to conduct interviews and examine documents.

These and other provisions will not only deter frivolous lawsuits, but will create roadblocks and obstacles to suits that seek recoveries for genuine victims of fraud. For decades these private class action lawsuits have provided a necessary supplement to the enforcement efforts of the Securities and Exchange Commission.

Enforcement of the securities laws and the confidence in our markets that these laws have engendered have contributed to making our stock markets the most robust in the world. The benefits this legislation is intended to achieve—the deterrence of abusive litigation—does not justify the potential costs of weakening an enforcement scheme that has effectively protected our markets for many years.

Mr. GRAMS. Mr. President, I rise in support of the conference report.

I am proud to say that I served on the conference committee which produced this report. As a freshman Senator, I was particularly honored to play a role in crafting legislation which will benefit so many Americans who find themselves victimized by the social costs of frivolous litigation.

The legislation before us today, H.R. 1058, is entitled the ''Private Securities Litigation Reform Act of 1995.'' In my opinion, a better title would have been the ''Investors, Workers and Consumers Legal Protection Act.'' After all, this legislation is designed to protect those very people—investors, workers and consumers—from the high cost of meritless and abusive litigation.

Today, we have an opportunity to make some modest and reasonable changes which will help weed out the most abusive lawsuits in the field of securities litigation while at the same time, preserving the right of action for shareholders who are truly victimized by securities fraud.

I am particularly pleased with a number of the provisions in this bill, including:

Mandatory sanctions against attorneys who file abusive lawsuits;

Codification of the pleading standard adopted by the second circuit court of appeals;

Elimination of bounty payments to named plaintiff, plaintiff referral fees, and undeserved windfall damages;

A safe harbor for forward-looking statements to encourage companies to voluntarily disclose information to help investors make better decisions; and

A reduction in the level of liability for secondary defendants who do not knowingly engage in securities fraud.

In addition, I am pleased that this legislation does not extend the current statute of limitations established by the U.S. Supreme Court in the 1991 Lampf decision. That's one year from the date the plaintiff knew of the alleged violation and 3 years from the date the alleged violation occurred.

While some critics of this legislation have seized upon the statute of limitations as a wedge to defeat this important bill, they have failed to present a convincing case for why this period should be extended.

They have tried to suggest that the current statute of limitations has curbed the number of meritorious cases filed in the courts, but the evidence proves otherwise.

According to the administrative office of the U.S. courts, during the 4 years prior to the Lampf decision, the average number of cases filed was 162 per year. In the 4-year period since Lampf, the average number of cases filed has risen to 278 per year, an increase of nearly 72 percent.

Contrary to the claims of the bill's opponents, securities litigation has increased under Lampf, not decreased. This should not be surprising, given the fact that many of these claims can now be filed within days, even hours, after a movement in the market.

There are a number of other reasons why the current statute of limitations should be preserved.

A longer period would simply allow speculators too much time to wait and see how their decisions to buy or sell securities turned out, permitting them to abuse our legal system to cover their losses in the market.

In addition, a longer period of limitations would make it more difficult for innocent defendants to protect themselves in court. Forcing companies to keep track of every rise and fall of their stock value for 5 years and allowing strike suit attorneys to attack job creators well after the memory of a reasonable person would have faded would only lead to more frivolous litigation, more exorbitant settlements, and more pain for investors, workers and consumers.

Under current law, plaintiffs with meritorious claims have more than enough time to file their suits; unfortunately, so too do strike suit attorneys. Even with the enactment of this bill, some meritless claims will survive. If our intent is to reverse the current litigation explosion, why would we want to invite more frivolous lawsuits by extending the statute of limitations?

In June, when this legislation was debated on the Senate floor, 52 of our colleagues wisely decided to retain the current statute of limitations. That was the right decision in June and it is the right decision today, and I am pleased that this conference report preserves current law.

Finally, I'd like to say something about how this legislation will benefit everyday Americans. Securities litigation reform is not a subject discussed every morning around the kitchen table, but its results will have a major and beneficial impact on most Americans.

It will protect the worker who worries about being laid off because his employer had to pay attorneys' fees instead of his salary.

It will help the consumer who has to pay higher prices for products today because of the hidden cost of frivolous litigation.

It will pay off for the legitimate investors and pensioners whose life savings are being jeopardized by strike suit attorneys.

And finally, it will benefit the thousands of honest, hard-working attorneys who have watched the public image of their profession being tarnished by a few greedy quick change artists.

It is for the sake of these Americans that we have put in long hours of hard work to craft this balanced and reasonable bill.

None of us are totally satisfied with this legislation. There are some supporters who feel that certain provisions in the conference report go too far.

There are others like me who would like to see this legislation go further. But I think we can all agree that this conference report does what it's supposed to do: protect legitimate investors, save jobs, and preserve the right of actions for true victims of securities fraud.

When I think of this bill, I am reminded of a quote by one of the strike suit attorneys who testified on this subject before the Senate Banking Committee. In a moment of honesty, this prominent and wealthy securities action lawsuit attorney said: "I have the best practice of law in the world. I have no clients."

In my opinion, these words best illustrate the problem that this legislation is designed to address.

I commend the managers of the conference, Senator D'AMATO and Congressman BLILEY, for crafting this report, as well as our colleagues, Senators DOMENICI and DODD for pushing this issue for so many years.

As a conferee, I am proud to have played a role in this legislation and urge my colleagues to adopt the conference report.

Mr. BRYAN. Mr. President, I ask unanimous consent I be allowed to use a portion of the time of the senior Senator from Minnesota as he will not be on the floor.

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

Mr. BRYAN. Mr. President, if I may, there has been some discussion as to the position of the Securities and Exchange Commission on this piece of legislation. I have in my possession a letter dated November 22, signed by Arthur Levitt, the Chairman of the Securities and Exchange Commission, who has written to the Los Angeles Times, the editor, Mr. Coffey. I am just going to read a portion of his statement: "I am concerned and disappointed with several major points in today's Los Angeles Times article entitled 'SEC Chief Shift on Investor Bill is Linked to Senate Pressure.'" The Chairman goes on to say, "The article is wrong in reporting that I now support the litigation reform bill."

I think that needs to be said. The Chairman of the SEC has not and does not support the legislation in the current form.

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

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

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, November 22, 1995.

SHELBY COFFEY III,
Editor, Los Angeles Times, Times Mirror Square, Los Angeles, CA.

DEAR MR. COFFEY: I am concerned and disappointed with several major points in today's Los Angeles Times article entitled "SEC Chief Shift on Investor Bill Is Linked to Senate Pressure."

The article is wrong in reporting that I now support the litigation reform bill.

The article is wrong in reporting that I've reversed my position.

The article is wrong in reporting that my position was influenced by political pressure.

In the sub-heading and again in the lead sentence of the article, I am represented to "back" and "support" the proposed legislation. This is simply not the case. This point was repeatedly stressed to the reporter.

Secondly, the position outlined in the SEC's letter in no way can be construed as a reversal of the SEC's position. The article fails to describe the significant changes that were made in the most recent draft of the legislation that precipitated our letter. To do so would have made it clear that our letter did not represent any "reversal."

Finally, my staff repeatedly and unequivocally expressed to Mr. Paltrow that it was simply not true to say that the SEC responded to political pressure in issuing our letter. The letter represents the Commission's position arrived at thoughtfully, independently and deliberately. To suggest anything less is an insult. To build an entire story about political influence around one quote from one Senate staff member opining about the motivations of the SEC is, at best, unfair; especially when you consider that the two SEC Commissioners who signed the letter—the only people in any position to accurately describe the circumstances surrounding it—unambiguously denied that they did so in response to political pressures.

I hope you will correct these misstatements.

Sincerely,

ARTHUR LEVITT, *Chairman.*

Mr. BRYAN. Mr. President, I realize it is very easy to demonize lawyers. Some of my colleague who have taken the opportunity this afternoon and this morning to do so would not be the first to do that. Dating back to the time of Shakespeare, "The first thing we ought to do," Shakespeare said, "is kill all the lawyers."

I believe this is not a warm, cuddly group that is easy to love. Having once practiced law, I share some of that antipathy to lawyers, when lawyers get out of line, as they from time to time do.

As I indicated, I fully support the provisions that deal with the frivolous lawsuits, and my colleague from Minnesota itemized a number of those.

Let me try to turn this to a broader perspective: Over 150 editorials and columns that have appeared in newspapers across the United States, in every region, newspapers whose philosophies are conservative, liberal, middle of the road. Overwhelmingly, the informed judgment and opinion by these editorial writers is in strong opposition to the bill—not because they do not recognize, as I, and I think all of my colleagues do, that we need to make some changes with respect to the frivolous lawsuits, but because this bill goes far beyond that.

It is really a Trojan horse in which those who seek to minimize or immunize themselves from liability have entered into the courtyard under this frivolous lawsuit flag, when in point of fact they are trying to protect themselves from liability after their misconduct has been adjudicated.

Among those organizations that have expressed their opposition are the National League of Cities, the National Association of Counties, the Government Finance Officers Association, the U.S. Conference of Mayors, the Municipal Treasurers Association. I do not know what the political affiliation is of all of these people, but I daresay if you examine it you would find Republicans and Democrats alike that hold these offices, all essentially reaching the same conclusion, that they and their constituent interests, namely, the people who live in these various communities, are at risk in terms of being protected in the event that investor fraud causes them to lose money in any of the portfolios they hold in behalf of the public, as members of counties or cities, municipal officers, and others.

I suspect that this group is about as neutral and objective as any that you might find. I think it is instructive that virtually all have expressed their strong opposition. They are extremely concerned that they might be the next Orange County. It could happen in their State, in their county, in their city to their university investment portfolio, and they know that they would be irreparably damaged if we do not take corrective action to balance this piece of legislation.

In recent weeks, well over 1,000 State and local officials and opinion leaders have written the Congress and the President to express their strong opposition. Among those letters, Mr. President, is a letter signed by 99 California government officials, including the Mayors of San Francisco and San Jose and officials in 43 of the State's 58 counties; a letter signed by 34 county treasurers in Arkansas; a letter signed by 24 opinion leaders in Iowa, including the State's Attorney General Tom Miller; a letter signed by 51 public officials in Georgia; a letter signed by 51 Maine opinion leaders, including State Treasurer Sam Shapiro and 9 State legislators; a letter signed by 60 public officials in Massachusetts, including the Massachusetts Association of County Commissioners; a letter signed by 33 opinion leaders in Montana, including Attorney General Joseph Mazurek and State Auditor Mark O'Keefe; a letter signed by 39 officials in New Jersey, including the New Jersey Conference of Mayors and the New Jersey League of Municipalities; a letter signed by 27 Ohio public officials, including the mayor of Cincinnati and the Ohio County Treasurers Association; a letter signed by 27 Vermont opinion leaders.

My point is that this spans the continent, from east to west, from north to south. Whether one is liberal, conservative, or middle of the road, virtually all have concluded that this legislation overreaches and clearly places those persons in their communities and their States at risk as a consequence of this legislation.

Mr. President, I reserve whatever time I have remaining and note the presence on the floor of my distinguished friend and colleague, the Senator from Alabama, Senator SHELBY.

The PRESIDING OFFICER. The Senator from Alabama has 7 minutes.

Mr. SHELBY. Mr. President, I am disappointed to say that the conference report before us today is not a balanced bill. It was not a balanced bill when it left the Senate several months ago, and it has not improved by any measure in conference.

Plain and simple, Mr. President, it remains unbalanced against the defrauded investor.

I am disappointed, as I was when the Senate passed S. 240, because I believe that there are some worthy provisions in this bill that would go far in reducing frivolous suits without compromising the rights of victims of fraud.

These few, worthy provisions, however, are insufficient to overcome the unbalanced nature of this bill.

While I support efforts to reduce frivolous litigation, I simply cannot support the approach taken here today.

This past year I have actively sought alternatives that would seek a middle ground between weeding out meritless litigation and preserving legitimate claims.

I have actively sought alternatives that would seek a middle ground between eliminating economic incentives to pursue frivolous litigation and protecting the rights of the defrauded investor.

And, I have actively sought alternatives that would seek a middle ground between opportunistic strike suits and preserving the powerful check of private litigation on professional misconduct.

Earlier this year, I joined Senator BRYAN in introducing a securities litigation reform bill that, I believe, struck the proper balance between protecting investors and reducing meritless litigation.

Our bill contained some of the same worthy provisions also incorporated in this conference report, like the ban on referral fees and the payment of attorney fees from the SEC disgorgement fund, increasing fraud detection and enforcement and ensuring adequate disclosure of settlement terms.

In addition, however, our bill sought balance by including several provisions to protect the rights of the defrauded investor.

It restored aiding and abetting liability; extended the statute of limitations for private fraud actions to the earlier of 5 years after the violation or 2 years after discovery, and ensured that the victim of fraud was made whole in the case of an insolvent joint and several defendant.

When S. 240 came before the Senate I, again, sought to improve the balance of the bill by offering an amendment on proportionate liability.

My amendment would have ensured that the insolvency of the defendant does not prevent the innocent victim from obtaining a full recovery by making proportionate defendants liable for the remaining uncollectible amount of an insolvent joint and several defendant.

Again, this provision would have weighted in favor of the victim of the fraud over the perpetrator of the fraud—a balance which is still missing from the conference report before us today.

Mr. President, these provisions are crucial, in my view, to ensuring that rights of defrauded investors are not unfairly impaired in an effort to reduce litigation—meritorious or meritless.

Mr. President, the conference report fails to do what S. 240 failed to do—and I, therefore, cannot support it.

The conference report, put simply, fails to ensure adequate protection of the rights of the innocent victim of securities fraud, and, in fact, makes it harder for the small investor to gain access to the courts and obtain a full recovery for securities fraud.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, let me express my appreciation to the Senator from Alabama for his comments and for his balance. I believe he would agree with me that there are abuses that need to be corrected. None of us who oppose this legislation are arguing the status quo is what we favor. Indeed, he is a cosponsor with me of the legislation that would have dealt with a number of those things. The Senator will recall that incorporated in that we had provisions to eliminate bonus payments being paid to brokers. That is dead wrong. He and I agree on that.

The Senator would agree with me, I am sure, that payments that would be made as bonus payments to certain plaintiffs are wrong as well. The referral fees—we clearly agree that before a settlement should be effected, the lawyers on behalf of the plaintiffs need to make a full disclosure as to what the terms of the settlement are to be. And we fully agreed that, if there are frivolous lawsuits, the courts need to be very aggressive in imposing sanctions.

I note my friend wants to respond. I will not purport to speak for him.

Mr. SHELBY. If the Senator from Nevada will yield just for a few brief comments?

Mr. BRYAN. I will be happy to.

Mr. SHELBY. I believe in any piece of legislation we need balance. We need balance for the people who are the issuers of stock in the public domain. But, on the other hand, we need some safeguards for the investor. If you do not have balance in a situation, you are going to have trouble later.

I believe this bill is not a panacea. This bill is fraught with danger. I think it is a bad bill the way it is constructed today, but it could have been a good bill if we had stayed with the basics and if we were able to work out a bipartisan approach to a very serious thing, and that is excessive litigation.

No one, I believe, in his right mind could do anything but agree that a lot of litigation is out of control in America. But how do you balance that? I believe we have that responsibility and obligation, to make sure it is balanced, especially when you are dealing with people who probably are not going to be as sophisticated about the marketplace as people who come to the marketplace, but will invest their life savings and will invest everything they have. And what remedy will they have in the future as victims? I think this is what some of this is about.

Mr. BRYAN. Mr. President, I note the distinguished Senator from New Mexico is on the floor, and he previously had some time. I would be willing to offer him some time and ask unanimous consent that we split the remainder of the time.

Mr. DOMENICI. How much time does the Senator have?

Mr. BRYAN. I think we have about 5 minutes.

Mr. DOMENICI. I do not need that time. I will take 2 of the 5. It is very generous of the Senator to split it with me.

Mr. BRYAN. Three.

Mr. DOMENICI. I do not really need that much, but I will accept it.

Mr. President, I would have stopped the distinguished Senator from Nevada had I had a chance and asked a question. I did not do that because I just did not get in the right position with reference to his speech.

He mentioned a lot of organizations, institutions, and editorial writers who are opposed to this bill. I guess if I had a chance to ask those associations, institutions, and editorial writers a question, I would just ask one. Let us assume in addressing them that I am saying, ''Mr. Jones,''—that addresses all of them—''did you know that the investors' share of what is collected in a lawsuit of the type we are concerned about, out of every dollar collected, that 14 cents goes to the investor?'' That is that poor stockholder that everybody is talking about being sorry for. Fourteen cents goes to that person, and the balance, if my arithmetic is correct, 86 cents goes to the lawyers, court costs, deposition costs, and the other things.

That is why the program needs to be fixed. There is no doubt about it. This part of the American judicial system and litigation system is not working. It is not worth the consequences to the enterprises being affected that normal litigation brings to the marketplace of American capitalism. It is sort of part of the system that has gone eccentric, that lawyers have found a bird's nest on the ground, and this is the result—settlements all over the place, deep pocket lawsuits, and even with all of that available to the lawyers of this country, 14 cents goes to that little investor whom everybody is trying to protect.

I would like to close by saying I am very pleased that the oldest and largest investment group around that takes care of small stockholders, the National Association of Investors Corp., which has a letter to the President saying protect their stockholders, endorses this.

There is a long list here of investors who say to the President, ''We want your support.'' There is a huge list from the American Business Conference to the public trading companies, maybe 30 of them.

I ask unanimous consent that all of these be printed in the RECORD in support of the cause that this bill contains.

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

NATIONAL ASSOCIATION OF INVESTORS CORPORATION,
Royal Oak, MI, October 25, 1995.

The PRESIDENT,
The White House,
Washington, DC.

MR. PRESIDENT: I am writing as chairman of America's oldest and largest organization of small investors—the lifeblood of our nation's capital markets. NAIC is a prime mover behind the popular trend of investment clubs, where investors share information and expertise while reducing risks. The number of investment clubs affiliated with NAIC has grown to 17,000, representing more than 325,000 individual investors.

Mr. President, America's small investors urgently want reform of our broken system of securities litigation.

We pride ourselves in making our own investment decisions, based on information in the marketplace. But because of the current legal system, we have been getting less and less access to voluntary information from publicly traded companies. Companies balk at disclosing useful information for fear of frivolous class-action securities lawsuits. To make matters worse, meritless securities lawsuits unjustly take money from the pockets of small investors by driving down the value of growth companies in which we invest. In the past four years alone, class-action securities suits have milked more than $2.5 billion from American companies. Plaintiff's lawyers have pocketed approximately one-third—$825 million—of these funds that otherwise could have gone to more productive use.

We want to be able to recover our investments in cases where we have been defrauded. Just as important, we want protection from unscrupulous ''strike suit'' attorneys who file baseless suits that coerce companies into spending our investment capital on settlement and defense costs.

That is why NAIC members support securities litigation reform legislation that cracks down on frivolous securities lawsuits while strengthening effective protection against real fraud. The bill's strong new fraud prevention provision would require public auditors to identify and report illegal activities as soon as discovered. This reform bill stops the abusive practice of using ''professional plaintiffs'' who buy small amounts of stock in many companies simply to gain the right to sue. It gives real investors more power to direct securities lawsuits.

Mr. President, on behalf of small investors across the nation, I urge you to work with Congress to enact securities litigation reform into law this year.

Sincerely yours,

THOMAS E. O'HARA.

INVESTORS AND THOSE WHO PROTECT INVESTORS HAVE SPOKEN OUT IN FAVOR OF SECURITIES LITIGATION REFORM

National Association of Investors Corporation, the largest individual shareowners organization in the United States.

Managers of public and private pension funds, including: New York City Pension Funds, Connecticut Retirement and Trust Funds, Oregon Public Employees' Retirement System, State Universities Retirement System of Illinois, Teachers Retirement System of Texas, State of Wisconsin Investment Board, Washington State Investment Board, Eastman Kodak Retirement Plan.

State treasurers and state officials responsible for state securities laws and pension funds, including: Treasurer, Commonwealth of Massachusetts, Treasurer, State of Ohio, Treasurer, State of Illinois, Commissioner of Corporations, California, Treasurer, State of North Carolina, Treasurer, State of South Carolina, Treasurer, State of Delaware, Treasurer, State of Colorado.

Senior citizen investors spoke out in a recent poll in favor of legal reforms to curb lawsuit abuse.

SUPPORTERS OF SECURITIES LITIGATION REFORM

American Business Conference.—Members of the American Business Conference include 100 chief executive officers of high-growth companies with revenues over $25 million. ABC serves as the voice of the midsize, high-growth job creating sector of the economy.

American Electronics Association.—The American Electronics Association represents some 3,000 companies in 44 states that span the breadth of the electronics industry, from silicon to software, to all levels of computers and communication networks, and systems integration.

American Financial Services Association.—The American Financial Services Association is a national trade association for financial service firms and small business. Its 360 members include consumer and auto finance companies, credit card issuers, and diversified financial services firms.

American Institute of Certified Public Accountants.—The American Institute of Certified Public Accountants is the national professional organization of over 310,000 CPAs in public practice, industry, government, and academia.

Association for Investment Management and Research.—The Association for Management and Research is an international nonprofit membership organization of investment practitioners and educators with more than 40,000 members and candidates.

Association of Private Pension and Welfare Plans.—The Association of Private Pension and Welfare Plans membership represents the entire spectrum of the private pension and employee benefits community: Fortune 500 companies, banks, insurance companies, law, accounting, consulting, investment and actuarial firms. APPWP members either sponsor directly or administer employee benefit plans covering more than 100 million Americans.

Association of Publicly Traded Companies.—The Association of Publicly Traded Companies has an active membership of over 500 corporations consisting of a broad cross section of publicly traded companies, especially those traded on the NASDAQ national market.

BIOCOM/San Diego (Formerly the Biomedical Industry Council).—BIOCOM/San Diego is a business association representing over 60 biotechnology and medical device companies in San Diego, CA.

Biotechnology Industry Organization.—The Biotechnology Industry Organization represents more than 525 companies, academic institutions, state biotechnology centers and other organizations involved in the research and development of health care, agriculture and environmental biotechnology products.

Business Software Alliance.—The Business Software Alliance promotes the contained growth of the software industry through its international public policy, education and enforcement programs in more than 60 countries, including the U.S., throughout North America, Asia, Europe and Latin America. BSA represents leading publishers of software for personal computers.

Information Technology Association of America.—The Information Technology Association is a major trade association representing over 5,700 direct and affiliated member companies which provide worldwide computer software, consulting and information processing services.

National Association of Investors Corporation.—The National Association of Investors Corporation is the largest individual shareowners organizations in the United States. NAIC has a dues-paid membership of investment clubs and other groups totalling more than 273,000 individual investors.

National Association of Manufacturers.—The National Association of Manufacturers is the nation's oldest voluntary business association, comprised of more than 13,000 member companies and subsidiaries, large and small, located in every state. Its members range in size from the very large to the more than 9,000 small members that have fewer than 500 employees each. NAM member companies employ 85% of all workers in manufacturing and produce more than 80% of the nation's manufactured goods.

National Investor Relations Institute.—The National Investor Relations Institute, now in its 25th year, is a professional association of 2,300 corporate officers and investor relations consultants responsible for communication between corporate management, shareholders, security analysts and other financial publics.

National Venture Capital Association.—The National Venture Capital Association is made up of 200 professional venture capital organizations NVCA's affiliate, the American Entrepreneurs for Economic Growth, represents 6,600 CEOs who run emerging growth companies that employ over 760,000 people.

Public Securities Association.—The Public Securities Association is the international trade association of banks and brokerage firms which deal in municipal securities, mortgages and other asset-based securities, U.S. government and federal agency securities, and money market instruments.

Securities Industry Association.—The Securities Industry Association is the securities industry's trade association representing the business interests of more than 700 securities firms in North America which collectively account for about 90% of securities firm revenue in the U.S.

Semiconductor Industry Association.—The Semiconductor Industry Association represents the $43 billion U.S. semiconductor industry on public policy and industry affairs. The industry invests 11% of sales on R&D and 15% of sales on new plant and equipment—more than a quarter of its revenue reinvested in the future—and thus seeks to improve America's equity capital markets.

Software Publishers Association.—The Software Publishers Association is the principal trade association of the personal computer software industry, with a membership of over 1,000 companies, representing 90% of U.S. software publishers. SPA members range from all of the well-known industry leaders to hundreds of smaller companies; all of which develop and market business, consumer, and education software. SPA members sold more than $30 billion of software in 1992, accounting for more than half of total worldwide software sales.

MANAGERS OF PRIVATE OR PUBLIC PENSION FUNDS

Champion International Pension Plan.—Champion International Pension Plan controls over $1.8 billion in total assets.

Connecticut Retirement and Trust Fund.—The Connecticut Retirement and Trust Fund invests over $11 billion on behalf of over 140,000 employees and beneficiaries.

Eastman Kodak Retirement Plan.—Eastman Kodak Retirement Plan manages over $10.9 billion in total assets and is ranked as one of the largest 60 pension plans in the U.S.

Massachusetts Bay Transportation Association.—With over 12,000 participants, the Massachusetts Bay Transportation Association controls over $772 million in total assets.

New York City Pension Funds.—Over $49 billion have been invested in the fund to insure the retirement security of 227,000 retirees and 138,000 vested employees.

Oregon Public Employees' Retirement System.—Assets controlled by the fund total over $17.2 billion. The Oregon Public Employees' Retirement System is ranked among the largest 30 pension plans in the U.S.

State of Wisconsin Investment Board.—One of the 10 largest pension funds in the United States, the State of Wisconsin Investment Board manages over $33 billion contributed by the State's public employees.

State Universities Retirement System of Illinois.—The State Universities Retirement System is ranked as one of the country's 100 largest pension funds with total assets of $5.3 billion.

Teachers Retirement System of Texas.—The Teachers Retirement System of Texas controls over $36.5 billion in total assets on behalf of its 700,000 members.

Washington State Investment Board.—With assets totaling over $19.7 billion, the Washington State Investment Board is ranked in the largest 25 pension funds.

Mr. DOMENICI. I yield the floor.

I thank my friend for the time.

Mr. BRYAN. Mr. President, let me compliment my friend from New Mexico. I know he is sincere. He has been laboring in the vineyards for a good many years on this legislation. Let me say by way of rebuttal that, if this legislation was about how we could increase that 14 cents that the investors currently receive according to the information provided, I would like to work with him. In point of fact, the concern is that this legislation will, in many cases, reduce the recovery to zero and in no instance is there a provision in this bill that would enhance the recovery beyond the 14 cents even if recovery is possible.

Finally, let me say by way of winding it up, our friend, the distinguished chairman of the Select Committee on Aging, has certainly provided a number of insights in terms of who really gets hurt in this legislation. He points out cogently and definitively that the seniors in America are going to be among its principal victims.

Mr. President, I note that our time is up. If there is any remainder of time, I yield it.

Have the yeas and nays been asked for?

The PRESIDING OFFICER (Mr. SANTORUM). They have not.

Mr. BRYAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report to accompany H.R. 1058, the Private Securities Litigation Reform Act of 1995.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Delaware [Mr. ROTH] are necessarily absent.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER (Mr. ABRAHAM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 65, nays 30, as follows:

[Rollcall Vote No. 589 Leg.]

YEAS—65

Abraham	Frist	Mack
Ashcroft	Gorton	McConnell
Baucus	Grams	Mikulski
Bennett	Grassley	Moseley-Braun
Bingaman	Gregg	Murkowski
Brown	Harkin	Murray
Burns	Hatch	Nickles
Campbell	Hatfield	Pell
Chafee	Helms	Pressler
Coats	Hutchison	Reid
Cochran	Inhofe	Robb
Coverdell	Jeffords	Rockefeller
Craig	Johnston	Santorum
D'Amato	Kassebaum	Simpson
DeWine	Kempthorne	Smith
Dodd	Kennedy	Snowe
Dole	Kerry	Stevens
Domenici	Kohl	Thomas
Exon	Kyl	Thompson
Faircloth	Lieberman	Thurmond
Feinstein	Lott	Warner
Ford	Lugar	

NAYS—30

Akaka	Dorgan	Levin
Biden	Feingold	McCain
Boxer	Glenn	Moynihan
Breaux	Graham	Nunn
Bryan	Heflin	Pryor
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Shelby
Cohen	Kerrey	Simon
Conrad	Lautenberg	Specter
Daschle	Leahy	Wellstone

"ANSWERED PRESENT"—1

Bond

NOT VOTING—3

Bradley	Gramm	Roth

So, the conference report was agreed to.

PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (H.R. 1833) to amend Title 18 U.S. Code to ban partial-birth abortions.

The Senate resumed consideration of the bill.

MORNING BUSINESS

Mr. SMITH. Mr. President, I ask unanimous consent that there be a period for morning business until 5:30.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object. I want to know what the intention is as far as going to the late-term abortion ban.

Mr. SMITH. The intention is to go to it at about 5:30.

Mrs. BOXER. How long does my colleague wish to continue the debate?

Mr. SMITH. I do not have any information on that at this time. I have no intention to delay the debate, I say to the Senator from California.

Mrs. BOXER. I know there are some people here who wish to speak, and they are here because it is their understanding that we were moving to it immediately. Is there any reason in delaying going to this bill?

Mr. SMITH. Only that Senator THOMAS asked me for time to give a tribute to Senator SIMPSON. That is the only reason.

Mrs. BOXER. Thank you. I do not object.

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

The Senator is recognized to speak as in morning business.

TRIBUTE TO ALAN SIMPSON

Mr. THOMAS. Mr. President, I appreciate the opportunity to come to the floor to talk about a friend, to talk about a man whom I respect as a friend, whom I respect as a public servant, a man—to quote a phrase he uses—"who is a friend to his friends," ALAN SIMPSON.

As you all know, AL SIMPSON indicated in Cody, WY, last Saturday that he would not seek another term in the U.S. Senate and would end his career at 18 years. ALAN SIMPSON is a special guy, a unique U.S. Senator. There are none other like him. He can be outspoken, very candid, very frank, and very kind.

This Cody boy is an outstanding Senator and my lifelong friend, a good and gracious man. I know that so many of you have known him well and also call him a friend. We are lucky in that way. Both he and Ann have given grace and style in their personal relationships as well as in their political life. All of us in Wyoming have been very proud of his representation in the Senate and his and Ann's representation as Wyomingites in the Nation's Capital.

I have had the privilege to serve as a part of a team with AL on the Wyoming delegation for 5 years, when I was in the House and he and Malcolm Wallop were here. This one very special year, ALAN SIMPSON and I have had the opportunity to serve together. There will be more accolades, tributes, and reactions, of course, to their decision. Many are surprised, certainly, and many are saddened by AL SIMPSON's decision not to run. I defend it because I know it was truly their decision and they are at peace with it and look forward to life beyond these Chambers, as we all know there is. I am sure that life will be centered in Cody, WY.

I know that AL could have done anything he chose to. People in Wyoming adore him, respect him, and he could have won the race easily. I have a selfish reaction to this. I wanted him to run again. We in Wyoming have a unique relationship in this delegation—all Republicans, and we are all friends. I think it is especially unique that AL and I grew up in the same little town, Cody, WY—which was about 6,000—across the alley from one another. We played sports together, grew up together. I can tell a few scandalous stories, but AL has told most of them already.

Few men in Washington have the gift of skill and the gift of humor that AL SIMPSON has. He has always been that way. I can recall when I was just a kid, Milward Simpson was probably the most famous man in our little town. I can remember being so astonished that he could stand up and extemporaneously speak, and it would just flow.

So now we are here serving the Wyoming people in the Senate, and here ALAN SIMPSON is my political mentor, our senior Senator and, very selfishly, I wanted him to run again, to continue his excellent representation and clear leadership. Many of you will have your own testimony to AL SIMPSON during the coming year. But I can tell you from one who has known the SIMPSON family, I know Milward and Lorna Simpson would have been very proud of AL, both in the way he has served and will serve throughout 1996, but also as proud as only a father and a mother can be in the way he has come to and announced his decision. He announced it with courage, with class, and with a positive view for the future—the qualities that define AL and Ann Simpson.

He has 1 more year to go. No one should make a mistake or forget about that. He will do many things in that year. He will achieve much. So I will, at the end of that year, miss my good friend and mentor. All of us, I think, will miss his good western advice, little bits of western wisdom, such as ''don't squat with your spurs on'' and other little bits like that.

So I say to my friend, hats off to a true trail boss, good luck, and I hope you do as well as you have done in the past, my friend, AL SIMPSON.

TRIBUTE TO ALAN SIMPSON AND MARK HATFIELD

Mr. JOHNSTON. Mr. President, I would like to remark at what a diminished place this will be because of the loss of Senator SIMPSON and Senator HATFIELD, both of whom announced over the weekend that they would be leaving. There are no Senators in this body, any that I know of, who have served here who have been more distinguished than the Senator from Wyoming and the Senator from Oregon. I might say that there are none for whom I have higher personal esteem and affection than both of these Senators.

It was truly a historic weekend for both of them to announce that they were leaving the Senate. I must say, had I not myself announced that I was leaving, I would be much sadder than I am. Since I will be leaving, I will not miss them here. I despair, though, because of the vacuum that will be left in this Nation when these two very great public servants will be leaving the Senate.

I did not come for that specific purpose, Mr. President. I will later talk about my two friends. But I could not miss the opportunity when the junior Senator from Wyoming brought up the subject to say how much I share his sentiments and how great I think the loss is for the country.

THE FARM PROVISIONS OF THE RECONCILIATION BILL

Mr. JOHNSTON. Mr. President, we knew that when the farm provisions of the reconciliation bill were agreed to, they were bad for the State of Louisiana, but we had no idea how bad these provisions were for the State of Louisiana when they were passed.

The reason is, Mr. President, we had no opportunity to be involved in this, no input into the provisions of it, no ability to evaluate it, no ability to discuss it. It was in conference committee and the reconciliation bill. The chairman of the House Agriculture Committee met with the Speaker of the House and, boom, ipso facto, it was created out of the ashes in whole part without any input from anybody.

Mr. President, now we have evaluated this bill. I can tell my colleagues that the agricultural provisions of the reconciliation bill will simply destroy the cotton industry and the rice industry in the State of Louisiana.

Let me repeat that: The agricultural provisions of the reconciliation bill will destroy the rice industry and the cotton industry in the State of Louisiana.

Mr. President, these are two of our largest crops. They contribute over $2 billion to the State of Louisiana, 7,000 direct jobs and 27,000 indirect agriculture jobs, according to Louisiana State University and the Louisiana Cooperative Extension Service.

Mr. President, they have done an analysis of what the bill does for rice and cotton. They have taken a typical Louisiana rice tenant farm, which is 287 planted acres—and this takes up about 90 percent of our tenant farms in the State of Louisiana—and they have a whole series of calculations as to what the economic effect on that rice farmer will be.

Mr. President, I ask unanimous consent that the calculations which they have done in great detail both as to the comparison of net returns for cotton, net returns for rice under the conference committee, and rice gross returns under alternative farm program, that these figures be printed in the RECORD at this time.

