in the country believe so, and the majority of the American-Jewish community, of which I am proud to be a member, also believe they are doing the right thing.

President Netanyahu is meeting with Secretary Albright. It is my hope that they will have fruitful discussions. I think it is terribly important that this happen.

Let me make three points by way of conclusion: First of all, the administration, as I mentioned a moment ago, is not issuing threats. However, the Bush administration—and I don't mean this as a partisan point, but the Bush administration in connection with policy on settlements did threaten to cut off aid to Israel. There have been no conditions of this kind, putting aside whether the Bush administration was right or wrong to do that.

I also remind colleagues that this peace process is critically important, that it is important that we bridge the gaps, that the United States be a neutral mediator, that we continue to be a third party to which both parties can speak.

Finally, I will simply say that all of us ought to contemplate for a moment what will happen if the administration does not press to preserve this process and if this peace process collapses. I think the alternative scenario, which I shudder to think about, would be an escalation of terrorist attacks, with Israel facing newly hostile Arab neighbors on all sides and increased pressure from the Arab street for violent action against her. It is frightening to consider. I don't think that stalemate or the status quo is acceptable—I believe it is unthinkable. I think it is terribly important the United States continues to show leadership in this process.

Mr. President, this recent crisis in the peace negotiations coincides with Israel's celebration of her 50-year jubilee, an occasion of great joy for all of us who love Israel.

With the founding of modern Israel, the children of Abraham and Sarah, survivors of over 2,000 years of persecution and exile, were home at last and they were free at last. But the dream of Israel's founder, David Ben-Gurion, and that of his allies was not simply to provide a safe haven from centuries of Jewish suffering, it was also about fulfilling Isaiah's prophecy of making Israel ''a light unto the nations,'' a powerful sign and symbol of justice and compassion to all people of the world.

Although it is fitting to pause to celebrate what all the people of Israel have accomplished over the last 50 years, we must also look forward to the tasks which face her in the next millennium, chief among them the task of building a just, secure and lasting peace.

It is my deepest prayer that our children and grandchildren, 50 years from this year, will be able to say with gratitude that we were the generation which overcame ancient hatreds and enabled them to achieve a just and lasting peace which has by then embraced the entire region and all the peoples. That is a vision worthy of Israel's founder and of all of us who come after. It is a vision for which we should and we must be willing to struggle, to fight for and for which all of us must take risks.

I come to the floor to say that I do not believe there would be anything more important than to forge a just and lasting peace for the region. This would truly be worthy of the dream of Israel's founder.

Mr. President, I speak out on the Middle East peace process, again, because I think there has been entirely too much personal attack and I believe it is terribly important that all of us who are committed to the peace process not be silent.

(The remarks of Mr. WELLSTONE pertaining to the introduction of S. 2074 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. WELLSTONE. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has approximately 2 minutes left.

Mr. WELLSTONE. In the 2 minutes I have left, I am going to take advantage of being on the floor of the Senate. After all, I always say to my family, you know, I get to speak on the floor of the Senate. That is a huge honor.

PERSECUTION IN INDONESIA

Mr. WELLSTONE. Mr. President, let me just point out to colleagues that six students were murdered by the Suharto regime. I came out on the floor 2 days ago and talked about the fact that this could happen. These students committed no crime except to courageously say there ought to be freedom in that country. They have had the courage to challenge this government and to speak up for freedom for citizens in Indonesia and for democracy, and to end the persecution against people. And for that, they now have been murdered.

I believe that our Government ought to—we ought to use our maximum leverage with international institutions, the International Monetary Fund, the World Bank, to make it clear to Suharto that he does not get financial assistance when he murders his citizens.

We ought to, as a government, speak up on this. We should not be silent. And we should support these courageous students in Indonesia. I want those students to know they have my full support as a Senator from Minnesota.

I yield the floor.

UNANIMOUS CONSENT AGREEMENT—S. 1723

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to the consideration of S. 1723. I further ask consent that there be 2 hours of general debate on the bill, equally divided in the usual form.

I further ask consent that the following be the only first-degree amendments in order, other than the committee-reported substitute, that the first-degree amendments be subject to relevant second-degree amendments; that with respect to any time limit on the first-degree amendment, any second-degree thereto be limited to the same time limits:

Bingaman, relevant;

Bumpers, EB5 visas, 90 minutes equally divided;

Kennedy, layoffs, 40 minutes equally divided; recruit home, 40 minutes equally divided; whistle-blower protection;

Reed of Rhode Island, strike SSIG provision;

Reid of Nevada, international child abduction;

Wellstone, job training;

McCain, relevant;

Warner relevant;

That upon disposition of all amendments the committee substitute be agreed to, the bill be read a third time, and the Senate then proceed to vote on passage without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 1260.

The assistant legislative clerk read as follows:

A bill (S. 1260) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Securities Litigation Uniform Standards Act of 1998''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Private Securities Litigation Reform Act of 1995 sought to prevent abuses in private securities fraud lawsuits;

(2) since enactment of that legislation, considerable evidence has been presented to Congress that a number of securities class action lawsuits have shifted from Federal to State courts;

(3) this shift has prevented that Act from fully achieving its objectives;

(4) State securities regulation is of continuing importance, together with Federal regulation of securities, to protect investors and promote strong financial markets; and

(5) in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the Private Securities Litigation Reform Act of 1995, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities

regulators and not changing the current treatment of individual lawsuits.

SEC. 3. LIMITATION ON REMEDIES.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 16 of the Securities Act of 1933 (15 U.S.C. 77p) is amended to read as follows:

''SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REMEDIES.

''(a) REMEDIES ADDITIONAL.—Except as provided in subsection (b), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

''(b) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

''(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(c) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

''(d) PRESERVATION OF CERTAIN ACTIONS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), a class action described in paragraph (2) of this subsection that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(2) PERMISSIBLE ACTIONS.—A class action is described in this paragraph if it involves—

''(A) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(B) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

''(i) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(ii) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(e) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(f) DEFINITIONS.—For purposes of this section the following definitions shall apply:

''(1) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(2) CLASS ACTION.—

''(A) IN GENERAL.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(B) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(3) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

(2) CONFORMING AMENDMENTS.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(A) by inserting ''except as provided in section 16 with respect to class actions,'' after ''Territorial courts,''; and

(B) by striking ''No case'' and inserting ''Except as provided in section 16(c), no case''.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended—

(1) in subsection (a), by striking ''The rights and remedies'' and inserting ''Except as provided in subsection (f), the rights and remedies''; and

(2) by adding at the end the following new subsection:

''(f) LIMITATIONS ON REMEDIES.—

''(1) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

''(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(2) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

''(3) PRESERVATION OF CERTAIN ACTIONS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(B) PERMISSIBLE ACTIONS.—A class action is described in this subparagraph if it involves—

''(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(ii) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

''(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(II) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(4) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(5) DEFINITIONS.—For purposes of this subsection the following definitions shall apply:

''(A) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(B) CLASS ACTION.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(C) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(D) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

SEC. 4. APPLICABILITY.

The amendments made by this Act shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

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

Mr. D'AMATO. Mr. President, today we begin consideration of S. 1260, the Securities Litigation Uniform Standards Act of 1998.

The Banking Committee reported this bill on April 29 by an overwhelming vote of 14–4. This bill has strong bipartisan support. It comes as no surprise to anybody who has followed the progress of this legislation. This bill is the product of a great deal of hard work. It has been refined through the incorporation of comments from many sources, including the Securities and Exchange Commission. As a result of this process, this bill not only has been improved, but it actually enjoys the support of the Securities Exchange Commission and the White House.

Mr. President, I am not going to ask unanimous consent now that letters from the SEC and the White House be printed in the RECORD as if read, which is something we generally do. I think it is so important that I am going to take the time to refer to both letters and read what has been said, so that my colleagues can hear, and those who are interested in this debate can follow.

This is a letter, dated March 24, from the Securities and Exchange Commission, addressed to me as Chairman of the Banking Committee; Senator GRAMM, Chairman of the Subcommittee; and Senator DODD, who is the ranking member.

Let me read it:

Dear Chairman D'AMATO, Chairman GRAMM, and Senator DODD:

You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1997, and amendments to the legislation which you intend to offer when the bill is marked up by the Banking Committee. This letter will present the Commission's position on the bill and proposed amendments.

The purpose of this bill is to help ensure that securities fraud class actions involving certain securities traded on national markets are governed by a single set of uniform standards.''

I think that is important, Mr. President. We should understand that those securities traded on national exchanges are governed by a uniform standard. I think that makes ample sense.

While preserving the right of individual investors to bring securities lawsuits wherever they choose. . .

So we should underscore that, as a premise, the SEC says, we are going to look for a single standard, but we will preserve the rights of individuals to bring securities lawsuits wherever they choose.

. . . the bill generally provides that class actions can be brought only in Federal Court where they will be governed by federal law.

As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses attributable to reckless misconduct would jeopardize the integrity of the securities market. In light of this profound concern, we were gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

So, Mr. President, we have a concern that was expressed as it existed in the 1995 law, and what the Securities and Exchange Commission said is, look, we want in the new proposal, as it relates to uniform standards, to clearly identify that you did not do away with, but will recognize the scienter standards. That has been accomplished. And I will go back to that.

Our October 1997 testimony also pointed out that S. 1260 could be interpreted to preempt certain state corporate governance claims, a consequence that we believe was neither intended nor desirable. In addition, we expressed concern that S. 1260's definition of class action appeared to be unnecessarily broad. We are grateful for your responsiveness to these concerns and believe that the amendments you propose to offer at the Banking Committee markup, as attached to your letter, will successfully resolve these issues.

So I think it is obvious that there has been considerable ongoing dialog and work between the Chairman of the Subcommittee, Senator GRAMM of Texas, the ranking member, Senator DODD, the Banking Committee staff and the SEC, to look and to deal with what is not only the proposals that we put forth for the first time, but to deal with some of the imperfections and some of the unintended consequences that may have evolved as a result of the 1995 act.

The ongoing dialog between our staffs has been constructive. The result of this dialogue, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act. This will help to diminish confusion in the courts about the proper interpretation of that Act and add important assurances that the uniform standards provided by S. 1260 will contain this vital investor protection.

We support enactment of S. 1260 with these changes and with its important legislative history.

We appreciate the opportunity to comment on the legislation, and of course remain committed to working with the Committee as S. 1260 moves through the legislative process.

Sincerely, Arthur Levitt, Chairman; Isaac C. Hunt, Commissioner; Laura S. Unger, Commissioner.

At this time, I ask unanimous consent that the letter be printed in the RECORD so that it can be viewed in its entirety.

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

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1997, and amendments to the legislation which you intend to offer when the bill is marked up by the Banking Committee. This letter will present the Commission's position on the bill and proposed amendments.*

The purpose of the bill is to help ensure that securities fraud class actions involving certain securities traded on national markets are governed by a single set of uniform standards. While preserving the right of individual investors to bring securities lawsuits wherever they choose, the bill generally provides that class actions can be brought only in federal court where they will be governed by federal law.

As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses attributable to reckless misconduct would jeopardize the integrity of the securities markets. In light of this profound concern, we were gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

Our October 1997 testimony also pointed out that S. 1260 could be interpreted to preempt certain state corporate governance claims, a consequence that we believed was neither intended nor desirable. In addition, we expressed concern that S. 1260's definition of class action appeared to be unnecessarily broad. We are grateful for your responsiveness to these concerns and believe that the amendments you propose to offer at the Banking Committee mark-up, as attached to your letter, will successfully resolve these issues.

The ongoing dialogue between our staffs has been constructive. The result of this dialogue, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act. This will help to diminish confusion in the courts about the proper interpretation of that Act and add important assurances that the uniform standards provided by S. 1260 will contain this vital investor protection.

We support enactment of S. 1260 with these changes and with this important legislative history.

We appreciate the opportunity to comment on the legislation, and of course remain committed to working with the Committee as S. 1260 moves through the legislative process.

Sincerely,

ARTHUR LEVITT,
Chairman.
ISSAC C. HUNT, JR.,
Commissioner.
LAURA S. UNGER,
Commissioner.

Mr. D'AMATO. Mr. President, I took the time to go through this because I think it is important that we understand that this has not been the product of one staff or two staffs. This has not been the product of just the Banking Committee and those in industry who have come to express their concern as to how it is that their class actions are being brought in a frivolous manner, using the State courts to get around what Congress debated and what Congress voted overwhelmingly to bring, which is a standard of conduct that will discourage a race to the courthouse, simply to bring a suit and simply to extort moneys from those who have deep pockets, because these suits can be long, they can be frivolous, and they can be dragged out. The cost factor to the people being sued is enormous—the time, the distraction, particularly to startup companies, and particularly those who want to let people know what they are doing, but who felt restricted as a result of the suits that were brought.

I am not going to bother going into the history and the comments that have been made by many. But indeed

*We understand that Commissioner Johnson will write separately to express his differing views. Commissioner Carey is not participating.

there have been many, which clearly are a stain on the rightful practice of law to ensure the rights of those who have been aggrieved and would hold people responsible for actions that are not tortious, malicious, malevolent, and indeed when there are no actions that should be sustained under any court, but because of the cost involved would have insurance carriers, accountants firms, securities firms, manufacturers, and others, be held to a situation where they have to settle. Who do they settle with? They settle with the moneys that come from the little guy—their stockholders. So while we say ''stockholder derivative actions,'' the people hurt are indeed the stockholders.

Mr. President, I mentioned two letters. Let me read a second letter.

The second letter is dated a month later to myself as Chairman of the Banking Committee, Senator GRAMM as Chairman of the Subcommittee on Securities, Senator DODD as ranking Member of that Committee, from the White House, dated April 28, 1998.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: We understand that you have had productive discussions with the Securities and Exchange Commission (SEC) about S. 1260, the Securities Litigation Uniform Standards Act of 1997. The Administration applauds the constructive approach that you have taken to resolve the SEC's concerns.

We support the amendments to clarify that the bill will not preempt certain corporate governance claims and to narrow the definition of class action. More importantly, we are pleased to see your commitment, by letter dated March 24, 1998, to Chairman Levitt and members of the Commission, to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the Scienter standard for securities fraud actions.

As you know, uncertainty about the impact of the Reform Act on the scienter standard was one of the President's greatest concerns. The legislative history and floor statements that you have promised the SEC and will accompany S. 1260 should reduce confusion in the courts about the proper interpretation of the Reform Act. Since the uniform standards provided by S. 1260 will provide that class actions generally can be brought only in federal court, where they will be governed by federal law, it is particularly important to the President that you be clear that the federal law to be applied includes recklessness as a basis for pleading and liability in securities fraud class actions.

So long as the amendments designed to address the SEC's concerns are added to the legislation and the appropriate legislative history and floor statements on the subject of legislative intent are included in the legislative record, the Administration would support enactment of S. 1260.

Sincerely,

BRUCE LINDSEY,
Assistant to the President and Deputy Counsel.

GENE SPERLING,
Assistant to the President for Economic Policy.

Mr. President, I make note that the SEC informed the Banking Committee and the Subcommittee Chairman and ranking member on March 24. It was fully a month thereafter, on April 28, that again the President reaffirmed his support for this action, and in so doing went out of his way to point out that we, indeed, will improve the present state of the law because of the colloquy that will take place and because of the manner in which the law was written.

So here the President of the United States and the SEC and his Commissioner are saying you are improving upon the law as it stands now, in addition—we will talk about that—to closing a loophole that has been used by those who rush to the courts to bring suits because they are looking to enrich themselves, not to protect the little guy or the small investors. They are costing the little guy and small investors money. I think the broad-based support that this bill enjoys is a tribute to Senator GRAMM. I want to say that for the record. He is here. He worked hard. His staff has worked hard. They have been reasonable. The chief sponsors of this legislation, Senators GRAMM and DODD have put together a tight bill intended to address a specific serious problem.

The problem to which I refer is a loophole that strike lawyers have found in the 1995 Private Securities Litigation Reform Bill which was fashioned again on the most part by Senators GRAMM, DODD, and DOMENICI.

Mr. President, the 1995 Act was passed in the last Congress in response to a wave of harassment litigation that threatened the efficiency and the integrity of our national stock markets, as well as the value of stock portfolios of individual investors. That is what is being hurt—the little guy, the small individual investor in whose companies they had a share in were diminished in value as a result of these suits. This threat was particularly debilitating to the so-called high-tech companies who desperately needed access to our capital markets to raise the money needed for research, development, and production of cutting-edge technology. These companies, which have spearheaded our economy's resurgence, are particularly susceptible to strike suits because of the volatility of the price of their stock. Strike lawyers thrive on stock price fluctuations regardless of whether there is even a shred of evidence of fraud.

Mr. President, this is the crux of the matter: That ultimately the cost of strike suits are borne by shareholders, including ordinary people saving for their children's education, or for their retirement. The average American goes into the stock market for long-term appreciation—i.e., to earn solid rates of return. They do not buy a stock simply to be positioned for a class action when the stock's price drops. It is those people, the ordinary investors, who foot the bill for high-priced settlements of harassment litigation.

We are not talking about preventing legitimate litigation. Real plaintiffs with legitimate claims deserve their day in court. And we preserve that in this bill. But what we have seen in our Federal courts, and what we are now seeing in our State courts is little more than a judicially sanctioned shakedown that only benefits the lawyers. We are talking about lawsuits in which we have nominal plaintiffs, and the lawyers are the only real winners. One of these strike lawyers drove this point home best, one of the biggest and one of the largest, when he bragged that he had ''the perfect practice''. Why did he say that? He bragged about it. He said he has the ''perfect practice.'' This is the fellow who has the largest, has brought more suits, hundreds of millions of dollars, who said he has ''the perfect practice'' because he has ''no clients.''

Isn't that incredible? He has no clients. He recovers hundreds of millions of dollars. When it is recovered, who gets most of it? The lawyers do. The so-called clients get hurt because the company which they have stock in loses value. It loses time. It pays millions of dollars. It has higher insurance costs, higher costs for auditing. The auditors have to charge more because they get sued. The insurance companies have to charge more for their premiums because they wind up paying more. Who do you think gets hurt? The little guy. Who benefits? The fellow who says ''I have got the perfect practice.''

Now, let me say this to you. This is a very, very, very small part of the law practice, is very specialized, relatively a handful of attorneys who have this, but let me tell you they hold hostage the companies of America, the private sector of America, as a result of what they can do by bringing these suits, suits that have no merit.

As I have previously mentioned, harassment lawyers found a loophole in which to ply their trade—the State court system. In the time since the 1995 Act was passed, we have seen these class-action lawyers rush to State courthouses. One witness before the Securities Subcommittee summarized this phenomenon well when he testified that the single fact is that State court class actions involving nationally traded securities were virtually unknown. In other words, prior to our 1995 Act, they just were not known. Now they are brought with some frequency.

This is a national problem. Regardless of where class actions are brought, they impact on the national stock markets. Money is moved away from job-creating, high-tech firms. Money is taken from shareholders in the form of stock price decline as a result of litigation. And where does this money go? It goes into the pockets of a very select cadre of these attorneys.

In addition, these lawsuits have a chilling, a chilling effect on one of the most important provisions in the 1995 Act and that is called the safe harbor provision. Until this loophole is closed, no company can safely risk issuing any forecast, even though the market desperately wants it. So you cannot get a company to say: ''This is what we predict; this is what we see,'' because they are subject to litigation. To do so is to invite a class action and a high-dollar settlement.

If someone makes a prediction and he is off by a little bit, he is sued. If someone makes a prediction, he says: ''We think we are going to increase profits or sales by one-third,'' and he doesn't hit that target, he has a smaller than anticipated increase, that company is going to be sued. And so you cannot get the kind of advice that investors are looking for.

That is not what we want today. The bill's detractors are wrong. It will not prevent shareholder derivative actions or individual lawsuits or lawsuits by school districts or municipalities or State securities regulator enforcement actions or lawsuits relating to ''microcap'' or ''penny'' stock fraud. Those actions will still be permitted.

This is important legislation, and it is narrowly drawn to address a specific and serious problem. Time is short. There are very few legislative days remaining in the session, and I encourage my colleagues on both sides of the aisle not only to support this bill and to support the sponsors of this bill, but also that we move forward in a manner which can see that it is speedily enacted. Every day that we delay occasions more of these suits which needlessly cost consumers and stockholders and the American public millions and millions of dollars.

Again, I commend the architects of this legislation, Senators DODD, GRAMM, and DOMENICI, and I also, again, would point out that we have worked very closely with the Securities and Exchange Commission and with the White House in coming to this point.

I yield the floor.

Mr. SARBANES. Mr. President, I think it is important at the outset of this debate to try to dispel three misconceptions that surround S. 1260. The first is that class-action lawsuits alleging securities fraud have migrated from Federal court to State court since 1995 and the enactment of the earlier legislation.

In fact, as I will describe in some detail shortly, every study indicates that the number of securities fraud class actions brought in State courts, while it increased in 1996, then declined in 1997. So the numbers do not support that assertion.

The next misconception is that this bill would preempt only class-action lawsuits from being brought in State court. In fact, this bill likely will deprive individual investors of their own opportunities to bring their actions in State courts separate and apart from class actions.

The final misperception about this bill, which is suggested, is that it enjoys widespread support. In reality, a broad coalition of State and local officials, senior citizen groups, labor unions, academics, and consumer groups oppose this bill. They oppose it because it goes too far. It will deprive defrauded investors of remedies.

Once again, we have this classic example of being able to sort of try to address a problem and, instead of narrowly dealing with the problem, swinging the pendulum well beyond the problem and taking the so-called corrective legislation so far out that in and of itself it creates additional problems.

Let me turn to the first misperception, the notion that securities fraud class actions are being brought in State court in order to avoid the provisions of the Litigation Act of 1995.

It is correct that the number of such cases went up in 1996, the first year the Litigation Act was effective, but every available study shows that the number declined in 1997. For example, a study done by the National Economic Research Associates, a consulting firm, found that the number of securities class-action suits filed in State courts during the first 10 months of 1996 increased to 79 from 48 filed during the same period in 1995.

In an update released in the summer of 1997, however, NERA found that the number of securities class actions filed in State courts during the first 4 months of 1997 declined to 19, down from 40 in the same period in 1996. So the number actually declined very significantly by more than half the first 4 months of 1997.

These numbers are cited in a report that was prepared by the Congressional Research Service. In July 1997, Professors Joseph Grundfest and Michael Perino of Stanford University Law School testified before the Securities Subcommittee, and in their testimony they show that the number of issuers sued only in State class actions declined from 33 in 1996 to an annualized rate of 18 in 1997. A Price Waterhouse securities litigation study posted by that accounting firm on its Internet site corroborated NERA's findings. Using data compiled by Securities Class Action Alert, based on the number of defendants sued, Price Waterhouse reported that the number of State court actions increased from 52 in 1995 to 66 in 1996 but then declined to 44 in 1997. That was lower than the number of such actions in 1991 or 1993.

The study went on to find that the total number of cases filed in 1997 showed little or no change—little or no change—from the average number of lawsuits filed in the period 1991 through 1995.

Data provided to the committee by Price Waterhouse on February 20, 1998, also demonstrated that State court filings declined in 1997. Measured by the number of cases filed, the number of State securities class actions declined from 71 in 1996 to 39 in 1997. So much for this assertion of a rising number of suits being brought in the State courts. This really is a piece of legislation in search of a problem. And when you look at the facts, when you look at the numbers, the problem is not there.

Now let me turn to the notion that this bill addresses only class-action lawsuits. I think most people understand a class-action lawsuit to refer to lawsuits brought by one person on behalf of himself and all other people similarly situated, an anonymous and potentially large group of people. For class actions to be certified in Federal court, the Federal Rules of Civil Procedure require that the class be so numerous that joinder of all members is impracticable. In Federal court, a judge normally must find that common questions of law and fact predominate over questions only affecting individual members.

Class actions are a tool that allow plaintiffs to share the cost of a lawsuit when it might not be economical for any one of them to bring an action. But, because they can be brought on behalf of potentially an enormous class, they also carry with them the possibility of being misused to coerce defendants into settlement.

This is the sort of situation that is ordinarily described by the proponents of such legislation as requiring a legislative enactment. But when you examine the legislation that comes in behind that assertion, you invariably find that the breadth of the legislation far exceeds this problem which they have identified, and which they constantly use in the discussion and the debate as the example of what they are trying to deal with. If we could limit the legislation to the examples that are cited, we might really come close to obtaining a consensus in this body about corrective measures. But the legislation goes far beyond the examples that are ordinarily used as constituting the basis for legislative enactment, and it is that expanded application of the legislative language, not the specific examples that are generally used, which creates the problem.

This bill is another example of that. It addresses more than the type of class-action case which is ordinarily cited as constituting a potential abuse of the legal process. This bill contains a definition of class action broad enough to pick up individual investors against their will. The bill would amend the Federal Securities laws to include a new definition of class action. It would include as class action any group of lawsuits in which damages are sought on behalf of more than 50 persons if those lawsuits are pending in the same court, involve common questions of law or fact, and have been consolidated as a single action for any purpose.

Even if the lawsuits are brought by separate lawyers without coordination—in other words, you have 50 different investors who feel they have been cheated and want to bring a lawsuit—there is no interplay or interaction amongst them, even if the common questions do not predominate—

which is a requirement in class-action suits, but weakened in this legislation—those lawsuits, under this legislation, may qualify as a class action and thus be preempted.

So if an individual investor chooses to bring his own lawsuit in State court, to bear the expenses of litigation himself, he can be forced into Federal court. He can be made to abide by the Federal Rules if 50 other investors make the same decision about bringing a lawsuit, 50 other separate investors. Indeed, the bill provides an incentive for defendants to collude with parties to ensure that the preemption threshold is reached. Such a result goes well beyond ending abuses associated with class-action lawsuits. It deprives individual investors of their remedies.

The definition of class action in the bill would preempt other types of lawsuits as well. It includes as a class action any lawsuit in which damages are sought on behalf of more than 50 persons and common questions of law or fact predominate. The bill specifies that the predomination inquiry be made without reference to issues of individualized reliance on an alleged misstatement or omission. This would ensure that the investor receives the worst of both worlds. While the investor could not bring a class action under State law, because each investor must prove his or her reliance, they nonetheless constitute a class action under the bill and their suit is preempted.

Finally, let me turn to the assertion that there is little or no opposition to this bill. In fact, the bill is opposed by State and local officials very vigorously, as a matter of fact. I note there that Orange County has just begun the first of its recoveries, in terms of being defrauded. Senior citizens groups, labor unions, consumer groups, columnists and editors, legal practitioners and academics have all weighed in on this debate. The headline of a column by Ben Stein in USA Today on April 28, summarizes this opposition: ‘‘Investors, beware: Last door to fight fraud could close.’’

‘‘Investors, beware: Last door to fight fraud could close.’’ He wrote of this bill, the legislation before us:

> State remedies would simply vanish, and anyone who wanted to sue would have to go into Federal court where impossible standards exist.

He warns:

> This is serious business for the whole investing public.

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

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

[From USA Today, Apr. 28, 1998]

INVESTORS, BEWARE: LAST DOOR TO FIGHT FRAUD COULD CLOSE

(By Ben Stein)

If you come home from vacation and find that your house has been broken into, you know who to call. You call the police and then your insurance agent to make up the loss.

If someone misuses your credit card, you also know what to do. You call MasterCard or Visa or whoever it is, and the company takes the fraudulent charge off your card.

But what if you open the newspaper one day to find you have been defrauded about the stocks and bonds you own? Who do you call for help if management of a company in which you hold stock has lied to the world about a product or its prospects, induced you to buy stock, and then fled with your money?

You can file a report with the Securities and Exchange Commission, but we all know how slowly even the best bureaucracies work. You can go to your state securities commission. They might be great people, but they also work slowly—in general taking years or decades—and they often are geared more to punishing the wrongdoer than to getting a recovery for the victims.

Also, both the feds and state bureaucracies will be totally overwhelmed and understaffed as a matter of course. You could sue the fraudmeisters yourself, but that kind of suit costs a fortune, literally millions of dollars, and that exceeds most people’s losses, not to mention their life savings.

So, who will possibly stand up for you and sue to get your money back? The private class-action securities bar.

These people are not Matt Dillon or Wyatt Earp, but their livelihood is wholly dependent upon getting results for defrauded investors. They aggregate claims by all of the cheated investors in a corporation and sue to get redress. They almost never make any money unless they get a chunk for the defrauded little guy. They are not angels, and they are not saints. They do it for the money. But they get money when you do, so they have to be persistent, aggressive and ruthless against the cheaters.