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

COMPARISON OF NET RETURNS FOR COTTON UNDER CONFERENCE COMMITTEE FARM PROPOSAL AND EXTENSION OF CURRENT FARM BILL, LOUISIANA, 1996–2002

	1996	1997	1998	1999	2000	2001	2002
Analysis Parameters							
Cotton farm acreage:				(acres)			
Base acres	353	353	353	353	353	353	353
Percent of base paid	85	85	85	85	85	85	85
Acres planted (85 percent of base) [1]	300	300	300	300	300	300	300
Cotton yields:				(lbs/acre)			
Louisiana actual yield	740	740	740	740	740	740	740
Louisiana program yield	722	722	722	722	722	722	722
Current program parameters:				(cents/lb)			
Target price	72.90	72.90	72.90	72.90	72.90	72.90	72.90
Loan rate	50.00	50.00	50.00	50.00	50.00	50.00	50.00
Estimated deficiency payment	13.22	13.22	13.22	13.22	13.22	13.22	13.22
Conference program parameters:				(acres)			
Estimated transition payment [2]	7.93	7.53	8.06	7.74	7.09	5.71	5.50
Loan rate	50.00	50.00	50.00	50.00	50.00	50.00	50.00
Market price level analyzed:				(cents/lb)			
1990–94 Louisiana average price	59.68	59.68	59.68	59.68	59.68	59.68	59.68
Estimated Net Returns (tenant operator)							
Current program				(Total cotton returns ($) per farm)			
Total farm market returns [3]	149,720	149,720	149,720	149,720	149,720	149,720	149,720
Total farm deficiency payments	28,639	28,639	28,639	28,639	28,639	28,639	28,639
Total farm gross returns [4]	178,359	178,359	178,359	178,359	178,359	178,359	178,359
Land rent (25 percent)	44,590	44,590	44,590	44,590	44,590	44,590	44,590
Net returns above land rent	133,769	133,769	133,769	133,769	133,769	133,769	133,769
Variable costs ($332.73/acre)	99,836	102,831	105,916	109,093	112,366	115,737	119,209
Net returns above variable costs	33,933	30,938	27,854	24,676	21,403	18,032	14,560
Fixed costs ($72.09/acre)	21,631	21,847	22,065	22,286	22,509	22,734	22,961

COMPARISON OF NET RETURNS FOR COTTON UNDER CONFERENCE COMMITTEE FARM PROPOSAL AND EXTENSION OF CURRENT FARM BILL, LOUISIANA, 1996–2002

	1996	1997	1998	1999	2000	2001	2002
Net returns above total costs	12,303	9,092	5,788	2,390	(1,106)	(4,702)	(8,401)
Conference program:							
Total farm market returns [3]	149,720	149,720	149,720	149,720	149,720	149,720	149,720
Total farm transition payments	17,179	16,313	17,461	16,768	15,359	12,370	11,915
Total farm gross returns [4]	166,899	166,032	167,180	166,487	165,079	162,089	161,635
Land rent (25 percent)	41,725	41,508	41,795	41,622	41,270	40,522	40,409
Net returns above land rent	125,174	124,524	125,385	124,865	123,809	121,567	121,226
Variable costs ($332.73/acre)	99,836	102,831	105,916	109,093	112,366	115,737	119,209
Net returns above variable costs	25,338	21,693	19,470	15,772	11,443	5,830	2,017
Fixed costs ($72.09/acre)	21,631	21,847	22,065	22,286	22,509	22,734	22,961
Net returns above total costs	3,708	(153)	(2,596)	(6,514)	(11,065)	(16,904)	(20,944)

[1] Estimated planted acreage level at maximum deficiency payment rate under $50,000 payment limitation.
[2] Preliminary payment rates under Agricultural Market Transition Program, November 1995.
[3] Includes sales of cottonseed valued at $0.05 per lb.
[4] Marketing loan payments are excluded from the analysis since the provisions for a marketing loan are the same under both programs.

COMPARISON OF NET RETURNS FOR RICE UNDER CONFERENCE COMMITTEE FARM PROPOSAL AND EXTENSION OF CURRENT FARM BILL, LOUISIANA, 1996–2002

	1996	1997	1998	1999	2000	2001	2002
Analysis Parameters							
Rice farm acreage:				(acres)			
Base acres	338	338	338	338	338	338	338
Percent of base paid	85	85	85	85	85	85	85
Acres planted (85 percent of base) [1]	287	287	287	287	287	287	287
Rice yields:				(cwt/acre)			
Louisiana actual yield	48.00	48.00	48.00	48.00	48.00	48.00	48.00
Louisiana program yield	41.31	41.31	41.31	41.31	41.31	41.31	41.31
Current program parameters:				($/cwt)			
Target price	10.71	10.71	10.71	10.71	10.71	10.71	10.71
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
Estimated deficiency payment	3.82	3.82	3.82	3.82	3.82	3.82	3.82
Conference program parameters:				($/cwt)			
Estimated transition payment [2]	1.52	2.66	2.86	2.77	2.53	2.04	1.98
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
Market price level analyzed:				($/cwt)			
1990–94 Louisiana average price	6.89	6.89	6.89	6.89	6.89	6.89	6.89
Estimated Net Returns (tenant operator)							
Current program:				(Total rice returns ($) per farm)			
Total farm market returns	95,016	95,016	95,016	95,016	95,016	95,016	95,016
Total farm deficiency payments	45,337	45,337	45,337	45,337	45,337	45,337	45,337
Total farm gross returns [3]	140,353	140,353	140,353	140,353	140,353	140,353	140,353
Land and water rent (20 percent for each)	56,141	56,141	56,141	56,141	56,141	56,141	56,141
Net returns above land/water rent	84,212	84,212	84,212	84,212	84,212	84,212	84,212
Variable costs	67,605	69,633	71,722	73,873	76,090	78,372	80, 723
Net returns above variable costs	16,607	14,579	12,490	10,338	8,122	5,840	3,488
Fixed costs	13,543	13,679	13,816	13,954	14,093	14,234	14,377
Net returns above total costs	3,064	900	(1,325)	(3,615)	(5,971)	(8,395)	(10,888)
Conference program:							
Total farm market returns	95,016	95,016	95,016	95,016	95,016	95,016	95,016
Total farm transition payments	18,040	31,570	33,944	32,875	30,027	24,211	23,499
Total farm gross payments [3]	113,056	126,586	128,959	127,891	125,043	119,227	118,515
Land and water rent (20 percent for each)	45,222	50,634	51,584	51,156	50,017	47,691	47,406
Net returns above land/water rent	67,833	75,951	77,376	76,735	75,026	71,536	71,109
Variable costs	67,605	69,633	71,722	73,873	76,090	78,372	80,723
Net returns above variable costs	229	6,319	5,654	2,861	(1,064)	(6,836)	(9,614)
Fixed costs	13,543	13,679	13,816	13,954	14,093	14,234	14,377
Net returns above total costs	(13,314)	(7,360)	(8,162)	(11,092)	(15,157)	(21,070)	(23,991)

[1] Estimated planted acreage level at maximum deficiency payment rate under $50,000 payment limitation.
[2] Preliminary payment rates under Agricultural Market Transition Program, November 1995.
[3] Marketing loan payments are excluded from the analysis since the provisions for a marketing loan are the same under both programs.

LOUISIANA RICE GROSS RETURNS UNDER ALTERNATIVE FARM BILL PROPOSALS, 1996–2002

	1996	1997	1998	1999	2000	2001	2002
Rice yields:				(cwt/acre)			
Louisiana actual yield	48.00	48.00	48.00	48.00	48.00	48.00	48.00
Louisiana program yield	41.31	41.31	41.31	41.31	41.31	41.31	41.31
Current program:				(acres)			
Base acres	100	100	100	100	100	100	100
Percent of base paid	85	85	85	85	85	85	85
Acres planted (85 percent of base)	85	85	85	85	85	85	85
Price/payment rates:				($/cwt)			
Target price	10.71	10.71	10.71	10.71	10.71	10.71	10.71
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
1990–94 Louisiana average price	6.89	6.89	6.89	6.89	6.89	6.89	6.89
Deficiency payment	3.82	3.82	3.82	3.82	3.82	3.82	3.82
Estimated gross returns:				(Total rice returns ($))			
Total farm market returns	28,111	28,111	28,111	28,111	28,111	28,111	28,111
Total farm deficiency payments [1]	13,413	13,413	13,413	13,413	13,413	13,413	13,413
Total farm gross returns	41,252	41,252	41,252	41,252	41,252	41,252	41,252
Conference bill:				(acres)			
Base acres	100	100	100	100	100	100	100
Percent of base paid	85	85	85	85	85	85	85
Acres planted (85 percent of base)	85	85	85	85	85	85	85
Price/payment rates:				($/cwt)			
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
1990–94 Louisiana average price	6.89	6.89	6.89	6.89	6.89	6.89	6.89
Transition payment	1.52	2.66	2.86	2.77	2.53	2.04	1.98
Estimated gross returns:				(Total rice returns ($))			
Total farm market returns	28,111	28,111	28,111	28,111	28,111	28,111	28,111
Total farm transition payments [1]	5,337	9,340	10,042	9,726	8,884	7,163	6,952
Percent change from current program [3]	−60	−30	−25	−27	−34	−47	−48
Total farm gross returns	33,448	37,451	38,154	37,838	36,995	35,274	35,064

LOUISIANA RICE GROSS RETURNS UNDER ALTERNATIVE FARM BILL PROPOSALS, 1996–2002—Continued

	1996	1997	1998	1999	2000	2001	2002
House bill:				(acres)			
Base acres	100	100	100	100	100	100	100
Percent of base paid	100	100	100	100	100	100	100
Acres planted (85 percent of base)	85	85	85	85	85	85	85
Price/payment rates:				($/cwt)			
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
1990–94 Louisiana average price	6.89	6.89	6.89	6.89	6.89	6.89	6.89
Transition payment	4.10	3.98	4.26	4.13	3.80	3.12	3.04
Estimated gross returns:				(Total rice returns ($))			
Total farm market returns	28,111	28,111	28,111	28,111	28,111	28,111	28,111
Total farm deficiency payments [2]	16,937	16,441	17,598	17,061	15,698	12,889	12,558
Percent change from current program [3]	26	23	31	27	17	−4	−6
Total farm gross returns	45,048	44,553,	45,709	45,172	43,809	41,000	40,669
Senate bill:				(acres)			
Base acres	100	100	100	100	100	100	100
Percent of base paid	70	70	70	70	70	70	70
Acres planted (85 percent of base)	85	85	85	85	85	85	85
Price/payment rates:				($/cwt)			
Target price	10.71	10.71	10.71	10.71	10.71	10.71	10.71
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
1990–94 Louisiana average price	6.89	6.89	6.89	6.89	6.89	6.89	6.89
Deficiency payment	3.82	3.82	3.82	3.48	3.23	2.89	2.66
Estimated gross returns:				(Total rice returns ($))			
Total farm market returns	28,111	28,111	28,111	28,111	28,111	28,111	28,111
Total farm deficiency payments [1]	11,046	11,046	11,046	10,063	9,340	8,357	7,692
change from current program [3]	−18	−18	−18	−25	−30	−38	−43
Total farm gross returns	39,157	39,157	39,157	38,174	37,451	36,468	35,803

[1] Marketing loan payments not included.
[2] No marketing loan program in House bill.
[3] Percent change in program payments from continuation of current program (excluding marketing loan).

COMPARISON OF GROSS RETURNS FOR COTTON UNDER CONFERENCE COMMITTEE FARM PROPOSAL AND EXTENSION OF CURRENT FARM BILL, LOUISIANA, 1996–2002

	1996	1997	1998	1999	2000	2001	2002
Analysis Parameters							
Cotton farm acreage:				(acres)			
Base acres	353	353	353	353	353	353	353
Percent of base paid	85	85	85	85	85	85	85
Acres planted (85 percent of base) [1]	300	300	300	300	300	300	300
Cotton yields:				(lbs/acre)			
Louisiana actual yield	740	740	740	740	740	740	740
Louisiana program yield	722	722	722	722	722	722	722
Current program parameters:				(cents/lb)			
Target price	72.90	72.90	72.90	72.90	72.90	72.90	72.90
Loan rate	50.00	50.00	50.00	50.00	50.00	50.00	50.00
Conference program parameters:				(cents/lb)			
Estimated transition payment [2]	7.93	7.53	8.06	7.74	7.09	5.71	5.50
Loan rate	50.00	50.00	50.00	50.00	50.00	50.00	50.00
Market price levels analyzed:				(cents/lb)			
10 percent above CBO baseline	70.40	67.10	66.00	64.90	66.00	66.00	66.00
CBO baseline	64.00	61.00	60.00	59.00	60.00	60.00	60.00
10 percent below CBO baseline	57.60	54.90	54.00	53.10	54.00	54.00	54.00
Estimated Gross Returns							
"Current program":				(Total cotton returns ($) per farm)			
10 percent above CBO baseline prices:							
Total farm market returns	156,314	148,987	146,544	144,102	146,544	146,544	146,544
Total farm deficiency payments	5,416	12,565	14,948	17,331	14,948	14,948	14,948
Total farm gross returns [3]	161,730	161,552	161,492	161,433	161,492	161,492	161,492
CBO baseline prices:							
Total farm market returns	142,104	135,443	133,222	131,002	133,222	133,222	133,222
Total farm deficiency payments	19,281	25,780	27,946	30,112	27,946	27,946	27,946
Total farm gross returns [3]	161,384	161,222	161,168	161,114	161,168	161,168	161,168
10 percent below CBO baseline prices:							
Total farm market returns	127,893	121,898	119,900	117,902	119,900	119,900	119,900
Total farm deficiency payments	33,145	38,994	40,944	42,894	40,944	40,944	40,944
Total farm gross returns [3]	161,039	160,893	160,844	160,796	160,844	160,844	160,844
"Conference program":							
10 percent above CBO baseline prices:							
Total farm market returns	156,314	148,987	146,544	144,102	146,544	146,544	146,544
Total farm transition payments	17,179	16,313	17,461	16,768	15,359	12,370	11,915
Total farm gross returns [3]	173,493	165,300	164,005	160,870	161,904	158,914	158,459
Percent change from current program	7.3	2.3	1.6	−0.3	0.3	−1.6	−1.9
CBO baseline prices:							
Total farm market returns	142,104	135,443	133,222	131,002	133,222	133,222	133,222
Total farm transition payments	17,179	16,313	17,461	16,768	15,359	12,370	11,915
Total farm gross returns [3]	159,283	151,755	150,683	147,769	148,582	145,592	145,137
Percent change from current program	−1.3	−5.9	−6.5	−8.3	−7.8	−9.7	−9.9
10 percent below CBO baseline prices:							
Total farm market returns	127,893	121,898	119,900	117,902	119,900	119,900	119,900
Total farm transition payments	17,179	16,313	17,461	16,768	15,359	12,370	11,915
Total farm gross returns [3]	145,073	138,211	137,361	134,669	135,259	132,270	131,815
Percent change from current program	−9.9	−14.1	−14.6	−16.2	−15.9	−17.8	−18.0

[1] Estimated planted acreage level at maximum deficiency payment rate under $50,000 payment limitation.
[2] Preliminary payment rates under Agricultural Market Transition Program, November 1995.
[3] Marketing loan payments are excluded from the analysis since the provisions for a marketing loan are the same under both programs.

COMPARISON OF GROSS RETURNS FOR RICE UNDER CONFERENCE COMMITTEE FARM PROPOSAL AND EXTENSION OF CURRENT FARM BILL, LOUISIANA, 1996–2002

	1996	1997	1998	1999	2000	2001	2002
Analysis Parameters							
Rice farm acreage:				(acres)			
Base acres	338	338	338	338	338	338	338
Percent of base paid	85	85	85	85	85	85	85
Acres planted (85% of base)[1]	287	287	287	287	287	287	287
Rice yields:				(cwt/acre)			
Louisiana actual yield	48.00	48.00	48.00	48.00	48.00	48.00	48.00
Louisiana program yield	41.31	41.31	41.31	41.31	41.31	41.31	41.31
Current program parameters:				($/cwt)			
Target price	10.71	10.71	10.71	10.71	10.71	10.71	10.71
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
Estimated deficiency payment	3.82	3.82	3.82	3.82	3.82	3.82	3.82
Conference program parameters:				($/cwt)			
Estimated transition payment[2]	1.52	2.66	2.86	2.77	2.53	2.04	1.98
Loan rate	6.50	6.50	6.50	6.50	6.50	6.50	6.50
Market price level analyzed:				($/cwt)			
1990–94 Louisiana average price	6.89	6.89	6.89	6.89	6.89	6.89	6.89
Estimated Gross Returns							
Current program:				(Total rice returns ($) per farm)			
Total farm market returns	95,016	95,016	95,016	95,016	95,016	95,016	95,016
Total farm deficiency payments	45,337	45,337	45,337	45,337	45,337	45,337	45,337
Total farm gross returns[3]	140,353	140,353	140,353	140,353	140,353	140,353	140,353
Conference program:							
Total farm market returns	95,016	95,016	95,016	95,016	95,016	95,016	95,016
Total farm transition payments	18,040	31,570	33,944	32,875	30,027	24,211	23,499
Total farm gross returns[3]	113,056	126,586	128,959	127,891	125,043	119,227	118,515
Percent change from current program:							
Percent change in market returns	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Percent change in program payments	−60.2	−30.4	−25.1	−27.5	−33.8	−46.6	−48.2
Percent change in gross returns[3]	−19.4	−9.8	−8.1	−8.9	−10.9	−15.1	−15.6

[1] Estimated planted acreage level at maximum deficiency payment rate under $50,000 payment limitation.
[2] Preliminary payment rates under Agricultural Market Transition Program, November 1995.
[3] Marketing loan payments are excluded from the analysis since the provisions for a marketing loan are the same under both programs.

Mr. JOHNSTON. Mr. President, when you boil the figures down, what it shows is that the average rice farmer in 1996 has a net income of minus $13,314. The average rice farmer in Louisiana for 1996 loses $13,314. In 1997, it is $7,360.

You say, why would he lose twice as much in 1996 as he would lose in 1997? The reason is, under this bill, incredibly, they have to pay back the payment they received for the last quarter of calendar 1996. They have to pay that back, so that you actually lose $13,314.

It gets worse from there. In 1998, $8,162; in 1999, $11,092; in the year 2000, $15,157; in 2001, $21,070; and 2002, $23,991.

Mr. President, these are not rich farmers but the average rice farmer in Louisiana who has planted 287 acres. Mr. President, this is not some Democratic Policy Committee who has come out with these figures; it is the Louisiana State University Agriculture Department.

Mr. President, this is actually not going to happen. The reason is that they are not going to plant the rice. With these kind of economic figures shown to the bankers, no banker is going to lend any money to plant this crop. So you will not have these losses. You will not have a rice industry in the State of Louisiana because it shows a negative cash flow for each of these years through the year 2002.

Again, Mr. President, this is the Louisiana State University who has come up with these figures.

Mr. President, it is only slightly less bad for cotton. Under cotton—and all of the figures under which we calculated each one of these figures has now been put into the RECORD—for the average cotton farmer, that is 300 planted acres, he makes $3,708 in 1996, begins to lose the next year, and by the year 2002 he is losing a net of $20,944.

This, again, Mr. President, is the average cotton farmer in the State of Louisiana.

You say, how in the world could they have done such folly in this bill? Mr. President, they did it without hearings, they did it without consultation, they did it without input. The Speaker got together with the head of the Agriculture Committee in the House and, bam, here it came. Here is the result.

Mr. President, this is an emergency. I think sooner or later this is going to be straightened out, because, as George Bush said about the invasion of Kuwait, this cannot stand. It just cannot be, Mr. President.

This Congress has done some dumb things, Mr. President, but we have never that I know of intentionally wiped out an industry—the cotton industry, the rice industry—in a State. If this is happening in the State of Louisiana, it is going to happen elsewhere across the country. We cannot intentionally do this.

Mr. President, it is an emergency that needs to be corrected now because if we wait, we are going to miss this crop year. Typically, Mr. President, the preparations for the crop year begin in December. The farmers decide what kind of money they are going to need to borrow, what kind of crops they want to plant, how much it is going to cost, et cetera, and they begin those negotiations with the bank, typically, in December. Certainly by the middle of January, they must have their bank arrangements pretty well in line because they have to plant that crop in the spring.

They have to not only order the seed, insecticide, pesticide, and the other things they will need for that crop, but their suppliers need to know sufficiently in advance how much they will need to order, how much seed to have on hand, how much insecticide.

Mr. President, you cannot pass a rule one week and expect the crop to be planted the next week.

Mr. President, you might ask, without support, if the Louisiana rice industry cannot survive, why is it that we plant rice in the United States? Why not just let the whole thing move overseas?

The reason is, Mr. President, that the subsidy, the support which we have for agriculture in the United States for rice, is a fraction of what it is in the European market, Japan, and our other foreign competitors. The fact of the matter is the EU, the European Union, subsidizes their farmers three to five times more than they do in the United States. They place high tariffs on some U.S. agricultural products which create artificially high prices.

I am informed, Mr. President—and I will get the exact figure and supply them for the RECORD later—I am informed that rice can fetch as high a price as $27 per 100-weight in Europe, compared to $6 in the United States.

Mr. President, if we intentionally wipe out the rice industry and the cotton industry in the State of Louisiana and elsewhere in our country, then we will be subject to the manipulation of foreign suppliers who will dominate and monopolize the whole market.

Mr. President, I do not believe there is time to legislate this year. Regulations must be put out under any new legislation that comes out, and regulations are going to take many weeks in order to determine how to interpret whatever law finally comes out. I believe it will be too late for the planting season even assuming that there is a veto of the reconciliation bill, which surely there should be if these are representative of the kind of provisions that are in that bill. If the Congress passes a new bill, I do not believe there is going to be time to get the regs out to borrow the money, to make the preparations in order to get the crop out this year.

So, Mr. President, what I am saying is the Congress needs to act as in an emergency and to extend the present law. We need to extend that present law so we can get the crop in the ground this year. If we do not do that, and if we have the reconciliation bill as passed, then we are going to wipe out the cotton and rice industry in the State of Louisiana and elsewhere in this country.

CHANGE OF VOTE

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, on the rollcall vote on the conference report accompanying H.R. 1058, I was recorded as voting in the affirmative. I ask unanimous consent to change my vote, which was recorded as ''yes'', to ''no.'' It will not change the outcome of the vote.

I ask unanimous consent I be recorded as a ''no'' vote.

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

[The foregoing tally has been changed to reflect the above order.]

PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 1833

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. 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.

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

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

Mrs. BOXER. Mr. President, I ask unanimous consent the Senator from California, Senator FEINSTEIN, be allowed to speak until such time as the majority leader comes to the floor and has a chance to discuss with the manager of the bill how we are going to proceed.

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

The Senator from California.

Mrs. FEINSTEIN. Mr. President, as everyone knows, about a week ago the Judiciary Committee held hearings on this so-called partial-birth abortion legislation. I wanted to speak today on what I learned from the hearings and my reasons for opposing this bill. Let me summarize those reasons up front, and then go into each one specifically.

First, I believe that this bill attempts to ban a specific medical procedure which is called, in this bill, a ''partial-birth abortion,'' but there is no medical definition for what a ''partial-birth abortion'' is.

Second, the language in the bill is so vague that I believe it will affect more than any one single medical procedure.

Third, the bill presumes guilt on the part of the doctor, so that every physician may have to prove that in fact he did not perform this procedure, or justify his reasons for so doing if he did.

This bill could be an unnecessary, I think an unconscionable complication to families who face many tragic circumstances involving severely deformed fetuses. I also believe it is an unnecessary Federal regulation, since 41 States have already outlawed postviability abortions, except to save a woman's life or health.

Finally, I hope to make a case that this bill is very carefully crafted to provide a direct challenge to Roe versus Wade.

First and foremost, this legislation claims to outlaw a medical procedure called a partial-birth abortion. As I said, this medical term does not, in fact, exist. It does not appear in medical textbooks. It does not appear in medical records. The medical doctors who testified before the Senate Judiciary Committee 2 weeks ago could not identify, with any degree of certainty or consistency, what medical procedure this legislation refers to.

I would like to read some of the responses to my question in the committee, when I asked these doctors what a partial birth abortion is.

Dr. Pamela Smith, director of ob/gyn medical education at Mt. Sinai Hospital in Chicago, said it was ''* * * a perversion of a breech extraction.''

Dr. Nancy Romer, a practicing ob/gyn and assistant professor at Wright State University School of Medicine, said it is ''a dilation and extraction, distinguished from dismemberment-type D&Es.''

Dr. Norig Ellison, President of the American Society of Anesthesiologists, who was at the hearing to represent anesthesiologists who supposedly participate in these procedures, said, ''I pass on that one. I am as confused as you are.''

And, Dr. Mary Campbell, medical director of planned parenthood of Washington, defined it as ''* * * a procedure in which any part of the fetus emerges from the cervix before the fetus has been documented to be dead.''

Others have said it is an ''intact dilation and evacuation,'' or a ''total breech extraction.''

I asked Dr. David Grimes of the University of California at San Francisco this same question, and he put it in writing.

> First, the term being used by abortion opponents, ''partial-birth abortion,'' is not a medical term. It is not found in any medical dictionary or gynecology text. It was coined to inflame, rather than to illuminate. It lacks a definition.
>
> As I understand the term, opponents of abortion are using this phrase to describe one variant of the dilation and evacuation procedure, known as a D&E, which is the dominant method of second trimester abortion in the United States.
>
> Second trimester abortion.
>
> If one does not use the D&E, the alternative methods of abortion after 12 weeks gestation are total birth abortion—labor induction is more costly and painful—or hysterotomy, which is the more costly, painful, and hazardous.
>
> Given the enviable record of safety of all D&E methods as documented by the Centers for Disease Control and Prevention, there is no public health justification for any regulation or intervention in a physician's decisionmaking with the patient.

Then I asked one of the professors who testified at the hearing about this. I will get to what he said in a moment. But for just 1 minute let me read the exact language of the bill. We have heard testimony from the authors that this refers to a breech extraction by stopping the head from leaving the birth canal and injecting scissors into the base of the skull and draining fluid. But the definition of the bill is entirely different. The bill says, ''The term 'partial-birth abortion' means an abortion in which the person performing the abortion partially delivers a living fetus before killing the fetus and completing the delivery.'' There is no reference to scissors in the bill. There is no reference to drawing fluid from the brain in this bill. In fact, many people believe that the purpose of this bill is really to get at second trimester abortions.

I believe that the language in this bill, Mr. President, is vague for very deliberate reasons, because by making it vague every doctor that performs even a second trimester abortion could face the possibility of prosecution in that he or she could be hauled before a court and have to defend their abortion. So this bill in effect could affect all abortions.

I asked the legal and medical experts who testified at the Judiciary Committee hearing last week if this legislation could affect abortion—not just late-term abortions but earlier abortions of nonviable fetuses as well. Dr. Louis Seidman, professor of law from Georgetown, gave the following answer, and I quote:

> . . . as I read the language, in a second trimester pre-viability abortion where the fetus will in any event die, if any portion of the fetus enters the birth canal prior to the technical death of the fetus, then the physician is guilty of a crime and goes to prison for 2 years.

That is a law professor's reading of the bill. He then continued his testimony, and I quote:

> If I were a lawyer advising a physician who performed abortions, I would tell him to stop because there is just no way to tell whether the procedure will eventuate in some portion of the fetus entering the birth canal before the fetus is technically dead, much less being able to demonstrate that after the fact.

Dr. Richardson, associate professor of gynecology and obstetrics at Johns Hopkins, in testimony before a House Committee said, ''[the language] . . . is vague, not medically oriented, and just not correct. In any normal second trimester abortion procedure by any method, you may have a point at which a part, a one-inch piece of [umbilical] cord, for example, of the fetus passes out of the cervical [opening] before fetal demise has occurred.

So contrary to proponents' claims, this bill could affect far more than just the few abortions performed in the third trimester and far more than just one procedure being described.

Another part of this bill which is very troubling to me is that an affirmative defense automatically presumes guilt. The legislation provides what is known as the ''affirmative defense,'' whereby an accused physician could escape liability only by proving that he or she ''reasonably believed'' that the so-called banned procedure—whatever that procedure is proved to be—was necessary to save the woman's life and that no other procedure would have sufficed. I think it also opens the door to the prosecution of any doctor who performs a second or third trimester abortion for any purpose whatsoever.

As has been said, there is no health exception in this bill at this point. With that, it offers a direct challenge to both Roe versus Wade and Planned Parenthood versus Casey, both of which provide a health exception.

So, if this legislation were law, a pregnant woman seriously ill with diabetes, cardiovascular problems, cancer, stroke, or any other health-threatening illness would be forced to carry the pregnancy to term or run the risk that her physician could be challenged and have to prove in court, A, what procedure he actually used, and B, whether or not the abortion partially, vaginally delivered a living fetus before the death of that fetus.

One of the things that also came forward very clearly in this and is important to point out is that any third trimester abortion is virtually always used in the case of severe fetal abnormality, and the fact is that not always is this fetal abnormality able to be detected early in the pregnancy. Many women undergo sonograms and other routine medical procedures in the early weeks of pregnancy to monitor fetal development. If a woman is over 35 years of age, she may also undergo amniocentesis. These tests are not routine in women under 35. Ultrasound could also provide early detection of fetal anomalies. But these tests also add considerable expense and are not routinely used until late in pregnancy.

As a result, some women carry fetuses with severe birth defects late into pregnancy without knowing it. For example, fetal deformities that are not easy to spot early on in the pregnancy include: cases where the brain forms outside the skull, or the stomach and intestines form outside the body, or do not form at all; or fetuses with no eyes, ears, mouths, legs, or kidneys—sometimes tragically unrecognizable as human at all.

But even with advanced technology, many serious birth defects can only be identified later, often in the third trimester when the fetus reaches a certain size. Among those is hydrocephaly. Another abnormality is polyhydramnios—too much amniotic fluid.

So families that face these unexpected tragedies are often only diagnosed late in their pregnancy. In fact, both Senator SMITH, I believe, and Senator HATCH said none of the women who came before the committee and talked about their third trimester abortion—all of which were the product of major fetal deformities—would be affected by that legislation, but every one of them testified after reading the bill and believing that they would have been affected by this legislation.

I think that only points out the vagueness and the flaws in the drafting of this legislation. In fact, no one knows who would really be affected by this legislation.

The next point I would like to make is that Roe already allows States to ban late-term abortions. It clearly allows States to ban all post-viability abortions unless necessary to protect a woman's life or health. And 41 States have already done that. So all I can believe is that the purpose of this bill is to invade a guarantee provided by Roe versus Wade, and that is to protect the health of the mother or the life of the mother.

As a matter of fact, my colleagues have made much of a statement made by an obstetrician/gynecologist, Dr. Martin Haskell, of Dayton, OH, who indicated that 80 percent of the late-term abortions he performed were so-called elective. I would like to point out that just this year Ohio became the 41st State to ban all post-viability abortions. So, clearly that State has taken care of whatever it was that Dr. Haskell was doing by banning all third-trimester abortions. As I said, 40 other States have done this. So this legislation is effectively unnecessary.

The whole focus of this Congress has been to remove the Federal Government where it is within the rights of the State to legislate. Yet this is the first time I can remember in this Congress, when the State has a clear right and ability to legislate and, in fact, has done so in 41 States, that the Federal Government is now saying, no, that is not enough. We want to legislate federally.

Let me touch for a moment on the commerce clause. I believe, and others do as well, that this legislation is meaningless under the commerce clause because it would only apply to patients or doctors who cross State lines in order to perform an abortion under these specific circumstances, whatever they may eventually be adjudicated to be. So what is the point?

The point is, that this legislation, I believe, has little or nothing to do with stopping the use of some horrific and unnecessary medical procedure performed by evil or inhumane doctors. If that were simply the case, we would all be opposed. I believe this legislation's major purpose is the camel's nose under the tent to get at second-trimester abortions and to put a fear over all legitimate physicians, obstetricians who do perform an abortion when an abortion is necessary—a fear that they could be hauled into court and have to defend themselves and prove that they did not perform whatever a partial-birth abortion is eventually adjudicated to be.

So the legislation is vague, it is flawed, and it presumes guilt on the part of the doctor. It ignores the vital health interest of women. I believe these are strong reasons to vote against this bill.

I thank the Chair. I yield the floor.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is H.R. 1833.

AMENDMENT NO. 3080

(Purpose: To provide a life-of-the-mother exception)

Mr. SMITH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 3080.

Mr. DOLE. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, at the end of line 9, insert the following:

''This paragraph does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.''

AMENDMENT NO. 3081 TO AMENDMENT NO. 3080

Mr. DOLE. I send a second-degree amendment to the Smith amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 3081 to amendment No. 3080.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

In the pending amendment, strike all after the word ''This'' and insert in lieu thereof the following: ''paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

This paragraph shall become effective one day after enactment.''

Mr. DOLE. Mr. President, we now return to important legislation to ban a reprehensible procedure that has no place in a civilized society. The ban on the so-called partial-birth abortions passed the House by a vote of 288 to 139 on November 1. The Senate called for a hearing on the legislation before the Committee on the Judiciary which was held on November 17.

The testimony before the Judiciary Committee reinforced what we already knew—this is a straightforward and narrowly crafted bill that bears no similarity to the caricature offered by those who oppose the bill.

Thus, for example, the hearing highlighted what medical authorities have already made clear—there is no situation where the life of a mother is at risk that calls for a partial-birth abortion. After all, this is a procedure that takes place over several days. In short, arguments about protecting the life of the mother are merely an attempt to scare people and avoid defending the indefensible.

Nonetheless, since there is no situation where the life of the mother calls for a partial-birth abortion, there is no reason not to make clear with explicit language that this legislation would not apply in any situation where the life of the mother is endangered. I therefore support the Senator from New Hampshire, Senator SMITH, in taking this issue off the table.

Mr. President, this is a bill that deserves overwhelming bipartisan support. This is our opportunity to show the American people that we can rise above the argument that says that compassion must give way to a rigid ideology that refuses to recognize any constraints of decency.

I therefore urge my colleagues to support Senator SMITH's amendment and to support the bill on final passage.

I now understand the Senator from Arkansas is going to set these amendments aside and offer a different amendment.

Mr. PRYOR. Mr. President, with that understanding, I ask unanimous consent that the amendment offered by the distinguished Senator from New Hampshire, second-degreed by the majority leader from Kansas, be set aside.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH. Reserving the right to object. Just to clarify, that is amendment No. 3080 and amendment No. 3081 to amendment No. 3080, is that correct?

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. SMITH. No objection.

Mr. PRYOR. Mr. President, I thank the Senator from New Hampshire.

AMENDMENT NO. 3082

(Purpose: To clarify certain provisions of law with respect to the approval and marketing of certain prescription drugs)

Mr. PRYOR. Mr. President, I have an amendment that I send to the desk at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. PRYOR], for himself, Mr. CHAFEE, and Mr. BROWN, proposes an amendment numbered 3082.

Mr. PRYOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . APPROVAL AND MARKETING OF PRESCRIPTION DRUGS.

(a) APPROVAL OF APPLICATIONS OF GENERIC DRUGS.—For purposes of acceptance and consideration by the Secretary of an application under subsections (b), (c), and (j) of section 505, and subsections (b), (c), and (n) of section 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b), (c), and (j), and 360b (b), (c), and (n)), the expiration date of a patent that is the subject of a certification under section 505(b)(2)(A) (ii), (iii), or (iv), section 505(j)(2)(A)(vii) (II), (III), or (IV), or section 512(n)(1)(H) (ii), (iii), or (iv) of such Act, respectively, made in an application submitted prior to June 8, 1995, or in an application submitted on or after that date in which the applicant certifies that substantial investment was made prior to June 8, 1995, shall be deemed to be the date on which such patent would have expired under the law in effect on the day preceding December 8, 1994.

(b) MARKETING GENERIC DRUGS.—The remedies of section 271(e)(4) of title 35, United States Code, shall not apply to acts—

(1) that were commenced, or for which a substantial investment was made, prior to June 8, 1995; and

(2) that became infringing by reason of section 154(c)(1) of such title, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983).

(c) EQUITABLE REMUNERATION.—For acts described in subsection (b), equitable remuneration of the type described in section 154(c)(3) of title 35, United States Code, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983) shall be awarded to a patentee only if there has been—

(1) the commercial manufacture, use, offer to sell, or sale, within the United States of an approved drug that is the subject of an application described in subsection (a); or

(2) the importation by the applicant into the United States of an approved drug or of active ingredient used in an approved drug that is the subject of an application described in subsection (a).

(c) APPLICABILITY.—The provisions of this section shall govern—

(1) the approval or the effective date of approval of applications under section 505(b)(2), 505(j), 507, or 512(n), or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b)(2) and (j), 357, and 360b(n)) submitted on or after the date of enactment of this Act; and

(2) the approval or effective date of approval of all pending applications that have not received final approval as of the date of enactment of this Act.

AMENDMENT NO. 3083 TO AMENDMENT NO. 3082

(Purpose: To clarify the application of certain provisions with respect to abortions where necessary to preserve the life or health of the woman)

Mrs. BOXER. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 3083 to amendment No. 3082.