The people who have done the fraud hate class-action lawyers. So, even more, do accountants and insurance companies. Accountants have often been involved in the fraud or at least ignored it or missed it. They’re still around when the business management has gone, so they—the accountants—often get sued successfully. Likewise, the companies that insure accountants for malpractice totally hate the class-action bar for the same reason.

In the 1980’s, there was a national upheaval in fraud—junk bonds, S&Ls high-tech fraud. There were some large federal class-action suits under decades-old consumer protection laws from New Deal days. Naturally, these upset the accountants, the insurers and the high-tech firms. There were some large recoveries.

No surprise, then, that the accountants, high-tech firms and insurance companies did what any smart and government-wise group of rich, unhappy people would do. They lobbied Congress, giving immense contributions to representatives and senators. And they got the federal law changed drastically so that it became extremely hard to sue for securities fraud as a class. There was a bar on suits against accountants except in very rare cases, stringent limits on discovering evidence of fraud, and an almost totally impossible level of pleading about how much defendants had to have known.

When those who wanted to protect the small investor—and there were such principled men and women in Congress—complained, the friends of the accountants and fraud makers said, ‘‘Hey, maybe the federal law is a bit harsh, but no problem. You can still sue in state court. You still have state remedies.’’ President Clinton vetoed the bill, but it was passed, over his veto, by a Republican Congress that I generally love but that sold out totally here. That was in 1995.

There has yet to be a single recovery for investors in a suit brought under the 1995 law. Now it’s 1998, and guess what’s happening: congress is racing toward passage of a law proposed by Chris Dodd, senator for Hartford, Conn., insurance capital of the world. The bill, which Congress is to vote on before summer, would spring the trap opened in 1995: It would bar all state class-action securities cases.

The state remedies that were supposed to remain in place would simply vanish, and anyone who wanted to sue would have to go into federal court, where those same impossible standards exist. The excuse of the accountants and high-tech pooh-bahs is that there has been a huge upsurge in state class-action cases since the 1995 law went into effect. The uncontroverted fact, however, is that the number of state court cases of class-action suits has fallen—not risen—since 1995 in the nation and has fallen in all but three states since 1995.

Of course, if you have money in Congress, you don’t need no stinking facts. And, the juggernaut of the accountants in Congress is powerful, indeed. They have even managed to get the chairman of the Securities and Exchange Commission, Arthur Levitt, to change his mind. Levitt in recent weeks was saying that state remedies should stay in place until he saw how the 1995 law worked out. He now endorses closing the state courthouse door to small class-action litigants if some changes in the standard of reckless misconduct required for liability are altered slightly.

This is not abstruse stuff for law teachers. This is serious business for the whole investing public. The goal of the accountants and their pals in Hartford is to simply kill the class-action bar. They’re gambling that their contributions, plus a general resentment against lawyers, will do the trick. But if it does, next time you’re defrauded, you’ll be plumb out of luck. You can call, but the phone will just ring and ring and ring, and you’ll be all alone at 3 a.m., wondering how you can possibly have such a bitter loss without anyone to help.

Mr. SARBANES. A number of groups representing State and Government officials, including the National League of Cities, the National Association of Counties, the Government Finance Officers Association, and the U.S. Conference of Mayors, oppose this bill, as do the National League of Cities National Association of Counties, Government Finance Officers Association, and the U.S. Conference of Mayors. I ask unanimous consent that a May 11, 1998, letter from these and other groups be printed in the RECORD.

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

GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA), MUNICIPAL TREASURERS’ ASSOCIATION (MTA), NATIONAL ASSOCIATION OF COUNTIES (NACO), NATIONAL ASSOCIATION OF COUNTY TREASURERS AND FINANCE OFFICERS (NACTFO), NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS (NASRA), NATIONAL CONFERENCE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS (NCPERS), NATIONAL LEAGUE OF CITIES (NLC), U.S. CONFERENCE OF MAYORS (USCM),

May 11, 1998.

Hon. PAUL S. SARBANES,
U.S. Senate, Hart Senate Office Building,
Re: S. 1260, Securities Litigation Uniform Standards Act of 1998.

DEAR SENATOR SARBANES: The state and local government organizations listed above write in opposition to S. 1260, the Securities Litigation Uniform Standards Act of 1998, as reported by the Senate Committee on Banking, Housing and Urban Affairs, which we understand will be considered by the full Senate this week. We urge you to support amendments to the bill which would (1) narrow the definition of class action to follow the Federal Rules of Civil Procedure; (2) allow plaintiffs to carry state statute of limitations laws with them in cases filed in state court which are removed to federal court; and (3) provide an exemption for classes comprised of state and local governments. We also ask that you oppose this legislation if the final version too closely resembles the current version of S. 1260. Our most significant concerns are the following:

The consequences for public pension funds and state and local governments which are unable to recover losses in state courts will be significant. If defrauded state or local pension funds are barred from recovering from corporate wrongdoers in state court (having already had many remedies foreclosed in federal court), the state or local government and its taxpayers may be required to make up losses in the fund. Not only would this jeopardize general revenue, leading to a likely loss of jobs and services to the public, but it could also severely damage a jurisdiction's credit rating. This could result in a higher cost of borrowing in the debt market to fund capital and operating expenses.

S. 1260 fails to reinstate liability for secondary wrongdoers who aid and abet securities fraud. Despite two opportunities to do so since the Supreme Court struck down for private actions aiding and abetting liability for wrongdoers who assist in perpetrating securities fraud, the current version of S. 1260 does not reinstate such liability. An amendment offered in the Banking Committee which would have allowed defrauded investors to carry with their federal claim the state law regarding aiding and abetting was defeated.

S. 1260 fails to reinstate more a reasonable statute of limitations for defrauded investors to file a claim. As in the case of aiding and abetting, Congress has now had two opportunities to reinstate a longer, more reasonable statute of limitations for defrauded investors to bring suit. Many frauds are not discovered within this shortened time period, but the Banking Committee again missed an opportunity to make wronged investors whole by defeating an amendment that would have allowed defrauded investors to carry with them in federal suits the state statute of limitations.

The definition of ''class action'' contained in S. 1260 is overly broad. The definition of class action in S. 1260 would allow single suits filed in the same or different state courts to be rolled into a larger class action that was never contemplated or desired by individual plaintiffs and have it removed to federal court. Claims by the bill's proponents that individual plaintiffs would still be able to bring suit in federal court are belied by this provision.

There have been few state securities class actions filed since the Private Securities Litigation Act (PSLRA) passed. Despite the claims of the bill's proponents, tracking by the Price Waterhouse accounting firm shows that only 44 securities class actions were filed in state court for all of 1997, compared with 67 in 1994 and 52 in 1995. Most of these cases were filed in California, indicating that, if there is a problem in that state, it is one which should be dealt with at the state level. Citizens of the other 49 states should not be penalized as a result of a unique situation in a single state.

The PSLRA was opposed by state and local governments because the legislation did not strike an appropriate balance, and this legislation extends that mistake to state courts. As both issuers of debt and investors of public funds, state and local governments seek to not only reduce frivolous lawsuits but to protect state and local government investors who are defrauded in securities transactions. The full impact of that statute on investor rights and remedies remains unsettled because even now many parts of the PSLRA have not been fully litigated; however, this untested law would now be extended to state courts.

The above organizations believe that states must be able to protect state and local government funds and their taxpayers and that S. 1260 inhibits these protections. We urge you to oppose preemption efforts which interfere with the ability of states to protect their public investors and to maintain investor protections for both public investors and their citizens.

Mr. SARBANES. Why are these public officials concerned about this bill? Why are these associations that represent public officials all across our Nation concerned about this bill? Because these public officials invest taxpayers' funds and public employees' pension funds in securities. And they fear they will be left without remedies if they are defrauded.

Testifying before the Senate Banking Committee, Mayor Harry Smith of Greenwood, MS, warned:

The most potent protection investors have is the private right of action. To remove that protection could have grave consequences. We oppose taking such a risk. We oppose preemption of traditional State and local rights created to protect our citizens and taxpayers. This bill is inconsistent with Congress' renewed commitment to the preservation of federalism, and reduces protections for our retirees, employees, and taxpayers.

Over two dozen law professors, including such nationally recognized securities law experts as John Coffee, Jr., Joel Seligman and Marc Steinberg, expressed their opposition in a letter earlier this year. I ask unanimous consent that letter be printed in the RECORD.

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

JANUARY 23, 1998.

DEAR SENATORS AND MEMBERS OF CONGRESS: We are professors of securities regulation and corporate law at law schools throughout the United States. Our teaching and scholarship focus on the coexistent federal and state systems for the regulation of securities, an extraordinary example of cooperation between the public and private sectors that has created for American businesses the largest capital market in the world, and for investors one of the safest. As events elsewhere in the world over the past few weeks so aptly demonstrate, the stability and integrity of our capital markets is one of our most important national accomplishments.

We are very concerned about legislation now pending in Congress that would preempt private rights of action for securities fraud in class actions brought under the statutes and common law of all fifty states.[1] This sweeping federal preemption of state law is being proposed less than one year after the National Securities Markets Improvement Act of 1996 preempted state ''merit review'' of most securities offerings, and two years after the federal litigation system itself was overhauled by the Private Securities Litigation Reform Act of 1995 (the ''1995 Act''), which made it more difficult for investors to recover for securities fraud in federal court. Defendants in securities fraud suits now argue that the 1995 Act contained a ''loophole'' because it did not overturn Congress's decision in 1933 and 1934 to leave state fraud remedies intact.[2]

Arthur Levitt, the Chairman of the Securities and Exchange Commission, however, has strongly urged Congress to wait until more is known about the impact of the 1995 Act on litigation in federal and state courts before considering legislation preempting state rights of action.[3] We also believe that Congress should wait to ascertain the effects of the 1995 Act, as well as the direction of state law, before enacting any legislation that would undercut the longstanding role that state law has had in protecting investors from securities fraud. The complex relationship between federal and state securities laws needs to be more fully understood before investors are denied the protection of either body of law.

We therefore urge you and your colleagues at this time not to support S. 1260, HR 1689, or any other legislation that would deny investors their right to sue for securities fraud under state law.

Very truly yours,

Ian Ayres, Yale University; Stephen M. Bainbridge, University of California at Los Angeles; Douglas M. Branson, University of Pittsburgh; William W. Bratton, Rutgers University; John C. Coffee, Jr., Columbia University; James D. Cox, Duke University; Charles M. Elson, Stetson University; Merritt B. Fox, University of Michigan; Tamar Frankel, Boston University; Theresa A. Gabaldon, George Washington University; Nicholas L Georgakopoulos, University of Connecticut; James J. Hanks, Jr., Cornell Law School; Kimberly D. Krawiec, University of Tulsa; Fred S. McChesney, Cornell Law School; Lawrence E. Mitchell, George Washington, University; Donna M. Nagy, University of Cincinnati; Jennifer O'Hare, University of Missouri, Kansas City; Richard W. Painter, University of Illinois; William H. Painter, George Washington University; Margaret V. Sachs, University of Georgia; Joel Seligman, University of Arizona; D. Gordon Smith, Lewis and Clark; Marc I. Steinberg, Southern Methodist University; Celia R. Taylor, University of Denver; Robert B. Thompson, Washington University; Manning G. Warren III, University of Louisville; Cynthia A. Williams, University of Illinois.

[1] See S. 1260, 105th Congress, 1st Sess. (1997) (the Securities Litigation Uniform Standards Act of 1997) (the ''Gramm-Dodd bill''); and HR 1689, 105th Congress, 1st Sess. (1997) (the ''White-Eshoo bill'').

[2] See Section 16 of the 1933 Act, 15 U.S.C. §77p (1996), and Section 28(a) of the 1934 Act, 15 U.S.C. §78bb(a) (1996).

[3] Prepared Statement of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission Before the Senate Committee on Banking, Housing and Urban Affairs Subcommittee on Securities Concerning the Impact of the Private Securities Litigation Reform Act of 1995, July 24, 1997.

Mr. SARBANES. These distinguished law professors stated:

We . . . believe that Congress should wait to ascertain the effects of the 1995 Act, as well as the direction of state law, before enacting any legislation that would undercut the longstanding role that state law has had in protecting investors from securities fraud.

These distinguished academics oppose any legislation that would deny

[2] Footnoes at end of letter

investors their right to sue for securities fraud under State law.

Similarly, the New York State Bar Association opposes this bill. A report prepared by the Bar Association Section on Commercial and Federal Litigation concluded: ''The existing data does not establish a need for the legislation,'' and, ''the proposed solution far exceeds any appropriate level of remedy for the perceived problem.''

Let me repeat that quote from the report prepared by the New York State Bar Association Section on Commercial and Federal Litigation:

The proposed solution far exceeds any appropriate level of remedy for the perceived problem.

The opposition goes on. As additional examples, I cite a March 30, 1998, editorial from the National Law Journal entitled ''What's the Rush?'' This editorial concludes:

The Senate should pause before it neutralizes State laws that still stand as a bulwark protecting investors against flimflam artists.

Mr. President, I ask unanimous consent that this editorial from the National Law Journal entitled ''What's the Rush?'' and concluding by saying, ''The Senate should pause before it neutralizes State laws that still stand as a bulwark protecting investors against flimflam artists,'' be printed in the RECORD.

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

[From the National Law Journal, Mar. 30, 1998]

WHAT'S THE RUSH?

You would expect Congress to think long and hard before passing laws that foreclose the right of potential litigants to bring their complaints in the courts. But Capitol Hill is moving swiftly on legislation that would block investor class actions in the state courts, though principles of federalism are in themselves reasons for Congress to proceed with caution.

Bills to amend the Private Securities Litigation Reform Act of 1995, which put strict limits on federal class actions, have enormous support: The Senate bill, S. 1260, already has 30 sponsors, and a virtually identical bill in the House, H.R. 1689, has 193 sponsors. The Senate Banking Committee is expected to mark up the bill this month, and Senate Majority Leader Trent Lott, R-Miss., has promised to bring the bill to a floor vote before the Easter recess, which begins April 3.

The Senate should slow down—and take a careful look at the evidence. Lobbyists for the high-technology companies that have been pushing for pre-emption claim that plaintiffs' lawyers such as San Diego's William S. Lerach, of New York's Milberg Weiss Bershad Hynes & Lerach L.L.P., are making an ''end run'' around the federal law by bringing their lawsuits in state court. But data collected by Price Waterhouse Inc., a key supporter of pre-emption, show a steep drop in the number of suits brought in state court: In 1996, 71 class actions were filed; in 1997, the number dropped to 39.