At the end of the amendment, add the following new sentence: ''The prohibition in section 1531 (a) of Title 18, United States Code, shall not apply to any abortion performed prior to the viability of the fetus, or after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.''.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. First, I would like to just take a very, very few moments of the Senate's time this evening to explain basically what my amendment does. I know there will be no vote on this amendment this evening, Mr. President. I realize that. I know that to accommodate some schedules tomorrow, it is likely that we will come back to this legislation late in the afternoon.

But having said that, Mr. President, I would like to state that this amendment relates to the issue of GATT and prescription drugs. I have spoken on this issue on several occasions on the floor of the Senate. And I would like, if I might, to just take a very few moments to explain basically what we have done and what I plan to speak about tomorrow.

When Congress voted on the GATT treaty, Mr. President, we did two things. First, we extended all patents from 17 to 20 years in duration. Second, we said in the GATT treaty that a generic drug company could market their product on a 17-year expiration date if they had already made a substantial investment and were willing to pay a royalty to the particular drug company that they were going in competition with.

We all considered and all agreed that this was a fair balance of interests. The treaty, Mr. President, applies in our country to every person, to every product, to every company and every industry in our country. We thought it was fair. We thought it was universal. But we were wrong. We simply made a mistake.

We accidentally left the prescription drug industry out of the picture. Today there are certain prescription drug companies that get the patent extension, but the GATT loophole shields them from any generic competition. Why is this, Mr. President?

First, because we by our own mistake—and we should admit that mistake; and, by the way, we have the opportunity to correct that mistake—we failed to have the food, drug and cosmetic law of our country comply to the GATT treaty language.

Second, the Food and Drug Administration tried in vain to correct this mistake. The U.S. Patent Office tried in vain to correct this mistake, but to no avail because the law was written and we failed to conform the food, drug, and cosmetic law to the specific GATT treaty language.

The drug industry is the only industry which enjoys this special protection under GATT. The American consumers are going to be paying, therefore, much more for their drugs as a result, as much, as a matter of fact, $2 to $6 billion a year more.

If we take Zantac, for example, Mr. President, the world's best selling drug for uclers, we will have to pay a price twice as much as we would be paying for a generic competitor. As a matter of fact, Mr. President, tomorrow, on Wednesday, we will see the drug company that manufactures Zantac—we will see that particular company taking in profits that they did not expect of $2 to $6 billion a year, unless we correct this outrageous loophole.

There is no conceivable reason why we should allow this loophole to remain uncorrected. Mickey Kantor, our own U.S. Trade Representative, the Patent Office, and the FDA all agree that it should be fixed. Even the drug companies admit that it was all a mistake.

Mr. President, we think that our cause is correct, and on behalf of Senator CHAFEE of Rhode Island and Senator BROWN of Colorado, I submit this amendment this evening. We will be talking about this amendment and what it does tomorrow. But I urge my colleagues to remember: Congress made a mistake. It led to consumers being forced to subsidize an unjustified multibillion-dollar windfall to a few undeserving companies. And tomorrow, we will have our sole opportunity to do the right thing and correct this mistake.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from California.

Mrs. BOXER. Mr. President, yesterday I spoke, I thought, at great length about this bill. For the first time, it would criminalize a medical procedure that saves lives. The important part, I thought, of the Judiciary hearing was that we had testimony from physicians who said clearly it is sometimes extremely risky to use other procedures. Cesarean sections or induced labor could cause the woman to bleed to death, to have serious health consequences even if she pulled through, and sometimes those consequences impact on her ability to have children at a later date.

What I did last night, and what I intend to do throughout the course of this debate—I will not go on at length tonight—is to try and put the woman's face on this issue. We see many times my colleague from New Hampshire bring out the diagram, and it shows the lower part of a woman's body. It is almost as if a woman's body is a vessel. It does not show the woman's face. It does not show her anguish when she learns that her baby is in serious trouble and could even die if she went forward with birth. So it is my intention to put that face on.

The women who came forward at that hearing were magnificent in their courage. I received many other letters from other women who said, ''Please, Senator BOXER, don't let them talk about this as if it doesn't affect real, living moms and dads and families who desperately want these children but who come upon these horrible outcomes of pregnancies.''

We deal here with situations in life that we hope never happen to any of us or our loved ones or anyone at all. We do not wish these things on anyone: When a woman, who is so excited about this pending birth of a child, goes to the physician in the late stages of her pregnancy and suddenly is told the most horrible news that the baby's brain is growing outside the skull, that there are no eyes. My colleague, Senator FEINSTEIN, talked about that. These anomalies go along with a great threat to the woman's life if the fetus is carried to term.

My colleagues say nobody ever talks about baby. Yes, I want to talk about baby. This is a baby. This is a late-term abortion. This is an emergency medical procedure, and I hope that the Senate will not go down the slippery slope of outlawing a procedure.

Where do we stop? Senator SIMON said yesterday he has heard about some procedures that are used for brain tumors and he has questions about them. We are not a medical school here. As Senator KENNEDY said, we should not be Senators practicing medicine without a license. We should leave that to physicians. And physicians are split. The physicians that came before the Judiciary Committee, some said this is a necessary procedure, we need it to save the life of a mother, protect her health and her fertility. Others said it is not.

I say, let us be conservative. Even if several physicians—and their qualifications were never questioned by the committee—say it could mean a woman's life, let us not take away her option to have a safe conclusion to a very tragic event because of some political agenda. We have a lot of work to do around here. We have a lot of debate to do around here with the budget, where we are seeing looming ahead on December 15 another shutdown, another crisis, while we are taking up a bill to tell physicians what they cannot do.

It seems to me a very dangerous course for Government, particularly a Republican Congress that says we should not interfere in local decisions, we should not interfere with States. States already control these abortions in the late term.

I have to say, the amendment that my friend has offered, I think, is quite interesting, because all through this debate the Senator from California was saying there is no exception, there is no exception if there is really a problem. And now here we have it. Here we have it, an exception now for life of the mother.

I think that is progress. I think that is progress, because when we started, there was no exception. It was an affirmative defense. My friend kept saying, ''Oh, no, you don't need an exception, you don't need an exception.'' We went on television and debated this, and I said, ''You do not even have an exception here.''

He said, ''It is already in the bill.''

It was not in the bill. We knew it; that is why we slowed this train down, that is why we had hearings.

I have offered a second-degree amendment to the amendment of my friend, Senator PRYOR. He is trying to protect the consumers of this country, and I offered an amendment that essentially says that, yes, if we are going to outlaw this procedure—and by the way, I do not think we should get into that slippery slope—but if we are going to do that, it should apply only to the late-term abortion, which is what it is supposed to do, and it clears it up and says, in the medical judgment of the attending physician, the abortion is necessary for the life of the woman or to prevent serious adverse health consequences to the woman.

I feel these amendments are moving in the right direction, but the whole issue of telling doctors what to do, of interfering in an emergency medical procedure has no place in the U.S. Senate. To quote a woman whose testimony I read yesterday, Coreen Costello, she said so beautifully the last thing she wants to see happen when a family is in crisis like this is for the Government to be involved.

It is such a tragedy, and these women who have gone through this were so eloquent. No matter what your view on a woman's right to choose, if you will simply read the testimony—and I handed it out today to my colleagues for them to read her words—it seems to me outrageous that politicians would insert themselves into matters that impact a family, matters like this.

As we get back to this bill, and I understand we will be back to it tomorrow evening about 5, I am going to bring out those photos of those women who have shared their stories with the Senate and want to share it with the American people and let us get this issue out there.

Let us not outlaw a medical procedure that doctors have testified is necessary to save the life of a mother and, in fact, if it is outlawed, could lead to her family losing her. A lot of these women have other healthy children. Let us think about those babies as well.

So, Mr. President, I shall not go on much longer at all tonight because, again, it looks like we are delaying this debate, and that is fine with me, because, as far as I am concerned, we do not need this law. This is an intrusion into the hospital room. This is a criminalization of a procedure, and, as far as I am concerned, it has no place here at all. We are not doctors, and we are not God. We are U.S. Senators. We should leave medical decisions up to medical doctors, and we should leave these tragic matters to the families and let them face it with their God and with each other.

I yield the floor.

PRIVILEGE OF THE FLOOR

Mr. SMITH. Mr. President, I ask unanimous consent that four members of my staff, Steven R. Valentine, Tom Hodson, Ed Corrigan, and Noah Silverman, be granted the privilege of the floor simultaneously during the consideration of H.R. 1333, the Partial-Birth Abortion Ban Act.

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

Mr. BURNS. Mr. President, I rise today to urge my colleagues to pass the partial-birth abortion ban. I have looked at the testimony presented before the Judiciary Committee, I have gotten letters and phone calls, and I have come to the conclusion that this is not about being pro-life or pro-abortion. It is not even about a woman's choice. Laws have already established that they have that choice.

This is about a procedure—a procedure that I do not know how anyone can perform or even condone, once you know what it is. We are talking about the practice of late-term abortion, but a specific procedure in which the fetus is turned around so that it is delivered feet first. And before the head is delivered, while it is still in the birth canal, the physician makes a hole with scissors in the base of the skull and suctions out the brains. And the majority of the time, the baby is alive when this procedure is performed. The heart is beating, the limbs are functioning, they feel, they react, they may even have a good chance of living if they had been allowed to be fully born.

To me this just sounds repulsive, absolutely inhumane. And it makes me wonder, if they were doing this to dogs or horses, whether we would have more support to ban this procedure. My daughter, who is a third year medical student, assures me that I would probably find most surgeries pretty hard to stomach. But even she agrees that this procedure is intolerable.

And I find it interesting that the American Medical Association's Council on Legislation has unanimously supported this bill. The argument is made that these procedures are done to save the life of the mother. Yet, even some physicians who specialize in this procedure claim otherwise. Dr. Martin Haskell conceded that 80 percent of his late-term abortions were elective.

Dr. Pamela Smith, up at Mt. Sinai Hospital in Chicago, recently wrote that "There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the life of the mother." And that is what I would think. If you are going to put the mother through delivery of a 24- or 26-week-old or even a full-term fetus, and the fetus is almost completely delivered, except for the head, why not just finish the birth?

I will tell you why. Because once the head is out, it is a child, a human being by legal standards, with all the constitutional rights that come with being alive and then it cannot be killed. But by common sense, not just conservative sense, that fetus is not any less human just because the head is still in the birth canal. And I found it ironic that, if the head does slip out and a live baby is born, the physician calls this a complication.

I realize that, for parents who have been told their long-anticipated child will be deformed or has little chance of living, this is a horrendous decision. And some may decide to abort. This bill does not restrict late-term abortions—only this method of doing it.

I have read some of the personal experiences of families who have chosen this option, and in the cases where the fetus developed organs outside the body, the recurring sentiment is that that baby would never have survived outside the mother's womb. If that is the case, why then should the fetus be killed while the head is still in the uterus?

Some say this is the safest procedure for the mother. But even the doctor who wrote "Abortion Practices," the Nation's most widely used textbook on abortion standards and procedures, disputes this. Dr. Hern states that he could not imagine a circumstance in which the partial-birth abortion procedure would be the safest. And after all, I think that is what we should be aiming for.

I am not doubting for an instant that carrying to term or delivering a baby that has little to no chance of survival would be difficult. And that's an understatement. You would need the mental fortitude of Jeannie French, whose testimony before the Senate Judiciary Committee was inspiring. She delivered by C-section twins, one of which she knew would not live. Against her doctor's recommendation to abort, she opted to go ahead with delivery and here little Mary's vital organs were used to save the lives of two children. Some may not think that is heroic, but I would bet you those two children are glad that Jeannie chose to deliver Mary.

Mr. President, our debate here today is not a debate on choice. It is not even a debate on abortion. Let no one convince you of that. The debate is whether or not this procedure, a procedure that most physicians do not approve of, and that most agree is not safe for the mother—certainly not safe for the fetus—should be legal. I believe it should be banned. For the health of the mothers and the health or our Nation, we should pass the partial-birth abortion ban bill.

Mr. SMITH. Mr. President, some of the debate and comments made on the floor on this issue never cease to amaze me. The distinguished Senator from California, Senator FEINSTEIN, a few moments ago on the floor of the Senate, made the statement that the doctors, in the medical testimony that she had seen or heard, said that partial-birth abortion procedures do not exist. If they do not exist, then why is there a problem in banning it? Maybe the Senator from California, Senator FEINSTEIN, could come back and explain that to me. If the procedure does not exist, as she says, then there ought not to be any problem banning something that does not exist.

Again, these things never cease to amaze me. Also, Senator BOXER of California, a few moments ago again referred to the case of Coreen Costello, who spoke very passionately—and it was a very compelling story—before the committee of her terrible tragedy of losing a child. And, again, Mr. President, let me repeat that Miss Costello's abortion was not a partial-birth abortion. So that is not what we are talking about here today.

We are talking about partial-birth abortions, when a child is allowed to come through the birth canal, with the exception of the head, and then is killed with the use of scissors and a catheter. That is what we are talking about—no other type of abortion.

I have made it very clear, and I think most of my colleagues know, that I oppose abortion. I believe abortion takes an innocent human life, no matter what stage of life it is in, whether the day after conception or the day of birth. But that is not the issue today. The issue here is partial-birth abortion.

Yesterday, we learned on the floor of the Senate, even though information was presented to the contrary, that when the witnesses came to testify before Senator HATCH's Judiciary Committee on this matter, there were no doctors called to testify, or no doctors who testified that had ever performed a partial-birth abortion, and there were no women who ever had one who testified. And we asked Dr. Haskell, who performed a thousand of them, partial-birth abortions, to come, and he refused. No women who had partial-birth abortions came. So it is interesting that Senator FEINSTEIN says that partial-birth abortion procedures do not exist when Dr. Haskell has performed 1,000 of them. Maybe somebody can explain that to me with some logic. But it beats me, Mr. President. You have a doctor who is an abortion doctor, who has performed 1,000 partial-birth abortions, and then the Senator from California comes to the floor and says it does not exist. I will leave that to my colleagues to decide what the facts are.

Mr. President, the amendment that I submitted a short time ago, which was second-degreed by the majority leader, Senator DOLE, would make a very explicit exception to the ban on partial-birth abortions for cases in which the life of the mother is in danger. It is very specific. The language could not be clearer.

To be perfectly candid about it, Mr. President, I do not believe that this amendment is really necessary. In the first place, there was no medical evidence—no medical evidence—presented at the November 17 Judiciary Committee hearing that the partial-birth abortion procedure, that brutal procedure that has been described a number of times here on the floor, which is banned by this bill, is ever necessary to save the life of the mother. There was no testimony to that effect.

In the second place, Mr. President, the bill already includes an affirmative defense for cases in which the doctor reasonably believes the mother's life is in danger. For all intents and purposes, this affirmative defense provision, found in subsection (e) of the bill, is a life-of-the-mother exception.

But that did not satisfy a number of my colleagues because they expressed to me their discomfort with the affirmative defense approach and asked me to consider placing a more explicit, more clear, if you will, life-of-the-mother exception in the bill, because I support a life-of-the-mother exception. Even though we cannot find any testimony anywhere in the record that I know of—no one has produced it yet—that it is necessary to do it to save the life of the mother, I am still willing to put that exception there. That is what I have done with the amendment that I have offered.

I do not believe it is necessary because the affirmative defense provision provides for that exception, and the amendment now before the Senate would place an explicit life-of-the-mother exception into subsection (a) of the bill. I am more than happy to do that. I am more than happy to clarify for my colleagues. The issue is the life-of-the-mother exception here, even though there was no evidence presented at the hearing that a mother's life was threatened. No one testified to that effect. But I am willing to do that because I think it is fair, and colleagues of mine have expressed the concern that we clarify the language, and that is what I have done.

So the language of this life-of-the-mother exception amendment is clear, Mr. President. It states, ''The ban on partial-birth abortions shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is in danger by a physical disorder, illness, or injury, provided that no other procedure would suffice for that purpose.''

That is very clear and explicit. Even though Senator FEINSTEIN says there are no such procedures as partial-birth abortions, it is interesting that they also want an exception to a procedure that does not exist, and they ignore the testimony of a doctor who has performed 1,000 of them.

So the first part of the amendment is designed to make it very clear and certain that the exception only applies to cases where the mother's life is genuinely physically threatened by some physical disorder, illness, or injury.

Let me also state that, yesterday, when we discussed this process, this brutal procedure, we discussed the fact that this baby—this is a late-term baby, Mr. President, as you know, anywhere from the fifth month of gestation to the ninth—is prevented, physically restrained, from completely exiting the birth canal. The baby is turned in the uterus with forceps so that it comes out feet first, and the baby is then restrained and not allowed to be completely born, if you will, where it is then killed by using an incision with scissors and a catheter which sucks the brains from the child.

We heard very compelling testimony at the hearing. We recited it here on the floor. There was testimony of a nurse who had witnessed this and had become so upset by it that she left the clinic because, as she stated it, after looking into the ''angelic face'' of this child that was aborted in this fashion, it was more than she could bear. She was horrified. We have heard a lot about the life of the mother and the eyes of the mother. We looked into this young woman's eyes, too, this mother of two daughters, and she was horrified by what she saw, that this child, contrary to what has been stated again on the floor of the Senate over and over again, this child's life was terminated for one reason—one reason, Mr. President. This child had Down's syndrome, so somebody made a decision to take the life of this child who had Down's syndrome.

I remind my colleagues, not that they need reminding, there are a lot of very productive people in our society today who happen to have Down's syndrome. There is a television show involving people with Down's syndrome.

The point I made yesterday, I guess we really did not need the Americans with Disabilities Act if we are going to terminate all the people who are going to be born disabled. I guess we could have it for those people who might be injured during the course of their lifetime. If anybody is going to be born disabled or in any way not normal, if you will, we would not need to have any coverage for them because we could just elect to terminate the pregnancy.

I was accused—because I was horrified by that—I was accused of playing God. I do not know where that comes from. It would seem to me someone who chooses to terminate a pregnancy simply because a child has Down's syndrome, perhaps they may be playing God.

Again, the issue here is 80 percent of the cases—not 20, not 10, not 5, not 1, in 80 percent of the cases—this is an elective procedure for no other reason other than that particular woman decides to have that abortion because—for whatever. ''I do not want a child, I do not want a child with Down's syndrome,'' or whatever. Mr. President, 80 percent of the cases are elective, not some horrible threat to the life or the health of the mother at all.

The second part of this amendment is intended to ensure that in such dire emergencies, a partial-birth abortion could only be performed if it were the medical procedure, the only medical procedure available to save the life of the mother. I support that. I have no problem supporting it because I have no problem in understanding the fact that there is not any need, absolutely no medical need that anyone has ever testified to, that says that this is necessary to protect the life of the mother.

Let me say why. How would restraining a child from coming through the birth canal, that could come through the birth canal, enhance the life or the health of the mother? I do not understand that. I do not think any reasonable person could understand it. We have had testimony that in the case of the hydrocephalic children, where the head is enlarged with fluids, that that can be drained so that the head can be a normal size and can be allowed to come through the birth canal.

So we are talking about a brutal practice here, in 80 percent of the cases elective, and nothing to do with the life of the mother.

Be that as it may, I agree with my colleagues. I agree with the Senator from California that a life-of-the-mother exception should be there, even though I disagree with her that there is a threat to the life of the mother. At least I have not seen any evidence to that in terms of testimony, but even that does not mean it cannot happen in the future. I am willing, certainly willing to protect the life of the mother.

Mrs. BOXER. Would my friend yield about timeframe? I would be appreciative, if my friend would yield 5 minutes, I will finish my remarks for the evening and leave him the rest of the evening if we could agree not to take any other action or lay down any other amendments.

Mr. SMITH. I know of no other amendments on my side. I certainly will not be offering any, and I do not intend to go very long.

I am happy to yield to the Senator.

Mrs. BOXER. I know my friend and I have different things pulling on us.

Mr. SMITH. I am happy to yield to the Senator.

Mrs. BOXER. I just want to say that we are going to have a very interesting debate about the competing amendments that will come before the Senate on this issue. One is Senator SMITH's and Senator DOLE's amendment, which they call a life-of-the-mother exception. The other is the Boxer amendment, which makes a life-of-the-mother exception and a serious adverse health consequences exception to the woman.

I have to just say to my colleagues if they may be watching, and I will discuss this with them at great length, that the Smith-Dole amendment which is stated as if it is, in fact, an exception, I have now had an opportunity to read it. I want everyone to know that it is really not an exception for the life of the mother because what it says is, essentially, that this procedure will be banned, except it will not apply to partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury.

I say to my friend, that is not a life-of-the-mother exception. That is a preexisting situation. So, yes, if a woman had diabetes or some other disease, there would be an exception, but if, in fact, the birth endangered her life there would be no exception.

So this so-called exception, life-of-the-mother exception that has been offered by my friend from New Hampshire with Senator DOLE, is not—let me repeat, is not—in any way a life-of-the-mother exception.

We have life-of-the-mother exceptions in many other bills that deal with Medicaid funding, and they never use this language. It just simply says ''except if the life of the mother is threatened.'' No such thing as ''if she is endangered by a physical disorder, illness, or injury.''

Let me repeat, most of the women would not fall in this category.

The first fight we had, or argument or debate, was over the issue of the life-of-the-mother exception in the bill as it was referred here to the Senate. My colleague from New Hampshire said there is a life-of-the-mother exception, and he insisted on it. We debated it over and over again. I said there was not; he said there was.

Now, today, he and the majority leader say, oh, you were right, there was not a life-of-the-mother exception. Here it is. And this one is not a life-of-the-mother exception; it is only an exception for a woman who comes to the birth with a preexisting condition or injury.

So we will make that debate clear, I hope tomorrow, or we can get more into this issue.

My goodness, let us not endanger a woman who has no preexisting condition such as diabetes. Let us not take away an option for her to have a safe outcome of a tragic situation.

I hope that Members will, in fact, vote for the Boxer amendment and not for the Smith-Dole. I yield the floor.

Mr. SMITH. Mr. President, I might just respond briefly. It is amazing what you can do with semantics. This language is as clear as it can possibly be. This paragraph is exactly the line—referring back to the paragraph in terms of the issue of whether or not you can have a partial-birth abortion—this paragraph does not apply to a partial-birth abortion.

Here is the language: ''That is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice.''

The focus of the remarks of Senator BOXER is physical disorder, a complication resulting from a pregnancy; if it is not a physical disorder, what is it? What is it? Of course it covers that. The Senator knows it. You cannot make it any clearer. We could play word games, but it is very, very clear.

Again, the argument is so unbelievable here because, A, they use the line that the partial-birth abortion procedure does not exist, yet they still say we should not have to ban it.

If it does not exist, what are they worried about the life-of-the-mother exception for? The truth of the matter is, of course, it exists. There are 1,000 that have been performed by Dr. Haskell alone. There are at least one or two that we know of, roughly, per day, that are still being performed in this country. Some people say that is not very many. Well, that is somewhere between 365 and 700 or 750. How many physicians who might cure cancer are in that group? How many future Presidents are in that group? Future Senators—perhaps from California or New Hampshire? Who knows, maybe even from Minnesota? Who knows who is in that group?

It is interesting. We have heard on the floor here that President Clinton will veto this horrible bill as soon as he gets to it, this bill to ban partial-birth abortions that execute innocent children, three-quarters of the way out of the womb, but we heard it proudly stated on the floor that the President is going to veto this bill.

I might say to the President of the United States—I know he is not listening tonight, probably—but, if he is, I would like to have the opportunity to have 15 minutes in the Oval Office to discuss this bill with him, because I do not believe, if he looked at the facts, that he would veto it because this process is so horrible that I think we have more important things to do in America than do that.

Let me just conclude on this point this evening, again, on the amendment. This amendment is designed to assure that no baby will be subjected to this brutal procedure unless this partial-birth abortion procedure is the only way to save the mother, in other words, in a true case of self-defense. Everyone has the right to self-defense.

In sum, I believe this is very carefully crafted language. It is fully adequate to provide the explicit life-of-the-mother exception to the bill's ban on partial-birth abortions. And those people who are now taking the words and fiddling with the words a little bit, trying to make things out of the words that are not there—do you know what the real issue is here, Mr. President? It is not that they object to this life-of-the-mother exception. No, it is not that. Their real problem is they do not want any exceptions. They do not want any exceptions. They want abortion on demand for whatever reason, mongoloid child, Down's syndrome child, a child with a cleft palate, a female child, a child with blue eyes, whatever.

I call on any one of my colleagues who is opposed to me on this issue to come down to the floor and say to me, ''I will not support an abortion, partial-birth or otherwise, because it was a female child.'' Come down to the floor and state that right now. I think you will find the silence is quite deafening, because it is abortion on demand. But, and this is the key, it is abortion on demand in the most horrible way that any abortion could ever be performed.

In spite of the fact that all of us have different opinions about when life begins—and everyone knows my position on that—that is not the issue here, my position on when life begins. That is not relevant today. What is relevant today in this discussion is whether or not we have the right, morally or otherwise, to kill an unborn child who is held in the hands of this doctor with the exception of the head. Three or four more inches and that doctor could place that tiny little head into his hand and cradle it. But, instead, he turns that baby over and executes him, with no novocaine, no anesthetic, nothing— with a pair of scissors and a catheter, a child.

That is what this is about. That is why, when this bill came to the floor for a vote, even without the language that I have now crafted for the life-of-the-mother exception—but with language that perhaps was not as clear but did have the life-of-the-mother exception—even with the old language, it passed overwhelmingly in the House. Why? Why did a pro-choice Republican woman like SUSAN MOLINARI vote for it? Why did a liberal Democrat like PATRICK KENNEDY, son of Senator TED KENNEDY, vote for it? Because it is reasonable. Because it is sickening to think of the fact that we would do this to our children here in America. That is the reason. This is not a radical, extremist position. The radicals and the extremists are the people who do this.

So, I urge my colleagues to oppose Senator BOXER's amendment whenever we vote on it, tomorrow or whenever. Because basically it provides the opportunity to drive a truck through this whole process. It is a killer amendment. It might as well be called the partial-birth abortion-on-demand amendment, because it is designed to gut the bill.

When you say ''health,'' you say anything. What is health? A sore toenail? A sore knee? I mean, it is a totally gutting amendment. If you want to gut the bill, then you would vote for Boxer. If you want abortion on demand, if you want to abort a perfectly normal, healthy child at 9 months because that child has blue eyes, or is a female, or a male, or whatever, then vote for Boxer. That decision is quite easy.

But, again, the health-of-the-mother issue is a phony issue. It is not the issue at all. Everyone knows it. We have had this debate here before. We have had the votes before. It has always been voted down. So the issue is, if you want to truly protect the life of the mother, then you would vote for the Smith-Dole amendment because that is exactly what it does, it protects the life of the mother.

Mr. President, Douglas Johnson, legislative director of the National Right to Life Committee, has prepared an outstanding, comprehensive analysis of H.R. 1833. It is entitled ''The Facts On Partial-Birth Abortions.'' For the benefit of my colleagues, I ask unanimous consent that this document be printed in the RECORD.

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

THE FACTS ON PARTIAL-BIRTH ABORTIONS

(By Douglas Johnson)

The Partial-Birth Abortion Ban Act (HR 1833) was introduced in Congress on June 15, 1995. From that day on, many opponents of the bill—including the National Abortion and Reproductive Rights Action League (NARAL), Planned Parenthood, and the National Abortion Federation—have manufactured and disseminated blatant misinformation regarding partial-birth abortions and about the bill. Some of this misinformation has been adopted and widely disseminated by some journalists, columnists, editorialists, and lawmakers. This feature summarizes key facts on partial-birth abortions and on HR 1833. For additional documentation, contact the NRLC Federal Legislative Office at (202) 626–8820.

What is the Partial-Birth Abortion Ban Act (HR 1833)?

The Partial-Birth Abortion Ban Act (HR 1833) is a proposal currently under consideration in Congress, which would place a national ban on use of the partial-birth abortion procedure (except when a doctor could show that he ''reasonably believed'' that the procedure would prevent the death of a pregnant woman, and that no other medical procedure would suffice).

The bill would ban abortions that are performed by an abortionist (1) delivering a *living* fetus/baby into the vagina, and then (2) killing him or her. The bill specifically defines a ''partial-birth abortion'' as ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.'' Abortionists who violate the law would be subject to both criminal and civil penalties, but no penalty could be applied to the woman who obtained such abortion.

What is the Status of the Bill?

The Partial-Birth Abortion Ban Act (HR 1833) was passed by the House of Representatives on November 1 by a vote of 288 to 139. As of November 28, the bill is awaiting action by the full U.S. Senate, which could occur as early as December 4.

The bill strongly opposed by pro-abortion advocacy groups and by their Senate allies, who will attempt to amend it to death—for example, by a proposed amendment to allow partial-birth abortions to be performed for ''health'' reasons. Legally, with reference to abortion, ''health'' is a term that covers emotional ''well-being.'' Thus, addition of a ''health exception'' would in practice allow unrestricted use of the partial-birth abortion procedure.

President Clinton opposes the bill.

How is a Partial-Birth Abortion Performed?

The bill is aimed at the basic method practiced by Dr. Martin Haskell of Dayton, Ohio, and by the late Dr. James McMahon of Los Angeles, among others. The *Los Angeles Times* accurately described this abortion method in a June 16 news story:

''The procedure requires a physician to extract a fetus, feet first, from the womb and through the birth canal until all but its head is exposed. Then the tips of surgical scissors are thrust into the base of the fetus' skull, and a suction catheter is inserted through the openings and the brain is removed.''

In 1992, Dr. Haskell wrote a paper on this abortion method. The paper (''Dilation and Extraction for Late Second Trimester Abortion'') describes in detail, step-by-step, how to perform the procedure.

Dr. Haskell wrote that he ''routinely performs this procedure on all patients 20 through 24 weeks LMP [i.e., from last menstrual period] with certain exceptions'' [4½ to 5½ months]. He also wrote that he used the procedure through 26 weeks [six months] ''on selected patients.'' Dr. McMahon used essentially the same procedure to a much later point—even into the ninth month. (Dr. McMahon died of cancer on Oct. 28).

How many partial-birth abortions are performed?

Nobody knows. Pro-abortion groups claim that ''only'' 450 such procedures are performed every year. But the practices of Dr. Martin Haskell and the late Dr. James McMahon alone would approximate that figure, and press reports indicate that other abortionists also utilize the procedure.

Both Haskell and McMahon have spent years trying to convince other abortionists of the merits of the procedure. That is why Haskell wrote his 1992 instructional paper. For years, McMahon was director of abortion instruction at the Cedar Sinai Medical Center in Los Angeles. It is impossible to know how many other abortionists have adopted the procedure, without choosing to write articles or grant interviews on the subject. The New York Times reported in a Nov. 6, 1995 news story about the bill:

'''Of course I use it, and I've taught it for the last 10 years,' said a gynecologist at a New York teaching hospital, who spoke on the condition of anonymity. 'So do doctors in other cities.'''

There are 164,000 abortions a year performed after the first three months of pregnancy, and 13,000 abortions annually after 4½ months, according to the Alan Guttmacher Institute (New York Times, July 5 and November 6, 1995), which should be regarded as conservative estimates.

For what reasons are partial-birth abortions performed?

The Planned Parenthood Federation of America recently issued a press release that asserted that the procedure is ''done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality.'' Many reporters, commentators, and members of Congress have accepted such assertions uncritically and publicly disseminated them as ''facts.''

Yet, the claim that partial-birth abortion procedures are done only (or mostly) in life-endangerment or grave-fetal-disorder cases cannot be reconciled with many documents and reliable reports that are readily available.

In Dr. Haskell's 1992 instructional paper, he wrote that he ''routinely performs this procedure on all patients 20 through 24 weeks'' (4½ to 5½ months). In 1993, after NRLC's publicizing of Dr. Haskell's paper engendered considerable controversy, the American Medical News—the official newspaper of the AMA—conducted a tape-recorded interview with Dr. Haskell concerning this specific abortion method, in which he said:

''And I'll be quite frank: most of my abortions are elective in that 20–24 week range. . . . In my particular case, probably 20% [of this procedure] are for genetic reasons. And the other 80% are purely elective.''

Recently, during testimony in a lawsuit in Ohio, Dr. Haskell was asked to list some of the medical problems of women on which he'd performed second-trimester abortions. Among the conditions he listed was ''agoraphobia'' (fear of open places).

Moreover, in testimony presented to the Senate Judiciary Committee on November 17, ob/gyn Dr. Nancy Romer of Dayton (the city in which Dr. Haskell operates one of his abortion clinics) testified that three of her own patients had gone to Haskell's clinics for abortions ''well beyond'' 4½ months into pregnancy, and that ''none of these women had any medical illness, and all three had normal fetuses.''

Dr. James McMahon voluntarily submitted to the House Judiciary Constitution Subcommittee a breakdown of a self-selected sample of 175 partial-birth abortions that he performed for what he called ''maternal indications.'' Of these, the largest single category of ''maternal indications''—39 cases, or 22% of the total sample—were for ''depression.''

Dr. McMahon's self-selected sample of ''fetal indications'' cases showed he had performed nine of these procedures for ''cleft palate.''

Even though this data is cited in the official report of the committee, when NARAL President Kate Michelman was asked at a November 7 press conference about ''arguments . . . that these procedures . . . are given for depression or cleft palate,'' Ms. Michelman responded, ''That is . . . not only a myth, it's a lie.''

Reporter Karen Tumulty wrote an article about late-term abortions, based in large part on extensive interviews with Dr. McMahon and on direct observation of his practice, which appeared in the Los Angeles Times Magazine (January 7, 1990). She concluded:

''If there is any other single factor that inflates the number of late abortions, it is youth. Often, teen-agers do not recognize the first signs of pregnancy. Just as frequently, they put off telling anyone as long as they can.''

(Dr. McMahon used the term ''pediatric indications'' to refer to abortions performed on these young mothers.)

In 1993, the then-executive director of the National Abortion Federation (NAF) distributed an internal memorandum to the members of that organization which acknowledged that such abortions are performed for ''many reasons'';

''There are many reasons why women have late abortions: life endangerment, fetal indications, lack of money or health insurance, social-psychological crisis, lack of knowledge about human reproduction, etc.'' [emphasis added]

Likewise, a June 12, 1995, letter from NAF to members of the House of Representatives noted that late abortions are sought by, among other, ''very young teenagers . . . who have not recognized the signs of their pregnancies until too late,'' and by ''women in poverty, who have tried desperately to act responsibly and to end an unplanned pregnancy in the early stages, only to face insurmountable financial barriers.''

True, some partial-birth abortions involve babies who have grave disorders that will result in death soon after birth. But these unfortunate members of the human family deserve compassion and the best comfort-care that medical science can offer—not a scissors in the back of the head. In some such situations there are good medical reasons to deliver such a child early, after which natural death will follow quickly.

Is the baby already dead before she is pulled feet-first into the vagina?

In his 1992 paper explaining step-by-step how to perform this type of abortion, Dr. Martin Haskell wrote that he performs the procedure ''under local anesthesia'' [emphasis added], which would have no effect on the baby/fetus. Nevertheless, since HR 1833 was introduced in June, many critics of the bill have insisted that the unborn babies are killed by anesthesia given to the mother, prior to being ''extracted'' from the womb.

For example, syndicated columnist Ellen Goodman wrote in November that, based on her review of statements by supporters of the bill, ''You wouldn't even know that anesthesia ends the life of such a fetus before it comes down the birth canal.''

Likewise, Kate Michelman, president of the National Abortion and Reproductive Rights Action League (NARAL), said at a Nov. 7 press conference, ''These experts have made it very clear that the fetus undergoes demise before the procedure begins. And because of the anesthesia, which is, you know, something like 50 to 100 times what a fetus can withstand, because it's given according to the weight of the woman.''

However, according to testimony presented to the Senate Judiciary Committee (Nov. 17) by the American Society of Anesthesiologists, such claims have ''absolutely no basis in scientific fact.'' The ASA says that regional anesthesia (used in many partial-birth abortions and most normal deliveries) has no effect on the fetus. General anesthesia has some sedating effect on the fetus, but much less than on the mother; even pain relief for the fetus is doubtful, and certainly anesthesia would not kill the baby, the ASA testified.

Dissemination of the false claim that anesthesia kills the baby is endangering the health and lives of pregnant women and their unborn children, because such erroneous information may frighten pregnant women away from obtaining medically necessary surgical procedures while they are pregnant, for fear of harming their unborn children, the ASA said.