But this is more than a numbers story. The federal courts have just begun to interpret the 1995 law, which passed after rancorous debate in the House and Senate, and only after Congress overrode a presidential veto. A ruling in one of the first cases filed under the new law, a class action that Mr. Lerach brought against Mountain View, Calif.'s Silicon Graphics Inc., threatens to wipe out ''recklessness'' as a sufficient standard of intent in securities fraud cases.

The Securities and Exchange Commission is supporting Mr. Lerach's appeal of this ruling to the 9th U.S. Circuit Court of Appeals, but the court won't hear arguments until next year. By then, Congress may have already blocked state court suits, leaving plaintiffs in investor suits without a forum to assert reckless conduct and, ergo, leaving corporate wrongdoers free to behave irresponsibly.

Other protections available in state court would also be lost. In 33 states, the statutes of limitation on filing suit are longer than the one-year federal limit. Liability for ''aiding and abetting'' a securities fraud—which was eliminated in federal court actions by a 1994 U.S. Supreme Court ruling—also exists in most states.

Before the Senate rushes to wipe out state fraud actions, it should recall the words of Sen. Pete V. Domenici, R-N.M., who co-sponsored the 1995 act. Addressing criticisms that the new law would allow financiers like Lincoln Savings & Loan's Charles V. Keating to escape liability, Senator Domenici pointed out that Mr. Keating had been sued under many provisions of state law—''laws untouched'' by his proposed reforms.

The Senate should pause before it neutralizes state laws that still stand as a bulwark, protecting investors against flimflam artists.

Mr. SARBANES. Mr. President, I would like to point out also the opposition of the American Association of Retired Persons, the Consumer Federation of America, the AFL–CIO, the American Federation of State, County and Municipal Employees, and the United Mine Workers. I ask unanimous consent that letters from these groups expressing their opposition to this bill be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AFL–CIO,
Washington, DC, May 11, 1998.

DEAR SENATOR: Labor unions have an enormous stake in protecting workers' hard-earned retirement savings from securities fraud. Over $300 billion in union members' pension assets are invested in the stock market. Thus, as shareholders and investors, unions and employees count on the protection of both state and federal laws and regulations to protect their investments and to preserve the integrity of the market. For this reason, the AFL–CIO urges you to oppose S. 1260, the Securities Litigation Uniform Standards Act.

State laws can and do provide even greater protection for small investors than is provided by the federal securities laws. Until now, it has been up to each state to decide whether and how to offer enhanced antifraud protections to its citizens.

This well established, dual system of state and federal protection is now threatened, however, S. 1260 preempts investor-friendly state laws and substitutes the federal Private Securities Litigation Reform Act (PSLRA), which would significantly limit the liability of fraud defendants.

In particular, the bill would hurt individual investors, including workers and pensioners, by denying them the ability to pursue effective redress through a class action. In broadly held publicly traded companies, class action litigation is the only economically feasible way in which shareholders can bring security fraud claims. Generally, even the largest institutional shareholders will not pursue a valid claim individually, because their possible individual benefit will not compensate for the costs incurred in bringing such litigation. In light of the SEC's limited resources, private class action litigation has always been the primary means for both institutions and individual shareholders to recoup losses from securities fraud and has been a powerful deterrent to managerial impropriety.

Tampering with the state's antifraud authority would place at risk the retirement savings of tens of millions of Americans. Aside from the obvious flaws, the proposed legislation also disturbs the state/federal balance by removing an important state role in the antifraud field without any sound justification. The AFL–CIO asks you to oppose this bill.

Sincerely,

PEGGY TAYLOR,
Director,
Department of Legislation.

CONSUMER FEDERATION OF AMERICA,
Washington, May 7, 1998.

DEAR SENATOR: It is our understanding that the Senate will vote next week on S. 1260, ''The Securities Litigation Uniform Standards Act of 1997.'' I am writing on behalf of Consumer Federation of America to reiterate our strong opposition to this anti-investor legislation and to urge you to oppose it.

Our opposition is based on a simple principle: Congress should not extend federal standards to securities fraud class action lawsuits being brought in state court until we know whether those federal standards are preventing meritorious cases from being brought or reducing victims' recoveries. Caution is particularly warranted in this case since both the Securities and Exchange Commission and the state securities regulators opposed the Private Securities Litigation Reform Act on the grounds that it would tip the balance too far in favor of fraud defendants.

The jury is still out on the PSLRA, since its major provisions have yet to be defined in court and there has yet to be a single recovery for investors under the 1995 law. It would be nothing short of irresponsible, in our view, for Congress to preempt state laws without first knowing the full effects of the federal law on meritorious lawsuits.

Supporters have made much of the fact that Securities and Exchange Commission Arthur Levitt now supports S. 1260, having announced his change of heart at his confirmation hearing in April. It is important to understand that nothing in the few cosmetic changes negotiated by Chairman Levitt alters the fundamentally anti-investor nature of this bill.

Furthermore, even as he made his unfortunate decision to endorse the legislation, Chairman Levitt did not withdraw earlier statements that the current federal law tilts the balance too far in favor of securities fraud defendants. Nor did he withdraw statements that this legislation is premature based on the limited data now available. Most importantly, he did not withdraw his assessment, expressed in October testimony before the Senate Banking Committee ''. . . that the bill would deprive investors of important protections, such as aiding and abetting liability and longer statutes of limitation, that are only available under state law'' and that ''great care should be taken to safeguard the benefits of our dual system of federal and state law, which has served investors well for over 60 years.''

During the Banking Committee's mark-up of the bill, amendments were offered that would have allowed defrauded investors to rely on longer statutes of limitations and aiding and abetting liability where they were available in state law and would have prevented state courts from consolidating individual lawsuits brought against a common defendant for the purposes of forcing the case into federal court. While these amendments alone cannot alter the fundamental flaws in this legislation, they would ameliorate some of the bill's most onerous effects. CFA believes these pro-investor changes are the minimum necessary to provide a modicum of balance to the bill. Should similar amendments be offered on the Senate floor, we urge you to support them.

As you consider this legislation, keep in mind that just under half of all American households now invest in the stock market directly or through mutual funds. Their primary reason for investing is to provide a decent standard of living for themselves in retirement. When the current bull market comes to its inevitable end, and the frauds that have been perpetrated under its cover are exposed, investors who find their retirement savings decimated by fraud should not be left without any means of recovering those losses.

Because it threatens to further restrict defrauded investors' access to justice, CFA urges you to vote against S. 1260.

Respectfully submitted,

BARBARA ROPER,
Director of Investor Protection.

Mr. SARBANES. Mr. President, much will be made during the debate on this bill of the support it is asserted it enjoys from the Securities and Exchange Commission. But it seems to me that citing the support of the SEC tells only part of the story—only part of the story.

First, SEC Commissioner Norman Johnson has written to express his opposition to the bill. His March 24, 1998, letter concludes:

I believe that much more conclusive evidence than currently exists should be required before state courthouse doors are closed to small investors through the preclusion of state class actions for securities fraud.

I ask unanimous consent to have Commissioner Johnson's letter printed in the RECORD.

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

SECURITIES AND
EXCHANGE COMMISSION,
Washington, DC, March 24, 1998.

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

Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: It is with regret that I find myself unable to join in the views expressed by my esteemed colleagues in their letter of today's date. For that reason I feel compelled to write separately to express my own differing views.

Consistent with the opinion the Commission and its staff have repeatedly taken, I believe that there has been inadequate time to determine the overall effects of the Private Securities Litigation Reform Act of 1995, and that the proponents of further litigation reform have not demonstrated the need for preemption of state remedies or causes of action at this time.

In the last few years, we have experienced a sustained bull market virtually unmatched at any time during this nation's history. I therefore question the necessity of the displacement of state law in favor of a single set of uniform federal standards for securities class action litigation. The Commission is the federal agency charged with protecting the rights of investors. In my opinion, S. 1260, the Securities Litigation Uniform Standards Act of 1997, does not promote investors' rights. I share in the views of 27 of this country's most respected securities and corporate law scholars who have urged you and your colleagues not to support S. 1260 or any other legislation that would deny investors their right to sue for securities fraud under state law.

In addition, data amassed by the Commission's staff, compiled in unbiased external studies, indicate that the number of state securities class actions has declined during the last year to pre-Reform Act levels. Indeed, a report by the National Economic Research Associates concluded that the number of state court filings in 1996 was ''transient.'' Under these circumstances, S. 1260 seems premature at the least.

This country has a distinguished history of concurrent federal and state securities regulation that dates back well over 60 years. Given that history, as well as the strong federalism concerns that S. 1260 raises, I believe that much more conclusive evidence than currently exists should be required before state courthouse doors are closed to small investors through the preclusion of state class actions for securities fraud.

Sincerely,

NORMAN S. JOHNSON,
Commissioner.

Mr. SARBANES. Secondly, the SEC supports changes to the Federal antifraud standard to make it more protective of investors. In other words, if the SEC is going to be cited, as the proponents of this legislation have done, in support of their position, surely then they ought to pay attention to the SEC position which has been asserted seeking changes in the Federal antifraud standard to make it more protective. Let me give you a few examples.

The SEC supports a longer statute of limitations so that fraud artists do not escape liability by successfully concealing their frauds. The SEC supports the restoration of liability for aiders and abetters of securities fraud so that those who give substantial assistance to fraud artists do not escape liability.

The SEC supports codification of liability—codification of liability—for reckless conduct to ensure that professionals, such as accountants and underwriters, carry out their responsibilities under the Federal securities laws. In fact, Chairman Levitt reiterated his support for these provisions as recently as 6 weeks ago when he appeared before the Banking Committee for his renomination hearing. Nonetheless, these provisions are nowhere to be found in this bill.

The supporters of this legislation argue the desirability of a uniform antifraud standard for securities traded on national securities exchanges, but they fail to address directly the question which we need to ask, whether the current Federal antifraud standard, as reflected by the 1995 act, deserves to be the uniform standard. Is the current antifraud standard, which they are now going to use to bring cases up from the State courts and deny investors the remedies under the State systems, is that standard adequate to protect investors?

I voted against the 1995 act because I was concerned that it did not establish an appropriate standard. I was worried that it did not strike the proper balance between deterring frivolous securities suits and protecting investors who are victimized by securities fraud. None of us is in favor of frivolous securities suits, these so-called strike suits. But at the same time, I, for one, at least, do not want to go so far in trying to deal with that problem that I cease to protect investors who are victimized by securities fraud. There is a line in between, actually, I have asserted many times, I think, on which a consensus can be reached, but the legislation that keeps coming forward always overreaches—it overreaches—and therefore, I think, jeopardizes the protections that are available to investors who are innocent victims of securities frauds.

A number of securities law experts warn that the safe harbor for forward-looking statements enacted by that act could protect fraud. In addition, the proportionate liability provisions leave innocent victims suffering a loss while shielding those who participate in securities fraud. Of course, the 1995 act omitted the statute of limitations in aiding and abetting provisions recommended by the SEC, still recommended by the SEC, and, of course, not included in this legislation.

Since the reform act was enacted, another concern has developed. Some district courts have relied on the legislative history of that act in concluding that the act's pleading standards eliminated liability for reckless conduct. Imagine, eliminating liability for reckless conduct.

If that view prevails in the circuit courts, and if the Congress preempts, as this legislation proposes to do, causes of action under State laws, investors will be left with no remedies—I underscore that, with no remedies—against those whose reckless conduct makes a securities fraud possible.

It is for these reasons that the associations and various commentators I have cited are opposing this bill. They oppose this bill both because of its overly broad reach—clearly because of its overly broad reach—and because its sponsors fail to take this opportunity to correct the flaws of the earlier legislation. If the sponsors are going to eliminate recourse in the State courts, it becomes even more incumbent upon them to correct the Federal standard with respect to the shortcomings which have been identified in it and continue to be identified by the Securities and Exchange Commission.

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

Mr. SARBANES. I yield to my colleague.

Mr. BRYAN. The question I have is with reference to the Senator's observation about standard for reckless misconduct.

As I understand, we have actual knowledge, we can have simple or ordinary negligence, we can have gross negligence, and then we can have a standard of reckless conduct which is an utter disregard of the facts. Is the Senator saying that the legislation that we are processing today does not clarify in the findings of this committee that we want to reaffirm that reckless misconduct ought to be a cause of action for those who are defrauded by investors?

Mr. SARBANES. I say to my colleague, as I understand it, this is what transpired. The 1995 act was being interpreted at the district court level, the Federal district court level—the legislative history of it—that the act's pleading standards eliminated liability for reckless conduct.

Now, the SEC has come to us and said we should codify a reckless conduct right of action into the Federal standard. The legislation before us does not have such a codification.

Now, there is language in the report, but we do not have a codification. So you have the problem about the legislative history for the 1998 act. And it is not quite clear to me how it will supplant the legislative history for the 1995 act. A codification would do that but that is not in this bill.

Mr. BRYAN. We are talking about, if I understand, conduct that is more egregious even than gross negligence. We are talking about an utter disregard of the facts and the consequences that flow from that?

Mr. SARBANES. That is right. If you want to talk about where you put the balance, how in the world would you drive the balance so far over that an investor who was the victim of reckless conduct would not have a remedy? It just defies any equitable striking of the balances with respect to, quote, ''frivolous'' lawsuits on the one hand, and investor protection on the other.

Mr. BRYAN. So if I understand the Senator's position, if S. 1260 is passed, we preempt State class actions so that small investors would not have the advantage of a longer statute of limitations that a number of States—I believe 33 out of the 50—provide to investors suing at the State level class actions.

We would deprive the small investor of his or her opportunity to go against the accomplices, the lawyers, the accountants, and others who conspired with the primary perpetrator of fraud. That protection is taken away. And we also eliminate the ability to move and to obtain a joint and several liability judgment against those offenders. They are all things which I understand currently exist to the benefit of small investors as class actions at the State level in most States, if I am not mistaken.

Mr. SARBANES. The Senator is correct. Currently, what happened is we set a Federal standard in the 1995 act in the Federal courts. That still left to an investor the option of going into a State court to seek remedy.

Now the proponents of this bill said, ''Well, everyone who is going into Federal court bringing the so-called frivolous suits are now going to migrate into the State courts.'' The numbers show that has not happened. You have a little increase in 1996. The numbers came back down in 1997. The projected numbers are down. So you do not have that flood of litigation into the State courts, and yet investors had available to them State court remedies.