Moreover, American Medical News reported in 1993, after conducting interviews with Drs. Haskell and McMahon, that the doctors ''told AM News that the majority of fetuses aborted this way are alive until the end of the procedure.'' On July 11, 1995, American Medical News submitted the transcript of the tape-recorded interview with Haskell to the House Judiciary Committee. The transcript contains the following exchange:

''American Medical News. Let's talk first about whether or not the fetus is dead beforehand.

''Dr. Haskell. No, it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress—intrauterine stress during, you know, the two days that the cervix is being dilated [to permit extraction of the fetus]. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And so in my case, I would think probably about a third of those are definitely are [sic] dead before I actually start to remove the fetus. And probably the other two-thirds are not.''

In another interview, quoted in the Dec. 10, 1989 Dayton News, Dr. Haskell again conveyed that the scissors thrust is usually the lethal act: ''When I do the instrumentation on the skull...it destroys the brain tissue sufficiently so that even if it (the fetus) falls out at that point, it's definitely not alive,'' Dr. Haskell said.

Brenda Pratt Shafer, a registered nurse from Dayton, Ohio, stood at Haskell's side while he performed three partial-birth abortions in 1993. In testimony before the Senate Judiciary Committee (Nov. 17), Mrs. Shafer described in detail the first of the three procedures—which involved, she said, a baby boy at 26½ weeks (over 6 months). According to Mrs. Shafer, the abortionist.

''...delivered the baby's body and the arms—everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were clasping and unclasping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp.''

Since the baby is usually not dead before being removed from the womb, does the baby experience pain? Yes, according to experts such as Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, who testified before the House Judiciary Constitution Subcommittee: ''The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain.'' After analyzing the partial-birth procedure step-by-step for the subcommittee, Prof. White concluded: ''Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure.''

Dr. Harlan R. Giles, a professor of ''high-risk'' obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until ''viability,'' but he does not perform partial-birth abortions. In sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13, 1995), Prof. Giles said:

''In my own personal opinion, particularly when there are other techniques available, that the introduction of a sharp instrument into the brain and sucking out the brain constitutes cruel and unusual fetal punishment.''

IS THE TERM ''PARTIAL-BIRTH ABORTION'' MISLEADING, OR IS IT ACCURATE?

In his 1992 paper, Dr. Haskell referred to the method as ''dilation and extraction'' or ''D&X''—noting that he ''coined the term.'' However, that nomenclature was rejected by Dr. McMahon, who refers to the method as ''intact dilation and evacuation'' and (in an interview in the Los Angeles Times Magazine in 1990) as ''intrauterine cranial decompression.'' There are also some variations in the procedure as performed by the two doctors.

None of the terms that the abortion practitioners prefer would be workable as a legal definition. The bill creates a legal definition of ''partial-birth abortion,'' and would ban any variation of that method—no matter what new idiosyncratic name any abortionist may invent to refer to it—so long as it is ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.''

Beyond the legal point, the term ''partial-birth abortion'' is accurate and in no way misleading. In explaining how to perform the procedure in his 1992 instruction paper, Dr. Martin Haskell wrote:

''With a lower [fetal] extremity in the vagina, the surgeon uses his fingers *to deliver* the opposite lower extremity, then the torso, the shoulders and the upper extremities.'' [Haskell paper, page 30, emphasis added]

In sworn testimony in a lawsuit pending in U.S. District Court for the Southern District of Ohio (Nov. 8, 1995), Dr. Haskell said that he first learned of the method when a colleague

. . . described very briefly over the phone to me a technique that I later learned came from Dr. McMahon where they internally grab the fetus and rotate if and accomplish—be somewhat equivalent to a breach type of delivery.''

Are the drawings of the procedure circulated by NRLC accurate, or are they misleading?

At a June 15, 1995, public hearing before the House Judiciary Subcommittee on the Constitution, Dr. J. Courtland Robinson, a self-described ''abortionist'' who testified on behalf of the National Abortion Federation, was questioned about the drawings by Congressman Charles Canady (R–Fl.). Mr. Canady directed Dr. Robinson's attention to the drawings, which were displayed in poster size next to the witness table. Dr. Robinson agreed with Mr. Canady's statement that they were ''technically accurate,'' and added:

''That is exactly probably what is occurring at the hands of the two physicians involved.'' [Transcript, page 80.]

Moreover, American Medical News (July 5, 1993) reported: ''Dr. [Martin] Haskell said the drawings were accurate 'from a technical point of view.' But he took issue with the implication that the fetuses were 'aware and resisting.' ''

Professor Watson Bowes of the University of North Carolina at Chapel Hill, co-editor of the Obstetrical and Gynecological Survey, wrote in a letter to Congressman Canady: ''Having read Dr. Haskell's paper, I can assure you that these drawings accurately represent the procedure described therein. . . . Firsthand renditions by a professional medical illustrator, or photographs or a video recording of the procedure would no doubt be more vivid, but not necessarily more instructive for a non-medical person who is trying to understand how the procedure is performed.''

On Nov. 1, 1995, Congresswoman Patricia Schroeder and her allies actually tried to prevent Congressman Canady from displaying the line drawings during the debate on HR 1833 on the floor of the House of Representatives. But the House voted by nearly a 4-to-1 margin (332 to 86) to permit the drawings to be used.

DOES THE BILL PERMIT THE PARTIAL-BIRTH ABORTION PROCEDURE TO BE UTILIZED TO SAVE THE LIFE OF THE MOTHER? ARE PARTIAL-BIRTH ABORTIONS RELATIVELY SAFE FOR THE PREGNANT WOMAN?

Under the bill, a doctor is not subject to penalty if he shows that he ''reasonably believed'' that the mother's life was in jeopardy and that no other medical procedure will save her life. However, many medical authorities, both pro-life and pro-abortion, say that this procedure would never be necessary to save a woman's life.

Moreover, some medical experts—on both sides of the abortion issue—say that the procedure itself carries special risks for the pregnant woman. American Medical News, the official newspaper of the American Medical Association, reported in its November 20, 1996 edition: '' 'I have very serious reservations about this procedure'' said Colorado physician Warren Hern, MD. The author of *Abortion Practice*, the nation's most widely used textbook on abortion standards and procedures, Dr. Hern specializes in late-term procedures. . . . [O]f the procedure in question he says, ''You really can't defend it. I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it.' ''

''Dr. Hern's concerns center on claims that the procedure in late-term pregnancy can be safest for the pregnant woman, and that without this procedure women would have died. 'I would dispute any statement that this is the safest procedure to use,' he said. Turning the fetus to a breech position is 'potentially dangerous,' he added. 'You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.'

''Dr. Hern said he could not imagine a circumstance in which this procedure would be safest. He did acknowledge that some doctors use skull-decompression techniques, but he added that is those cases fetal death has been induced and the fetus would not purposely be rotated into a breech position.''

Dr. Harlan R. Giles, a professor of ''high-risk'' obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until ''viability.'' In sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13, 1995), Prof. Giles said:

''[After 23 weeks] I do not think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally, or by Cesarean section for that matter, depending on the choice of the parents with informed consent. * * * But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt. [transcript, page 240]

''I cannot think of a fetal condition or malformation, no matter how severe, that actually causes harm or risk to the mother of continuing the pregnancy. I guess one extremely rare example might be a partial hydatidiform mole. But that's a one-in-a-million situation. In most cases, mothers carrying an abnormal fetus, such as with Down's syndrome, anencephaly, the absence of a brain itself, dwarfism, other severe, even lethal chromosome abnormalities—those mothers, if you follow their pregnancy, have no higher risk of pregnancy complications than for any other mother who's progressing to term for a delivery. [court transcript, pp. 241–42]

''There is no need to perform a D and X ['dilation and extraction,' i.e., partial-birth] procedure. That is not part of the required teaching of the D and E ['dilation and evacuation,' the technique of dismembering the baby inside the uterus]. [court transcript, p. 260.]''

Dr. Pamela Smith, Director of Medical Education in the Department of Obstetrics and Gynecology, Mt. Sinai Hospital, Chicago, told the Senate Judiciary Committee that the partial-birth abortion procedure is an adaptation of the ''internal podalic version'' procedure that obstetricians occasionally use to purposely deliver a baby breech (feet first)—but that this procedure is risky to the mother, and its use is recommended only to deliver a second twin. ''Why, if it's dangerous to the mother's health to do this when your intent is to deliver the baby alive, that this should suddenly become . . . the safe method when your intention is to kill the baby?'' Dr. Smith said.

Dr. Smith also gave the Judiciary Committee her analysis of a sample of 175 cases, selected by Dr. McMahon himself, in which he claimed that he had used the procedure because of maternal health indications. Of this sample, the largest group, 39 cases (22%) were for maternal ''depression,'' while another 16% were ''for conditions consistent with the birth of a normal child (e.g., sickle cell trait, prolapsed uterus, small pelvis),'' Dr. Smith noted. She added that in one-third of the cases, the conditions listed as ''maternal indications'' by Dr. McMahon really indicated that the procedure itself would be seriously dangerous to the mother.

What would be the effect of adding to the bill an exception to allow partial-birth abortions for ''health'' reasons, as proposed by pro-abortion Senator Barbara Boxer (D-Ca.) and others?

In the context of abortion-related law, ''health'' is a legal term of art. In Doe v. Bolton (the companion case to Roe v. Wade), the Supreme Court defined ''health'' to include ''all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient.'' Thus, the bill with a ''health'' exception would permit abortionists to perform partial-birth abortions at will—even for ''depression,'' as Dr. James McMahon did (see page 4). Adding the word ''serious'' before ''health'' changes nothing, because it is the abortionist who would determine whether the ''depression'' or other distress was ''serious.''

Does the bill contradict U.S. Supreme Court decisions?

In its official report on HR 1833, the House Judiciary Committee makes the very plausible argument that HR 1833 is not an ''assault'' on Roe v. Wade, but rather, could be upheld by the Supreme Court without disturbing Roe. In Roe, the Supreme Court said that ''the unborn fetus is not a person'' under the Constitution (even during the final months of pregnancy). So, in the Supreme Court's doctrine, a human being becomes a legal ''person'' upon emerging from the uterus. But a partial-birth abortion kills a human being who is four-fifths across the 'line-of-personhood' established by the Supreme Court. Thus, the Supreme Court could very well decide that the killing of a mostly born baby, even if done by a physician, is not protected by *Roe v. Wade.*

What position has the American Medical Association taken on H.R. 1833?

On September 23, the national Council on Legislation of the American Medical Association (AMA) voted unanimously to recommend AMA endorsement of H.R. 1833. (*Congress Daily*, Oct. 10.) The Council on Legislation is made up of about 12 physicians of different specialities, who are charged with studying proposed federal legislation with respect to its impact on the practice of medicine. A member of the Council told *Congress Daily* that ''this was not a recognized medical technique'' and that ''this procedure is basically repulsive.''

However, meeting in October, the AMA Board of Trustees was divided on this recommendation, and therefore took no position either for or against the bill. According to an October 23 letter from AMA headquarters in Chicago, ''The AMA Board of Trustees has determined that it will not take a position on H.R. 1833 at this time.''

From the perspective of those who believe that unborn children should be protected from all methods of abortion, what is the point of supporting a bill that would ban only one method?

Each human being is a unique individual with immeasurable worth. Pro-abortion advocates often try to dismiss the significance of partial-birth abortions by observing that they appear to account for ''only'' less than one percent of all abortions. But for each and every human individual who ends up at the pointed end of the surgical scissors, the procedure is a 100 percent proposition.

Should Congress be in the business of banning specific surgical procedures?

Some prominent congressional opponents of the bill to ban partial-birth abortions, including Rep. Schroeder (D-Co.), argue that Congress should not attempt to ban a specific surgical procedure. But Rep. Schroeder is the prime sponsor of HR 941, the ''Federal Prohibition of Female Genital Mutilation Act.'' (The Senate companion bill is S. 1030.)

This bill generally would ban anyone (including a licensed physician from performing the procedure known medically as ''infibulation,'' or ''female circumcision,'' which is practiced by some immigrants from certain countries. The bill provides a penalty of up to five years in federal prison. Supporters of this bill argue, persuasively, that subjecting a little girl to infibulation is a form of child abuse. But then, so too is subjecting a baby to the partial-birth abortion procedure.

WHY DID THE BILL PASS THE HOUSE OF REPRESENTATIVES BY A MORE THAN 2-TO-1 MARGIN?

In the House, the bill won support from more than a few lawmakers who generally favor legal abortion. Once they had the facts, a significant number of those self-described ''pro-choice'' lawmakers experienced an authentic moral revulsion regarding the procedure. In certain other cases, the revulsion was probably more political than moral. For whatever combination of these reasons, HR 1833 won support from a broad spectrum of House members, including: 73 Democrats and 215 Republicans (37% of voting Democrats, 93% of Republicans); nearly one-third of the women in the House (15 of 47), Democratic Leader Richard Gephardt (Mo.); Democratic Whip David Bonior (Mi.); Rep. John Dingell (Mi.), ranking Democrat on the Commerce Committee; Rep. Lee Hamilton (D-In.), ranking on the International Relations Committee; Rep. Dave Obey (D-Wi.), and Congressman Patrick Kennedy (D-RI), the son of Sen. Edward Kennedy (D-Mass.)

THE ARCTIC WILDLIFE REFUGE

Mr. STEVENS. Mr. President, I come to the floor once again to talk about the appearance that I had on ''Nightline'' with the Secretary of the Interior, Mr. Babbitt. In that program, which I call a debate, on ''Nightline,'' the Secretary claimed that the development of the coastal plain of our arctic for its oil potential would mean the end of that wildlife refuge.

He referred to the Arctic National Wildlife Refuge, which is some 19 million acres of our northern part of Alaska. It is above the Arctic Circle, as indicated. As a matter of fact, there are 21.2 million acres of wilderness in this whole area, and that area is larger than Vermont, New Hampshire, Connecticut, and Rhode Island put together.

Of this area, in 1980, 1.5 million acres of the arctic plain was set aside for development for oil and gas exploration, subject only to an environmental review to determine whether that type of development would result in irreparable harm to our arctic plain. That is what we call section 1002 of ANILCA, the Alaska National Interest Lands Conservation Act. That 1.5 million acres was the only area in the 1980 bill, that dealt with over 100 million acres, that provided for any development in our State. The Secretary says that proceeding as was intended in 1980 would be the end of that wildlife refuge. That is what I am here to talk about today.

If we proceed with oil and gas exploration, as is intended by the Balanced Budget Act of 1995, this area will be leased. There will be bonus bids that will bring in some $2.8 billion, we estimate. It will be at least that because one small area offshore here, the Mukluk, brought in over $1 billion—$1 billion—in a very small area. It was a dry hole.

But this leasing will take place. As the exploration takes place, the total area that will be used out of that 1.5 million acres is about 12,000 acres. That is about the size of Dulles Airport. And, after that exploration takes place, the actual area of development, for the roads, the buildings, the rigs that will be in place for the period of development, will be about 2,000 acres; 2,000 acres of the 1.5 million which is part of 19 million acres total in that refuge.

I come to speak about this rhetoric because the administration is trying to leave the impression with the American public that, if this leasing takes place, it is the end of this whole refuge. As a matter of fact, Mr. President, the wilderness area selected by the Interior Department is in the area south of the arctic coastal plain and just at the slope of the Brooks Range. We call it the North Slope of the Brooks Range. It is not in the arctic plain.

You know, Mr. President, it is a very difficult thing for people to understand that this is an arctic desert. The oil exploration will take place in an area which is an arctic desert. The problem comes that the porcupine caribou herd, which lives approximately 9 months of the year in Canada on the Porcupine River area, migrates into Alaska and goes 150 miles up onto the North Slope. It is present on the plain maybe 6 to 8 weeks when it decides to go up there. Some years it does not go at all, as I will mention. But when we were debating the oil pipeline—this is the area of the oil pipeline up to the Prudhoe Bay. This is the Prudhoe Bay development right there. It is on State land. The land belongs to the State of Alaska. The claim was made 20 years ago that approval of that pipeline would lead to the destruction of the caribou herd. We call it the central arctic caribou herd. One person actually stood on the floor here and said that, if we got the approval to build the Alaska oil pipeline, all of the caribou would die, that it would be the end of the central arctic herd that lives near Prudhoe Bay.

Did the caribou disappear? Did the pipeline, this tremendous pipeline that has brought us 11 billion barrels of oil so far—cause the caribou to disappear? Have they been injured? As a matter of fact, at the time we debated that pipeline, the caribou herd was about 6,000 animals. It went up to 23,400 animals by 1992. As we came to 1992, the development was over, and really man's presence started to be reduced in this area. The caribou have actually reduced in number as the number of people involved in the Prudhoe Bay area has been reduced. They are down to about 18,100 this year. But that is still more than three times the size of the caribou herd at the time the prediction was made that they would all die if the oil pipeline was put in place.

The health of the caribou has very little to do with man's presence. As a matter of fact, that caribou herd is a very healthy herd. I have been up there. I would be glad to one of these days bring some photographs showing the caribou standing next to oil rigs, caribou rubbing up against the pipeline to scratch their backs, caribou coming up on top of the crosswalks to go over the pipeline because they are trying to get away from the mosquitoes. They are trying to get in a breeze, get high enough to get rid of the mosquitoes.

That is a very flat area—the arctic plain. It is an area that has so many mosquitoes that very few animals or people spend much time there. If they do, they are very heavily loaded down with mosquito dope. I mean real, real mosquito dope.

But technology is different now than 20 years ago when that pipeline was developed. There is no question, as I said, that the size of the actual development in the arctic plain will be quite small. We are looking now at the problem of what will human activity in this area do that might affect the caribou that might be different from this area around Prudhoe Bay. The answer is nothing.

This will not be the end of the wildlife refuge. That assertion cannot be supported by any facts. It really is not only misleading; it is wrong. It is not truthful.

This herd, as I said, does not stay there permanently. The central arctic herd stays there—in Prudhoe Bay—permanently. The central arctic herd is a very migrating herd. Sometimes it does not go up there. Our records show that in 1973, 1974, 1982, and 1988 the caribou did not come into this area at all. The caribou wander around in terms of this whole area.

It is the fact that the caribou sometimes actually come over and go back into Canada into the area where there is substantial presence of the oil and gas industry over by the Beaufort Sea.

Our arctic plain is, as I said, a desert. It is almost perfectly flat. It is treeless. That might surprise people because they see the photographs that are in the brochures of all of these extreme environmental organizations saying "save this place from development." They show you beautiful lakes and hills, trees, bear, and caribou, and even, one time, an elk. There has never been any elk up there. It is a frozen desert.

It has about 5 to 7 inches total of precipitation, snow and rain, in a 12-month period. Think of that—5 to 7 inches. This ground is permanently frozen. Water will not even penetrate it. Whatever melts from the snow gathers in small pools. They become shallow and stagnant. That is where we get the mosquitoes. It is probably the best breeding ground for mosquitoes in the whole United States. There is no question that the animals that are there, particularly the caribou, are driven nuts by the mosquitoes. They are very vicious. As I said, the mosquitoes drive these caribou so that they go under and on top of the pipeline. They try to get away from them by getting into the breeze that may be caused by wind blowing under the pipeline or over the pipeline.

The wilderness area that we have is here. It is south of the 1002 area. When you listen to the Secretary of the Interior, it sounds like we are trying to lease a wilderness area. That again is not true. It has never been true.

This area once was the Arctic Wildlife Range. It was created by a secretarial order, and that order specifically stated that oil and gas leasing could take place on the range subject to stipulations to protect the fish and wildlife.

At the time we considered this enormous act that withdrew all of these areas that are outlined in either blue or green or red, the Congress looked at all of them. And this is the only area, as I said, where the natural resources were so significant that the area was set aside, specifically stating that it would be subject to oil and gas leasing. The only thing that had to happen was that there had to be an environmental study made.

It came to Congress not for the purpose of trying to open it. It has always been open. The question is, Should Congress approve the finding of the Secretary of the Interior that there would not be irreparable harm to this area if oil and gas development took place?

It is 1½ million acres. Out of all of this area, as I said, of the whole area that belongs to the Federal Government up here, some 21.2 million acres of the arctic is set aside as wilderness. As a matter of fact, Mr. President, 65 percent of all wilderness in the United States is in our State. Sixty-five percent of all the wilderness in the United States is in our State. Fifty-six million acres total have already been set aside as wilderness.

In addition to that, we have 70 percent of the national parklands. We have 85 percent of all the national wildlife refuges in Alaska.

That is the only area that Congress has ever designated as being set aside for oil and gas development. The Secretary tries to let the American public believe that this Senator is trying to authorize drilling in a wilderness area. It is not a wilderness area. It never was a wilderness area. It has never been withdrawn from oil and gas leasing. Oil and gas leasing was subject to this environmental impact statement that was made and has been presented to Congress. Two Secretaries of the Interior have recognized that and recommended to Congress that the oil and gas leasing proceed as was intended by my good friend, the late Scoop Jackson, in 1980.

Mr. President, I am going to come back again and again and talk about all the statements the Secretary made that night on ''Nightline'' that were not true. I think the American public should know. And I intend to find some way to be sure that cabinet officers that discuss pending legislation speak the truth.

Thank you very much, Mr. President. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, was leader's time reserved?

The PRESIDING OFFICER. The Senator is correct.

TRIBUTE TO TROOP 7 OF TOPEKA, KS, ON THEIR 75TH ANNIVERSARY

Mr. DOLE. Mr. President, today I take great pride in recognizing Boy Scout Troop 7 from Topeka, KS, for 75 years of honorable Scouting service.

If ever a troop has exemplified the high ideals of Scouting, Troop 7 has. These young men have not only been of great service to their community since 1920, but 147 of them have risen to a rank few achieve, that of Eagle Scout.

The young men of Troop 7 have dedicated themselves to becoming conscientious and responsible citizens with the help of their adult volunteers. The Scout oath and law instill moral uprightness and the precious selflessness of duty to others, while the motto, ''Be Prepared,'' entreats them to never rest on their laurels. This untiring endeavor to personal fulfillment and service to others is a standard of excellence that will challenge them throughout their lives.

Mr. President, it is only fitting that we honor the young men and the adult leaders of Troop 7 on the occasion of their diamond anniversary. After all, Scouting has only been in the United States for 85 years, which makes Troop 7 one of the oldest in the country.

With their record of excellence, I am confident that Troop 7 will continue to embody the spirit of Scouting for many years to come.

TRIBUTE TO CONGRESSWOMAN JAN MEYERS

Mr. DOLE. Mr. President, anyone who has been to the Kansas City and Johnson County area during any of the last 6 election years could not go far without seeing campaign signs that said ''Jan Can.''

The signs were referring to JAN MEYERS, who, since 1985, has represented the Third District of Kansas in the U.S. House of Representatives with great ability.

Congresswoman MEYERS announced this week in Overland Park that this will be her final term in Congress, and I wanted to take a moment to pay tribute to my friend and colleague.

JAN MEYERS' dedication to public service extends nearly 30 years. Before her election to Congress, she served 5 years as an Overland Park City councilwoman, and 12 years as a Kansas State senator.

Throughout her years in the political arena, JAN MEYERS has earned a reputation as a public servant of great competence, compassion, and common sense.

During her years here in Washington, she has devoted a great deal of time to fighting the scourge of illegal drugs. She successfully fought to ensure that operators of common carriers involved in accidents that cause death and injury while under the influence of drugs and alcohol would face tough criminal penalties.

Congresswoman MEYERS also spoke out on the need to reform welfare and to return power to the States well before those causes gained favor here in Washington.

But perhaps Congresswoman MEYERS' greatest sphere of influence involved issues affecting small business. Kansas is a small business State, and as ranking member, and now chairman of the House Small Business Committee, JAN MEYERS never stopped fighting to reduce the regulatory and tax burdens on America's small businessmen and women.

I look forward to working with Congresswoman MEYERS in the year ahead, and wish her, her husband Dutch, and their family many years of health and happiness.

TRIBUTE TO SENATOR MARK HATFIELD

Mr. DOLE. Mr. President, 45 years ago a young political science professor went to Silverton, OR, to announce his candidacy for the Oregon State House of Representatives.

In the years that followed, MARK HATFIELD would return to Silverton to announce his candidacy for the Oregon State Senate, for secretary of state, for Governor, and for U.S. Senator. And each and every time MARK HATFIELD put his name on the ballot, Oregonians responded by voting for him in overwhelming numbers.

Not only did MARK HATFIELD never lose an election, he never lost the total trust and respect or Oregonians.

Last Friday, Senator HATFIELD returned again to Silverton.

Only this time, he did not announce his candidacy for a sixth term in this Chamber—even though he would easily have been reelected.

Instead, Senator HATFIELD announced that he will retire from the Senate at the end of the 104th Congress so that he can return to Oregon. And I might say, I had the pleasure of watching much of his retirement speech on C–SPAN.

And when Senator HATFIELD leaves this Chamber for the final time, he will leave behind an enduring legacy of statesmanship, leadership, dignity, and integrity.

No matter if any Senator agreed or disagreed with MARK HATFIELD, no one could ever doubt that he was standing up for what the he believed was right for Oregon and for America.

And just as Oregonians have grown to count on Senator HATFIELD's leadership, many Senators have also grown to count on his friendship.

Many of us will never forget the day when our late colleague Senator Stennis was shot in a burglary attempt, and how Senator HATFIELD raced to the hospital to be with Senator Stennis, and how he personally manned the telephone lines, responding to inquiries about the condition of Senator Stennis.

Senator HATFIELD also served his country during World War II, where he saw battle at Iwo Jima and Okinawa, and was among the first U.S. servicemen to enter Hiroshima following the atomic explosion.

With Senator HATFIELD's retirement, the Senate will also be losing one of the Nation's leading scholars of the life of Abraham Lincoln. And those colleagues who have not seen Senator HATFIELD's Lincoln collection are now on notice that they have about a year to do so.

In one of the last letters that Lincoln wrote, he said that his goal was not just that America be a Union of States, but also a ''Union of hearts and hands.''

That goal has also been the life's work of MARK HATFIELD, and the Senate, Oregon, and America, are all better because of him.

TRIBUTE TO SENATOR AL SIMPSON

Mr. DOLE. Mr. President, finally Saturday night another of our colleagues announced his retirement.

Mr. President, 40 years ago, then-Senator John Kennedy wrote a best-selling book called ''Profiles in Courage.'' It consisted of biographies of a number of U.S. Senators who took courageous positions in their time.

If a similar book was written today, I have no doubt that it would include a biography of our colleague, Senator ALAN SIMPSON.

As my colleagues know, Senator SIMPSON returned to his home town of Cody, WY, this weekend to announce that he would not be a candidate for a fourth term in the U.S. Senate.

Again, I had the pleasure of watching about 45 minutes of his retirement speech to the Cody Chamber of Commerce on C–SPAN.

In his announcement, however, Senator SIMPSON left no doubt that his final year in the Senate would be no different from the first 17—from immigration to entitlement reform, he will continue to courageously tackle the toughest and most controversial of issues, calling them as he sees them, and letting the cards fall where they may.

AL SIMPSON is a man of strong opinions, but he also is someone who knows how to count votes and how to get things done. As Republican whip for 10 years, AL was a trusted member of our leadership team.

He made being Republican leader a much easier job—and all Senators will attest to the fact that with his unique sense of humor, AL has made serving in the Senate much more enjoyable.

Senator SIMPSON has served in Washington for 17 years, and although he and his wife, Ann, have devoted themselves to many cultural and charitable causes here in the Nation's capital. AL SIMPSON never forgot that Wyoming was home.

The great Alf Landon once said that ''there are some intelligent people in Washington. But there are more of them in Kansas.'' AL SIMPSON never forgot that there are also more of them in Wyoming, and he has never tired of fighting for returning power to where it belongs—to the people of Wyoming and our other 49 States.

I have long thought that AL embodies the ''American spirit'' that many Americans associate with Wyoming and with the American cowboy. He is honest, independent, and judges people not by money or position—but by character.

AL's father also represented Wyoming here in this Chamber. And when Milward Simpson passed away in 1993, AL delivered a very moving eulogy on the Senate floor.

I re-read that eulogy the other day, and it struck me that the words spoken about a father, could also be applied to the son.

AL SIMPSON said:

> My father was a man who did not just take little philosophies and paste them on the wall and then ignore them and yet say, ''I live by that.'' No, he did live by those things that he told us . . . . and one of those things he told us was ''I cannot tell you how to succeed, but I can sure tell you how to fail—and that is to try and please everybody.''

Mr. President, AL SIMPSON is retiring from the Senate, but he is not retiring from life. He will continue to make a difference. He will continue to live by his philosophies. And he will continue to succeed, because no matter what, AL SIMPSON won't try to please everybody—and Wyoming and America would want it no other way.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business until the hour of 7:15 p.m.

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

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, before discussing today's bad news about the Federal debt, how about another go, as the British put it, with our pop quiz. Remember—one question, one answer.

The question: How many millions of dollars in a trillion? While you are thinking about it, bear in mind that it was the U.S. Congress that ran up the enormous Federal debt that is now about $12 billion shy of $5 trillion.

To be exact, as of the close of business yesterday, December 4, the total Federal debt—down to the penny—stood at $4,988,891,675,281.12. Another depressing figure means that on a per capita basis, every man, woman and child in America owes $18,937.92.

Mr. President, back to our quiz—how many millions in a trillion?: There are a million million in a trillion, which means that the Federal Government will shortly owe five million million.

Now who is not in favor of balancing the Federal budget?

TRIBUTE TO LADY CLIO CRAWFORD

Mr. PRESSLER. Mr. President, Lady Clio Crawford was a personal friend of mine. I recall many great conversations with her when I was a student at Oxford. I remember in particular a wonderful dinner at Elizabeth's Restaurant, at which we discussed all of Africa and the problems of the emerging states of the continent. Having spent much of her life there, she was an expert on Africa. Later, when I was a lieutenant in the U.S. Army in Vietnam, serving in the Mekong Delta, she sent me some audio tapes on which she spoke to me, expressed concern about my safety, and wished me well. Her son, Tony, was a good friend of mine at Oxford University.

Lady Clio Crawford passed away in Geneva, Switzerland, on October 25, 1995, after a short illness.

Lady Clio Crawford was born Clio Colocotronis on February 2, 1925. Her mother came from the island of Crete and her father from the Peloponnese. Her family were direct descendants of Gen. Theodore Colocotronis, who was instrumental in liberating Greece from Turkish occupation 150 years ago, and whose statue and name adorn present-day Athens. At the age of 17, Clio Colocotronis, whose family were living in Alexandria, Egypt at the time (her father was a banker), was courted by and married Vassos Georgiadis, who was a highly successful Greek industrialist in East Africa and some 20 years her senior. Clio Georgiadis bore two sons in Kampala, Alexander and Antony, but she became a widow at the tender age of 27 in 1952.

With all the energy, courage and determination which were hallmarks of this remarkable lady, she took over responsibility of her late husband's multi-faceted business empire: This included the East Africa Tobacco Co. which was one of Africa's dominant corporations. She learned the complexities of the businesses, expanded them, and even diversified in Europe to become a major shipowner. But what she considered her major achievement was bringing up her two sons on her own, ensuring they had the best education at Oxford and U.S. business schools, watching with pride as they succeeded in life.

In 1961, she married Sir Frederick Crawford, who was then British Governor and Commander-in-Chief in Uganda. After he handed Uganda over to majority rule in 1961, he moved to Rhodesia (now Zimbabwe), where he became the head of the British South Africa Co. and was on the boards of many Anglo-American companies in southern Africa. Sir Frederick Crawford sadly died in 1978.

Lady Clio Crawford resided in Geneva since that time. She travelled extensively throughout her life. She was one of the most energetic, charming, imposing and kind-hearted persons I have ever met. From her early days and throughout her life, she was also very actively involved in all sorts of charities. She became the honorary consul for Greece in Uganda, which was the first time a woman held this post. She was head of the Red Cross, and was instrumental in establishing the Greek Orthodox Church in Uganda. In Switzerland, she and her sister were very much the pillars of the Greek community. Lady Crawford had a close connection with Oxford University in that her husband, Sir Fredrick, was a graduate of Balliol College. Her sons and stepsons all attended St. Edmund Hall (one of Oxford's oldest colleges), with which she maintained a close association over the years. She and her family were generous sponsors of many college developments and an area of St. Edmund Hall bears her name. She left behind two sons, Alec and Tony Georgiadis, who have charming wives—Ann and Elita—and six grandchildren, three from Tony and Elita (Clio, Vassos John and Ileana), and three from Alec (Vassos, Nicholas and Philip).

In tribute to this grand lady, I quote the comments sent to her family by a former vice chancellor of Oxford University:

> ''I remember her as one of the most cheerful, energetic, independent and altogether delightful women I have every met. I always found her confident good humour and marvellous 'joie de vivre' infectious. . . . She never seemed to lack the vigour and vitality and warm understanding which were her hallmark. She was a wonderful, gracious lady who enriched the life of a friend like myself. The thought that I shall not see her again is a sad wrench. May she rest in peace—no one better deserves to do so.

TRIBUTE TO THE REVEREND DR. RICHARD C. HALVERSON

Mr. LIEBERMAN. Mr. President, I rise today to pay my respects to the Rev. Richard Halverson, whose recent passing saddened all of us in this Chamber. He was, for us, a spiritual Rock of Gibraltar, always present as a reminder of eternal values, in the midst of even the most temporal of debates.

One of the remarkable things about the life of this faith-filled man is the fact that he became the Chaplain of the

U.S. Senate at a time when most people his age retire and go fishing or play golf. At 65, Reverend Halverson undertook the most significant, perhaps the most difficult, task of his life—ministering to the spiritual needs of 100 U.S. Senators, their staffs, employees of the Senate and countless others who came to him for counsel and prayer. He fulfilled that mission with great honor.

I will always remember Reverend Halverson as a gracious man, a man of considerable intellect, and especially a scholar of the Old Testament and the Jewish religion, about which we had memorable conversations.

We will miss Reverend Halverson, especially in a time when partisan rancor seems so sharp and divisive here in Capitol Hill, and in a society where bedrock values like belief in God and respect for one another seem to be at such risk. His warm presence always stood in strong contrast to the trials of the moment. We have faith that he is in the embrace of a loving God.

Yet, I am confident he is praying for us still. May God bless Reverend Halverson, and may He grant his family and many friends solace from the grief we share at his passing, and confidence that life eternal is the reward for those who live to His will.

MEMORIAL TRIBUTE TO DR. RICHARD HALVERSON

Mrs. KASSEBAUM. Mr. President, last week the Senate and the Nation lost a gifted spiritual adviser. All of us mourn the death of Dr. Richard Halverson, who served here for 14 years as Senate Chaplain before retiring last February.

As shepherd of his Senate flock, Dr. Halverson always brought strength of faith and a wealth of patience in his actions to all, whether on the floor of the Senate or to the broader national audience. For 14 years, his prayers began each of our working days and did so with spiritual substance, expecting from all of us the very best standards of conduct, understanding and commitment.

I valued his friendship as well as his spiritual leadership. I will hold a special memory of his committed caring and the twinkle in his eye.

TRIBUTE TO THE REVEREND DR. RICHARD HALVERSON

Mr. JEFFORDS. Mr. President, in one of his books, Dr. Halverson wrote, ‘‘It is foolish to say there is no God. But it is infinitely more foolish to say there is and to live as though there were not.’’ Dr. Halverson's special grace was in his way of helping us to bridge the gap between faith and practice. As a preacher, Chaplain Halverson fought against unbelief but, as a pastor, he was equally concerned about hypocrisy.

Dick, as he was known to all of us in the Senate, loved his country, loved the Senate as an institution, but more importantly he loved us as individual Members of the Senate. His deep caring spirit was evident in his availability at all times to attend to the needs of Senators and our families. He knew us all and, even so, managed to love us whatever our backgrounds may have been. And, not only the Senators, Dick loved the staffers, the elevator operators, the police officers, and everyone he met in the course of a day on the Hill. No one knew more people than did Dick.

His daily prayers in the Senate acted as a reality check for each of us. One morning his prayers began:

> Gracious Father in Heaven, help us to keep our priorities straight. In this center of power, secondary matters have a way of preoccupying our attention and preempting our time. Help us not to take ourselves too seriously, forgetting that we are fallible human beings with many needs. Deliver us from VIP syndrome which expects or demands preferential treatment.

It is these actions and thoughts which live on in our hearts and minds as we think of Dick. His words and love taught us much and each of us is the better for having known him. He was a special gift to us and we shall remember him.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1659. A communication from the Senior Deputy Assistant Administrator of the U.S. Agency for International Development (for Legislative and Public Affairs), transmitting, pursuant to law, the report on financial statements on the Micro and Small Enterprise Development (‘‘MSED’’) Program for fiscal year 1994; to the Committee on Governmental Affairs.

EC–1660. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC–1661. A communication from the Executive Director of the Federal Retirement Investment Board, transmitting, pursuant to law, audit reports issued during fiscal year 1995; to the Committee on Governmental Affairs.

EC–1662. A communication from the Executive Director of the Harry Truman Scholarship Foundation, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1995; to the Committee on Governmental Affairs.

EC–1663. A communication from the Comptroller General of the United States, transmitting, pursuant to law, reports of three deferrals of budget authority; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Finance, and to the Committee on Foreign Relations.

EC–1664. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 93-02; to the Committee on Appropriations.

EC–1665. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a statement regarding a transaction involving exports to the People's Republic of China; to the Committee on Banking, Housing, and Urban Affairs.

EC–1666. A communication from the Executive Director of the Thrift Depositor Protection Oversight Board, transmitting, pursuant to law, the final report during calendar year 1995; to the Committee on Banking, Housing, and Urban Affairs.

EC–1667. A communication from the Secretary of Transportation, transmitting, pursuant to law, the final report on the Tanker Navigation Safety Research Baseline study; to the Committee on Commerce, Science, and Transportation.

EC–1668. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the report on the nondisclosure safeguards information for the quarter beginning July 1 through September 30, 1995; to the Committee on the Environment and Public Works.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–476. A resolution adopted by the Nevada League of Cities relative to the Nevada Test Site; to the Committee on Armed Services.

POM–477. A resolution adopted by the Interfaith Council to Assist Vietnamese Refugees relative to Vietnamese asylum seekers; to the Committee on Foreign Relations.

POM–478. A resolution adopted by the Greater Nashville Regional Council of Nashville, Tennessee relative to the Southern Power Administration; to the Committee on Energy and Natural Resources.

POM–479. A resolution adopted by the American Legislative Exchange Council relative to the Consumer Price Index; to the Committee on Labor and Human Resources.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

The following U.S. Army Reserve officers for promotion in the Reserve of the Army to the grades indicated under title 10, U.S.C. sections 3371, 3384 and 12203(a):

To be major general

Brig. Gen. Jorge Arzola, 000–00–0000.
Brig. Gen. William E. Barron, 000–00–0000.
Brig. Gen. Tommy W. Bonds, 000–00–0000.
Brig. Gen. William N. Clark, 000–00–0000.
Brig. Gen. George W. Goldsmith, Jr., 000–00–0000.
Brig. Gen. Ralph L. Haynes, 000–00–0000.
Brig. Gen. William B. Hobgood, 000–00–0000.
Brig. Gen. Curtis A. Loop, 000–00–0000.
Brig. Gen. James M. McDougal, 000–00–0000.
Brig. Gen. William C. Mercurio, 000–00–0000.
Brig. Gen. Evo Riguzzi, Jr., 000–00–0000.

To be brigadier general

Col. Patricia J. Anderson, 000–00–0000.
Col. William S. Anthony, 000–00–0000.
Col. David R. Bockel, 000–00–0000.
Col. Robert W. Chestnut, 000–00–0000.
Col. Richard E. Coleman, 000–00–0000.
Col. James M. Collins, Jr., 000–00–0000.

Col. Perry V. Dalby, 000–00–0000.
Col. William N. Kiefer, 000–00–0000.
Col. Robert M. Kimmitt, 000–00–0000.
Col. Robert A. Lee, 000–00–0000.
Col. Paul E. Lima, 000–00–0000.
Col. Richard D. Lynch, 000–00–0000.
Col. Robert G. Mennona, Jr., 000–00–0000.
Col. H. Douglas Robertson, 000–00–0000.
Col. Jon R. Root, 000–00–0000.
Col. John L. Scott, 000–00–0000.
Col. Gerry G. Thames, 000–00–0000.
Col. Thomas A. Wessels, 000–00–0000.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, U.S.C., section 601(a):

To be lieutenant general

Maj. Gen. Thomas A. Schwartz, 000–00–0000.

The following-named officer to be placed on the retired list of the U.S. Army in the grade indicated under section 1370 of title 10, U.S.C.

To be lieutenant general

Lt. Gen. Paul E. Funk, 000–00–0000.

The following-named officer for appointment to the grade of Vice Admiral in the U.S. Navy while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Alexander J. Krekich, 000–00–0000.

The following-named officer to be placed on the retired list of the U.S. Navy in the grade indicated under section 1370 of title 10, U.S.C.

To be admiral

Adm. Henry G. Chiles, Jr., 000–00–0000.

(The above nominations were reported with the recommendation that they be confirmed.)

Mr. THURMOND. Mr. President, for the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD of October 27 and 31, November 7 and 8, 1995, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of October 27, 31, November 7 and 8, 1995, at the end of the Senate proceedings.)

*Rear Admiral Alexander J. Krekich, USN to be vice admiral (Reference No. 682)

**In the Army Reserve there are 49 promotions to the grade of colonel and below (list begins with Raymond W. Carpenter) (Reference No. 700)

**In the Army Reserve there are 2 appointments to the grade of lieutenant colonel (list begins with Nelson M. Alverio) (Reference No. 704)

**In the Navy there are 1,233 appointments to the grade of ensign (list begins with Bobby Z. Abadi) (Reference No. 705)

**In the Army Reserve there are 583 promotions to the grade of colonel (list begins with Virgil A. Abel) (Reference No. 706)

*In the Army Reserve there are 29 promotions to the grade of major general and below (list begins with Jorge Arzola) (Reference No. 711)

**In the Air Force Reserve there are 19 promotions to the grade of lieutenant colonel (list begins with Monika K. Botschner) (Reference No. 714)

**In the Navy there are 6 appointments to the grade of lieutenant (list begins with Brian G. Buck) (Reference No. 715)

**In the Army there are 5 promotions to the grade of colonel and below (list begins with Travis L. Hooper) (Reference No. 718)

**In the Army there are 4 promotions to the grade of lieutenant colonel list begins with Bobby T. Anderson) (Reference No. 719)

*Admiral Henry G. Chiles, Jr., USN to be placed on the retired list in the grade of admiral (Reference No. 724)

Total: 1,932.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. BREAUX (for himself and Mr. JOHNSTON):

S. 1444. A bill to provide for 1 additional Federal judge for the middle district of Louisiana and 1 less Federal judge for the eastern district of Louisiana; to the Committee on the Judiciary.

By Mr. PRESSLER (for himself and Mr. BURNS):

S. 1445. A bill to authorize appropriations for the National Science Foundation, and for other purposes; to the Committee on Labor and Human Resources, pursuant to the order of March 3, 1988, with instructions, that if reported the bill then be referred to the Committee on Commerce, Science and Transportation for a period not to exceed 30 session days.

By Mr. McCAIN:

S. 1446. A bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to establish an Inspector General of the Administrative Office of the United States Courts, and for other purposes; to the Committee on the Judiciary.

By Ms. MIKULSKI (for herself, Mr. KENNEDY, and Mr. PRYOR):

S. 1447. A bill to amend the Older Americans Act of 1965 to provide for Federal-State performance partnerships, to consolidate all nutrition programs under the Act in the Department of Health and Human Services, to extend authorizations of appropriations for programs under the Act through fiscal year 1998, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KERRY:

S. 1448. A bill to establish the National Commission on Gay and Lesbian Youth Suicide Prevention, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. FEINGOLD:

S. 1449. A bill to make agricultural promotion boards and councils more responsive to producers whose mandatory assessments support the activities of such boards and councils, to improve the representation and participation of such producers on such boards and councils, to ensure the independence of such boards and councils, to ensure the appropriate use of promotion funds, to prevent legislatively authorized promotion and research boards from using mandatory assessments to directly or indirectly influence legislation or governmental action or policy, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SIMON (for himself and Ms. MOSELEY-BRAUN):

S. Res. 197. A resolution to congratulate the Northwestern University Wildcats on winning the 1995 Big Ten Conference football championship and on receiving an invitation to compete in the 1996 Rose Bowl, and to commend Northwestern University for its pursuit of athletic and academic excellence; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRESSLER (for himself and Mr. BURNS):

S. 1445. A bill to authorize appropriations for the National Science Foundation, and for other purposes.

THE NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT OF 1995

Mr. PRESSLER. Mr. President, today, as chairman of the Committee on Commerce, Science, and Transportation, I am introducing the National Science Foundation Authorization Act of 1995. The bill provides a 3-year authorization for the science and education programs of the National Science Foundation [NSF]. Our economy, our quality of life, and our national security are increasingly dependent on our leadership in science and technology. Since its beginnings in 1950, the NSF has played a central role in maintaining that leadership through its research programs. In fact, NSF remains the principal source of funding for fundamental research at our Nation's academic institutions.

While America is still doing well in science and technology, our leadership position is slipping. For example, while the U.S. leads the world in total dollars spent on research and development, both Japan and Germany currently outspend the United States as a percentage of GNP. Similarly, a recent study by the White House Office of Science and Technology Policy revealed the U.S. leads in 27 critical technologies, but Europe and Japan are catching up in many of those areas.

There is little question that meeting these challenges in science and technology requires a strong and robust NSF. To that end, the legislation I am introducing today provides $3.2 billion for each of fiscal years 1996, 1997, and 1998 to allow NSF to continue its efforts to keep America at the forefront of basic research. In a fiscal environmental in which we are looking to eliminate entire agencies, this authorization bill reflects a strong commitment to basic science. The annual funding is only slightly below NSF's fiscal year 1995 funding level. Moreover, the bill's funding authorizations for both the overall agency and its major individual accounts correspond to the appropriations levels approved for NSF by the Senate in September.

Mr. President, of the total NSF authorization, the bill authorizes $2.3 billion for the research and related activities account, the main source of NSF's research grants. This is roughly the same as the fiscal year 1995 funding level. NSF's research programs support important work in advanced materials, biotechnology, global climate studies, general science and math, and high performance computing. Many of the products and services we take for granted are the direct result of research funded by NSF grants.

Within the Research Account, let me make special mention of one program: the Experimental Program to Stimulate Competitive Research [EPSCoR] at NSF. This program has been particularly helpful in strengthening the research capabilities of colleges in States that historically have been unable to effectively compete for Federal research opportunities. EPSCoR has been so successful at NSF that it has also been adopted at five other Federal science agencies, including NASA.

To allow EPSCoR to continue its important work in our rural States, my bill provides an annual authorization of $46 million for the program. This is a 24-percent increase over its fiscal year 1995 level of $37 million. Unfortunately, when it comes to many Federal science programs, my home State of South Dakota and other rural States have had little, if any, involvement—either as participants or beneficiaries. These States, too, must be part of the technological revolution. In that regard, the National Science Foundation, through EPSCoR and other programs, has done a tremendous job of including rural States in that revolution.

I should mention the bill funds EPSCoR out of the Research Account rather than its current funding source, the Education Account. This change is intended to encourage greater coordination and interaction between EPSCoR and the larger research programs.

To further build on the successful EPSCoR concept, my bill authorizes $10 million a year for a new pilot program to provide research grants to partnerships formed by EPSCoR institutions and large research universities. This program will enable small schools participating in EPSCoR to graduate from the smaller EPSCoR science projects into larger mainstream programs by joining with a big brother research university like MIT. The large schools participating in the program stand to gain as well. The program would enable large schools to become more competitive by combining their talent, experience, and resources with those of their rural counterparts. In short, Mr. President, if approved, this program will help broaden and strengthen America's science and technology base.

My bill also provides $599 million for the education account at NSF to help develop a new generation of scientists and engineers to tackle future scientific challenges and to ensure a technologically literate Nation. NSF's programs support educational activities reaching students at all levels in South Dakota and all across the Nation. Science education must be a national priority if we are to remain competitive in our increasingly global and technologically oriented marketplace. My bill's full funding for NSF's education programs indicates the high priority I place on science education.

Finally, I note that my bill authorizes $100 million for the facilities program at NSF. Good science requires good research facilities. The NSF facilities program provides funding to enable our research institutions to renovate old facilities and buy up-to-date lab equipment so our scientists will have the proper tools and environment to conduct their studies.

Mr. President, we in South Dakota are especially grateful for the work of NSF. Currently, NSF is supporting more than 50 research and education projects in South Dakota educational institutions ranging from elementary school to graduate school. These activities have been crafted to reflect the special expertise of those schools and universities as well as the particular needs of our region.

For instance, NSF is supporting research at the South Dakota School of Mines and Technology designed to better understand and predict weather and climate to help our agriculture community. NSF also is funding several projects in South Dakota to improve the teaching of math and science at our schools. In September, for example, NSF began funding for a project designed to create degree programs in science, engineering, and mathematics at our tribal colleges. This important work must be allowed to continue.

Mr. President, my bill will enable these and other NSF projects to move forward and to keep America strong in science and technology. I look forward to working with my colleagues to get this important legislation enacted.

Mr. BURNS. Mr. President, today I stand with Senator PRESSLER as a cosponsor of the National Science Foundation Authorization Act of 1995 (S. 1445). The National Science Foundation is an independent Federal agency that provides grants for basic research to colleges, universities, and nonprofit organizations. NSF supports research in the basic science and mathematic areas in addition to supporting precollege, undergraduate, and graduate students, as well as post-doctoral associates. The foundation's support for basic research and science education is one major reason for our world leadership in science and technology.

The bill authorizes the National Science Foundation to spend $3.2 billion in fiscal years 1996, 1997, and 1998, which is 95 percent of the administration's budget request. The bill authorizes the Foundation's research and related activities at $2.3 billion and its education and human resources activities at $599 million each year.

Our authorization includes a total of $56 million for the Experimental Program to Stimulate Competitive Research [EPSCoR] and related activities that have provided needed assistance for universities in rural States such as my State of Montana. The primary purpose of EPSCoR is to serve as a change agent and catalyst to develop a competitive research base in our rural areas. The development of this strong research base will in turn improve the quality of education we provide to our citizens at all levels, and generate spin-off technologies.

The Bill also authorizes the National Science Foundation to spend $100 million each year for Academic Research Infrastructure. This activity provides grants to universities to upgrade and improve research and lab equipment and renovate facilities. Good research requires good facilities and good lab equipment. Full funding for this account will help to rebuild the U.S. academic institutions to facilitate the conduct of leading-edge research.

Finally, this bill supports the Foundation's science education programs. Strengthening the math and science literacy of our young people is the only way to insure their involvement in our increasingly technological world. I am especially interested in activities aimed at K through 12 education. I also think it is important to take advantage of communications technology to make our educational system more effective, such as the distance learning/teacher enhancement projects at Montana State University developed to improve the skills of teachers in remote areas of the Northwest. In that connection, I sponsored language in the bill which establishes a pilot program at the Foundation to provide, in a competitive basis, financial support for States with two or more tribally-controlled community colleges. This assistance will establish interactive telecommunication systems at these colleges to enhance and improve their educational programs and curricula. These are the kinds of activities that we need to stress if our Nation is to remain competitive.

Again, I would like to state my support for the National Science Foundation Authorization Act of 1995 and look forward to working with my colleagues to enact this legislation during this Congress.

By Mr. MCCAIN:

S. 1446. A bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to establish an inspector general of the Administrative Office of the United States Courts, and for other purposes; to the Committee on the Judiciary.

THE INSPECTOR GENERAL OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS ACT OF 1995

• Mr. MCCAIN. Mr. President, today I am introducing legislation to establish an inspector general within the Administrative Office of the United States Courts.

The Administrative Office, commonly referred to as the AO, was established in 1939 to provide the Federal courts with administrative support. The office is in charge of the day-to-day operations of the Federal judiciary, including budgets, automation, security, and office space. The AO operates on a budget of $44 million and a staff of 900 but coordinates the judiciary's budget of $2.7 billion and a staff of over 27,000 employees.

While the AO employs a significant number of people and manages a sizable budget, it has no inspector general to promote efficiency within its programs. Many agencies within the executive branch, including those similar in size to the AO—such as the Smithsonian Institution, the Corporation of Public Broadcasting, the Corporation for National and Community Service, the EEOC, the OPM, the Nuclear Regulatory Commission, the Railroad Retirement Board, and the U.S. Information Agency—have inspector generals which provide the American public with a valuable service by conducting objective and independent oversight of agency activity.

In the past, the Congress has been hesitant to require the AO, a judicial agency, to have an inspector general like executive agencies, in the effort to avoid even the appearance of encroaching on the separation of powers. However, I trust my colleagues will agree that the efficient and cost-effective use of taxpayer dollars is as important in the administration of the judiciary as it is in the executive branch. The establishment of an IG within the AO will help ensure the appropriate and efficient use of taxpayer dollars without unduly burdening or diminishing in any way the independence of the Judiciary.

Mr. President, this legislation is not intended to be a harsh criticism of the AO. Certainly, the Administrative Office, like many other governmental agencies, has had its share of waste and inefficiency. My colleagues are aware of concerns I have expressed about the National Fine Center, which the AO is taking steps to rectify, and the Federal Courthouse Construction Program. I simply believe any bureaucracy with a large budget and many employees can benefit from independent oversight. However, I am certainly open to any suggestions about how this bill could be improved.

I want to make clear that the inspector general at the AO would have no authority to review and report on matters involving the Federal courts' judicial decisions. Jurisdiction would be limited strictly to the administrative functions performed by the AO.

Again, I believe this is a common sense, good Government piece of legislation which will enhance the cost-effective use of the taxpayer resources utilized to administer our Federal courts.●

By Ms. MIKULSKI (for herself, Mr. KENNEDY, and Mr. PRYOR):

S. 1447. A bill to amend the Older Americans Act of 1965 to provide for Federal-State performance partnerships, to consolidate all nutrition programs under the Act in the Department of Health and Human Services, to extend authorizations of appropriations for programs under the Act through fiscal year 1998, and for other purposes; to the Committee on Labor and Human Resources.

THE OLDER AMERICANS ACT AMENDMENTS OF 1995

● Ms. MIKULSKI. Mr. President, I introduce the Older Americans Act Amendments of 1995, which is the Clinton administration's proposal for the reauthorization of this critical legislative initiative.

The Older Americans Act [OAA] celebrated its 30th anniversary this year and with it, a great number of accomplishments. The Older Americans Act, enacted in 1965, was the first program to focus on the community-based services for seniors. It articulates a comprehensive set of services, designed to meet the diverse needs of older persons. Implemented at state and local levels, these programs are critical to the health and well-being of millions of senior Americans in Maryland and throughout the United States.

Now, the Congress is beginning the process of reauthorizing the Older Americans Act for another 3 to 5 years. As we seek a vision for the Older Americans Act in the 21st century, I believe we must assess all aspects of the program and look to the future needs of seniors and their families. This includes examination of the core elements of the act, being more realistic to streamlining the scope of services that the act provides, and allowing service providers to focus on improving the quality of those services.

In an effort to expand the debate on the reauthorization of the Older Americans Act, I am introducing today the administration's proposal. This legislation combines consolidation of programs while encouraging greater flexibility in the delivery of services to seniors. While I am not in agreement with every aspect of this proposal, I do believe that it will contribute to the debate of this very important program.

I look forward to collaborating with Senator JUDD GREGG, our chairman of the Subcommittee on Aging and Senator NANCY KASSEBAUM, our chair of the Senate Labor and Human Resources Committee, as we work together with out Senate colleagues in reauthorizing the Older Americans Act. I am dedicated to seeing that the best of the Older Americans Act remains and thrives. I ask my colleagues to join me in this important effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1447

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

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Older Americans Act Amendments of 1995''.

(b) REFERENCE.—Except as otherwise expressly provided in this Act, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—PERFORMANCE PARTNERSHIPS

SEC. 101. RESPONSIBILITIES OF ASSISTANT SECRETARY.

(a) FUNCTIONS OF ASSISTANT SECRETARY.—Section 202(a)(3) is amended by inserting before the semicolon '', and to negotiate performance partnership agreements with the States under titles III and VII''.

(b) PERFORMANCE PARTNERSHIPS.—Title II is amended by inserting after section 202 the following new section:

''PERFORMANCE PARTNERSHIPS

''SEC. 202A. (a) IN GENERAL.—The Assistant Secretary shall negotiate performance partnership agreements with States in accordance with the provisions of this section.

''(b) PERFORMANCE OBJECTIVES AND MEASURES.—

''(1) DESIGNATION OF OBJECTIVES.—The Assistant Secretary, in consultation (as appropriate) with the States, local governments, tribal organizations, and other entities, shall specify, by the end of September 1996 (and from time to time revise, as needed), with respect to the goals specified in sections 305A and 704A—

''(A) a list of performance partnership objectives to accomplish the goals of each such section, and

''(B) a core set for each such section of objectives that address needs of older Americans of national significance.

''(2) ELEMENTS OF PERFORMANCE PARTNERSHIP OBJECTIVES.—Each performance partnership objective specified under paragraph (1) shall include—

''(A) a performance indicator;

''(B) the specific population being addressed;

''(C) a quantifiable performance target; and

''(D) a date by which the target level is to be achieved.

''(3) GENERAL CRITERIA FOR DESIGNATION OF OBJECTIVES.—In specifying the performance partnership objectives, the Assistant Secretary shall be guided by the following principles:

''(A) objectives should be closely related to the goals of the section concerned, and be viewed as important by and understandable to State policymakers and the general public;

''(B) actions taken under the partnership agreement should be expected to have an impact on the objective;

''(C) measurable progress in achieving the objective should be expected over the period of the grant;

''(D) objectives should be results-oriented, including a suitable mix of outcome, process and capacity measures, and, if an objective measures process or capacity, it should be demonstrably linked to the achievement of a specified outcome for older Americans; and

''(E) data to track the objective shall, to the extent practicable, be comparable for all States, meet reasonable statistical standards for quality, and be available in a timely fashion, at appropriate periodicity, and at reasonable cost, and, with respect to core objectives, shall include as appropriate the data specified in section 202(a)(19), collected in accordance with the uniform procedures established pursuant to section 202(a)(29).

''(c) STATE PERFORMANCE PARTNERSHIP PROPOSAL.—

''(1) IN GENERAL.—In order to meet the requirements of this subsection, a performance partnership proposal submitted to the Assistant Secretary by a State agency under title III or VII shall contain—

''(A) a list of one or more objectives (derived from the performance partnership objectives specified under subsection (b)) toward which the State will work and a performance target for each objective which the applicant will seek to achieve by the end of the partnership period (which shall be coterminous by the period covered by the State plan under section 307);

''(B) a rationale for the applicant's selection of its objectives, including its performance targets, and timeframes;

''(C) a statement of the applicant's strategies for achieving the objectives over the course of the grant period;

''(D) a statement of the estimated amount to be expended to carry out each strategy; and

''(E) an assurance that the State will report to the Assistant Secretary, not later than 60 days after the end of each fiscal year, on progress in the State toward accomplishing core performance objectives specified under subsection (b)(1)(B) (regardless of whether it is working toward those objectives) and the specific objectives toward which the State is working under the performance partnership. A State may select an objective that is not a specified performance partnership objective under subsection (b)(1)(A) if it demonstrates to the Assistant Secretary that the objective relates to a significant concern of older Americans in the State that would not otherwise be addressed appropriately (and that a suitable performance indicator exists to measure progress toward the objective).

''(2) ELEMENTS OF STATE PROPOSALS RELATING TO SPECIAL POPULATIONS.—Each State proposal for a performance partnership under title III or VII shall, as appropriate, include objectives—

''(A) designed, in consultation with tribal governments (or their representatives) to address the needs of older Indians or Native Hawaiians within the State to ensure that an appropriate and equitable share of State funding under such title is used to meet such needs; and

''(B) designed to give priority to activities addressing the needs of vulnerable older individuals in the State.

''(d) NEGOTIATIONS AND ADJUSTMENT.—

''(1) INITIAL NEGOTIATIONS.—In the negotiations concerning a proposed performance partnership agreement submitted under this section, the Assistant Secretary shall—

''(A) consider the extent to which the State's proposed objectives, performance targets, timeframes, and strategies are likely to address appropriately the most significant needs of older Americans (as measured by applicable indicators) within the State, including the needs of vulnerable populations, and

''(B) give particular consideration to the State's proposed performance partnership in addressing progress toward the core set of performance partnership objectives.

''(2) ADJUSTMENT.—The Assistant Secretary and a State may at any time in the course of a performance partnership renegotiate, and revise by mutual agreement, the elements of the partnership agreement in light of new information or changed circumstances (including information or changes identified during assessments or on-site reviews under subsection (e)).

''(e) ANNUAL ASSESSMENTS; PERIODIC ON-SITE REVIEWS.—

''(1) ASSESSMENTS.—The Assistant Secretary shall assess annually with respect to performance partnerships under such titles III and VII, on the basis of the report submitted by a State under subsection (c)(1)(E)—

''(A) the progress achieved nationally toward each of the objectives in the core set of performance partnership objectives; and

''(B) in consultation with each State, the State's progress toward each objective agreed upon in the performance partnership under such title.

The Assistant Secretary shall make assessments publicly available.

''(2) PERIODIC ON-SITE REVIEWS.—The Assistant Secretary shall conduct an on-site review of each State's adherence to its performance partnership agreement under title III or VII not less often than every five years.

''(f) INCENTIVE AWARDS FOR EFFECTIVE PERFORMANCE.—From amounts reserved under section 304(a), the Assistant Secretary may make an incentive award to any State determined, on the basis of assessments or on-site reviews under subsection (e) or other investigation, to have performed effectively under a performance partnership agreement under title III or VII and to have made significant progress toward meeting core national objectives. Incentive awards made to States shall be available only for use in furnishing additional services under the State's agreement under such title.''.

(c) DEFINITIONS.—Section 102 is amended by adding at the end the following new paragraph:

''(45)(A) The term 'performance indicator' means a quantifiable characteristic used as a measurement.

''(B) The term 'performance target' means a numerical value sought to be achieved within a specified period of time.''.

SEC. 102. FUNDING OF PERFORMANCE PARTNERSHIP ADMINISTRATIVE COSTS AND INCENTIVE AWARDS.

(a) STATE ADMINISTRATIVE COSTS RELATED TO PERFORMANCE PARTNERSHIPS.—Section 308 is amended by adding at the end the following new subsection:

''(d) In addition to amounts otherwise available under this section, each State may use, for costs relating to the administration of performance partnerships under this title and title VII, including costs of developing, negotiating, administering, monitoring, evaluating, and reporting on performance under, such partnerships, such additional amounts from the allotment to the State under section 304 (not to exceed 2 percent of such allotment) as the Assistant Secretary may permit.''.

(b) SET-ASIDE FOR INCENTIVE AWARDS.—(1) IN GENERAL.—Section 304 is amended—

(1) by redesignating subsections (a) through (e) as subsections (b) through (f); and

(2) by inserting after ''SEC. 304.'' the following new subsection:

''(a) RESERVATION OF FUNDS FOR PERFORMANCE PARTNERSHIP INCENTIVE AWARDS.—From each of the sums appropriated under section 303 for each fiscal year, the Assistant Secretary may reserve up to 10 percent for performance incentive awards to States in accordance with section 205(f).''.

(2) CONFORMING AMENDMENT.—Section 304(b), as redesignated by subsection (a), is amended by striking ''from the sums appropriated'' and inserting ''from the amounts remaining, after application of subsection (a), from the sums appropriated''.

SEC. 103. RESPONSIBILITIES OF STATES.

(a) UNDER BASIC STATE GRANTS PROGRAM.—Title III is amended by inserting after section 305 the following new section:

''PERFORMANCE PARTNERSHIPS

''SEC. 305A. (a) GOALS.—The goals of this section are for the States and the Federal Government, working together in a partnership, to accomplish the purposes specified in section 301(a).

''(b) PERFORMANCE PARTNERSHIP AS ELEMENT OF STATE PLAN.—In order to be eligible to receive a grant from its allotment under this title, except as provided in section 309(a), a State shall propose to and negotiate with the Assistant Secretary a performance partnership agreement in accordance with the provisions of this section and section 202A, and shall include such agreement as part of the State plan under section 307.

''(c) ADVISORY COUNCIL.—The State shall establish an Advisory Council, with members including representatives of other State agencies administering programs serving the elderly, private entities providing services under the State plan, and older individuals (with appropriate efforts to include members of minority groups), whose responsibilities shall include—

''(1) reviewing and commenting on the State's proposed performance partnership agreement under this section (and such comments shall be included with the State plan submission under section 307); and

''(2) evaluating and reporting on the State's performance under the final agreement negotiated with the Assistant Secretary.''.

(b) UNDER VULNERABLE ELDER RIGHTS PROTECTION PROGRAM.—Title VII is amended by inserting after section 704 the following new section:

''PERFORMANCE PARTNERSHIPS

''SEC. 704A. (a) GOALS.—The goals of this section are for the States and the Federal Government, working together in partnership, to protect the rights of vulnerable older individuals and to prevent elder abuse, neglect, and exploitation.

''(b) STATE PERFORMANCE PARTNERSHIP AS ELEMENT OF STATE PLAN.—In order to be eligible to receive a grant from its allotment under this title, a State shall propose to and negotiate with the Assistant Secretary a performance partnership agreement in accordance with the provisions of this section and section 202A, and shall include such agreement as part of the State plan under section 307.

''(c) ADVISORY COUNCIL.—The responsibilities of the advisory council established by the State pursuant to section 305A(c) State shall include—

''(A) reviewing and commenting on the State's proposed performance partnership agreements under this title (and such comments shall be included with the State plan submission under section 307); and

''(B) evaluating and reporting on the State's performance under the final agreement negotiated with the Assistant Secretary under this title.''.

(c) STATE PLAN REQUIREMENT.—Section 307(a) is amended in the first sentence by striking ''which meets such criteria'' and inserting ''which includes the performance partnership agreements under this title and title VII negotiated with the Assistant Secretary under sections 202A, 305A, and 704A, and meets such other criteria''.

SEC. 104. AREA PLANS: REORGANIZATION, STREAMLINING, AND INCORPORATION OF PERFORMANCE PARTNERSHIPS.

(a) AREA PLAN REQUIREMENTS.—Section 306(a) is amended—

(1) in the matter preceding paragraph (1), by striking ''Each such plan shall—'' and inserting ''Each such plan shall comply with the following requirements:'';

(2) in paragraph (1), to read as follows:

''(1) SERVICES PROVIDED.—The plan shall provide for the furnishing, through a comprehensive and coordinated system, of services the need for which has been determined pursuant to paragraph (3), and which are designed to meet the performance objectives specified under paragraph (4), including—

''(A) supportive services (including at least the service specified in paragraph (2));

''(B) nutrition services; and

''(C) where appropriate, the establishment, maintenance, or construction of multipurpose senior centers.'';

(3) in paragraph (2)—

(A) by inserting ''PRIORITY SERVICES.—The plan shall'' after ''(2)'';

(B) by striking ''section 307(a)(22)'' and inserting ''section 307(a)(2)'';

(C) by striking ''and specify annually in such plan, as submitted or as amended'' and inserting ''and assurances that the area agency will report annually to the State agency''; and

(D) by striking the semicolon at the end and inserting a period;

(4) by striking paragraphs (3) (designation of focal points for service delivery in each community) and (4) (information and assistance services);

''(5) by inserting after paragraph (2) the following new paragraphs:

''(3) DETERMINATION OF NEEDS.—The plan shall provide for determining the extent of need for the services specified in paragraphs (1) and (2) in the area taking into consideration, among other things—

''(A) the numbers of older individuals residing in such area—

''(i) who have low incomes,

''(ii) who have greatest economic need (with particular attention to individuals who are members of historically disadvantaged groups),

''(iii) who have greatest social need (with particular attention to individuals who are members of historically disadvantaged groups), or

''(iv) who are Indians; and

''(B) the effectiveness of use of resources (including efforts of volunteers and voluntary organizations) in meeting such need.

''(4) PERFORMANCE PARTNERSHIP OBJECTIVES.—The plan shall identify area objectives, for purposes of the performance partnership required under sections 305A and 704A, on the basis of the determinations under paragraph (3) (and including objectives required under paragraph (5)), and shall be amended as necessary to incorporate, as appropriate, the objectives specified in the agreements negotiated by the State agency under such sections 305A and 704A.'';

(6) in paragraph (5)—

(A) by inserting ''OBJECTIVES FOR SERVICES TO OLDER INDIVIDUALS WITH GREATEST NEED.—The plan shall'' after ''(5)''; and

(B) by striking the semicolon at the end and inserting a period;

(7) in paragraph (6)—

(A) by inserting ''Policy Development.—The plan shall—'' after ''(6)'';

(B) by striking subparagraphs (A) (evaluations and public hearings) and (B) (technical assistance to providers);

(C) by relocating and redesignating subparagraph (D) as subparagraph (A);

(D) by relocating and redesignating subparagraph (F) as subparagraph (B);

(E) by striking the semicolon at the end of subparagraph (C) and inserting a period; and

(F) by striking subparagraphs (E) (arrangements with specified organizations), (G) (methods for determining priority services), (H) (coordination among programs), (J) (identification of protective services providers, (L) (coordination of services for Alzheimer's patients), (M) (coordination of mental health services), (O) (information on higher education), (Q) (coordination with housing providers), (R) (telephone listings of area agencies), and (S) (coordination of transportation services);

(8) by striking paragraphs (7) through (10) (assurances that funds will be spent for the purposes awarded);

(9) by striking subparagraphs (I) and (K) of paragraph (6) (community-based long-term care services) and inserting after paragraph (6) the following new paragraph:

''(7) COMMUNITY-BASED LONG-TERM CARE SERVICES.—The plan shall provide that the area agency will facilitate the coordination of community-based, long-term care services designed to enable older individuals to remain in their homes, by means including—

''(A) development of case management services as a component of the long-term care services, consistent with the requirements of paragraph (8);

''(B) involvement of long-term care providers in the coordination of such services; and

''(C) increasing community awareness of and involvement in addressing the needs of residents of long-term care facilities.'';

(10) by relocating and redesignating paragraph (20) as paragraph (8), and amending such paragraph by inserting ''PROVISION OF CASE MANAGEMENT SERVICES.—The plan shall'' after ''(8)'';

(11) by redesignating paragraph (11) as paragraph (9), and amending such paragraph—

(A) by inserting ''MAINTENANCE OF EFFORT FOR OMBUDSMAN PROGRAM.—The plan shall'' after ''(9)'';

(B) by striking ''section 307(a)(12)'' and inserting ''section 307(a)(9)''; and

(C) by striking the semicolon at the end and inserting a period;

(12) by redesignating and relocating paragraph (6)(P) as paragraph (10), and amending such paragraph—

(A) by inserting ''GRIEVANCE PROCEDURE.—The plan shall'' after ''(10)''; and

(B) by striking the semicolon and inserting a period;

(13) by striking paragraphs (6)(N), (18), and (19), and inserting after paragraph (10) the following paragraph:

''(11) SERVICES TO NATIVE AMERICANS.—The plan shall provide the following assurances concerning services to older Native Americans:

''(A) If there is a significant population of older individuals who are Indians in the area, the area agency will pursue activities, including outreach, to increase access of such individuals to programs and benefits under this title.

''(B) The area agency will, to the maximum extent practicable, coordinate the services it provides under this title with services provided under title VI.'';

(14) by striking paragraph (12) (area option concerning volunteer services coordinator);

(15) by striking paragraphs (13) through (16) (description of and assurances concerning activities of area agency); and

(16) by redesignating paragraph (17) as paragraph (12) and amending such paragraph—

(A) by inserting ''SPECIAL MENUS IN NUTRITION PROGRAMS.—'' after ''(12)'';

(B) by striking ''section 307(a) (13) (G)'' and inserting ''section 307(a) (10) (D)''; and

(C) by striking the semicolon and inserting a period.

(b) STATE WAIVERS.—Section 306(b) is amended—

(1) by striking paragraph (2) (procedural requirements for State agency waivers to area agencies); and

(2) by striking ''(1)'' after ''(b)''.