Well, now what they are going to do is they are going to preempt the ability to bring the action in the State courts. Well, then, the proponents will say, ''Well, we are just preempting it for these class actions. If you are an individual investor and you want to hire your lawyer, you will still be able to go into State court.'' But they define a class action in this bill in such a way, so broadly that it will sweep up individual investors who are really not part of a class-action suit.

Those individual investors will then discover—I mean, what is going to happen here, my prediction on this is that what is going to come before the Congress down the road, if this legislation passes, is small investors showing up in the Congress and saying, ''This happened to me. And now I discover, because of the legislation which you all enacted, I can't get any remedy. And this isn't right.'' And Members are going to be looking at that, and they are going to say it is not right.

That is why we are urging Members to pause and take a careful look at this before they put it into law. You can have a situation in which an individual investor goes in under State law within the statute of limitations. Often you do not discover these things. They are concealed. That is what fraud is all about. So he is within the statute of limitations. Other investors do the same thing.

So let us say it is New York or California or Illinois, and a whole wide group of people have been defrauded by some fraud artist. Well, if 50 of them come in and bring some kind of suit against this artist, they can be swept up into a class action, removed into the Federal court. They will go over to the Federal court, and then they say to them, ''Well, our statute of limitations is shorter than your State statute of limitations under which you filed this action,'' which was timely filed in the State court.

They acted on their rights within the time limitation of the State court. They had no idea they were going to get swept up the way this bill permits. And so all of a sudden they are over in Federal court, and they say to them ''It's too bad. The statute of limitations has run. And you don't have an action. You don't have a cause of action.'' You are shut out of the courthouse.

Now, where is the fairness in that? I defy anyone to show me the fairness in that process.

Mr. BRYAN. Is the Senator also suggesting that a remedy available at the State court level against an accomplice, whether it be a lawyer or an accountant, that would be available to the investor under State law, if removed under the process of the Federal court, which the Senator has just described, would preclude that small investor from a recovery against an accomplice who had participated in the fraud that resulted in the investor's loss?

Mr. SARBANES. The Senator is exactly on point. That is exactly what would happen, which would be exactly what would be permitted to take place under this legislation.

When the 1995 bill was passed, people said, ''Well, we are defining this Federal standard. People can still go into the State court, the individual investor, and get a remedy.''

Now they come along and they say, ''Well, we're going to preempt the State courts in quote, 'class actions,''' but then they define class actions so broadly that it will sweep up individual investors. It can sweep up people who are not bringing what we traditionally recognize and know as a class action.

So it is once again an example of overreaching, as this mayor indicated from Greenwood, MS, that removing these protections would have grave consequences. This thing goes beyond anything that is required to deal with—the New York State Bar Association quote, I think, is the best on this very point when they said, ''The proposed solution far exceeds any appropriate level of remedy for the perceived problem.''

I am saying to the opponents, look, let us examine what you assert as the problem. And we will hear examples of a problem that will be cited. Most of those examples, I am sure I would think something needs to be done about them. But the solution, the proposed solution here will far exceed the examples. What is going to happen is eventually—and that is why I think these people are opposing this legislation I have cited.

I think Senators need to be cautious. This, in effect, is an investor's beware legislation—investors beware. I think in the future we are going to be petitioned or importuned in the Congress to correct this overreaching because innocent people will have been denied their remedy against fraud artists who have cheated them out of their life savings.

Let me just note that we are at a time of record high in our Nation's stock market. The current bull market is the longest in history. Stocks are trading at a price-earnings ratio that exceed even those reported in the 1920s. The level of participation in the stock market by America's families is also at a record level, both directly through ownership of stocks and indirectly through pension funds and mutual funds. History suggests that at some point the bull market will end, and history also suggests that when that occurs is when securities fraud will be exposed. You don't get that much exposure in a rising market.

Should this bill be enacted, at that time many investors will find their State court remedies eliminated. In too many cases investors will be left without any effective remedies at all. Such a result can only harm innocent investors, undermine public confidence in the securities market, and ultimately raise the cost of capital for deserving American businesses.

I urge my colleagues to think long and hard about this legislation, to be very careful about it. It far exceeds what needs to be done in terms of addressing any perceived problem. I think we need to be extremely sensitive to it.

I expect a number of amendments to be offered to this bill as we proceed with its consideration. I look forward to discussing those at the appropriate time as we seek to correct what I think are some of the more obvious and egregious flaws in this legislation.

I yield the floor.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Connecticut is recognized.

Mr. DODD. Madam President, let me begin by thanking my chairman of the committee, Senator D'AMATO, and Senator GRAMM with whom I authored this particular proposal.

Senator DOMENICI has been very involved in this issue, going back a number of years when the issue first arose, trying to deal with this sinister practice going on of strike lawsuits and predator law firms. I will share briefly some news out this morning as to how the law firms that we are trying to deal with operate, where the issue of fraudulent behavior is hardly their motivation; it has to do with simple stock fluctuation. Some Internet activity today will highlight that in categorical terms, as early as about 4 or 5 hours ago. This is a pervasive problem that needs to be addressed.

We passed this bill out of our committee 14–4 on a strong bipartisan vote. The bill is endorsed by the Securities and Exchange Commission, supported by this administration, the Clinton administration. We will be happy to entertain the amendments as they are offered that come up that were raised in committee. We had hearings on this matter—not a lengthy markup, but an extensive markup—with an opportunity to vote a lot of the issues.

I will pick up on some of the concluding comments and remarks of my two colleagues from Maryland and Nevada with regard to the recklessness standard. We received a letter of endorsement and support from the Securities and Exchange Commission, signed by Chairman Arthur Levitt, Isaac Hunt, and Laura Unger, March 24. This letter, I believe, has been introduced in the RECORD by Chairman D'AMATO, but I am, at this juncture, going to highlight two paragraphs of this letter because they go right to the heart of what was raised a few moments ago when it comes to the recklessness standard. I will address this more directly in my remarks. Let me quote two paragraphs in this letter.

> As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to cover losses attributable to reckless misconduct would jeopardize the integrity of the securities markets. In light of this profound concern, we are gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

Jumping down another paragraph,

> The ongoing dialog between our staffs has been constructive. The result of this dialog, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act.

Then it goes on to complete the paragraph.

I don't know if anything can be more clear in this letter. Certainly the intent, stated in committee, stated on the floor previously, stated in this letter, and we stated again here on the floor today as to what the intentions were of those of us who crafted this legislation when it comes to ''recklessness.''

Now I agree. I mentioned earlier, some courts, a few district courts, have read otherwise. That happens. But we will try to make it clear that was aberrational behavior, erroneous behavior, in my view, rather than what we intended.

I see my colleague from New York is rising.

Mr. D'AMATO. If the Senator will yield for a question, is it not true, if we were to set aside this legislation and not go forward, there might be a question and that, indeed, what both the White House and the SEC are saying, as a result of our coming forward, we may be eliminating that question, that ambiguity, by moving forward in the way that we proposed in this legislation?

Mr. DODD. I think the chairman of committee raises an excellent point, that in fact our legislative history included with S. 1260, the debate we have had, makes it quite clear what the intent of the committee was in 1995, what the intent of the committee in this legislation is today.

In the absence of that, I think you might have courts ruling otherwise, even though we may have not drawn that conclusion in the earlier legislation.

Mr. SARBANES. Will the Senator yield?

Mr. DODD. I will make my comments, and then I will be glad to yield for a debate, but I want to finish my opening statement.

Mr. SARBANES. Would the Senator have any objection to codifying this standard?

Mr. DODD. I will do that in my remarks.

There is a very difficult problem codifying the standard on recklessness. Congress has wrestled with this over the years. We were not the first committee to try. We thought leaving the standard as it has been in the courts, making sure we are not trying to make any change to that standard here, any way other than what has been an accepted standard, was a better way to proceed, based on the advice we received.

We certainly did not change that standard, as has been the suggestion, either with this act or the act of 1995 despite the fact that some courts may have read it otherwise. I can't preclude a court from misinterpreting the decisions of a Congress.

But the recklessness standard has been a good standard over the years and ought not to be tampered with, in my opinion.

Mr. BRYAN. Will the Senator yield? I don't want to interrupt his presentation. I am always happy to wait, but we are talking of the reckless standard.

If I might inquire of the Senator, the SEC, as I understand it, has sent over a definition of ''reckless.'' If that could be included in the findings of fact as opposed to the report language, I think it would strengthen what we all seek to do, and that is to retain the reckless standard, which I know is the objective of the Senator from Connecticut.

As the Senator knows far better than I, report language is fairly thin gruel compared to the findings of fact which are included or other issues which the sponsors of the legislation—I wonder if the Senator would consider including that definition.

Mr. DODD. The problem has been, as you start trying to codify, we—I will take a look at what the Senator has. I haven't seen it.

The suggestion has been made—what I was trying to respond to, prior to rising here, was that the suggestion was made that somehow this piece of legislation and '95 Act had undone the standard of recklessness that had been used.

We made it quite clear—at least I thought we did—in 1995 that we were not altering the standard. Certainly the SEC believes that was what we intend. This legislative history and this debate on today's bill makes it clear it was not the intent. What I objected to was the suggestion that somehow we had changed the scienter standard. We had not done that. And the letter from the three members of the Securities and Exchange Commission, I think, reinforces the point—not whether or not you add something in the statement of facts or whether or not you have it in the legislative history where I believe it is most appropriate—about addressing the underlying concern and issue. And that is whether or not this legislation in any way, or the 1995 Reform Act in any way, tried to fool around with the standard of recklessness. We didn't then, and we aren't now.

So what I am saying here today, what the chairman of the committee has said, and others, this is raising a red herring. It doesn't exist. It is difficult enough to debate where there is a legitimate disagreement, and there will be amendments offered where clearly there are provisions in the bill which my colleagues, including my distinguished friend from Nevada, disagree with. It is a fundamental difference here. Recklessness, as a matter of this legislation, is not a problem. It is trying to raise an issue that really does not exist. That is the reason I felt I should address that issue prior to making my general comments and statements about what I think is a valuable piece of legislation.

Now, Madam President, let me, if I may, proceed here. It has been said, in the sense that we get the pendulum swings and the proposals are offered, in a sense, this is a very narrow bill. It is not designed to be all-encompassing and all-sweeping, yet it is being received by certain quarters as if it were a wide, sweeping piece of legislation. It is dealing with an underlying problem that still exists. The facts bear out the necessity of us trying to move with nationally traded securities on the national exchanges to see to it that we can set some standards here so we don't continue to end up with a proliferation of lawsuits chasing forums all over this country to satisfy a trial bar at the expense of jobs, investors in these companies out there. That is what has been happening. That is what we try to address with this bill.

At the beginning of the debate today on S. 1260, the securities litigation reform standards, marks, in a sense, an anniversary, Madam President. It was almost 3 years ago that we took the floor of this body, many of my colleagues, in support of the Private Securities Litigation Reform Act of 1995. That bill, overwhelmingly enacted into law by Congress, was designed to curb abuses in the field of private securities class action lawsuits.

Let me pause, if I can, to note just how important the private litigation system has been in maintaining integrity of our capital markets. It is highly questionable whether our markets would be as deep, as liquid, as strong, or as transparent were it not for our system of maintaining private rights of action against those who commit fraud. America's markets are the envy of the world because of the tremendous confidence that American and foreign investors have in the regulatory system that supports those markets.

But it is precisely because of the vital importance of the private litigation system that the depths to which it had sunk by 1995 had become so damaging. The system was no longer an avenue for aggrieved investors to seek justice and restitution, but it had become, instead, a pathway for a few enterprising attorneys to manipulate its procedures for their own considerable profit, to the detriment of legitimate companies and investors all across our Nation.

If we needed a reminder about how abusive that system had become, we received yet another example of it last week, with the conclusion of one of the last lawsuits filed under that old system. This litigation against a Massachusetts biotech company called Biogen, lasted more than 3 years, cost that company, in direct litigation expenses alone, more than $3 million.

But even more than the direct costs, the lawsuit enacted an untold loss on the company because of the time and resources devoted by its top management and their scientists to defending themselves.

The conclusion to this litigation on May 6 came in swift contrast to the lengthy and expensive lawsuit itself, as reported by Reuters:

> A Federal jury has ruled as baseless a class-action shareholder lawsuit accusing Biogen, Inc. and its chairman of misleading investors . . . The 10-member jury took less than three hours to reach their verdict. . . .

So this week's debate marks not only the opening of Congress' effort to establish strong national standards of liability for nationally-traded securities, but also allows us to mark the close of an era in securities litigation that perversely offered more comfort to those filing abusive and frivolous lawsuits than it offered to redress to those who had been legitimately defrauded.

But the very success of the 1995 reform act in shutting down avenues of abuse on the Federal level has created a new home for such kinds of litigation in State courts.

Throughout 1996, the first year of the reform act, reports were coming to Congress that there was a dramatic increase in the number of cases filed in State courts. Prior to enactment of the '95 reform act, it was extremely unusual, extremely unusual, for a securities fraud class action case to be brought in a State court anywhere in this country.

But by the end of 1996, it had become clear from both the number of cases filed in State court, and the nature of those claims, that a significant shift was underfoot, as some attorneys sought to evade the provisions of the reform act that made it more difficult to coerce a settlement, which was what was going on.

John Olson, the noted securities law expert, testified in February before the subcommittee on securities that:

> In the years 1992 through 1994, only six issuers of publicly traded securities were sued for fraud in State court class actions. In contrast, at least 77 publicly traded issuers were sued in State court class actions between January 1, 1996, and June 30, 1997. Indeed, the increase in State court filings may even be greater than indicated by these dramatic statistics. Obtaining an accurate count of State court class actions is extraordinarily difficult, because there is no central repository of such data and plaintiffs are under no obligation to provide notice of the filing of such suits.

In April, 1997, the Securities and Exchange Commission staff reported to the Congress, and the President found that:

> Many of the State cases are filed parallel to a Federal court case in an apparent attempt to avoid some of the procedures imposed by the reform act, particularly the stay of discovery pending a motion to dismiss. This may be the most significant development in securities litigation post-reform act.

Even though the number of State class actions filed in 1997 was down from the high of 1996, it was still 50 percent higher than the average number filed in the 5 years prior to the reform act, and it represented a significant jump in the number of parallel cases filed.

So there was a significant increase. It did drop in 1997. But if you are going to use the bar of when the reform act was passed, it was still substantially higher. It was a rare occasion indeed when people ran to State courts. We didn't think we would need this bill. We honestly thought that dealing with this problem at the Federal level would work. That is where the cases were brought. Why are we here today? We are here because these enterprising attorneys, as the chairman of the committee pointed out—many without clients, by the way—discovered that if they ran into a State court here, they could avoid the legislation that we adopted and passed so overwhelmingly here in 1995. But there are other reasons as well. It isn't just an increase in the caseload. That would not, in my view, necessarily warrant moving today. There are other issues.

This change in the number and nature of the cases filed has had two measurable, negative impacts that I think our colleagues ought to take very good note of.

First, for those companies hit with potentially frivolous or abusive State court class actions, all of the cost and expense that the '95 reform act sought to prevent are once again incurred. So, in effect, we did nothing. Today, all of that cost and discovery, and so forth, before a motion to dismiss could be filed—today you have to go do it all over again. It is as if the '95 act were never passed. That is what happened here.

Some might question whether a State class action can carry with it the same type of incentives to settle even frivolous lawsuits that existed on the Federal level prior to 1995.

Allow me to provide one example of how this is so. Adobe Systems, Inc. wrote to the Banking Committee on April 23, 1998, this year, about its experience with State class action lawsuits.

One of the key components of the 1995 reform act was to allow judges to rule on a motion to dismiss prior to the commencement of the discovery process. This is not precedent-setting procedure. That is normally, in many cases, how you deal with it, a motion to dismiss coming up early. Under the old system, Adobe had won a motion for summary dismissal, but only after months of discovery by the plaintiffs that cost the company more than $2 million in legal expenses and untold time and energy by officials to produce the tens of thousands of documents and numerous depositions.

With the 1995 act in place, those kinds of expenses are far less likely to occur at the Federal level.

But in an ongoing securities class action suit filed in California state court since 1995, Adobe has had to spend more than $1 million in legal expenses and has had to produce more than 44,000 pages of documents, all before the state judge is even able to entertain a motion for summary dismissal.

In fact, in an April 23rd, letter to Chairman D'AMATO, Colleen Pouliot, Adobe's General Counsel, noted that:

There are a number of California judicial decisions which permit a plaintiff to obtain discovery for the very purpose of amending a complaint to cure its legal insufficiencies.

This one example makes clear that while Adobe, which has the resources for a costly and lengthy legal battle, might fight a meritless suit, these costs provide a powerful incentive for most companies without that kind of wherewithal to settle these suits rather than incur such expenses.

The second clear impact of the migration of class action suits to state court is that it has caused companies to continue to avoid using the safe harbor for forward looking statements that was a critical component of the '95 reform act.

In this increasingly competitive market, investors are demanding more and more information from company officials about where it thinks that the company is going, and what is likely to happen.

In fact, today we have more investors in our markets than ever before. People want more information. The safe harbor provisions which we crafted were designed to encourage companies to step forward and to tell us where they were going. Clearly, there can be some who decide it would be deceitful. In no way do we try to protect anybody who is lying or cheating in the process. We are trying to encourage companies to tell us more about where they are going so those investors can make good decisions. But what has happened as a result of this rush to State courts is that the very companies that said they need the safe harbor provisions are not writing the safe harbor provisions because they know they don't have the same protection in State court, which is where these cases are running.

So after all the encouragement of the 1995 act to have the safe harbor, companies haven't been putting it in. So investors out there trying to make decisions of where to put their hard-earned dollars don't have the benefit of that safe harbor language, which may give them a better idea in which companies to make those investments.

The California Public Employees Pension System, one of the biggest institutional investors in the Nation stated that ''forward-looking statements provide extremely valuable and relevant information to investors.''

SEC Chairman Arthur Levitt also noted the importance of such information in the marketplace in 1995:

Our capital markets are built on the foundation of full and fair disclosure. . . . The more investors know and understand management's future plans and views, the sounder the valuation is of the company's securities and the more efficient the capital allocation process.

In recent years, the Securities and Exchange Commission, in recognition of this fact, sought to find ways to encourage companies to put such forward-looking statements into the marketplace. Congress too sought to encourage this and this effort ultimately culminated in the creation of a statutory safe harbor, so that companies need not fear a lawsuit if they did not meet their good-faith projections about future performance.

Unfortunately, the simple fact is that the fear of State court litigation is preventing companies from effectively using the safe harbor.

Again, the SEC's April 1997 study found that ''companies have been reluctant to provide significantly more forward looking disclosure than they had prior to enactment of the safe harbor.'' (p. 24); the report went on to cite the fear of State court litigation as one of the principal reasons for this failure.

Stanford Law School lecturer Michael Perino stated the case very well in a forthcoming law review article:

If one or more states do not have similar safe harbors, then issuers face potential state court lawsuits and liability for actions that do not violate federal standards. . . . for disclosures that are . . . released to market participants nationwide, the state with the most plaintiff-favorable rules for forward looking disclosures, rather than the Federal Government, is likely to set the standard to which corporations will conform.

If the migration of cases to state court were just a temporary phenomenon, then perhaps it would be appropriate for Congress to tell these companies and their millions of investors to simply grin and bear it, that it will all be over soon.

But the SEC report contains the warning that this is no temporary trend: ''If state law provides advantages to plaintiffs in a particular case, it is reasonable to expect that plaintiffs' counsel will file suit in state court.'' The plain English translation of that is that any plaintiffs' lawyer worth his salt is going to file in state court if he feels it advantageous for his case; since most state courts do not provide the stay of discovery or a safe harbor, we're confronted with a likelihood of continued state court class actions.

While the frustration of the objectives of the 1995 Reform Act provide compelling reasons for congressional action, it is equally important to consider whether the proposition of creating a national standard of liability for nationally-traded securities makes sense in it's own right.

I certainly believe it does.

In 1996, Congress passed the ''National Securities Markets Improvement Act'' which established a precedent of national treatment for securities that are nationally-traded.

In that act, Congress clearly and explicitly recognized that our securities markets were national in scope and that requiring that the securities that trade on those national markets comply with 52 separate jurisdictional requirements both afforded little extra protection to investors and imposed unnecessarily steep costs on raising capital.

Last July, then-Securities Commissioner Steven Wallman submitted testimony to the Securities Subcommittee in which he said:

Disparate, and shifting, state litigation procedures may expose issuers to the potential for significant liability that cannot be easily evaluated in advance, or assessed when a statement is made. At a time when we are increasingly experiencing and encouraging national and international securities offerings and listing, and expending great effort to rationalize and streamline our securities markets, this fragmentation of investor remedies potentially imposes costs that outweigh the benefits. Rather than permit or foster fragmentation of our national system of securities litigation, we should give due consideration to the benefits flowing to investors from a uniform national approach.

That is what we are trying to do with this bill.

At that same hearing, Keith Paul Bishop, then-California's top state securities regulator testified along the same lines that:

California believes in the federal system and the primary role of the states within that system. However, California does not believe that federal standards are improper when dealing with truly national markets. California businesses, their stockholders and their employees are all hurt by inordinate burdens on national markets. Our businesses must compete in a world market and they will be disadvantaged if they must continue to contend with 51 or more litigation standards.

SEC Chairman Arthur Levitt, at his reconfirmation hearing before the Banking Committee on March 26, 1998, said that the legislation we are debating today:

Addresses an issue that . . . deals with a certain level of irrationality. That to have to two separate standards is not unlike if you had, in the state of Virginia, two speed limits, one for 60 miles an hour and one for 40 miles an hour. I think the havoc that would create with drivers is not dissimilar from the kind of disruption created by two separate standards [of litigation] and I have long felt that in some areas a single standard is desirable.

which is all we are trying to do here with this bill, to set one speed limit, if you will, on a national debate on trading securities and on markets. That is all, one speed limit, not two, to live up to the fact of what we tried to do with the 1995 bill.

The message from all of these sources is clear and unequivocal: A uniform, national standard of litigation is both sensible and appropriate.

The legislation under consideration today accomplishes that goal in the narrowest, most balanced way possible.

Before I discuss what the legislation will do, let me point out a few things that it won't do:

It will not affect the ability of any state agency to bring any kind of enforcement action against any player in the securities markets;

It will not affect the ability of any individual, or even a small group of individuals, to bring a suit in state court against any security, nationally traded or not;

It will not affect any suit, class action or otherwise, against penny stocks or any stock that is not traded on a national exchange.

It will not affect any suits based upon corporate disclosure to existing shareholders required by state fiduciary duty laws;

And it will not alter the national scienter requirement to prevent shareholders from bringing suits against issuers or others who act recklessly.

There has been a lot of talk about this last point, so let me address it head-on.

It is true that in 1995, Congress wrestled with the idea of trying to establish a uniform definition of recklessness; but ultimately, the 1995 Private Securities Litigation Reform Act was silent on the question of recklessness. While the act requires that plaintiffs plead ''Facts giving rise to a strong inference that the defendant acted with the requisite state of mind . . .''

The act at no point attempts to define that state of mind. Congress left that to courts to apply, just as they had been applying their definition of state of mind prior to 1995.

Unfortunately, a minority of district courts have tried to read into some of the legislative history of the reform act an intent to do away with recklessness as an actionable standard.

I believe that these decisions are erroneous and cannot be supported by either the black letter of the statute nor by any meaningful examination of the legislative history.

There are several definitions of recklessness that operate in our courts today, and some of them are looser than others. But I agree with those who believe that reckless behavior is an extreme departure from the standards of ordinary care; a departure that is so blatant that the danger it presents to investors is either known to the defendant or is so obvious that he or she must have been aware of it.

The notion that Congress would condone such behavior by closing off private lawsuits against those who fall within that definition is just ludicrous.

And if, by some process of mischance and misunderstanding, investors lost their ability to bring suits based on that kind of scienter standard, I would be the first, though certainly not the last, Senator to introduce legislation to restore that standard.

As I mentioned a moment ago, Mr. President, S.1260 is a moderate, balanced and common sense approach to establishing a uniform national standard of litigation that will end the practice of meritless class action suits being brought in state court.

This legislation keeps a very tight definition of class action and applies it's standards only to those securities that have been previously defined in law as trading on a national exchange.

That is why the Securities and Exchange Commission has stated that ''We support enactment of S. 1260;'' That is why the Clinton administration has also indicated it's support for the legislation.

In the final analysis, it is both the millions of Americans who have invested their hard-earned dollars in these nationally-traded companies and the men and women who will hold the new jobs that will be created as a result of newly available resources, whom we hope will be the real beneficiaries of the action that we take here today.

I strongly urge my colleagues to join the Securities and Exchange Commission, dozens of our colleagues, the Clinton administration, dozens of governors, state legislators and state securities regulators in supporting passage of the Securities Litigation Uniform Standards Act of 1998.

Madam President, I see my colleague.

How much time remains?

The PRESIDING OFFICER. The Senator from New York controls the time. There are 10 minutes 30 seconds remaining.

Mr. D'AMATO. I wonder if I might ask my friend and colleague. I know we are going to have some extended debate with some of the amendments. Senator GRAMM, who has worked with the Senator from Connecticut, would like to be heard, and Senator FEINGOLD has been waiting. He has an amendment that I believe is a very substantive amendment, and is one that might take hours to debate. But I believe we can dispose of it in a relatively short period of time if we were to permit the Senator to proceed.

Mr. DODD. I didn't realize how much time had already gone on. My colleague from Texas is chairman of the Securities Subcommittee and the principal author of the bill, of which I am proud to be a cosponsor.

While he is in the Chamber, let me commend and congratulate my colleague from Texas on this issue. This is a strong bipartisan bill, 14 to 4, coming out of this committee. It took a long time to go through all of this. We have had extensive hearings on it. We have listened to an awful lot of people. This is a good piece of legislation. It is needed out there, if we are going to in this day and age, with so many people wanting to get into this market, get more information to them, having a single standard here. Jobs and investors are affected when you have a handful of attorneys out there deciding they are going to act in a way that really brings great danger to our markets. And so I urge adoption of the legislation.

I yield the floor at this point.

Mr. D'AMATO. Madam President, I yield up to 3 minutes to the Senator from Texas and ask unanimous consent that Senator FEINGOLD from Wisconsin be recognized thereafter for the purposes of introducing an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Reserving my right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I certainly do not want in any way to interfere with the presentation of the amendment of the Senator from Wisconsin, but we are in a time limit where we have an hour on each side and I want to make sure that I do not lose my——

Mr. D'AMATO. It was never the Senator's intent nor would this impinge on the Senator's time. It was an effort to accommodate one of our colleagues.

Mr. BRYAN. I am happy to do that. Can we include one proviso in the proposed unanimous consent that after the Senator from Texas is allowed the time as requested by my friend, the distinguished chairman, and after the Senator from Wisconsin is recognized for purposes of an amendment, will the Senator from Nevada then be next recognized, if that would be agreeable?

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

The Senator from Texas.

Mr. GRAMM. Madam President, I often find myself having to speak at length in the Chamber when I do not have the votes. On this bill, I am in the happy position that we have the votes. We are going to win. We are going to defeat all of the amendments, because we have a good bill, and we have a very broad base of support. So I have often found that when you have the votes, it is best not to speak at length.

However, as the author of the legislation, I wanted to say just a couple of things. First, I thank Chairman D'AMATO for his leadership. I want people to know that without his principal leadership on this bill, we would not be here. He was instrumental in helping us pull the coalition together. He set a time schedule on bringing the bill before the full committee, and I thank him for his leadership.

I believe this legislation will benefit the country. I think we will create jobs, growth, and opportunity from enactment of the bill, and I think that Chairman D'AMATO IS DUE A LION'S SHARE OF THE CREDIT.

I thank Senator DODD. I don't think anybody in the Senate has a better, more cooperative ranking member than I do as chairman of the Securities Subcommittee. I thank Senator DODD for his leadership.

The bottom line on this bill is that in 1995 we sought to act to deal with the problem of economic piracy through the courts. We had found ourselves in a position where lawsuits were being filed against companies if their stock price went up, if their stock price went down, if their stock price did not change. New, emerging companies were the special targets of these lawsuits. These are the companies that had great technical ideas but did not have a whole bevy of lawyers on their payroll, and they were finding themselves basically being extorted, as people filed lawsuits that often were just boilerplate documents. These suits were so boilerplate that at times the name of the company being sued was confused in the documents filed in the court.

And so we stepped in to try to do something about it, and we passed a bill called the Private Securities Litigation Reform Act, Public Law 104–67. That legislation basically did five things. No. 1, it said that you had to have a client; that you could not have a lawyer who filed a bunch of motions representing nobody in reality and just collecting a whole bunch of money. The legislation said that there had to be genuine clients, and the client that stood the most to gain could be the lead client and had the privilege to choose the lawyer, and the lawyer had to be accountable to the people who were filing the lawsuit.