SEC. 105. STATE PLANS: REORGANIZATION, STREAMLINING, AND INCORPORATION OF PERFORMANCE PARTNERSHIPS.

(a) STATE PLAN REQUIREMENTS.—Section 307(a) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

''(1) AREA PLANS AND PERFORMANCE PARTNERSHIPS.—The plan shall—

"(A) require each area agency designated under section 305(a) (2) (A) to—

"(i) develop and submit to the State agency for approval, in accordance with a uniform format developed by the State agency, an area plan meeting the requirements of section 306 which specifies area objectives for purposes of performance partnerships under sections 305A and 704A, as required by section 306(a)(4); and

"(ii) amend such area plan as necessary to incorporate, as appropriate, objectives specified in the performance partnership agreements negotiated by the State agency under such sections 305A and 704A;

"(B) be based on such area plans; and

"(C) include the performance partnership agreements negotiated by the State agency with the Assistant Secretary under such sections 305A and 704A.";

(2) by striking paragraphs (3) (A) (evaluation of need for services), (9) (information and assistance services), and (22) (funding shares for priority services), and amending paragraph (2) to read as follows:

"(2) DETERMINATION OF SERVICE NEEDS.—The plan shall provide that the State agency will—

"(A) evaluate, using uniform procedures under section 202(a) (29) the need for supportive services (including legal assistance, information and assistance, and transportation services), nutrition services, and multipurpose senior centers within the State;

"(B) determine the extent to which existing public or private programs and resources (including volunteers and programs and services of voluntary organizations) meet such need; and

"(C) specify a minimum percentage of the funds received by each area agency for part B to be expended (unless waived by the State agency under section 306(b)) by such area agency to provide each of the categories of services specified in section 306(a) (2).";

(3) by striking paragraphs (3)(B) (maintaining rural funding), (29) and (37) (rural services and costs thereof), and (33) (intra-State funding formula), and adding after paragraph (2) the following new paragraph:

"(3) INTRA-STATE FUNDING REQUIREMENTS.—The plan shall—

"(A) shall include (and may not be approved unless the Assistant Secretary approves) the statement and demonstration required by paragraphs (2) and (4) of section 305 (d) (concerning intra-State distribution of funds); and

"(B) with respect to services to older individuals residing in rural areas—

"(1) provide assurances that the State agency will spend for each fiscal year, under this title and titles V and VII, not less than 105 percent of the amount so expended for fiscal year 1978;

"(ii) identify, for each fiscal year under the plan, the projected costs of providing such services (including the cost of providing access to such services); and

"(iii) describe the methods used to meet the needs for such services in the fiscal year preceding the first year to which such plan applies.";

(4) by striking paragraph (4) (methods of administration, personnel standards);

(5) by striking paragraph (8) (evaluations and hearings) and inserting after paragraph (3) the following paragraph:

"(4) EVALUATIONS.—The plan shall provide that the State agency will conduct periodic evaluations of, and public hearings on, activities and projects carried out under the State plan.";

(5) by striking paragraph (43) (grievance procedures) and amending paragraph (5) (hearing for area agencies and providers) to read as follows:

"(5) "HEARINGS FOR AREA AGENCIES AND PROVIDERS; GRIEVANCE PROCEDURES.—The plan shall provide that the State agency will—

"(A) afford an opportunity for a hearing upon request, in accordance with published procedures, to any area agency submitting a plan under this title, or to any provider of (or applicant to provide) services under such a plan; and

"(B) issue guidelines applicable to grievance procedures required by section 306(a)(10).";

(6) in paragraph (6), by inserting "REPORTS:—" after "(6)";

(7) in paragraph (7)—

(A) by inserting "FISCAL CONTROLS.—" after "(7)"; and

(B) by striking subparagraph (C);

(8) by redesignating paragraph (10) as paragraph (8) and amending such paragraph by inserting "RESTRICTION ON DIRECT PROVISION OF SERVICES.—" after "(8)";

(9) by striking paragraph (11) (hiring preference for older individuals and individuals trained in field of aging);

(10)(A) by redesignating paragraph (12) as paragraph (9), and amending such paragraph—

(i) by inserting "LONG-TERM CARE OMBUDSMAN PROGRAM.—" after "(9)"; and

(ii) by adding before the period ", and "will expend for such purpose not less than the total amount so expended by the State agency in fiscal year 1991"; and

(B) by striking paragraph (21);

(11) by redesignating paragraph (13) as paragraph (10), and amending such paragraph—

(A) by inserting "NUTRITION SERVICES.—" after "(10)";

(B) by striking subparagraphs (B) (primary consideration to congregate meals), (D) (accessibility of congregate meal site), (E) (outreach), (H) (grandfathered providers of home-delivered meals), and (M) (nonfinancial eligibility criteria); and

(B)(i) by inserting "and" at the end of subparagraph (K);

(ii) by striking "; and " at the end of subparagraph (L) and inserting a period; and

(iii) by redesignating subparagraph (C) and the remaining subparagraphs as subparagraphs (B) through (H);

(12) by striking paragraph (14) (restrictions on use of funds under the Act for acquisition, alteration, or construction of facilities);

(13) (A) by redesignating paragraph (15) as paragraph (11), and amending such paragraph—

(A) by inserting "LEGAL ASSISTANCE.—" after "(11)"; and

(B) (i) by striking "and" at the end of subparagraph (D); and

(ii) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(B) (i) by amending paragraph (18) by striking all that precedes "assign personnel" and inserting "the State will"; and

(ii) by relocating and redesignating such paragraph (18) as paragraph (11)(F);

(14) by redesignating paragraph (16) as paragraph (12), and amending such paragraph by inserting "PREVENTION OF ABUSE.—" after "(12)";

(15) by striking paragraph (17) (in-service personnel training);

(16) by striking paragraph (19) (guarantees that area agencies may give grants or contracts to providers of education and training services);

(17) by redesignating paragraph (20) as paragraph (13), and amending such paragraph by inserting "OLDER INDIVIDUALS OF LIMITED ENGLISH-SPEAKING ABILITY.—";

(18) by redesignating paragraph (23) as paragraph (14), and amending such paragraph by inserting "SPECIAL NEEDS POPULATIONS.—" after "(14)";

(19) by redesignating paragraph (24) as paragraph (15), and amending such paragraph by inserting "OUTREACH.—" after "(15)";

(20) by redesignating paragraphs (25) as paragraph (16), and amending such paragraph by inserting "OLDER INDIVIDUALS WITH SEVERE DISABILITIES.—" after "(15)";

(21) by redesignating paragraph (26) as paragraph (17), and amending such paragraph—

(A) by inserting "COMMUNITY-BASED SERVICES.—(A) LONG-TERM CARE SERVICES.—" after "(26)"; and

(B) by striking "section 306(a)(6)(I)" and inserting "section 306(a)(6)(D)";

(22) by relocating and redesignating paragraph (44) as paragraph (17)(B);

(23) by striking paragraph (27) (assurances concerning part D in-home services program);

(24) by striking paragraph (28) (assurances concerning part E special needs program);

(25) by redesignating paragraph (30) as paragraph (18), and amending such paragraph by inserting "TITLE VII PROGRAM.—" after "(18)";

(26) by striking paragraph (31) (State volunteer services coordinator);

(26) by redesignating paragraph (32) as paragraph (19), and amending such paragraph by inserting "TECHNICAL ASSISTANCE TO PROVIDERS.—" after "(19)";

(27) (A) by redesignating paragraph (34) as paragraph (20), and amending such paragraph by inserting "OLDER NATIVE AMERICANS.—(A)" after "(34)"; and

(B) by redesignating subparagraphs (A) and (B) of paragraph (35) as clauses (i) and (ii), and redesignating and relocating such paragraph (35) as subparagraph (B) of paragraph (20);

(28) by redesignating paragraph (36) as paragraph (21), and amending such paragraph by inserting "CASE MANAGEMENT PROVIDERS.—"after "(21)";

(29) by striking paragraphs (38) and (39) (assurances concerning use of funds);

(30) by striking paragraph (40) (assurances concerning part G program for in-home caretakers);

(31) by striking paragraph (41) (efforts to coordinate services and provide multigenerational activities); and

(32) by striking paragraph (42) (coordination of transportation services).

SEC. 106. EFFECTIVE DATE.

The amendments made by this title shall become effective with respect to a State on the effective date of the first State plan under section 307 of the Older Americans Act of 1965 that takes effect one year or later after the enactment of this Act.

TITLE II—OTHER AMENDMENTS TO THE OLDER AMERICANS ACT OF 1965

PART A—ADMINISTRATION OF AGING

SEC. 201. NATIONAL ELDERCARE LOCATOR SERVICE.

Section 202(a)(24) is amended to read as follows:

"(24) develop and operate, either directly or through contracts, grants, or cooperative agreements, a National Eldercare Locator Service, providing nationwide toll-free information and assistance services to identify community resources for older individuals;".

SEC. 202. AUTHORIZATIONS OF APPROPRIATIONS.

(a) FEDERAL COUNCIL ON THE AGING.—Section 204(g) is amended by striking all that follows "to carry out this section" and inserting "$226,000 for fiscal year 1996 and such sums as necessary for each of fiscal years 1997 and 1998.".

(b) ADMINISTRATION ON AGING.—Section 215 is amended to read as follows:

"SEC. 215. There are authorized to be appropriated, for carrying out the responsibilities of the Administration on Aging under this title—

"(1) for fiscal year 1996, $18,149,000, plus such additional sums as may be necessary to carry out responsibilities with respect to programs under section 311 and title V transferred to the Administration on Aging by the Older Americans Act Amendments of 1995, and

''(2) such sums as may be necessary for each of fiscal years 1997 and 1998,

of which up to $1,000,000 for each such fiscal year shall be available for operation of the National Eldercare Locator Service under section 202(a)(24).''.

PART B—STATE AND COMMUNITY PROGRAMS ON AGING

SEC. 211. CLARIFICATION CONCERNING SERVICES TO NONELDERLY.

Section 301 is amended by adding at the end the following new subsection:

''(d) SCOPE OF SERVICES; USE OF FUNDS.—

''(1) RESTRICTED USE OF RESOURCES UNDER ACT.—Federal funds paid to States under this title, and cash and in-kind contributions required by section 304(e) (as redesignated by section 102 of this Act) as the non-Federal share of expenditures under this title, shall be used only for activities and services to benefit older individuals and other individuals as specifically provided in this title.

''(2) RESTRICTION INAPPLICABLE TO OTHER RESOURCES.—Neither paragraph (1) nor any other provision of this title shall be construed to prohibit State or area agencies on aging from engaging in activities or providing services to benefit individuals not described in paragraph (1) using cash or in-kind resources from sources not described in paragraph (1).

SEC. 212. COORDINATION OF SERVICES FOR INDIVIDUALS WITH DISABILITIES UNDER AREA PLANS.

Section 306(a) (as amended by section 104 of this Act) is further amended by inserting after paragraph (3) the following new paragraph:

''(4) provide assurances that the area agency on aging will coordinate planning, identification, assessment of needs, and service for older individuals with disabilities, with particular attention to individuals with severe disabilities, with agencies that develop or provide services for individuals with disabilities.''.

SEC. 213. ELIGIBILITY OF OLDER INDIANS FOR SERVICES UNDER AREA PLANS.

(a) UNDER AREA PLANS.—Section 306(a) (18) is amended by inserting before the semicolon '', including assurances that, notwithstanding any provision of this Act restricting eligibility for services to individuals aged 60 or older, it will make services under the area plan available, to the same extent as such services are available to older individuals within the service area, to older Indians eligible for services under an approved plan under title VI''.

(b) UNDER GRANTS FOR NATIVE AMERICANS.—Sections 602, 611, 613, and 614 are each amended by striking ''individuals who are'' each place it appears.

SEC. 214. STATE OPTION FOR COST SHARING.

(a) STATE PLAN REQUIREMENT.—Section 307(a) (as amended by section 105 of this Act) is further amended by adding at the end the following new paragraph:

''(31) If the State elects to require cost sharing by recipients of services under the State plan (or to require or permit area agencies on aging to require cost sharing by recipients of services under area plans), the plan shall—

''(A) provide that no cost sharing shall be required for—

''(i) information and assistance, outreach, or case management services;

''(ii) ombudsman or other protective services; or

''(iii) congregate or home-delivered nutrition services; and

''(B) (i) exempt from cost-sharing requirements individuals with incomes below a low-income threshold set by the State, and

''(ii) set cost-sharing rates for individuals with incomes above such threshold on a sliding-fee scale based on income.''.

(b) AREA PLAN REQUIREMENT.—Section 306(a) (as amended by section 104 of this Act) is further amended—

(1) by striking the period at the end of paragraph (11) and inserting a semicolon; and

(2) by adding at the end the following new paragraph:

''(12) provide assurances that any requirements for cost-sharing by recipients of services under the plan will be consistent with the provisions of the State plan under section 307(a)(31)''.

SEC. 215. STATE OPTION CONCERNING CONSUMER-DIRECTED SERVICES.

Section 307(a) (as amended by sections 105 and 214 of this Act) is further amended by adding at the end the following new paragraph:

''(32) The plan shall specify—

''(A) whether (and if so, with respect to which supportive or nutrition services) the State elects to permit area agencies on aging—

''(i) to provide services to older individuals through direct contracts with the individuals delivering such services; or

''(ii) to provide vouchers or cash to older individuals to permit such older individuals to contract with individuals or entities for the delivery of such services (and, if so, any requirements for the setting of payment rates or amounts);

''(B) the qualifications and other requirements that must be met by individuals and entities providing services under such arrangements; and

''(C) whether (and, if so, the conditions under which) services may be provided to an older individual by a family member under such an arrangement.''.

SEC. 216. TRANSFER OF FUNDS BETWEEN PROGRAMS.

(a) STREAMLINING OF GENERAL RULES.—Section 308(b) is amended—

(1) in paragraph (4)—

(A) by striking ''(A)'' after ''(4)''; and

(B) by striking subparagraph (B) (Assistant Secretary's discretion to permit State to transfer additional amounts between congregate and home-delivered meal programs); and

(2) in paragraph (5) (authority to transfer funds between nutrition and services programs), to read as follows:

''(5) Of the funds received by a State for a fiscal year from funds appropriated under subsections (a)(1), and (b)(1) and (2), of section 303, the State may elect to transfer not more than 20 percent between programs under part B and part C, for use as the State considers appropriate.

(b) WAIVER AUTHORITY.—For the Assistant Secretary's authority to waive limitations on amounts transferable between programs, see section 219 of this Act, adding a new section 314.

SEC. 217. AVAILABILITY OF DISASTER RELIEF FUNDS TO TRIBAL ORGANIZATIONS.

Section 310 is amended—

(1) in subsection (a)(1)—

(A) by inserting ''(or to any tribal organization receiving a grant under title VI)'' after ''any State''; and

(B) by inserting ''(or used by such tribal organization)'' before ''for the delivery of supportive services'';

(2) in subsection (a)(2), by inserting ''and tribal organizations'' after ''States''; and

(3) in subsection (a)(3), by inserting ''or tribal organization'' after ''State'' each place it appears; and

(4) in subsections (b)(1) and (c,) by inserting ''and tribal organizations'' after ''States''.

SEC. 218. NUTRITION SERVICES INCENTIVE PROGRAM.

(A) ESTABLISHMENT OF PROGRAM.—Section 311, including the heading thereof, is amended to read as follows:

''NUTRITION SERVICES INCENTIVE PROGRAM

''SEC. 311. (a) PURPOSE.—The purpose of the program under this section is to provide incentives to encourage and reward effective performance by States and tribal organizations in the efficient delivery of nutritious meals to older Americans.

''(b) PAYMENTS TO TRIBAL ORGANIZATIONS.—(1) FUNDING.—The Assistant Secretary shall reserve 3 percent of the total amount appropriated for a fiscal year under subsection (d) for payment to tribal organizations in accordance with paragraph (2).

''(2) ALLOTMENT AND PAYMENT.—The Assistant Secretary shall allot and pay, to each tribal organization with a plan approved under title VI for a fiscal year, an amount bearing the same ratio to the total amount reserved under paragraph (1) as the number of meals served by such tribal organization, under such plan approved for the preceding fiscal year, bears to the total number of meals served by all tribal organizations under all such plans approved for such preceding fiscal year.

''(c) PAYMENTS TO STATES.—(1) FUNDING.—The Assistant Secretary shall allot among the States for each fiscal year, in accordance with paragraph (2), the balance of amounts appropriated under subsection (d) remaining after application of subsection (b).

''(2) ALLOTMENT AND PAYMENT.—The Assistant Secretary shall allot and pay, to each State agency with a plan approved under this title for a fiscal year, an amount bearing the same ratio to the total amount reserved under paragraph (1) as the number of meals served in the State, under such plan approved for the preceding fiscal year, bears to the total number of meals served in all States under all such plans approved for such preceding fiscal year.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For carrying out the purposes of this section, there are authorized to be appropriated $151,250,000 for fiscal year 1996 and such sums as may be necessary for each of fiscal years 1997 and 1998.''.

(b) ELIMINATION OF MAINTENANCE OF EFFORT.—Section 339A is repealed.

SEC. 219. WAIVERS OF CERTAIN REQUIREMENTS FOR STATE PROGRAMS.

(a) GENERAL WAIVER AUTHORITY.—Part A of title III is amended by adding at the end the following new section:

''WAIVERS

''SEC. 315. (a) IN GENERAL.—The Assistant Secretary may waive any of the provisions enumerated in subsection (b) with respect to a State, upon application by the State agency containing or accompanied by documentation sufficient to establish, to the satisfaction of the Assistant Secretary, that—

''(1) approval of the State legislature has been obtained or is not required;

''(2) the State agency has consulted with area agencies on aging with respect to the proposal for which waiver is sought;

''(3) such proposal has been made available for public review and comment within the State (and a summary of comments received shall be included with the application); and

''(4) the State agency has given adequate consideration to the probable positive and negative consequences of approval of the waiver application, and the probable benefits for older individuals can reasonably be expected to outweight any negative consequences, or particular circumstances in the State otherwise justify the waiver.

''(b) REQUIREMENTS SUBJECT TO WAIVER.—The provisions of this title that may be waived under this section are—

''(1) any provisions of sections 305, 306, and 307 requiring statewide uniformity of programs under this title, to the extent necessary to permit demonstrations, in limited areas of a State, of innovative approaches to assist older individuals;

''(2) any area plan requirement under section 306(a);

''(3) any State plan requirement under section 307(a);

''(4) any restriction, under section 308(b)(4) or (5), on the amount that may be transferred between programs under part B and part C, or between programs under subpart 1 and subpart 2 of part C; and

''(5) all or any part of the reduction in allotment required under section 309(c) with respect to a State which reduces expenditures under its State plan (but only to the extent that the non-Federal share of expenditures is not reduced below any minimum specified in section 304(d) or any other provision of this title.''.

(b) CONFORMING AMENDMENT.—Section 307(b) is amended—

(1) by striking paragraph (2) (waiver of maintenance of effort for rural areas); and

(2) by striking ''(1)'' after ''(b)''.

SEC. 220. CONSOLIDATION OF AUTHORITIES FOR SUPPORTIVE SERVICES AND SENIOR CENTERS.

(a) COMMUNITY-BASED CARE AND SERVICES.—Section 321(a)(5) is amended by striking ''including'' and all that follows and inserting ''including—

''(A) client assessment, case management, and development and coordination of community services;

''(B) in-home services for frail older individuals (including supportive services for victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and for the families of such individuals);

''(C) supportive activities to meet the special needs of caregivers, including caretakers who provide in-home services to frail older individuals;

''(D) in-home and other community services, including home health, homemaker, shopping, escort, reader, and letter writing services, to assist older individuals to live independently in a home environment;''.

(d) DISEASE PREVENTION AND HEALTH PROMOTION.—Section 321(a)(8) is amended by inserting ''disease prevention and health promotion services and information, including'' after ''(8)''.

(c) GENERAL AUTHORITY.—Section 321(a)(22) is amended by inserting ''necessary for the general welfare of older individuals'' after ''any other services''.

(d) RELOCATION OF DEFINITIONS.—

(1) Section 342 (definition of ''in-home services'') is relocated and redesignated as paragraph (46) of section 102, and is amended by striking ''For purposes of this part, the term'' and inserting ''The term''.

(2) Section 363 (definition of ''disease prevention and health promotion services'') is relocated and redesignated as paragraph (47) of section 102, and is amended by striking ''For purposes of this part, the term'' and inserting ''The term''.

(e) REPEAL OF SUPERSEDED AUTHORITIES.—

(1) SUBSTANTIVE AUTHORITY.—Part D (In-Home Services for Frail Older Individuals), part E (Additional Assistance for Special Needs of Older Individuals), part F (Disease Prevention and Health Promotion Services), and part G (Supportive Activities for Caretakers Who Provide In-Home Services to Frail Older Individuals) are repealed.

(2) AUTHORIZATION OF APPROPRIATIONS.—(A) REPEALS; REDESIGNATION.—Section 303 is amended by striking subsection (d), (e), (f), and (g), and by redesignating subsection (h) as subsection (d).

(B) CONFORMING AMENDMENT.—Sections 202(a)(24) and 304(b)(2) are each amended by striking ''303(h)'' and inserting ''303(d)''.

SEC. 221. CONSOLIDATION OF AUTHORITIES FOR NUTRITION SERVICES.

(a) SCHOOL/BASED MEALS AS CONGREGATE NUTRITION SERVICES.—

(1) Section 331 is amended by inserting ''(a) IN GENERAL.—''after ''331.''.

(2) Section 338(a) is relocated and redesignated as subsection (b) of section 331, and is amended, in the matter preceding paragraph (1), by striking all that precedes ''projects'' and inserting instead the following:

''(b) SCHOOL-BASED MEALS AND MULTIGENERATIONAL PROGRAMS.—The State may include, in programs under this section,''.

(b) REPEAL OF SUPERSEDED AUTHORITY.—

(1) SUBSTANTIVE AUTHORITY.—Part C of title III is amended by striking subpart 3 and redesignating subpart 4 as subpart 3.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 303(b)(3) is repealed.

SEC. 222. AUTHORIZATION OF APPROPRIATIONS.

(a) SUPPORTIVE SERVICES AND SENIOR CENTERS.—Section 303(a)(1) is amended by striking all that precedes ''for the purpose'' and inserting ''There are authorized to be appropriated $306,711,000 for fiscal year 1996 and such sums as may be necessary for each of fiscal years 1997 and 1998,''.

(b) CONGREGATE NUTRITION SERVICES.—Section 303(b)(1) is amended by striking all that precedes ''for the purpose'' and inserting ''There are authorized to be appropriated $375,809,000 for fiscal year 1996 and such sums as may be necessary for each of fiscal years year 1997 and 1998,''.

(c) HOME-DELIVERED NUTRITION SERVICES.—Section 303(b)(2) is amended by striking all that precedes ''for the purpose'' and inserting ''There are authorized to be appropriated $94,065,000 for fiscal year 1996 and such sums as may be necessary for each of fiscal years 1997 and 1998,''.

PART C—RESEARCH, DEVELOPMENT, AND DEMONSTRATIONS

SEC. 231. REVISION OF TITLE IV.

Title IV is amended by striking all that follows the heading of the title and inserting the following:

''STATEMENT OF PURPOSE

''SEC. 401. (a) It is the purpose of this title to expand the Nation's knowledge and understanding of aging and the aging process; to design, test, and promote utilization of innovative ideas and best practices in programs and services for older individuals; to help meet the needs for trained personnel in the field of aging; and to increase the awareness of citizens of all ages of the need to assume personal responsibility for their own aging through—

''(1) education and training to develop an adequately trained work force to work with and on behalf of older individuals;

''(2) research and policy analysis to improve access to and delivery of services;

''(3) development of methods and practices to improve quality and effectiveness of services;

''(4) demonstration of new approaches to design, delivery and coordination of programs and services;

''(5) technical assistance on planning, development, implementation, evaluation, and improvement of programs and services under this Act; and

''(6) dissemination of information on aging issues, their impact on individuals and society, and programs and services benefiting older individuals.

''(b) ACTIVITIES GIVEN SPECIAL ATTENTION.—The activities supported under this title are intended to fulfill the objectives for older Americans specified in section 101, with special attention to the service and advocacy goals expressed in section 301(a)(1) (A), (B), (C) and (D) and section 601, and to the special population groups identified as vulnerable and at risk throughout the Act.

''PART A—EDUCATION AND TRAINING

''PURPOSE

SEC. 410. The purpose of this part is to improve the quality of service and to help meet critical shortages of adequately trained personnel for programs in the field of aging by activities including—

''(1) identifying work force training and development needs in the field of aging;

''(2) developing a broad range of educational and training programs and activities for professionals, paraprofessionals, administrators, technicians and service workers;

''(3) encouraging recruitment, training and placement of minority trainees in key positions within agencies and organizations of the aging network;

''(4) improving academic gerontology training and education programs to make them more responsive to changing requirements;

''(5) increasing the capacity of aging planning and service organizations to improve the performance of their staff and other providers through training and other developmental activities; and

''(6) improving the knowledge and skills of teachers, instructors, trainers, guidance counselors and other personnel development staff in aging concepts and workforce opportunities and practices.

''GRANTS AND CONTRACTS

''SEC. 411. (a) IN GENERAL.—The Assistant Secretary may make grants to any public or nonprofit private agency, organization or institution, and may enter into contracts with any agency, organization, institution, or individual, or activities to achieve the purposes of this part, including—

''(1) development and improvement of multidisciplinary education and training programs (including expansion and improvement of curricula, instructional methods and materials, faculty and teacher development, and program administration) in academic institutions and other educational organizations which prepare individuals for employment in programs and occupations serving older individuals;

''(2) development and improvement of continuing education and in-service training opportunities for individuals already working in the field of aging, including the personnel of State offices, area agencies on aging, senior centers, and nutrition, counseling, ombudsman, adult protective services, and legal assistance programs; and

''(3) development of curriculum and guidance materials for students in secondary and vocational schools to encourage them to pursue employment and careers in the field of aging.

''(b) PROJECTS GIVEN SPECIAL CONSIDERATION.—To achieve the purposes of this title, the Assistant Secretary shall give special consideration to the support of projects that—

''(1) improve opportunities for career training activities to ensure an adequate and competent workforce in aging;

''(2) increase the capacity of State and area agency and non-profit service organizations to provide short-term in-service training to staff and volunteers;

''(3) develop leadership knowledge and skills of managers and administrators of organizations and agencies which plan, advocate, and provide services to older individuals, through workshops, seminars, and training institutes;

''(4) provide in-service training opportunities for program directors and providers of services to older Indians under title VI through grants to tribal and other nonprofit Indian aging organizations; and

''(5) improve the training and preparation of the workforce (including professionals, paraprofessionals and volunteers) providing home and community services for older individuals with physical and cognitive disabilities and mental health disorders.

''PART B—RESEARCH, DEVELOPMENT, AND DEMONSTRATIONS

''PURPOSE

''SEC. 420. The purpose of this part is to improve the quality and efficiency of programs serving older individuals through research and development projects, and demonstration projects, designed to—

''(1) conduct research and policy analysis to—

''(A) develop and synthesize knowledge about aging programs, practices and policies from multidisciplinary perspectives; and

''(B) assess the effectiveness of services and practices designed to improve access to and delivery of service programs; and

''(2) develop, test, and evaluate innovative planning, advocacy, and service practices and programs.

''RESEARCH AND DEVELOPMENT PROJECTS

''SEC. 421. (a) IN GENERAL.—The Assistant Secretary may make grants to any public or nonprofit private agency, organization, or institution, and may enter into contracts with any agency, organization, institution, or individual for research or policy analysis related to the purposes of this part, including development of practices, assessment instruments, and applications involving—

''(1) use of technology for planning and delivery of services; and

''(2) use of interactive communication systems and assistive devices to maintain or increase the independence of older individuals.

''(b) CONSULTATION AND COLLABORATION WITH OTHER FEDERAL AGENCIES.—The Assistant Secretary may consult with, and may enter into formal agreements with, other Federal agencies supporting aging research and development activities, including agreements involving interagency transfer of funds to support collaborative research activities consistent with the conditions specified in section 451(b).

''DEMONSTRATION PROJECTS

''SEC. 422. (a) IN GENERAL.—The Assistant Secretary may make grants to any public agency or nonprofit private organization or enter into contracts with any agency or organization to design, test and demonstrate new approaches to planning and delivery of supportive services, nutrition services and other activities to maintain or increase the independence and improve the quality of life of older individuals.

''(b) PROJECTS GIVEN PRIORITY CONSIDERATION.—The Assistant Secretary shall give priority consideration to funding the following projects under this section:

''(1) COMMUNITY SERVICES FOR FUNCTIONALLY IMPAIRED INDIVIDUALS.—Planning, development, and implementation of new approaches to delivery of home and community-based supportive services for older individuals with disabilities limiting their ability to perform activities of daily living, including projects involving coordination and integration of such services with those for nonelderly individuals with similar disabilities, including approaches that—

''(A) promote individual choice in the selection of services;

''(B) eliminate access barriers for populations with greatest need;

''(C) reduce or eliminate duplication and fragmentation of services;

''(D) strengthen the quality, efficiency, and cost-effectiveness of non-profit service providers;

''(E) improve the quality and effectiveness of personnel of public and private entities involved in service delivery; and

''(F) develop cooperative relationships with private entities to increase the effective use of available public and private resources.

''(2) PREVENTION OF CRIME, VIOLENCE, AND ABUSE.—Planning, development, implementation, and evaluation of comprehensive community, State, and tribal models designed to prevent crime, violence and abuse against the elderly which include—

''(A) public education on prevention for older individuals;

''(B) supportive services for older individuals who have been victimized;

''(C) improvements in information and data reporting systems;

''(D) coordination of public and private sector services and resources; and

''(E) in-service and cross-service training of personnel in criminal justice, health, mental health, law enforcement, social and protective services, and aging and advocacy service systems.

''(c) ADDITIONAL PROJECTS.—The Assistant Secretary may support under this section any project designed to achieve the purposes of this part, including the following:

''(1) COMPREHENSIVE COMMUNITY SERVICES TO INDIVIDUALS AT RISK OF LOSING INDEPENDENCE.—Projects to assist older individuals at risk of losing their independence without assistance in accomplishing activities of daily living, including those disabled by Alzheimer's Disease and related disorders, physical disability, mental illness or emotional stress, and developmental disabilities, through comprehensive State and community model programs for such supportive services to such individuals, their families and caregivers, including—

''(A) in-home health care;

''(B) social and medical adult day care;

''(C) homemaker aides and personal care attendants;

''(D) transportation to and from community health, mental health and social service facilities;

''(E) respite care, caregiver education, training, and counseling and other supportive services for primary caregivers of persons with Alzheimer's Disease, physical and developmental disabilities, or other serious functional impairments; and

''(F) information and referral, outreach, counseling and other services to increase access to appropriate medical, nutritional, and supportive services.

''(2) HOUSING SERVICES.—Projects addressing the special housing needs of older individuals by activities including—

''(A) developing programs to enable or assist older homeowners—

''(i) to maintain their residences through repairs or renovations, and

''(ii) to increase their physical safety through structural modifications or alterations and installation of security devices;

''(B) studying and demonstrating methods of adapting existing housing, or construction of new housing, to meet the needs of older individuals with functional impairments;

''(C) coordinating counseling services with those available to residents of Federal and State assisted housing facilities with high concentrations of older residents;

''(D) developing information, counseling and referral programs for older renters and homeowners on housing options, including eligibility requirements; application processes; financing; and legal rights and responsibilities of tenancy and restricted ownership, including foreclosure and eviction.

''(3) EDUCATION AND TRAINING.—Projects to provide education and training to older individuals designed to enable them to lead more productive lives through development and demonstration of—

''(A) older adult literacy programs, including use of peer tutoring;

''(B) pre-retirement counseling and education programs; and

''(C) older adult occupational training and employment placement and counseling activities not currently supported under title V or programs administered by the Department of Labor.

''(4) TRANSPORTATION SERVICES.—Projects to improve and develop transportation systems which—

''(A) increase access of older individuals, especially low-income individuals and those living in rural areas, to community services essential to independent living;

''(B) provide low-cost commuter transportation for in-home personal care aides serving functionally impaired older individuals in under-served public transit areas; and

''(C) provide assisted transportation services for frail and disabled older individuals.

''(5) VOLUNTEER OPPORTUNITIES.—Projects developed in conjunction with the Corporation for National and Community Service to develop—

''(A) innovative opportunities for older volunteers to fulfill community needs which are not being met by existing programs (including volunteer programs), including opportunities to provide—

''(i) multigenerational services addressing the needs of youth and children; and

''(i) peer support and home and community services to other older individuals with functional impairments or otherwise at risk of losing their ability to live independently; and

''(B) innovative multigenerational volunteer programs affording opportunities for children, youth, and adults to serve unmet needs of functionally impaired older individuals regardless of their living situation.

''(6) HEALTH-RELATED SERVICES.—Projects to demonstrate effective home and community rehabilitative, health and mental health promotion, and disease prevention activities for older individuals at risk of losing their ability to live independently.

''(7) CONSUMER PROTECTION.—Projects to develop innovative approaches to consumer protection for older individuals in home and community settings, addressing consumer rights and protections relating to auto, health, life, and other insurance policies; mortgages, leases, and similar property and housing rights; and personal loans and other financial transactions.

''PART C—CENTERS

''PURPOSE

''SEC. 431. The purpose of this part is to improve the quality of services available to older individuals through multi-function, multi-disciplinary centers and other cross-cutting activities as resources for planners, administrators, policy-makers and providers in the field of aging.

''FUNCTIONS OF GRANTEES AND CONTRACTORS; ADVISORY BOARDS

''SEC. 432. (a) FUNCTIONS.—Grantees and contractors under this part shall, as appropriate, perform the following functions:

''(1) evaluate, analyze, and report on program policies and practices to assess their effectiveness in meeting the needs and improving the quality of life of older individuals and their families and caregivers;

''(2) compile, select, and make available research, evaluation and demonstration findings which provide useful guidance in determining the needs of older individuals and improving practices in the field of aging;

''(3) develop strategies and models to improve the quality, efficiency, and effectiveness of service programs and activities;

''(4) develop technical assistance and training materials and participate in workshops, conferences and events which promote transfer of useful information and practices;

''(5) sponsor activities which enhance the education and training of a competent workforce in the field of aging;

''(6) assist other grantees conducting demonstration or pilot projects under the Act by providing documentation, assessment, and other assistance in the planning and implementation of such pilot projects; and

''(7) conduct information dissemination activities in coordination with such activities of the National Aging Information Center.

''(b) ADVISORY BOARDS.—Each center supported by a grant under this part shall establish an advisory board which—

''(1) shall provide policy guidance with respect to the planning and conduct of activities under such grant; and

''(2) whose members shall include representatives of—

''(A) State and area agencies on aging;

''(B) appropriate national, State, and local service organizations; and

''(C) other groups as appropriate.

''GRANTS AND CONTRACTS

''SEC. 433. (a) NATIONAL CENTERS PROVIDING SUPPORT TO ADMINISTRATORS OF GRANT PROGRAMS.—(1) IN GENERAL.—The Assistant Secretary may make grants to or enter into contracts with any public or non-profit private entities, for the purpose of operating national centers serving primarily as informational resources to State and area agencies administering programs under titles III and VII, tribal organizations and other organizations administering programs under title VI, and providers of services under such programs.

''(2) FUNCTIONS OF CENTERS.—Centers funded under this subsection shall focus on selected subject-matter areas (including all policy and program issues, such as development, delivery, financing, and coordination of services, concerning such subject-matter area) relating to programs under titles III, VI, and VII, and may include centers such as those focusing on the following program areas:

''(A) Comprehensive home and community-based services, including long-term care services, intended to enable functionally impaired elderly to remain in their homes and communities.

''(B) Nutrition services, including congregate and home-delivered meals, dietary standards, and related matters.

''(C) Information and referral services.

''(D) Older Native Americans, including individuals living in tribal and in non-tribal areas.

''(E) Legal assistance.