You all heard the statement that our chairman quoted, about the bragging of the lead lawyer in this area.

Are my 3 minutes up?

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. D'AMATO. I request an additional 2 minutes.

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

Mr. GRAMM. So we required that you have real people filing a real lawsuit. We also required that if you are going to file a lawsuit, you have to say specifically what the company did wrong. We further established a procedure whereby you did not have to go through this lengthy and expensive discovery process while the court was considering whether there was even enough merit in the case to proceed further with it. We also eliminated the ability to go after the people that had deep pockets, even though they had no real, substantive liability. Finally, where it was clear that the lawsuit was frivolous, we gave the judge the responsibility to require that the people who filed the lawsuit paid the legal expenses of those who found themselves pulled into court.

It was a good bill, and it is beginning to have an impact. Our problem is that in trying to circumvent it, the same people filing the same lawsuits started to move into State court. So we have written a bill that tries to set uniform national standards. It applies only to class-action suits. It applies only to stocks that are traded nationally.

It is eminently reasonable. It is clearly within the purview of the interstate commerce clause of the Constitution. This is a bill that needs to be passed. I thank everybody who has been involved in it for their leadership.

We will have a series of amendments. We voted on every one of them in committee. Every one of these amendments is aimed at killing the bill by undercutting the basic premise of the bill, which is when you are dealing with nationally traded securities, you need national standards. So I hope our colleagues will join us in the process of defeating these amendments and approving the bill.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the Chair. I thank the manager, the Senator from New York.

AMENDMENT NO. 2394

(Purpose: To amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful employment discrimination based on race, color, religion, sex, national origin, age, or disability, and for other purposes)

Mr. FEINGOLD. At this point I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 2394.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that 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, add the following:

SEC. ____. CIVIL RIGHTS PROCEDURES PROTECTIONS.

(a) SHORT TITLE.—This section may be cited as the ''Civil Rights Procedures Protection Act of 1998''.

(b) AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end the following new section:

''SEC. 719. EXCLUSIVITY OF POWERS AND PROCEDURES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this title, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(c) AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) is amended—

(1) by redesignating sections 16 and 17 as sections 17 and 18, respectively; and

(2) by inserting after section 15 the following new section 16:

''SEC. 16. EXCLUSIVITY OF POWERS AND PROCEDURES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 795) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under section 501, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(e) AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990.—Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim based on a violation described in subsection (a), such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(f) AMENDMENT TO SECTION 1977 OF THE REVISED STATUTES.—Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end the following new subsection:

''(d) Notwithstanding any Federal law (other than a Federal law that expressly refers to this section) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim concerning making and enforcing a contract of employment under this section, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(g) AMENDMENT TO THE EQUAL PAY REQUIREMENT UNDER THE FAIR LABOR STANDARDS ACT OF 1938.—Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended by adding at the end the following new paragraph:

"(5) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this subsection, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(h) AMENDMENT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.—Title IV of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) is amended—

(1) by redesignating section 405 as section 406; and

(2) by inserting after section 404 the following new section:

"**SEC. 405. EXCLUSIVITY OF REMEDIES.**

"Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would modify any of the powers and procedures expressly applicable to a right or claim arising under this Act or under an amendment made by this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(i) AMENDMENT TO TITLE 9, UNITED STATES CODE.—Section 14 of title 9, United States Code, is amended—

(1) by inserting "(a)'' before "This''; and

(2) by adding at the end the following new subsection:

"(b) This chapter shall not apply with respect to a claim of unlawful discrimination in employment if such claim arises from discrimination based on race, color, religion, sex, national origin, age, or disability.''.

(j) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to claims arising on and after the date of enactment of this Act.

Mr. FEINGOLD. Madam President, I rise today to offer an amendment, which is actually a bill I have worked on for some time, the Civil Rights Procedures Protection Act, S. 63, a measure cosponsored by Senators KENNEDY, LEAHY, and TORRICELLI.

What this legislation does is address the rapidly growing and troubling practice of employers conditioning employment or professional advancement upon their employees' willingness to submit claims of discrimination or harassment to arbitration, mandatory arbitration, rather than still having the right to pursue their claims in the courts. In other words, in too many cases employers are forcing their employees to ex ante agree to submit their civil rights claims to mandatory binding arbitration irrespective of what other remedies may exist under the laws of this Nation.

So to address this growing trend of mandatory binding arbitration, this measure, the Civil Rights Procedures Protection Act, amends seven civil rights statutes to guarantee that a civil rights plaintiff can still seek the protection of the U.S. courts. The measure ensures that an employer cannot use his or her superior bargaining power to coerce her or his employees to, in effect, capitulate to an agreement which diminishes their civil rights protection.

To be specific, this legislation affects civil rights claims brought under title VII of the Civil Rights Act of 1964, section 505 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, section 1977 of the revised statutes, the Equal Pay Act, the Family and Medical Leave Act, and the Federal Arbitration Act. In the context of the Federal Arbitration Act, the protections in this legislation are extended to claims of unlawful discrimination arising under State or local law, and other Federal laws that prohibit job discrimination.

Madam President, I want to be clear, because it is important that we promote voluntary arbitration in this country, that this is in no way intended to hinder or discourage or bar the use of arbitration on conciliation or mediation or any other form of alternative dispute resolution short of litigation resolving those claims. I think it is tremendous that we try to encourage people to voluntarily avoid litigation.

I have long been a strong proponent of voluntary forms of alternative dispute resolution. The key, however, is that, in those cases that I can support alternative dispute resolution, it is truly voluntary. That is not what we are talking about here. What is happening here is that these agreements to go to arbitration are mandatory, they are imposed upon working men and women, and they are required prior to employment or prior to a promotion.

Mandatory binding arbitration allows employers to tell all current and prospective employees, in effect, if you want to work for us, you will have to check your rights as a working American citizen at the door. Indeed, these requirements have been referred to recently as front-door contracts; that is, employers require that employees surrender certain rights right up front in order to get in the front door. Working men and women all across the country are faced with a very dubious choice, then, of either accepting these mandatory limitations of their right to redress in the face of discrimination or harassment, or being placed at risk of losing an employment opportunity or professional advancement.

As a nation that values work and deplores discrimination, I don't think we can allow this situation to continue. The way I like to describe it is, what this expects a person to do is to sign an agreement that they will not go to court even before they feel the sting of discrimination. They have to sign this deal before they even sit down to their desk and do their first work for an employer.

So, in conclusion, allow me to stress that this practice of mandatory binding arbitration should be stopped now. If people believe they are being discriminated against or sexually harassed, they should continue to retain all avenues of redress provided for by the laws of this Nation. This amendment will help restore integrity and balance in relations between hard-working employees and their employers. But I think more important, this amendment will ensure that the civil rights laws this Congress passes will continue to protect all Americans.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Madam President, I commend the Senator from Wisconsin for coming forth with this proposal. It is an amendment that he has been working on, for quite a period of time. As a matter of fact, it has been referred to the Judiciary Committee.

Having said that, I think at the very least it should have, and requires, a thorough hearing. It is important, and it is important we understand the nuances. It is important that we get the case-by-case documentation as relates to those people who have suffered as a result of this area of the law. It is an area of great concern in terms of whether or not a person has to sign an agreement—and they do now—prior to employment, that they give away or they agree that all matters will be settled by way of arbitration.

Maybe it should not be "all matters.'' Maybe there are certain matters that no one should ever be required to forfeit. I think we should look at that, because I think there are some very real questions. If there is a question of sexual harassment, do you mean to tell me that a person in that case should have to give up his or her right to bring a claim and that it will be settled in camera, behind the scenes, by way of arbitration? And there may be other areas where, indeed, the arbitration procedure should be the methodology of resolving a dispute.

But I believe the Senator is correct, that there are some areas that really call into question whether or not a person must sign this agreement, otherwise he or she doesn't get the job. They just never get the job. They never get the promotion. So what do you think they are going to do? Of course they are going to sign. So this is serious.

I believe we have an obligation to have a thorough, thoughtful analysis, and, indeed, the Judiciary Committee may want to look at certain aspects. But I believe since, indeed, the financial services community, the banking community, the securities community has to deal with this day in and day out, the proper jurisdiction does lie before the Banking Committee.

With that in mind, I have indicated to the Senator that, before we leave, during the month of July or prior, it will be my intent to hold at least a full hearing, where witnesses to both sides, including the Securities and Exchange Commission—which I understand is studying this matter very carefully—will appear so we could have the benefit of their review, of their testimony, of people who have written and people who have been involved in this, those who have been aggrieved as well as those who can testify to the merits of certain aspects of having arbitration in some limited cases.

But I must say for the record, I believe the Senator has touched on something that is very important and I would not like to move to table at this time. I think it would be unfair to the importance of this legislation.

With that in view, I have indicated to the Senator that I will call these hearings, so we can fully explore this and then bring it to this floor as legislation that has had the benefit of the totality of the input from the SEC, from our staffs, after listening and hearing and getting the kind of in-depth review that I know that not only I feel should take place, but that most of the members of my committee would support.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I thank the Senator from New York who, I think, has given a very sympathetic listen to what we are trying to accomplish here. This issue, in fact, emanates in large part originally from his State and from some of the practices in his State that are now becoming nationwide.

I think he has shown here, in his comments, already a keen understanding of what is involved here. Even though this issue has not been presented formally to his committee, he clearly understands that what is being requested of some of these individuals is simply unreasonable in light of American traditions of protection from discrimination and sexual harassment.

So, even though I think this bill is a very appropriate vehicle to offer this amendment, I am grateful the chairman of the Banking Committee has agreed to hold a hearing in which he will be personally involved, in which I will have the opportunity to testify, prior to the end of July, on this bill.

I look forward to being able to participate in helping to select some of the witnesses. I agree with the Senator very strongly that there are people on both sides, as well as those in the middle such as the SEC, who are seriously looking at this. This would be a useful hearing to move this issue along. I happen to be a member of the Judiciary Committee as well, so I certainly regard this as an appropriate forum as well. But I think this committee, in light of the fact these agreements started in securities firms, is a place where a hearing would be appropriate.

I also understand the Senator does not expect in any way I would be prevented from offering this to other bills at any point.

But, in light of all that and his assurances—which have always been extremely secure whenever I have dealt with him in the past, for the last 5½ years—in light of all that, I look forward to the hearing, I look forward to working with him. I hope that he can support this legislation after he has had a chance to review it.

Given all that, at this point, Madam President, I withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

The amendment (No. 2394) was withdrawn.

Mr. D'AMATO. I thank my colleague and tell him that we look forward to working together in a cooperative way in helping to craft a package that will address the true abuses yet maintain the importance of arbitration where it is deemed appropriate, because I think in certain cases it is absolutely appropriate and I think in others it is absolutely indefensible.

The PRESIDING OFFICER. Under the previous order, the Senator from Nevada is recognized.

Mr. BRYAN. I thank the Presiding Officer.

Just to be clear, in terms of the status, the 22 minutes that are reserved to the Senators in opposition is not affected by the colloquy between my two friends from New York and Wisconsin?

The PRESIDING OFFICER. The Senator is correct.

Mr. BRYAN. Madam President, this legislation that we are debating today, as I have said on previous occasions, is somewhat arcane and esoteric. It is not the sort of thing where, for people who are at home watching this debate, it causes them to move to the edge of their chairs and to hang on every word.

It is, however, terribly important for the tens of millions of small investors who, in recent years, have invested in the future of America, and for their confidence in the market system that we have created, because they are the small investors, they are the ones who will be impacted by this legislation. The large investors, the large institutions, will still have options that heretofore the small investors have had but the small investors will be deprived of as a result of this legislation. So it is the view of the Senator from Nevada that this legislation plunges a dagger into the heart of every small investor in America.

What we are talking about is not whether a case can be brought in State court or Federal court. We are talking about a system, which currently exists, that allows a private small investor to be part of a class action, and other small investors who have been defrauded as a result of the misconduct of others, to come together and file an action in State court and to avail themselves of statutes of limitations that are longer than are available to those of us who file in Federal court to provide, for joint and several liability, the ability to recover from accomplices—particularly important if the primary offender has bankrupted himself or herself or itself or has taken leave—and to avail himself or herself of triple damages under RICO.

So this has a very practical impact. Actions that would be available to small investors at the State court level will no longer—no longer—be available to those small investors, as a practical matter. So we continue a process which alarmed my good friend, the distinguished ranking member of this committee, the distinguished Senator from Maryland, that began with the Private Securities Litigation Reform Act of 1995 and, in our view, simply goes too far.

Those of us who express strong reservations about this bill find no comfort with those who are filing strike suits, those who are involved in litigiousness for the sake of litigiousness. I believe it would be possible to craft a narrow provision that addresses the ostensible concerns that have been raised and yet not deprive small investors in this country of their rights under the law.

The system for private enforcement of remedies has existed now for more than six decades. It is a dual system involving the State courts and the Federal courts. It has worked exceptionally well. The SEC has repeatedly testified as to the importance of private rights of actions as being absolutely essential to augment their own enforcement efforts. Indeed, they have said they have not the ability nor the resources to deal with the vast panoply of investor fraud, and they view the private cause of action as essential.

Indeed, States were the first to enact these protections against fraud in the early 1900s, and when, in the mid-1930s, the statutes that essentially provided the framework for Federal securities regulation were put in place, it was expressly intended to supplement, not to supersede, to complement, not to wipe out, and the language of this legislation today specifically preempts the State cause of action for class actions. These State remedies are vitally important, and States have responded in a number of different ways by providing protections. I am going to talk about three primarily.

The statute of limitations. Why is that important? Those who perpetrate fraud on small investors don't do so openly and nakedly; they try to conceal it to protect that activity. So the unfortunate decision of the court in the Lampf decision, which limits at the Federal level the right of an investor who has been defrauded 1 year from the point of discovery of the fraud, 3 years even though the investor never becomes aware of that fraud, is viewed by the Securities Commission as unreasonable because it takes them, with all of their resources, a minimum of 3½ years.

The statute of limitation is not just an arcane debate about how long one should have, it is the ability of a small investor who has been defrauded without his knowledge and, never having learned of it within the 3-year period of time, is now precluded. Thirty-three States in this country, including my own in Nevada, provide for a longer statute of limitation. Some provide 2 years from the time of discovery of fraud, or 5 or 6 or even 10 years, and some provide no bar at all.