''(3) NATIONAL OMBUDSMAN AND ELDER ABUSE CENTERS.—Funds available under this subsection may be used, to the extent the Assistant Secretary finds necessary, to support the activities of the National Ombudsman Resource Center under section 202(a)(21) and the activities of the National Center on Elder Abuse under section 202(d).

''(b) NATIONAL EDUCATION AND TRAINING CENTERS.—(1) IN GENERAL.—The Assistant Secretary may make grants to or enter into contracts with any public or non-profit private entities, for the purpose of operating national centers to encourage leadership and improve education, training, and employment practices for the workforce needed to plan, administer and provide services under this Act, and to promote policy discussion and development to prepare the Nation for the increased and changing demands of its aging population.

''(2) FUNCTIONS OF CENTERS.—Centers funded under this subsection may include—

''(A) multidisciplinary academic centers of gerontology to conduct applied research, education, training, technical assistance and dissemination activities with special attention to human resource and development issues affecting special population groups; and

''(B) a national leadership institute on aging to develop and conduct training activities for executive managers and senior officials of government and non-profit agencies, voluntary groups, professional associations, and other organizations responsible for planning, financing, and providing programs and services for older individuals.

''(c) CROSS-CUTTING POLICY CENTERS.—(1) IN GENERAL.—In addition to the grants and contracts authorized under subsections (a) and (b), the Assistant Secretary may make grants to or enter into contracts with any public or non-profit private entities, for research, policy analysis, technical assistance, information dissemination or training activities, as appropriate on any area or areas of broad national interest (including social, economic, health, mental health, and environmental issues) affecting older individuals.

''(2) ISSUES ADDRESSED.—Issues that may be addressed under a grant under this subsection include—

''(A) broad societal issues addressed in section 101, including transportation, housing, employment, income security, public safety, health, and mental health; and

''(B) concerns of special population groups among older individuals, including low income, older women, rural elderly, minorities, and disabled populations.

''PART D—INFORMATION DISSEMINATION AND RELATED ACTIVITIES

''PURPOSE

''SEC. 441. (a) IN GENERAL.—The purpose of this part is to improve the quality, efficiency, availability, and accessibility of services for older individuals through support of information dissemination and utilization activities which—

''(1) collect, preserve, and disseminate, publish, or otherwise make available relevant materials concerning matters such as research and demonstration findings, and training and technical assistance materials;

''(2) synthesize, publish, and disseminate information concerning completed projects under this title which are of demonstrated value, including—

''(B) technical assistance and training in the implementation and adaptation of project methods; and

''(C) the development of additional materials which increase the awareness and acceptance of such project results;

''(3) locate, publicize, and make available practical self-help information for older individuals and their families and encourage development of appropriate public education activities;

''(4) support conferences, forums, and other meetings designed to identify, disseminate and promote utilization of research findings, policy practices, and best practices; and

''(5) provide technical assistance to grantees under this title and other recipients of support under this Act on the design, development and promotion of products and information materials.

''(b) COORDINATION WITH OTHER INFORMATION SOURCES.—Activities supported under this part will be coordinated with the information dissemination activities of Centers authorized under part C and other Federal information clearinghouses and document repositories.

''GRANTS AND CONTRACTS

''SEC. 442. (a) IN GENERAL.—The Assistant Secretary may make grants to any public agency or non-profit private organization or enter into contracts with any agency or organization for activities to carry out the purposes of this part, including the following:

''(1) activities of the National Aging Information Center established under section 202(e).

''(2) sponsorship and co-sponsorship with other Federal agencies and other public and private organizations of national and regional conferences and other meetings which disseminate discretionary project findings and information related to issues and concerns affecting the well-being of older individuals; and

''(3) A National Academy on Aging to serve as a forum for policy analysis and debate on current and emerging issues and for informing policy officials and the public about such issues.

''PART E—GENERAL PROVISIONS

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 451. (a) AUTHORIZATION.—There are authorized to be appropriated to carry out the provisions of title $44,384,000 for fiscal year 1996, and such sums as necessary for each of fiscal years 1997 and 1998.

''(b) RESTRICTONS.—No funds appropriated under this title—

''(1) may be transferred to any office or other authority of the Federal Government which is not directly responsible to the Assistant Secretary, unless those funds are used for purposes authorized under this title in accordance with conditions specified by formal inter-agency agreements with other Federal agencies;

''(2) may be used for any program or activity which is not specifically authorized by this title (except as specifically authorized by this Act); or

''(3) may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this title are separately identified in such grant or payment and are used for the purposes of this title.

''PAYMENT OF GRANTS

''SEC. 452. (a) CONTRIBUTIONS BY GRANTEES AND CONTRACTORS.—To the extent the Assistant Secretary deems appropriate, the Assistant Secretary shall require the recipient of any project grant or contract under this title to contribute money, facilities, or services for carrying out the project for which such grant or contract is made.

''(b) METHOD OF PAYMENT.—Payments under this title pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Assistant Secretary may determine.

''ADMINISTRATION

''SEC. 453. (a) ADMINISTRATION ON AGING.—In order to carry out the provisions of this title effectively, the Assistant Secretary shall administer this title through the Administration on Aging.

''(b) ASSISTANCE FROM OTHER AGENCIES.—In carrying out the provisions of this title, the Assistant Secretary may request the technical assistance and cooperation of other agencies and departments of the Federal Government as may be appropriate.

"(c) OUTREACH TO APPLICANTS.—The Assistant Secretary shall ensure that applications from agencies, organizations, and institutions representing minorities, are encouraged in the writing of grant proposal solicitations and contract requests for proposals.

"(d) CONSULTATION.—The Assistant Secretary shall, in developing priorities, consistent with the requirements of this title, for awarding grants under this title, consult with State agencies on aging, area agencies on aging, recipients of grants under title VI, institutions of higher education, organizations representing beneficiaries of services under this Act, and other organizations and individuals with expertise in aging issues.

"(e) EVALUATIONS AND REPORTS.—The Assistant Secretary shall ensure that grants and contacts awarded under this title—

"(1) conduct evaluations and prepare reports indicating their benefit to older individuals, and to programs under this Act; and

"(2) comply with the requirements under this Act.

"(f) REPORT TO CONGRESS.—The Assistant Secretary shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report for each fiscal year that describes activities for which funds were provided under this title including—

"(1) an abstract describing the purpose and activities of each grant or contract awarded or continued;

"(2) the name and address of the organizational recipient;

"(3) the name and affiliation of the project director;

"(4) the period of project performance; and

"(5) the amount of Federal funds awarded in the fiscal year on which the report is made.

"(g) EXTERNAL REVIEW.—The Assistant Secretary shall establish by regulation and implement an external review process to evaluate applications for discretionary grant awards under this title.".

PART D—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

SEC. 241. TRANSFER OF AUTHORITY.

(a) IN GENERAL.—Section 502(a) is amended by striking "Secretary of Labor (hereinafter in this title referred to as the 'Secretary')" and inserting "Assistant Secretary".

(b) TRANSFER OF CONTRACTS, GRANTS, ETC.—

(1) IN GENERAL.—There are transferred from the Department of Labor to the Department of Health and Human Services any contracts, grants, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with or arising from the administration of the program under title V of the Older Americans Act of 1965.

(2) INTERAGENCY ARRANGEMENTS.—The Secretaries of Labor and Health and Human Services shall enter into and implement such arrangements as they find reasonable and necessary for the orderly transfer of such program in accordance with this section.

(3) CONTINUATION OF REGULATIONS, GRANTS, CONTRACTS, ETC.—All rules, regulations, administrative directives, grants, contracts, and other determinations and agreements in effect under such title V on the effective date of this section shall remain in effect until modified, terminated, suspended, set aside, or repealed by the Secretary of Health and Human Services or the Assistant Secretary. References to the Secretary of Labor in such determinations and agreements shall be considered references to the Secretary of Health and Human Services or the Assistant Secretary for Aging, as appropriate.

(4) CONTINUATION OF AUDITS.—Audits relating to such title V pending on the effective date of this section shall be on the effective date of this section shall be unaffected by the enactment of this section.

(5) CONTINUATION OF SUITS.—Judicial proceedings and proceedings before administrative law judges under or with respect to such title V pending on the effective date of this section shall be unaffected by the enactment of this section, except that the Secretary of Health and Human Services and the Assistant Secretary for Aging shall be substituted for the Secretary of Labor as parties to such proceedings.

(c) CONFORMING AMENDMENTS.—

(1) Section 502(b) (1) (P) is amended by striking "Department of Labor" and inserting "Department of Health and Human Services".

(2) Section 502(c)(1) is amended by striking "Health and Human Services" and inserting "Labor".

(3) Section 503(a)(1) is amended by striking "the Secretary shall, through the Assistant Secretary for Aging," and inserting "the Assistant Secretary shall".

(4) Section 503(a)(2) is amended by striking "The Secretary of Labor and the Assistant Secretary for Aging" and inserting "The Assistant Secretary".

(5) Section 503(b)(1) is amended—

(A) in the first sentence, by striking "The Secretary" and inserting "The Assistant Secretary and the Secretary of Labor"; and

(B) in the second sentence—

(i) by striking "The Secretary" and inserting "The Assistant Secretary", and

(ii) by striking "by the Assistant Secretary for Aging,".

(6) Section 505(a) is amended—

(A) by striking "The Secretary" and inserting "The Assistant Secretary"; and

(B) by striking "the Assistant Secretary for Aging" and inserting "the Secretary of Labor".

(7) Section 505(b) is amended by striking "Secretary of Health and Human Services" and inserting "Secretary of Labor".

(8) Title V is further amended throughout by striking "Secretary" each place it appears (except where preceded by "Assistant" or followed by "of") and inserting "Assistant Secretary".

SEC. 242. PHASED REDUCTION OF FEDERAL SHARE.

Section 502(c) is amended—

(1) in paragraph (1), by striking "90 percent" and inserting "the Federal share, as specified in paragraph (2),";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(3) by adding after paragraph (1) the following new paragraph:

"(2) the Federal share, for purposes of this subsection, shall be—

"(A) 90 percent for fiscal year 1996,

"(B) 89 percent for fiscal year 1997,

"(C) 87.5 percent for fiscal year 1998,

"(D) 86.5 percent for fiscal year 1999, and

"(E) 84 percent for fiscal year 2000 and each succeeding fiscal year.".

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

Section 508(a) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out this title such sums as may be necessary for each of fiscal years 1996, 1997, and 1998.".

PART E—GRANTS FOR NATIVE AMERICANS

SEC. 251. AUTHORIZATION OF APPROPRIATIONS.

Section 633(a) is amended by striking all that precedes "to carry out this title" and inserting "There are authorized to be appropriated $18,402,000 for fiscal year 1996, and such sums as may be necessary for each of fiscal years 1997 and 1998".

PART F—VULNERABLE ELDER RIGHTS PROTECTION

SEC. 261. ASSISTANCE PROGRAM FOR INSURANCE AND PUBLIC BENEFITS.

(a) CLARIFICATION OF IMPLEMENTATION OPTIONS.—Section 741(d) is amended by adding at the end the following new sentence: "If the State elects to award funds under this section to area agencies on aging or other local entities, it shall give priority to local areas which have high concentrations of older individuals with greatest economic or social need, and in which outreach activities, application assistance, and benefits counseling are inadequate.".

(b) REPEAL OF INCONSISTENT PROVISION.—Section 705(a) is amended—

(1) by adding "and" at the end of paragraph (6);

(2) by striking paragraph (7); and

(3) by redesignating paragraph (8) as paragraph (7).

SEC. 262. AUTHORIZATION OF APPROPRIATIONS.

(a) OMBUDSMAN PROGRAM.—Section 702(a) is amended by striking all that follows "chapter 2," and inserting $4,449,000 for fiscal year 1996, and such sums as may be necessary for each of fiscal years 1997 and 1998.".

(b) PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION.—Section 702(b) is amended by striking all that follows "chapter 2," and inserting $6,232,000 for fiscal year 1996, and such sums as may be necessary for each of fiscal year 1997 and 1998.".

(c) STATE ELDER RIGHTS AND LEGAL ASSISTANCE DEVELOPMENT PROGRAM.—Section 702(c) is amended by striking all that follows "chapter 4," and inserting such sums as may be necessary for each of fiscal years 1996, 1997, and 1998.".

(d) OUTREACH, COUNSELING, AND ASSISTANCE PROGRAM.—Section 702(d) is amended by striking all that follows "chapter 5," and inserting $1,976,000 for fiscal year 1996, and such sums as may be necessary for each of fiscal years 1997 and 1998.".

(e) NATIVE AMERICAN PROGRAMS.—Section 751(d) is amended by striking all that follows "this section," and inserting "such sums as may be necessary for each of fiscal years 1996, 1997, and 1998.".

PART G—TECHNICAL AMENDMENTS

SEC. 271. DEFINITIONS.

(a) RELOCATION, REORDERING, AND REDESIGNATION OF DEFINITIONS.—

(1)(A) Paragraphs (1) and (2) of section 302 are relocated and redesignated as paragraphs (48) and (49) of section 102.

(B) Paragraph (3) of section 302 is repealed.

(2)(A) Section 102(5) is amended by inserting "(A)" after "(5)".

(B) Section 102(6) is amended—

(i) by striking "(A)" and "(B)" and inserting "(i)" and "(ii)"; and

(ii) by striking "(6)" and inserting "(B)".

(C) Section 102(7) is amended by striking "(7)" and inserting "(C)".

(3)(A) Section 102(8) is amended—

(i) by striking the subparagraph designations "(A)" through "(H)" and inserting clause designations "(i)" through "(viii); and

(ii) by inserting "(A)" after "(8)".

(B) Section 102(9) is amended—

(i) by striking the subparagraph designations "(A)" and "(B)" and inserting the clause designations "(i)" and "(ii)"; and

(ii) by striking "(9)" and inserting "(B)".

(4) The paragraphs of section 102 are reordered in alphabetical order by term defined, and renumbered accordingly.

PART H—EFFECTIVE DATE

SEC. 281. EFFECTIVE DATE.

Except as otherwise specifically provided, the amendments made by this title shall become effective October 1, 1995.

TITLE III—WHITE HOUSE CONFERENCE ON AGING

SEC. 301. WHITE HOUSE CONFERENCE AUTHORIZED.

(a) AUTHORITY TO CALL CONFERENCE.—Not later than December 31, 2005, the President shall convene the White House Conference on Aging in order to develop recommendations for additional research and action in the field of aging which will further the policy set forth in subsection (b).

(b) PLANNING AND DIRECTION.—The Conference shall be planned and conducted under the direction of the Secretary in cooperation with the Assistant Secretary for Aging and the heads of such other Federal departments and agencies as are appropriate. Such assistance may include the assignment of personnel.

(c) PURPOSE OF THE CONFERENCE.—The purpose of the Conference shall be—

(1) to increase the public awareness of the interdependence of generations and the essential contributions of older individuals to society for the well-being of all generations:

(2) to identify the problems facing older individuals and the commonalities of the problems with problems of younger generations;

(3) to examine the well-being of older individuals, including the impact the well-being of older individuals has on our aging society;

(4) to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and improving the well-being of the aging;

(5) to develop recommendations for the coordination of Federal policy with state and local needs and the implementation of such recommendations; and

(6) to review the status and multigenerational value of recommendations adopted at previous White House Conferences on Aging.

(d) CONFERENCE PARTICIPANTS AND DELEGATES.—

(1) PARTICIPANTS.—In order to carry out the purposes of this section, the Conference shall bring together—

(A) representatives of Federal, State, and local governments,

(B) professional and lay people who are working in the field of aging, and

(C) representatives of the general public, particularly older individuals.

(2) SELECTION OF DELEGATES.—The delegates shall be selected without regard to political affiliation or past partisan activity and shall, to the best of the appointing authority's ability, be representative of the spectrum of thought in the field of aging. Delegates shall include individuals who are professionals, individuals who are nonprofessional, minority individuals, and individuals from low-income families. A majority of delegates shall be aged 55 or older.

SEC. 302. CONFERENCE ADMINISTRATION.

(a) ADMINISTRATION.—In administering this section, the Secretary shall—

(1) provide written notice to all members of the Policy Committee of each meeting, hearing, or working session of the Policy Committee not later than 48 hours before the occurrence of such meeting, hearing, or working session,

(2) request the cooperation and assistance of the heads of such other Federal departments and agencies as may be appropriate in the carrying out of this section,

(3) furnish all reasonable assistance, including financial assistance, to State agencies on aging and to area agencies on aging, and to other appropriate organizations (including organizations representing older Indians), to enable them to organize and conduct conferences and other activities in conjunction with the Conference (including activities in advance of the Conference, as part of the process of planning for the Conference, and activities subsequent to the Conference in connection with dissemination, discussion, and implementation of recommendations of the Conference);

(4) make available for public comment a proposed agenda, prepared by the Policy Committee, for the Conference which will reflect to the greatest extent possible the major issues facing older individuals consistent with the provisions of subsection (a),

(5) prepare and make available background materials for the use of delegates to the Conference which the Secretary deems necessary, and

(6) engage such additional personnel as may be necessary to carry out the provisions of this section without regard to provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) DUTIES.—The Secretary shall, in carrying out the Secretary's responsibilities and functions under this section, and as part of the White House Conference on Aging, ensure that—

(1) the conferences under subsection (a)(3) shall—

(A) include a conference on older Indians to identify conditions that adversely affect older Indians, to propose solutions to ameliorate such conditions, and to provide for the exchange of information relating to the delivery of services to older Indians, and

(B) be so conducted as to ensure broad participation of older individuals,

(2) the agenda prepared under subsection (a)(4) for the Conference is published in the Federal Register not later than 30 days after such agenda is approved by the Policy Committee, and the Secretary may republish such agenda together with the recommendations of the Secretary regarding such agenda,

(3) the personnel engaged under subsection (a)(5) shall be fairly balanced in terms of points of views represented and shall be appointed without regard to political affiliation or previous partisan activities,

(4) the recommendations of the Conference are not inappropriately influenced by any appointing authority or by any special interest, but will instead be the result of the independent judgement of the Conference, and

(5) current and adequate statistical data, including decennial census data, and other information on the well-being of older individuals in the United States are readily available, in advance of the Conference, to the delegates of the Conference, together with such information as may be necessary to evaluate Federal programs and policies relating to aging. In carrying out this paragraph, the Secretary is authorized to make grants to, and enter into cooperative agreements with, public agencies and nonprofit private organizations.

(c) GIFTS.—The Secretary may accept, on behalf of the United States, gifts (in cash or in kind, including voluntary and uncompensated services), which shall be available to carry out this title. Gifts of cash shall be available in addition to amounts appropriated to carry out this title.

(d) RECORDS.—The Secretary shall maintain records regarding—

(1) the sources, amounts, and uses of gift accepted under subsection (c); and

(2) the identity of each person receiving assistance to carry out this title, and the amount of such assistance received by each such person.

SEC. 303. POLICY COMMITTEE; RELATED COMMITTEES.

(a) POLICY COMMITTEE.—

(1) ESTABLISHMENT.—There is established a Policy Committee comprised of 25 members to be selected, not later than 90 days after the enactment of the Older Americans Act of 1995, as follows:

(A) PRESIDENTIAL APPOINTEES.—13 members shall be selected by President and shall include—

(i) 3 members who are officers or employees of the United States; and

(ii) 10 members with experience in the field of aging, who may include representatives of public aging agencies, institution-based organizations, and minority aging organizations, and shall include a member of the Federal Council on the Aging.

(B) HOUSE APPOINTEES.—4 members shall be selected by the Speaker of the House of Representatives, after consultation with the Minority Leader of the House of Representatives, and shall include members of the Committee on Economic and Educational Opportunities and the Committee on Ways and Means of the House of Representatives. Not more than 3 members selected under this subparagraph may be associated or affiliated with the same political party,

(C) SENATE APPOINTEES.—4 members shall be selected by the Majority Leader of the Senate, after consultation with the Minority Leader of the Senate, and shall include members of the Committee on Labor and Human Resources and the Special Committee on Aging of the Senate. Not more than 3 members selected under this subparagraph may be associated or affiliated with the same political party.

(D) JOINT APPOINTEES.—4 members shall be selected jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate, after consultation with the minority leaders of the House and Senate, and shall include representatives with experience in the field of aging, who may include representatives described in subsection (a)(1)(A)(ii). Not more than 2 members selected under this subparagraph may be associated or affiliated with the same political party.

(2) DUTIES OF THE POLICY COMMITTEE.—The Policy Committee shall initially meet at the call of the Secretary, but not later than 30 days after the last member is selected under subsection (a). Subsequent meetings of the Policy Committee shall be held at the call of the chairperson of the Policy Committee. Through meetings, hearings, and working sessions, the Policy Committee shall—

(A) make recommendations to the Secretary to facilitate the timely convening of the Conference;

(B) formulate and approve a proposed agenda for the Conference not later than 60 days after the first meeting of the Policy Committee;

(C) make recommendations for participants and delegates of the Conference;

(D) establish the number of delegates to be selected under section 301(d)(2); and

(E) formulate and approve the initial report of the Conference in accordance with section 304.

(3) QUORUM; COMMITTEE VOTING; CHAIRPERSON.—

(A) QUORUM.—13 members shall constitute a quorum for the purpose of conducting the business of the Policy Committee, except that 17 members shall constitute a quorum for purposes of approving the agenda required by paragraph (2)(B) and the report required by paragraph (2)(E).

(B) VOTING.—The Policy Committee shall act by the vote of the majority of the members present.

(C) CHAIRPERSON.—The President shall select a chairperson from among the members of the Policy Committee. The chairperson may vote only to break a tie vote of the other members of the Policy Committee.

(b) OTHER COMMITTEES.—The Secretary may establish such other committees, including technical committees, as may be necessary to assist in the planning, conducting, and reviewing of the Conference.

(c) COMPOSITION OF COMMITTEES.—Each committee established under subsection (b) shall be composed of professionals and public members, and shall include individuals from low-income families, and individuals who are Native Americans. Appropriate efforts shall be made to include individuals who are members of minority groups. A majority of the public members of each such committee shall be 55 years of age or older.

(d) COMPENSATION.—Appointed members of any such committee (other than any officers or employees of the Federal Government), while attending conferences or meetings of the committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not to exceed the daily prescribed rate for GS–18 under section 5332 of title 5, United States Code (including travel time). While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5708 of such title for persons employed intermittently in Federal Government service.

SEC. 304. REPORT OF THE CONFERENCE.

(a) PROPOSED REPORT.—A proposed report of the Conference, which shall include a statement of comprehensive coherent national policy on aging together with recommendations for the implementation of the policy, shall be published and submitted to the chief executive officers of the States not later than 90 days following the date on which the Conference is adjourned. The findings and recommendations included in the published proposed report shall be immediately available to the public.

(b) RESPONSE TO PROPOSED REPORT.—The chief executive officers of the States, after reviewing and soliciting recommendations and comments on the report of the Conference, shall submit to the Policy Committee, not later than 90 days after receiving the report, their views and findings on the recommendations of the Conference.

(c) REPORTS.—

(1) INITIAL REPORT.—The Policy Committee shall, after reviewing the views and recommendations of the chief executive officers of the States, prepare and approve an initial report of the Conference, which shall include a compilation of the actions of the chief executive officers of the States and take into consideration the views and findings of such officers.

(2) PUBLICATION OF INITIAL REPORT; FINAL REPORT.—Not later than 60 days after such initial report is transmitted by the Policy Committee, the Secretary shall publish such initial report in the Federal Register. The Secretary shall republish a final report together with such additional views and recommendations as the Secretary considers to be appropriate.

(d) RECOMMENDATIONS OF THE POLICY COMMITTEE.—The Policy Committee shall, within 90 days after submission of the views of the chief executive officers of the States, publish and transmit to the President and to the Congress recommendations for the administrative action and the legislation necessary to implement the recommendations contained within the report.

SEC. 305. DEFINITIONS.

For the purposes of this title—

(1) the term ''area agency on aging'' has the meaning given the term in section 102 of the Older Americans Act of 1965,

(2) the term ''State agency on aging'' means the State agency designated under section 305(a)(1) of the Act,

(3) the term ''Secretary'' means the Secretary of Health and Human Services,

(4) the term ''Conference'' means the White House Conference on Aging, and

(5) the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for fiscal years 2005 through 2007 to carry out this title.

(2) CONTRACTS.—Authority to enter into contracts under this title shall be effective only to the extent, or in such amounts as are, provided in advance in appropriation Acts.

(b) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (3), funds appropriated to carry out this title and funds received as gifts under section 303(c) shall remain available for obligation or expenditure until the expiration of the one-year period beginning on the date the Conference adjourns.

(2) UNOBLIGATED FUNDS.—Except as provided in paragraph (3), any such funds neither expended nor obligated before the expiration of the one-year period beginning on the date the Conference adjourns shall be available to carry out the Older Americans Act of 1965.●

By Mr. KERRY:

S. 1448. A bill to establish the National Commission on Gay and Lesbian Youth Suicide Prevention, and for other purposes; to the Committee on Labor and Human Resources.

THE GAY AND LESBIAN YOUTH SUICIDE PREVENTION ACT

● Mr. KERRY. Mr. President, today I am introducing the Gay and Lesbian Youth Suicide Prevention Act.

Mr. President, my bill is a companion to legislation introduced in the House of Representatives by my friend, Congressman MARTIN MEEHAN of Massachusetts. This bill is a modest beginning to address a pernicious crisis among our teenagers. The bill establishes a Federal commission seeks to identify the root causes and report on possible methods to prevent suicide among gay and lesbian adolescents.

In 1989, then Secretary of the Department of Health and Human Services, Dr. Louis Sullivan, issued a report on youth suicide. The report's most dramatic findings included a particularly alarming statistic—nearly one-third of all teen suicide occurred among gay and lesbian youth.

This is a disturbing trend. Instead of ignoring this epidemic as past administrations have chosen to do, the Commission my bill would establish will devise ways to address effectively the situations of gay youth in existing suicide prevention programs. It will make recommendations to the Secretary of HHS on methods to curb suicide among gay teens. And it will expand existing research on youth suicide to include gay and lesbian adolescents. A full and appropriate airing of these issues will mean the beginning of the end of the tragic waste of young life in our country that the suicides of gay teens represent.

Although the benefits from the Commission will be great, its cost will not. The Commission will use the existing resources of the Department of Health and Human Services. The members of the Commission will not be paid. And the Commission will not be another of the Government bodies that, once established, endures to eternity. It will sunset 6 months after its initial meeting.

Too often, Mr. President, we hear stories of harassment and abuse which lead to depression, emotional problems and suicide. We cannot ignore the obvious fact that gay and lesbian youth are subjected to enormous societal pressure and we certainly cannot turn our back on the chilling evidence that gay and lesbian youth are three times more likely to commit suicide than other young people.

Current official youth suicide prevention programs do not address this issue, and it is high time they did. We need to get serious about putting an end to this preventable epidemic. That is what this bill does. I urge my colleagues to support this effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1448

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Gay and Lesbian Youth Suicide Prevention Act''.

SEC. 2. ESTABLISHMENT.

There is established a commission to be known as the National Commission on Gay and Lesbian Youth Suicide Prevention (referred to in this Act as the ''Commission'').

SEC. 3. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 31 members appointed by the Secretary of Health and Human Services. Members of the Commission shall include professionals and experts in the field of youth suicide prevention.

(b) TERMS.—Each member of the Commission shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect the powers of the Commission, but shall be filled in the same manner as the original appointment.

(c) MEETINGS.—The Commission shall, during a 6-month period, meet with the Secretary of Health and Human Services and advise various offices within the Department of Health and Human Services on an ongoing basis.

(d) CHAIRPERSON.—The Secretary of Health and Human Services shall select a chairperson for the Commission from among the members of the Commission.

SEC. 4. DUTIES OF COMMISSION.

(a) IN GENERAL.—The Commission shall carry out activities to combat the epidemic of suicide among gay and lesbian youth, who account for 30 percent of completed youth suicides, as reported by the Department of Health and Human Services in the 1989 ''Report of the Secretary's Task Force on Youth

Suicide''. The Commission shall advise the Secretary of Health and Human Services and heads of other Federal and State youth service agencies concerning how to include the concerns of gay and lesbian youth in suicide prevention policies, programs, and research.

(b) GOALS OF COMMISSION.—The goals of the Commission shall be to—

(1) work to include the concerns of gay and lesbian youth in suicide prevention programs at the national and State level;

(2) develop and make specific recommendations to the Secretary of Health and Human Services and heads of other relevant Federal and State agencies about how to stem the epidemic of gay and lesbian youth suicide;

(3) work to expand research on youth suicide to include research on gay and lesbian youth suicide; and

(4) work to amend existing youth suicide policies, guidelines, and programs to include policies, guidelines, and programs appropriate for gay and lesbian youth.

SEC. 5. REPORTS.

(a) INTERIM REPORTS.—The Commission shall conduct regional public hearings around the United States to gather information from youths, family members of such youths, and professionals, about the problem of gay and lesbian youth suicide, on an ongoing basis. The Commission shall prepare and submit an interim report to the Secretary of Health and Human Services. The interim report shall contain findings and conclusions of the Commission, based on the hearings.

(b) FINAL REPORT.—The Commission shall prepare and submit a final report to the Secretary of Health and Human Services. The final report shall contain a detailed statement of the findings and conclusions of the Commission.

SEC. 6. POWERS OF THE COMMISSION.

(a) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(b) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(c) USE OF VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary of Health and human Services is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this Act.

SEC. 7. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION.—Members of the Commission shall serve on the Commission without compensation.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 6, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(d) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 8. SUNSET PROVISION.

The Commission shall terminate 6 months after the date of the first meeting of the Commission.●

By Mr. FEINGOLD:

S. 1449. A bill to make agricultural promotion boards and councils more responsive to producers whose mandatory assessments support the activities of such boards and councils, to improve the representation and participation of such producers of such boards and councils, to ensure the appropriate use of promotion funds, to prevent legislatively authorized promotion and research boards from using mandatory assessments to directly or indirectly influence legislation or governmental action or policy, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE AGRICULTURAL PROMOTION ACCOUNTABILITY ACT

● Mr. FEINGOLD. Mr. President, I introduce legislation addressing existing and future agricultural promotion programs. Fundamentally, Mr. President, my legislation, the Agricultural Promotion and Accountability Act, makes some modest and common sense reforms to all of the existing agricultural promotion programs in order to make them more accountable to, and representative of, the farmers who pay for the programs. These congressionally authorized programs create boards and councils, made up of agricultural producers, which have the authority to assess a mandatory fee on producers to pay for the costs of board or council sponsored self-help promotion activities.

Agricultural promotion programs are designed to allow producers to engage in self-help initiatives to promote their products to the consumer, to enhance demand and ultimately improve the economic security of farmers paying the assessment. It is hard to argue with that basic goal, Mr. President. These programs are fully funded and managed by farmers, with oversight conducted by the Department of Agriculture. The boards or councils authorized by Congress collect the producer funds and then conduct generic promotion activities for the specific commodity by contracting out the specific advertising and research projects to private entities.

While some of these programs have existed for nearly 30 years, the majority were created and implemented in the last 10 years. In fact, since 1982, when national promotion programs collected just $45 million annually, the amount of money collected under mandatory promotion programs has increased ten-fold.

These programs currently cover about 16 agricultural commodities including milk, beef, pork, eggs, soybeans, cotton as well as many specialty commodities. All totalled these programs collect roughly $500 million annually from producers and processors of commodities. According to USDA, 90 percent of all U.S. producers contribute money for promotion programs, either State or federally authorized. The growth in the number of these programs in the last decade is not surprising. As Federal dollars to support agriculture dwindle due to budget constraints, Congress has stood ready to allow producers to engage in these self-help efforts. I understand that when the Congress addresses omnibus farm legislation either this year or next year, that my colleagues and I will be asked to approve additional commodity promotion programs for popcorn, canola and rapeseed and perhaps other commodities as well.

But Mr. President, while the goals of these programs are truly admirable, I am concerned that some of the issues raised by some farmers with respect to these programs have been swept away in the Congressional tide to approve more and more producer-supported checkoff programs. Congress has approved so many of these programs in such a short period of time that we have not taken a step back to look at overall principles guiding these programs and whether or not the programs are operating as they should be.

These programs are typically referred to as checkoff programs since the funds that producers must pay to the promotion boards and councils are automatically deducted from the producer's check received for commodities sold. In many cases, the checkoff is a fixed amount, such as 15 cents per hundred pounds of milk sold, or $1 per head of beef or dairy cattle sold. In other cases, the amount deducted is a percentage of the market value of the commodity sold. The checkoff payment is mandatory and essentially permanent once a majority of producers approve of the overall program in an initial referendum.

To give my colleagues an idea of the scope of producer contributions, consider the annual investment of a small Wisconsin dairy farm. A milk producer with a 50 cow herd, averaging 18,000 pounds per cow per year, would pay about $1,350 annually for State, regional, and Federal milk promotion activities. Mr. President, that is a large contribution for such a small farm. Consider that a large dairy with 1,000 cows, such as those in the southwest and western regions of the country, averaging 18,000 pounds of milk per cow, contributes about $27,000 annually for mandatory milk promotion. Consider also that a dairyman who also raises hogs, replacement heifers, and soybeans would contribute to the pork, beef, and soybean promotion program. Mr. President, these mandatory contributions represent a sizable investment by the individuals required to pay them.

On the surface, these programs appear well-supported by farmers and others paying the mandatory assessments. However, as I have travelled the countryside of Wisconsin, holding listening sessions in each of Wisconsin's 72 counties each year, I have learned that, in fact, these programs tend to be controversial among farmers in Wisconsin. In my home State, where some counties are home to more cows than people, the most controversial of the boards are the National Dairy Promotion and Research Board and the Cattlemen's Beef Promotion and Research Board.

In the 103d Congress, when I served as a member of the Senate Agriculture Committee, I had the opportunity to be involved in the creation of new promotion programs as well as the modification of existing programs. I learned, Mr. President, that the controversy stemming from these programs goes well beyond the beef and dairy programs. In each case, Mr. President, when the Committee addressed promotion programs from eggs to sheep to beef, the controversy among the producers footing the bill for the program was significant. In response to some of the concerns raised by farmers, the Senate Subcommittee on Domestic and Foreign Marketing and Promotion held a hearing on the beef and dairy promotion programs. The House Agriculture Committee held a similar hearing on the beef, pork, eggs and dairy checkoff programs in the 103d Congress. The bill I am introducing today addresses the concerns that have been voiced in these hearings during my tenure on the Committee and since that time.

The concerns checkoff paying farmers have raised include:

The promotion programs do not provide for adequate input by,or representation of, the producers paying for the program.

The programs once authorized continue into perpetuity with little opportunity for producer review or reauthorization. All but one of the existing programs are permanently authorized by Congress.

In most cases concerned producers must expend their own time and resources to gather enough names on a petition—usually 10 percent of all eligible producers—in order to call for another approval referendum.

In the case of the dairy promotion program, cooperatives are allowed to vote on behalf of their producers, which some farmers contend biases the referendum by drowning out the voices of dissenting producers.

The promotion programs require all producers to pay for a program regardless of whether they agree with the program, whether they think the program is working, and whether they spend their own money on individual promotion efforts.

The programs far too often engage in activities well beyond those intended by the producers who approved the program at its initiation. Some producers complain that broad-scale public relations work funded by checkoff dollars does little to enhance demand and far more to advance the political objectives of certain contracting organizations. Such activities may violate the prohibition on the use of checkoff funds to influence government action or policy. Last August, during the Senate subcommittee hearing mentioned previously, staff of USDA pointed out one specific promotion effort that may have entered the grey area of prohibited activities.

The programs provide preferential treatment to certain industry-governed farmer organization to the exclusion of others. Some farmers contend that the ties between some promotion boards and the industry-lobbying organization are too tight and may create a conflict of interest for those boards.

The programs that do provide contracts or grants to specific lobbying organizations may be indirectly supporting or subsidizing the legislative activities of that organization. This concern has been voiced by a number of members of the Senate and the House with respect to the use of Federal funds and grants provided to lobbying organizations. In fact, much time and effort has been expended in the Senate to ensure that Congressionally authorized funding is not ultimately used for lobbying activities. The concerns that farmers have raised with respect to the use of checkoff dollars are consistent with these concerns.

The mandatory nature of the programs and the contractual relationship maintained by some of the boards implicate the First Amendment rights of producers who should not be required to associate with a group with whom they do not agree. In fact, some statewide promotion programs similar to the individual promotion programs addressed in my legislation, have been successfully challenged on First Amendment grounds.

Mr. President, I think these are serious concerns. The fact that these programs impose an additional targeted tax on producers purportedly for their own good, should compel the Congress to take these complaints seriously, as well. Producers initially approved all of these promotion programs based on very specific goals and with a number of requirements and constraints. As members of the body that authorized these programs, we must ensure that the initial goals of these programs are being met and that those farmers required to pay for them have assurances that the programs are operated fairly and democratically within the bounds of the statute and without bias towards or against specific segments of the taxed industry.

The legislation I am introducing today will help accomplish those goals without restricting the ability of the promotion boards to accomplish their objectives of enhancing consumer demand for the commodity. The Agricultural Promotion and Accountability Act provides guidelines to promotion boards and councils on the prohibited activities with respect to lobbying and other activities intended to influence government action or policy. It makes some conforming changes to existing statutes to ensure that all promotion programs are subject to the same restrictions.

The bill addresses the concern that too much money is spent on broad scale public relations work and not enough on direct promotion of the product, by limiting the types of public relations works that can be conducted. In fairness to all producers in arguably heterogenous agricultural sectors, industry image enhancement activities are prohibited. What might be a desirable image for one segment of an agricultural sector, might not be desirable for other segments of the industry. Since the checkoff assessments are levied equally on all producers, in most cases, general public relations work with checkoff funds is not an appropriate or equitable use of promotion dollars. Instead, all boards will be allowed to promote the image of the generic product itself, which is consistent with the goal of enhancing consumer demand.

The bill also improves the democratic nature of promotion boards and councils by providing producers with an opportunity to reauthorize their program, on average, every 5 years. Referenda on approval or termination of the mandatory promotion programs would be held periodically to assure that producers continue to support the program in which they make substantial annual investments. During that referendum, producers will also be allowed to decide whether or not they favor instituting refunds of assessments to producers who request them. These provisions will provide the checkoff paying producer with more control over the promotion boards they fund. Additionally, producers argue that if they are allowed a regular review of their programs, the boards will be more accountable to the farmers who foot the bill.

The concern about the fungibility of checkoff dollars paid in contracts to industry-governed lobbying organizations is perhaps one of the most difficult issues to address. It is, of course, not a new issue. In fact, just 3 years ago, Secretary of Agriculture Dan Glickman, then a member of Congress, stated in a promotion program oversight hearing that ''Congress should not be in the business of enacting programs which will result in the collection of funds from all farmers for the benefit of lobbying groups which may represent the view of just a fraction of the farmers.'' As I stated earlier, that is exactly what some producers contend is happening under some of the agricultural promotion programs.

To address those concerns the Agricultural Promotion Accountability Act creates a number of safeguards to ensure the independence of the boards from their contractors, to avoid conflicts of interest between the board and any contractor or grantee, to ensure that contracts are let on both an equitable and efficient basis providing a voice for all check-off paying producers, and to safeguard against any checkoff dollars being used for prohibited activities.

Mr. President, I think the modest changes this legislation makes to promotion programs will go a long way to ensure the continued productivity and success of these promotion boards while providing producers a greater voice in how their money is spent. I urge my colleagues to support this legislation.

I ask unanimous consent that a letter of support for the Agricultural Promotion Accountability Act from the National Farmers Union be included in the RECORD. I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1449

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Agricultural Promotion Accountability Act of 1995''.

SEC. 2. PURPOSE.

The purpose of this Act is to make agricultural promotion boards and councils more responsive to producers whose mandatory assessments support the activities of such boards and councils, to improve the representation and participation of such producers on such boards and councils, to ensure the independence of such boards and councils, to ensure the appropriate use of promotion funds, and to prevent legislatively authorized agricultural promotion and research boards from using mandatory assessments to directly or indirectly influence legislation or governmental action or policy.

SEC. 3. DEFINITIONS.

In this Act:

(1) INFLUENCING LEGISLATION OR GOVERNMENTAL ACTION OR POLICY.—The term ''influencing legislation or governmental action or policy'' includes—

(A) establishing, administering, contributing to, or paying the expenses of a political party campaign, political action committee, or other organization established for the purpose of influencing the outcome of an election;

(B) attempting to influence—

(i) the outcome of any Federal, State or local election, referendum, initiative, or similar procedure through a cash contribution, in-kind contribution, endorsement, publicity or public relations activity or similar activity;

(ii) the introduction, modification, or enactment of any Federal or State legislation or signature or veto of any enrolled Federal or State legislation, including through—

(I) communication with any member or employee of a legislative body or agency or with any governmental official or employee who may participate in the formulation of the legislation, including engaging State or local officials in similar activity (not including a communication to an appropriate government official in response to a written request by the official for factual, scientific, or technical information relating to the conduct, implementation, or results of promotion, research, consumer information and education, industry information, or producer information activities under a promotion program);

(II) planning, preparing, funding, or distributing any publicity or propaganda to affect the opinion of the general public or a segment of the public in connection with a pending legislative matter; or

(III) urging members of the general public or any segment of the general public to contribute to, or participate in, any mass demonstration, march, rally, fund-raising drive, lobbying campaign, letter-writing campaign, or telephone campaign in connection with a pending legislative matter;

(C) carrying out a legislative liaison activity, including attendance at a legislative session or committee hearing to gather information regarding legislation or to analyze the effect of legislation, if the activity is carried on in support of, or in knowing preparation for, an effort to influence legislation or government action or policy;

(D) carrying out an opinion survey of the general public or a segment of the public, general research, or information gathering, if carried out in support of, or in knowing preparation for, an effort to influence legislation or government action or policy; or

(E) attempting to influence any agency action or agency proceeding, as the terms are defined in section 551 of title 5, United States Code, through—

(i) communication with any government official or employee who may participate in the action or proceeding (not including a communication to an appropriate government official in response to a written request by the official for factual, scientific, or technical information relating to the conduct, implementation, or results of promotion, research, consumer information or education, or industry information of producer information activities under a promotion program);

(ii) planning, preparing, funding, or distributing any publicity or propaganda to affect the opinions of the general public or any segment of the general public in connection with the action or proceeding; or

(iii) urging members of the general public or any segment of the general public to contribute to, or participate in, any mass demonstration, march, rally, fundraising drive, lobbying campaign, letter-writing campaign, or telephone campaign in connection with the action or proceeding.

(2) PROMOTION PROGRAM.—The term ''promotion program'' means—

(A) the cotton research and promotion program established under the Cotton Research and Promotion Act (7 U.S.C. 2101 et seq.);

(B) the potato research, development, advertising, and promotion program established under the Potato Research and Promotion Act (7 U.S.C. 2611 et seq.);

(C) the egg research, consumer and producer education, and promotion program established under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.);

(D) the beef promotion and research program established under the Beef Research and Information Act (7 U.S.C. 2901 et seq.);

(E) the wheat research and nutrition education program established under the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401 et seq.);

(F) the dairy promotion program established under the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501 et seq.);

(G) the honey research, promotion, and consumer education program established under the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 et seq.);

(H) the pork promotion, research, and consumer information program established under the Pork Promotion, Research, and Consumer Information Act (7 U.S.C. 4801 et seq.);

(I) the watermelon research, development, advertising, and promotion program established under the Watermelon Research and Promotion Act (7 U.S.C. 4901 et seq.);

(J) the pecan promotion, research, industry information, and consumer information program established under the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001 et seq.);

(K) the mushroom promotion, research, and consumer and industry information program established under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101 et seq.);

(L) the lime research, promotion, and consumer information program established under the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201 et seq.);

(M) the soybean promotion, research, consumer information, and industry information program established under the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301 et seq.);

(N) the fluid milk advertising and promotion program established under the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401 et seq.);

(O) the flowers and greens promotion, consumer information, and related research program established under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (7 U.S.C. 6801 et seq.);

(P) the sheep promotion, research, consumer information, education, and industry information program established under the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101 et seq.); and

(Q) any other coordinated program of promotion, research, industry information, and consumer information that is funded by mandatory assessments on producers and designed to maintain and expand markets and uses for an agricultural commodity, as determined by the Secretary.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 4. INFLUENCING LEGISLATION OR GOVERNMENTAL ACTION OR POLICY.

(a) IN GENERAL.—A board or council established by a promotion program may not use any funds collected by the board or council for the purpose of directly or indirectly influencing legislation or governmental action or policy, except for the development and recommendation of amendments to the promotion program to the Secretary.

(b) CONFORMING AMENDMENTS.—

(1) COTTON.—Section 7(h) of the Cotton Research and Promotion Act (7 U.S.C. 2106(h)) is amended by striking ''influencing governmental policy or action'' and inserting ''directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)''.

(2) POTATOES.—Section 308(f)(3) of the Potato Research and Promotion Act (7 U.S.C. 2617(f)(3)) is amended by striking ''influencing governmental policy or action'' and inserting ''directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)''.

(3) EGGS.—Section 8(h) of the Egg Research and Consumer Information Act (7 U.S.C. 2707) is amended by striking ''influencing governmental policy or action'' and inserting ''directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)''.

(4) BEEF.—Section 5(10) of the Beef Research and Information Act (7 U.S.C. 2904(10)) is amended—

(A) by striking "influencing governmental action or policy" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)"; and

(B) by inserting "to the Secretary" before the period at the end.

(5) WHEAT.—Section 1706(i) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3405(i)) is amended by striking "influencing governmental policy or action" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

(6) DAIRY.—Section 113(j) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(j)) is amended by striking "influencing governmental policy or action" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995),".

(7) HONEY.—Section 7(h) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4606(h)) is amended by striking "influencing governmental policy or action" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

(8) PORK.—Section 1620(e) of the Pork Promotion, Research, and Consumer Information Act (7 U.S.C. 4809(e)) is amended by striking "influencing legislation" and all that follows through the period at the end and inserting the following: "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995), except to recommend amendments to the order to the Secretary.".

(9) WATERMELONS.—Section 1647(g)(3) of the Watermelon Research and Promotion Act (7 U.S.C. 4906(g)(3)) is amended by striking "influencing governmental policy or action" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

(10) PECANS.—Section 1910(g)(1) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6005(g)(1)) is amended—

(A) in the matter preceding paragraph (1)—

(i) by striking "to," and inserting "for the purpose of,"; and

(ii) by striking "to—" and inserting "for the purpose of—";

(B) in paragraph (1), by striking "influence legislation or governmental action" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)";

(C) in paragraph (2), by striking "engage" and inserting "engaging"; and

(D) in paragraph (3), by striking "engage" and inserting "engaging".

(11) MUSHROOMS.—Section 1925(h) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6104(h)) is amended by striking "influencing legislation or governmental action or policy" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

(12) LIMES.—Section 1955(g) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6204(g)) is amended by striking "influencing legislation or governmental policy or action" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

(13) SOYBEANS.—Section 1969(p) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6304(p) is amended—

(A) in paragraph (1), by striking "influencing legislation or governmental action or policy" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting "to the Secretary" before the semicolon; and

(ii) in subparagraph (B), by inserting ", in response to a request made by the officials," after "officials".

(14) MILK.—Section 1999H(j)(1) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(j)(1)) is amended by striking "influencing legislation or governmental action or policy" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

(15) FLOWERS AND GREENS.—Section 5(i) of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (7 U.S.C. 6804(i)) is amended by striking "influencing legislation or government action or policy" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

(16) SHEEP.—Section 5(l)(1) of the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7104(*l*)(1)) is amended by striking "influencing legislation or government action or policy" and inserting "directly or indirectly influencing legislation or governmental action or policy (as defined in section 3(1) of the Agricultural Promotion Accountability Act of 1995)".

SEC. 5. PROMOTING THE IMAGE OF AN INDUSTRY PROHIBITED.

(a) IN GENERAL.—A board or council established by a promotion program may not use any funds collected by the board or council for the purpose of enhancing the image of an industry, except that the board or council may promote the image of a product with the express intent of stimulating demand for and sales of an agricultural product in the marketplace.

(b) CONFORMING AMENDMENTS.—

(1) BEEF.—Section 3(9) of the Beef Research and Information Act (7 U.S.C. 2902(9)) is amended by striking ", increased efficiency" and all that follows through "industry" and inserting "and increased efficiency".

(2) PECANS.—Section 1907(12) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6002(12)) is amended by striking ", increased efficiency" and all that follows through "industry" and inserting "and increased efficiency".

(3) MUSHROOMS.—Section 1923(7) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6103(7)) is amended by striking ", increased efficiency" and all that follows through "industry" and inserting "and increased efficiency".

(4) SOYBEANS.—Section 1967(7) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6302(7)) is amended by striking ", and activities" and all that follows through "industry".

SEC. 6. LIMITATIONS ON CONTRACTING.

(a) PERMITTED CONTRACTS OR AGREEMENTS.—Notwithstanding any other provision of law, a board or council established by a promotion program shall not be limited to contracting with, or entering into an agreement with, an established national nonprofit industry-governed organization.

(b) COMPETITIVE BIDDING.—It is the policy of Congress that boards and councils should, to the extent practicable, use competitive bidding in the awarding of contracts and grants for activities authorized under a promotion program.

(c) INDEPENDENCE OF BOARDS AND COUNCILS.—

(1) APPLICATIONS AND RECOMMENDATIONS NOT BINDING.—Notwithstanding any other provision of law, a board or council established by a promotion program shall not be bound by a proposed application for a board or council contract or a recommendation or advice of a potential contractor or a national nonprofit industry-governed organization on the use of board or council receipts.

(2) INTERLOCKING BOARDS OR MEMBERSHIP.—Notwithstanding any other provision of law, no person shall be eligible to be a member of any board or council established by a promotion program (including operating and nominating committees) if the person serves in any decision making capacity, such as that of a member of the board of directors, executive committee, or other committee, for an entity that enters into a contract or other agreement with the board or council.

(3) REQUIREMENTS FOR CONTRACTING.—A contractor or grantee of a board or council may not use funds collected through mandatory assessments under a promotion program to fund any staff (including expenses or other activities of the staff) who, in part, engage in 1 or more activities to influence legislation or governmental action or policy.

(d) PRODUCER APPROVAL OF RELATIONSHIPS WITH BOARDS OR COUNCILS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of law, the entering into of a permanent cooperative arrangement or the establishment of a joint committee (including an arrangement that is advisory in nature) by a board or council established by a promotion program with a national nonprofit industry-governed organization shall require the prior approval of at least ⅔ of the eligible producers under the promotion program.

(2) EXCEPTION.—Paragraph (1) shall not apply to a cooperative arrangement or joint committee—

(A) that was established prior to January 1, 1995; or

(B) that includes representatives or participation from all producer-, processor-, or handler-governed national nonprofit organizations (including general farm organizations) that represent any but an insignificant number of producers, processors, or handlers paying assessments under the promotion program to the board or council, as determined by the Secretary.

(3) PERMANENT COOPERATIVE ARRANGEMENT.—In this subsection, the term "permanent cooperative arrangement" means a formal or informal, written or unwritten agreement or understanding establishing a relationship, a liaison, a sole source contract, or an operational mechanism under which a board or council shares staff, facilities, or other resources or carries out coordinated activities with any entity on a more or less permanent and exclusive basis.

(e) FUNGIBILITY OF BOARD OR COUNCIL FUNDS.—

(1) IN GENERAL.—The Inspector General of the Department of Agriculture shall conduct an annual review of contractual arrangements between each board or council established by a promotion program and any entity or association that engages in activities to influence legislation or governmental action or policy and receives a significant

amount of funding from the board or council as determined by the Secretary.

(2) SCOPE OF REVIEW.—A review under paragraph (1) shall examine whether any funds collected by the board or council are used to directly or indirectly fund or subsidize an entity or association that engages in influencing legislation or governmental action or policy.

(3) REPORT.—The Secretary shall submit a report on the findings of any review under this subsection and make recommendations for any actions that should be taken as a result of the findings to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 7. PERIODIC REFERENDA.

(a) IN GENERAL.—Notwithstanding any other provision of law, not less than 4 nor more than 6 years after the date of enactment of this Act or the date on which the Secretary determines the results of the most recent referendum for a promotion program, whichever is earlier, and not less than once every 5 years thereafter, the Secretary shall conduct a referendum to determine whether to approve or terminate the order under the promotion program and whether refunds should be made under the order.

(b) PROCEDURE.—The referendum under subsection (a) shall be conducted using the same eligibility and other procedures as the referendum used to approve the original order under the promotion program, except that, notwithstanding any other provision of law, no greater than a simple majority of eligible producers shall be required to approve the making of refunds to producers.

(c) TERMINATION.—

(1) IN GENERAL.—If the percentage of persons voting to approve the order does not equal or exceed the percentage of persons necessary to approve the continuation of the original order under the promotion program, the Secretary shall terminate the order.

(2) TIME OF TERMINATION.—The Secretary shall terminate the order at the end of the marketing year during which the referendum is conducted.

(d) REFUNDS.—If the making of refunds is approved in a referendum under subsection (a), the Secretary shall establish a procedure for making the refunds not later than 180 days after the date of the referendum.

(e) COOPERATIVE ASSOCIATION.—Notwithstanding subsection (b), a cooperative association may not vote on behalf of the members of the association in a referendum conducted under this section.

(f) INACTIVE PROMOTION PROGRAMS.—The Secretary shall not conduct a referendum of a promotion program under this section if the Secretary determines that the promotion program is not active.

NATIONAL FARMERS UNION,
November 7, 1995.

Re legislation to regulate producer assessments for promotion funding.

Hon. RUSS FEINGOLD,
U.S. Senator,
Washington, DC.

DEAR SENATOR FEINGOLD: On behalf of the nearly 300,000 farm families of the National Farmers Union, I write to express our strong support of the Agricultural Promotion Accountability Act of 1995. Many of our members pay multiple mandatory assessments for promotion funding, amounting to thousands of dollars per year, per producer. Our 1995 national policy statement calls for legislative safeguards to insure the use of promotion funds is controlled by the producers who pay the assessments, and that dollars are used to enhance producer profitability. Your proposed legislation will help address several items of concern.

(1) It is essential that mandatory assessments are not used for lobbying. Although lobbying is prohibited under current law, your bill makes the prohibition meaningful by clearly defining the prohibited activities.

(2) It is essential that producers control how their dollars are spent. Your legislation ensures that decisions are made by independent, accountable boards. Your legislation also helps ensure that all producers have a voice, not just those who belong to a specific trade association. Your legislation further promotes producer control by prohibiting bloc voting.

(3) It is essential that an independent review of funding be conducted annually. We support naming the Inspector General of USDA to conduct this review.

(4) It is essential that periodic referenda are held to provide producers the opportunity to review whether the promotion program is worth continuing. Your legislation achieves this by specifying a referendum every five years, including a referendum on refunds.

(5) It is essential that assessments are used for activities to enhance producer price. The proposed legislation meets this goal by prohibiting use of funding for influencing regulatory bodies, and other purposes not specifically linked to product promotion.

Thank you for your work on behalf of family farmers. Promotion assessments affect nearly every farmer and the topic always produces much debate whenever discussed by producers. Your legislation is a positive step in addressing many concerns. We look forward to working with you to pass this bill.

Sincerely,

LELAND SWENSON,
President.●

ADDITIONAL COSPONSORS

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 968

At the request of Mr. MCCONNELL, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 968, a bill to require the Secretary of the Interior to prohibit the import, export, sale, purchase, and possession of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 978

At the request of Mrs. HUTCHISON, the names of the Senator from Montana [Mr. BURNS] and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of S. 978, a bill to facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, to clarify the inapplicability of antitrust laws to charitable gift annuities, and for other purposes.

S. 984

At the request of Mr. GRASSLEY, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 984, a bill to protect the fundamental right of a parent to direct the upbringing of a child, and for other purposes.

S. 1058

At the request of Mr. WELLSTONE, the names of the Senator from Illinois [Mr. SIMON] and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 1058, a bill to provide a comprehensive program of support for victims of torture.

S. 1178

At the request of Mr. CHAFEE, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 1178, a bill to amend title XVIII of the Social Security Act to provide for coverage of colorectal screening under part B of the Medicare Program.

S. 1335

At the request of Mr. MCCONNELL, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 1335, a bill to provide for the protection of the flag of the United States and free speech, and for other purposes.

S. 1432

At the request of Mr. MCCAIN, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 1432, a bill to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the Social Security earnings limit for individuals who have attained retirement age, and for other purposes.

SENATE RESOLUTION 197—TO CONGRATULATE THE NORTHWESTERN UNIVERSITY WILDCATS

Mr. SIMON (for himself and Ms. MOSELEY-BRAUN) submitted the following resolution; which was considered and agreed to:

S. RES. 197

Whereas the Northwestern University Wildcats are the 1995 Big Ten Conference football champions and have been invited to participate in the Rose Bowl on January 1, 1996, in Pasadena, California;

Whereas the winning of the 1995 Big Ten Conference football championship by the Wildcats completes an unprecedented 1-year turnaround of the Northwestern University football program; and

Whereas Northwestern University is committed to athletic competitiveness without diminution of scholastic standards: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Northwestern University and its athletes, coaches, faculty, students, administration, and alumni on the winning of the 1995 Big Ten Conference football championship by the Wildcats and on the receipt by the Wildcats of an invitation to compete in the 1996 Rose Bowl; and

(2) recognizes and commends Northwestern University for its pursuit of athletic as well as academic excellence.

AMENDMENTS SUBMITTED

THE PARTIAL-BIRTH ABORTION BAN ACT OF 1995

SMITH AMENDMENT NO. 3080

Mr. SMITH proposed an amendment to the bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions; as follows:

On page 2, at the end of line 9, insert the following: ''This paragraph does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.''

DOLE AMENDMENT NO. 3081

Mr. DOLE proposed an amendment to amendment No. 3080 proposed by Mr. SMITH to the bill, H.R. 1833, supra; as follows:

In the pending amendment, strike all after the word ''This'' and insert in lieu thereof the following: ''paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.''

This paragraph shall become effective one day after enactment.

PRYOR (AND OTHERS) AMENDMENT NO. 3082

Mr. PRYOR (for himself, Mr. CHAFEE, and Mr. BROWN) proposed an amendment to the bill, H.R. 1833, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . APPROVAL AND MARKETING OF PRESCRIPTION DRUGS.

(a) APPROVAL OF APPLICATIONS OF GENERIC DRUGS.—For purposes of acceptance and consideration by the Secretary of an application under subsections (b), (c), and (j) of section 505, and subsections (b), (c), and (n) of section 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b), (c), and (j), and 360b (b), (c), and (n)), the expiration date of a patent that is the subject of a certification under section 505(b)(2)(A) (ii), (iii), or (iv), section 505(j)(2)(A)(vii) (II), (III), or (IV), or section 512(n)(1)(H) (ii), (iii), or (iv) of such Act, respectively, made in an application submitted prior to June 8, 1995, or in an application submitted on or after that date in which the applicant certifies that substantial investment was made prior to June 8, 1995, shall be deemed to be the date on which such patent would have expired under the law in effect on the day preceding December 8, 1994.

(b) MARKETING GENERIC DRUGS.—The remedies of section 271(e)(4) of title 35, United States Code, shall not apply to acts—

(1) that were commenced, or for which a substantial investment was made, prior to June 8, 1995; and

(2) that became infringing by reason of section 154(c)(1) of such title, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983).

(c) EQUITABLE REMUNERATION.—For acts described in subsection (b), equitable remuneration of the type described in section 154(c)(3) of title 35, United States Code, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983) shall be awarded to a patentee only if there has been—

(1) the commercial manufacture, use, offer to sell, or sale, within the United States of an approved drug that is the subject of an application described in subsection (a); or

(2) the importation by the applicant into the United States of an approved drug or of active ingredient used in an approved drug that is the subject of an application described in subsection (a).

(c) APPLICABILITY.—The provisions of this section shall govern—

(1) the approval or the effective date of approval of applications under section 505(b)(2), 505(j), 507, or 512(n), of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b)(2) and (j), 357, and 360b(n)) submitted on or after the date of enactment of this Act; and

(2) the approval or effective date of approval of all pending applications that have not received final approval as of the date of enactment of this Act.

BOXER AMENDMENT NO. 3083

Mrs. BOXER proposed an amendment to amendment No. 3083 proposed by Mr. PRYOR to the bill, H.R. 1833, supra; as follows:

At the end of the amendment, add the following new sentence: ''The prohibition in section 1531(a) of title 18, United States Code, shall not apply to any abortion performed prior to the viability of the fetus, or after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Tuesday, December 5, 1995, beginning at 10 a.m. in room SD–215, to conduct a hearing on the Organization for Economic Cooperation and Development [OECD] Shipbuilding Subsidies Agreement.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BENNETT. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Tuesday, December 5, at 9:30 a.m. for a hearing on S. 88, Local Empowerment and Flexibility Act of 1995.

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

SUBCOMMITTEE ON THE ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Subcommittee on the Administrative Oversight and the Courts of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, December 5, 1995, at 10 a.m., in the Senate Dirksen Building, room 226, to hold a hearing on S. 984, the Parental Rights and Responsibilities Act.

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

ADDITIONAL STATEMENTS

GLAXO WELLCOME

• Mr. FAIRCLOTH. Mr. President, I want to applaud a dramatic new commitment by Glaxo Wellcome, a North Carolina-based pioneer pharmaceutical research company whose contributions to medicine and biotechnology have helped to make the American health care industry the most innovative and productive in the world.

Glaxo Wellcome has just received approval from the Food and Drug Administration for its latest drug, Epivir, an aggressive new treatment for AIDS. Epivir received FDA approval in less than 5 months, but the advent of this new treatment is the result of years of hard work and millions of dollars invested by Glaxo Wellcome.

The firm also announced that it has set itself the goal of bringing an unprecedented three new medicines to market each year by the beginning of the next century. This is an enormous endeavor. It will require threefold increase in Glaxo Wellcome's research and development productivity.

The merger of Glaxo and Burroughs Wellcome produced an enormous portfolio of research and development projects. The ensure the most efficient integration of the two firms, the entire portfolio was reviewed according to rigorous standards. The resulting R&D portfolio now includes 50 major research projects and 93 development projects. These projects run the gamut from cardiovascular disease and cancer to the neurosciences. Significant resources are being committed to projects involving the respiratory system: anti-viral infection: the central nervous system and other areas. Together, Glaxo Wellcome's total R&D spending for 1996 will exceed $1.9 billion.

That's good news for the millions of Americans who suffer from life threatening diseases for which there is currently no known treatment. Good news also for their families, their employers, and their neighbors. This massive investment in the future of American health care is good news for all of us.

Pioneering the next ''miracle drug'' is not easy. It costs, on average, 12 years and $350 million to develop just one new pharmaceutical. Only one in 5,000 compounds tested in a laboratory ever finds its way onto pharmacy shelves. And only a third of those ever earns full return on the vast investment of time, money, and thought made to discover it.

Because of the costly pioneering research of pharmaceutical companies like Glaxo Wellcome, American consumers have access to the next generation of pharmaceuticals and state-of-the-art medical treatments. Taxpayers also benefit because of the savings to be realized in future health care costs. Pioneers like Glaxo Wellcome hold our best hope for the discovery of breakthrough medicines in the future. I salute Glaxo Wellcome for deepening its commitment to the future of American medicine.•

THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

• Mr. JOHNSTON. Mr. President, on November 28, 1995, President Clinton signed into law the National Highway System Designation Act of 1995 which will make a number of desperately needed changes to our Nation's transportation infrastructure. I am pleased to have had the opportunity to work with my colleagues to pass this legislation. More importantly, I want to take special notice of a particular section of this law and the Louisiana citizens who did their civic duty in bringing a serious problem to the attention of their representatives in Washington.

The National Highway System Designation Act contains numerous specific projects that will benefit society and commerce and, as with all of the legislation we concern ourselves with in the U.S. Senate, proves the worth of our democratic process. Included in this law is a provision which I think most clearly demonstrates how important our system of representative democracy is and, hopefully, will help to renew our sense of civic duty and alleviate the apathetic attitude toward government that is so common today.

In one of the fastest growing areas in Louisiana, Ascension Parish, there is a section of State Highway 42 known commonly as ''Dead Man's Curve.'' Unfortunately, this name truly reflects the road's history. On this section of the two lane highway which curves drastically and cannot accommodate its growing traffic load, nearly 50 serious automobile accidents have occurred in the last 4 years. When the road becomes wet, as roads often do in south Louisiana, this poorly designed road becomes a death trap causing numerous multiple car sideswipes and head-on collisions. One particularly tragic accident last year took the lives of three young people and galvanized public support for the effort to make LA 42 safe.

On August 20, 1994, in a head-on collision on this dangerous S-curve, Mandy Acosta age 18, her cousin Brett Leggette age 13, and his friend Brett Frederic also age 13 died. In one horrible accident two sisters had lost their teen-aged children. An extended family and an entire community were devastated.

When the grieving period had run its course, these sisters decided that they would not simply stand by and watch history repeat itself, but would become involved to make sure that this road would not take more of our sons and daughters. Ms. Templet and Ms. Leggette organized the community through public marches and petition drives. They contacted Parish President Tommy Martinez who immediately mobilized his resources. Engineers Mr. Glenn Shaheen and Mr. Mark DeBossier were called in to find out what needed to be done. Mr. David Young coordinated their message and worked with the Louisiana congressional delegation to find the surest way to get the Government to fulfill its duty in protecting the lives of its citizens.

Mr. President, the dedicated and passionate work of these two sisters, Parish President Martinez, and their community did make a difference. As a result of their involvement, the Federal Government has now dedicated itself to finding the best way to fix Dead Man's Curve. I am pleased that the National Highway System Designation Act of 1995 includes $250,000 for this problem. I am most pleased, however, that Congress and the President have proven that our system works and that civic duty has not lost its meaning.●

TRIBUTE TO PAUL O. BOFINGER

● Mr. GREGG. Mr. President, it gives me great pleasure today to rise to pay tribute to Paul O. Bofinger, president of the Society for the Protection of New Hampshire Forests, upon his retirement. Paul has served the New Hampshire conservation community loyally for 30 years as an intelligent and clear voice of reason and stubborn common sense. Upon graduation from Cornell University in 1953 and the University of Michigan in 1955, Paul has been actively involved in the New Hampshire conservation debate. Paul's profound insight and powerful influence on New Hampshire environmental policy has helped to create the special tradition of balance and consensus building that we are proud of in New Hampshire.

Over the past three decades Paul Bofinger has received numerous awards and honors including the American Foresters John Artson Warder Medal, the Nature Conservancy's Conservation Achievement Award, the University of New Hampshire Granite State Award, and the Audubon Society of New Hampshire Tudor Richards Award. Paul received a 1982 Governor's Award of Distinction and was named 1994 Forester of the Year by the Granite State Division of the Society of American Foresters. He is a Franklin Pierce College Honorary Doctor of Human Letters, and a recipient of the Chevron Conservation Award. Paul Bofinger served in 1984 and 1985 at Harvard University as a C. Bullard Fellow.

Paul's leadership assured the success of the New Hampshire Land Conservation Investment Program and the creation of the majestic Lake Umbagog National Fish and Wildlife Refuge. Under his presidency, the New Hampshire Forest Society has become one of the premier land trusts in the Nation. During the past several years Mr. Bofinger and the New Hampshire Forest Society have contributed greatly to the work of the Northern Forest Lands Council. He has positioned New Hampshire as a leader in the regional effort to protect the traditional land use patterns of the great Northern Forest for the benefit of future generations. Through Paul's stewardship of New Hampshire conservation policy, his strong commitment to the development of broad consensus-based groups, and his disciplined approach to conservation policy through respectful dialog, New Hampshire's forest conservation and land use process has become a model for the rest of the country to learn and benefit from.

Mr. President, I ask that my colleagues join me in congratulating Paul Bofinger on an exemplary career as a leader of New Hampshire forest conservation and a voice of wise moderation. I wish him good fortune and Godspeed as, upon retirement, he pursues new life challenges.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following military nominations reported out of the Armed Services Committee today: Thomas Schwartz and Paul Funk.

I further ask unanimous consent that the nominations be confirm, en bloc; that the motions to reconsider be laid upon the table, en bloc; that any statements relating to the nominations appear at the appropriate place in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

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

The nominations considered and confirmed, en bloc, are as follows:

To be lieutenant general

Maj. Gen. Thomas A. Schwartz, 000–00–0000, U.S. Army.

To be lieutenant general

Lt. Gen. Paul E. Funk, 000–00–0000, U.S. Army.

LEGISLATIVE SESSION

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

DEFENSE PRODUCTION ACT AMENDMENTS OF 1995

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 239, H.R. 2204.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2204) to extend and re-authorize the Defense Production Act of 1950, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table and any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (H.R. 2204) was deemed read the third time and passed.

ORDERS FOR WEDNESDAY, DECEMBER 6, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. on Wednesday, December 6; that following the prayer, the Journal of proceedings be deemed approved to date; that no resolutions come over under the rule; that the call of the Calendar be dispensed with; that the morning hour be deemed to have expired; and that the time for the two leaders be reserved for their use later in the day.

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

Mr. DOLE. Mr. President, I further ask unanimous consent that the hour of 5 p.m. on Wednesday, the Senate resume consideration of H.R. 1833, regarding partial-birth abortions in status quo.

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

PROGRAM

Mr. DOLE. Mr. President, it will be the majority leader's intention to move to proceed to House Joint Resolution 79, the constitutional amendment regarding flag desecration, at 10 a.m. on Wednesday, December 6. I hope between now and then we will have consent to go to that. We would like to complete action on this bill on December 7.

I know there has been an objection raised as to consideration. I hope we do not have to file cloture to proceed to this very important piece of legislation and that my colleagues may cooperate with us. If it takes that, we will proceed on that basis. I know we have at least 60 votes to proceed and I hope we have 60 votes if cloture is needed on the amendment itself.

We can expect votes to occur possibly on the constitutional amendment and can expect amendments to the partial-birth abortions bill.

Also, for the information of all my colleagues, the schedule for the next few days is as follows: As I said, tomorrow we will start at 10 a.m. on flag burning, or debate a motion to proceed to that measure; at 5 p.m., resume the partial-birth abortions bill. Therefore, late sessions can be anticipated.

On Thursday and Friday, complete action on partial-birth abortions if not previously disposed of; resume and, hopefully, complete action on the constitutional amendment regarding flag desecration.

Also, the Senate could be asked to consider any available appropriations conference reports once received from the House. We expect to receive State, Justice, Commerce from the House on Wednesday afternoon.

And then the following week, the State Department reorganization bill, S. 1441, if agreement cannot be reached to activate the original consent agreement of September 29, 1995, we will start on that bill on Monday.

Other items next week: Available appropriations conference reports; H.R. 660, fair housing exemption bill, hopefully under a time agreement of 1 hour. It may be that we can dispose of that this week.

There will be a Bosnia resolution next week. We are still in the process of drafting that resolution. We have had meetings today, and we hope to have additional discussions tomorrow and the next day. It is my hope that we can have some resolution that can be supported by a majority of our colleagues. I am not certain what day next week that will come up.

It is very likely next week there will also be a conference report on welfare reform. I think we have about concluded the conference. I just ask my colleagues, the original bill passed in the Senate by a vote of 87 to 12. We believe we have retained most of the Senate provisions in the conference, and I ask my colleagues on both sides—this bill had strong bipartisan support—to take a close look.

Eighty-eight percent of the American people want welfare reform. We will have it on the floor, we hope, next week. We hope the President of the United States will sign it. In my view, it is a good resolution of differences between the House and the Senate. We still have one or two minor—well not minor—issues in disagreement we hope to resolve tomorrow, and then we hope to bring it up by midweek next week.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DOLE. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:19 p.m., adjourned until Wednesday, December 6, 1995, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 5, 1995:

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. ARMY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601(A):

To be lieutenant general

MAJ. GEN. THOMAS A. SCHWARTZ, 000–00–0000

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST OF THE U.S. ARMY IN THE GRADE INDICATED UNDER SECTION 1370 OF TITLE 10, U.S.C.

To be lieutenant general

LT. GEN. PAUL E. FUNK, 000–00–0000