In the vast majority of States in America, small investors filing class actions who do not discover the fraud until after 3 years are currently, under existing law, protected in at least 33 States. This legislation cuts off that right, and even though we all agree or, as the lawyers say, stipulate to the merit of the claim, it is barred—barred—by the 3 years even though the small investor never became aware of the fraud. That is what we are talking about.

Forty-nine of the 50 States provide liability for the accomplices—those who conspired with the primary perpetrator of the fraud, whether they be lawyers, whether they be accountants, whether they be other investment advisers—to provide a cause of action—49 out of 50. Unfortunately, at the Federal level, there is no remedy for plaintiffs against aiders and abetters. So that means that if the primary offender, the perpetrator, becomes bankrupt, leaves the country, or is otherwise unable to respond in damages, historically at the State court level, the class-action plaintiffs could recover against those who conspired and aided in that fraud.

The action that we take with S. 1260 deprives small investors filing class actions from this recovery. So now, if we pass this legislation, they are precluded from moving against those who conspired and actively participated in the fraud.

Moreover, States, as a matter of providing protection to their own citizens, have provided in a number of jurisdictions for joint and several liability. That means if five or six are guilty of the fraud and only one has the ability to respond in damages, States have made the determination that as between the innocent investor, utterly blameless, that the innocent investor ought to be satisfied against the perpetrator of that fraud, even though there may have been several involved. That is wiped out.

We have, in effect, a piece of legislation before us that dramatically limits the right of a small investor to pursue a class action in State court and to avail himself or herself of a whole host of remedies which States have provided on their own.

I must say, the irony of this course of action by a Republican Congress that has proclaimed its devotion to State rights and has raged against preemption by a Congress at the Federal level of essentially State rights does not go unnoticed by this Senator.

Why are class actions important? Again, it is pretty esoteric. Think for a moment. Tens of millions of small investors who may have been victimized by a fraud don't have the ability to hire a lawyer on their own to fight against entrenched special interests who have the ability to provide legal defenses and delays and delays. That is practically no remedy at all. It is only by binding together with other investors, small investors who are similarly situated, as the law says, that those costs can be spread and a recovery can be possible.

When we say, as proponents of this legislation, ''Well, the small investor can still file in State court,'' that is true, but it is a hollow and transparent remedy because, as a practical matter, small investors simply do not have the ability to pay for the lawyer's fees and the costs that are involved in processing these kind of cases.

That was the situation that 23,000 senior citizens who joined in a class action against Charlie Keating and Lincoln Savings and Loan found themselves in a few years ago. It was a class action, and they were ultimately able to recover 65 cents on the dollar of their losses.

Had those plaintiffs been involved today with a shorter cause of action at the Federal level, with the cause of action unavailable at the State level for class actions, those plaintiffs would have not been able to recover that kind of money. The examples of these kinds of groups are not just small individuals, but they include school districts, municipalities, special improvement districts, pension funds at the State and municipal level. All of these are going to be affected by this legislation. As a practical matter, a class action provides the only realistic hope of recovery.

As I pointed out, the SEC, with all its resources, says it takes them up to 3 years to compile the data to bring these securities fraud suits. So in effect, what we are doing now is we are providing for two classes of investors: Those who have been defrauded who are people of means, of wealth, so they can hire their own lawyers, they can still file at the State court level and take advantage of the longer statute of limitations, can take advantage of the provisions that provide liability against accomplices, can take advantage against the joint and several liability protections available at the State level. But if you are a small investor—and that is what most of those who are defrauded are, small investors—that remedy is no longer available to you.

So the question arises: Why are we doing this? What is the problem? Well, frankly, to the great credit of our regulatory framework, we have the safest and the most efficient securities markets in the world.

In 1990, there were 158 IPOs, totaling $4.6 billion. In 1997, 7 years later, there were 619 IPOs, totaling $39 billion. The stock market has recently set record highs. The Dow is over 9,000. And individuals confident in these markets are pouring in $40 billion a month in mutual funds. In 1980, 1 in every 18 households in America invested in the stock market. Less than 20 years later, it is more than one in three. That is a great tribute to the security and safety of this market.

Why are we reducing the investor protections at a time when the stock market is surging and consumer confidence is growing?

Investor confidence is crucial, and it is threatened by increasing fraud. I believe it was President Kennedy who made the observation, that, ''A rising tide''—referring to the economy—''raises all boats.'' And I think that is true. But it is equally true it also hides the shoals.

Newsweek, in its October 6, 1997, edition: ''Scam Scuttling: The Bull Market is Drawing Con Artists. SEC Chairman Levitt summarized, ''In a market like this, parasites crowd in to feast on the bull's success.''

Business Week, December 15: ''Ripoff! Secret World of Chop Stocks—And How Small Investors—[and that is what we are talking about] Are Getting Fleeced.'' The article focuses on small-cap equities manipulated to enrich promotors and defraud thousands of small investors—a $10 billion-a-year business that regulators and law enforcement have barely dented.

The New York Times of November 26 of last year: ''Lessons of Boesky and Milken Go Unheeded in Fraud Case.'' In one case, 1,600 investors were swindled out of $95 million.

Yet Federal and State enforcement resources are shrinking as these fraudulent schemes are perpetrated upon the innocent small investors.

Now is not the time, I would respectfully argue, to in effect rip from the investor his or her opportunity to recover that which has been lost as a result of being victimized by fraud. Our securities markets run on trust, Madam President—on trust—not money. There will be much less trust, I fear, if this legislation occurs.

Look what has happened in countries around the world: ''Albania tries to regain control [of the Ponzi scheme].'' That can't happen in America with the system that we have created. ''Shanghai Stock Market Cited for Scandal.'' ''10,000 Stampede as Russian Stock [Market] Collapses.'' ''Scandal Besets Chinese Markets.''

My point being that we have devised a system to protect investors. And I fear, by reason of overly broad legislation, we are depriving small investors of the very opportunity to recover that which has provided the confidence in the market that has encouraged such a massive investment by small investors.

Why? We are led to believe there is a massive influx of cases that must be preempted because everybody is going to the State court to bypass the provisions of the 1995 law.

Price Waterhouse, in January of 1998, made a report, an evaluation. Forty-four State cases—44—were filed in all of 1997, a one-third decrease since 1996—I want to emphasize that, a decrease—when 66 were filed, and less than in the 3 years before the 1995 legislation. A followup Price Waterhouse study, in February, tells us 39 cases were filed.

My point being, whether it is 39 or 44, I would not argue that with my colleagues, but that is, out of 15 million cases, civil cases—not criminal, not traffic, not domestic relations—we are talking about 44 cases or 39 cases out of 15 million filed. That is a very, very small number. And although there are some problems, as has been pointed out by the proponents, none of the problems justifies the sweeping emasculation of investor protections that this legislation provides for.

Now, what are the problems specifically in the act itself?

If one believes that uniform standards are an essential public policy in the country—and, I must say, I have not been persuaded—then I think we would agree that a uniform standard that provides strong investor protections ought to be a part of that uniform standard.

Unfortunately, what we have done, in each and every case, is opted for the lowest common denominator of protection. If the statute of limitations is longer at the State level, we have preempted it and limited the statute of limitations. If the State provides for liability against those who are accomplices, we take that cause of action away from the small investor. If the State allows for joint and several recovery against each and every one of those involved in the fraud, we take that away from the small investor.

So it is my view that this is part of an ongoing process in which we have, in my judgment, left the small investor high and dry in many cases if this legislation passes.

I must say that when you look at the trend line following the 1995 legislative enactments, you can see that pattern unfold. The Lampf decision, which shocked the SEC and others, limited the statute of limitations to 1 year from the time of discovery of the fraud to 3 years. The SEC recognized that that is an unreasonable period of time. And those who argued several years ago for comprehensive reforms said, ''Look, we'll address the statute of limitations at that point.'' We tried, Madam President, in 1995 to address the statute of limitations, but we were rebuffed. Now this legislation takes the longer statute of limitations, available in 33 out of 50 States, away from those small investors.

The Supreme Court, in the Central Bank case, held that there is no ability to hold accomplices liable. We tried to provide for aider and abetter coverage. The SEC strongly supports that. We were told that when we redid the Federal securities laws that that would be included. My colleague from Maryland and I tried, and we were rebuffed in that effort.

Joint and several liability, eliminated in the 1995 act. Civil RICO, eliminated. Discovery provisions, limited. In 1996, we made a determination to divide some of the regulatory responsibility between State and Federal authorities.

In 1998, we are here with S. 1260, which I think is the coup de grace in terms of small investor protection. So I must say that I am greatly disturbed by this threat. I believe that small investors ultimately will pay the price.

It is often said that those of us who oppose this legislation must be working for those nefarious trial lawyers. Let's take a look at the groups who support the position that the senior Senator from Maryland and I take. The American Association of Retired Persons. When I attend one of their meetings, I haven't seen a single retired lawyer in attendance. The AFL-CIO, the American Federation of State County and Municipal Workers, Consumer Federation of America, Consumers Union, and many, many others, as you can see, particularly those involved with the State retirement associations, including the Public Employees Retirement System, the League of Cities, the National Association of Counties and Municipal Treasuries.

Let me read a paragraph from a letter that the able Senator from Maryland introduced, coming from the Government Finance Officers Association, the Municipal Treasurers'Association, National Association of Counties, National Association of County Treasurers, National Association of State Retirement Administrators, National Conference on Public Employee Retirement System, National League of Cities, U.S. Conference of Mayors. They raise many of the same objections that I have outlined today, as has my colleague from Maryland.

Here is their comment:

The Private Securities Litigation Reform Act was opposed by state and local governments because the legislation did not strike an appropriate balance, and this legislation extends that mistake to state courts. As both users of debt and investors of public funds, state and local governments seek to not only reduce frivolous lawsuits but to protect state and local government investors who are defrauded in securities transactions. . . .

The above organizations believe that States must be able to protect State and local government funds.

We are talking about taxpayer dollars. We are not talking about litigious plaintiffs. We are talking about pension funds, municipal State funds in which those entities have been defrauded and now will be provided much less protection to recover tax dollars—dollars belonging to each and every citizen who is a part of that group.

Let me address one final point here as we conclude this discussion. One of the concerns that has been expressed is that there is no adequate assurance that liability will continue to exist against those who are reckless in their conduct. Now, that is a standard more egregious than simple negligence, more egregious than gross negligence. We are talking about conduct that is reckless in nature.

Prior to 1995, when the Private Securities Litigation Reform Act was enacted, 11 of 13 circuits in this country had addressed the issue and had concluded that there was a cause of action for those who are guilty of reckless misconduct. The 1995 legislation, because it talked about a specific pleading standard, has created some confusion. Following the 1995 enactment, several district courts have concluded that no longer is there liability for reckless misconduct.

Now, the proponents of this legislation say that they do not intend that as a consequence. And I accept their representation. However, we have tried to get into this bill a provision crafted by the SEC defining ''reckless'' to make it absolutely sure that ''reckless'' is protected. Their response? If the courts strike down ''reckless'' we will remedy it.

I never impugn anyone's good faith, but I am a product of the experience that I have had in this legislation. We were told back in the 1990s that we would address the statute of limitation problem when we looked at comprehensive legislation to correct that. It did not occur. We were told after the Central Bank case that we will address the problem in which aiders and accomplices are no longer liable under the law. We were rejected in that effort. So I must say I find my comfort level not very high if the courts intend that. It seems to me if we are in earnest in wanting to protect that ''reckless'' standard, it is terribly important we use a definition which the SEC has provided. Let's make it part of this legislation.

I am not unmindful of the fact that this bill is a train that is leaving the station. It will pass and it will be signed into law. But it would be a tragic mistake not to make absolutely sure that ''reckless'' is included. I believe a fair reading of the 1995 legislation should not give rise to an inference that ''reckless'' has somehow been changed. I don't believe that was the intent. The authors of this legislation say it is not true, but even when we try to get it moved into the findings of the legislation, we get resistance, so I have concern.

Let me conclude by saying this is a piece of legislation which is a solution in search of a problem, overly broad and dangerous to millions of small investors in America.

I yield the floor and reserve whatever time remains.

(Mr. FAIRCLOTH assumed the chair.)

Mrs. FEINSTEIN. Mr. President, I rise today to lend my support to S. 1260, the Securities Litigation Uniform Standards Act. This legislation, introduced by Senator GRAMM and Senator DODD, is essential to my state of California, providing needed uniform national standards in securities fraud class actions.

In 1995, with my support, Congress successfully passed the Securities Litigation Reform Act. The 1995 Act provided relief to American companies hit with frivolous, or nuisance, lawsuits.

Specifically, the legislation adopted federal provisions to discourage nuisance securities lawsuits and increase the level of information provided for investors.

This is very important to my state of California, where hundreds of burdensome lawsuits are filed each and every year. More than 60% of all California high tech firms have been sued at least once. Apple Computers executives stated they expect to be sued every two years. These lawsuits levy a heavy cost on businesses who have to pay for expensive legal battles, draining company resources which might otherwise be spent on growing and improving the health of the company. Securities litigation, as several high tech executives have described, is truly ''an uncontrolled tax on innovation.''

The high-tech industry has been central to the successful economic recovery in California. As thousands of workers in the aerospace industry lost their jobs, and as the recession of the '90s stalled the economy, it was California's entrepreneurial spirit, the investment in new ideas, research and new technology which resulted in a rebounding economy.

In California, there are over 20,000 established high-tech companies. With roughly 670,000 workers, California ranks 1st in the nation in high-tech employment. To put it in another way, for every 1,000 workers in my state, 62 are high-tech. That is significant when one considers that as the 7th largest economy in the world, California supports almost every kind of industry and business known to commerce.

Start-up companies in the high-tech and biotech industries are most directly affected by securities lawsuits. These high-tech and biotech companies dedicate a large percentage of company funds for research and development. The average high tech firm invests between 16–20% of company revenues in research, with biotech firms often as high as 60%. This level of investment is integral to their business success. However, with the burden of frivolous lawsuits, California companies are not able to use their resource on developing innovative technologies and new products for the market place.

The 1995 Securities Litigation Reform moved in the right direction. However, the 1995 legislation did not address recent actions by plaintiffs to file frivolous cases in state courts. Since the passage of the 1995 legislation, suits traditionally filed in federal courts are now being placed in state courts. The current law does not protect companies from this threat.

The bill, which I have been pleased to support, will protect companies from this side-door tactic. The Securities Litigation Uniform Standards Act of 1997 establishes uniform national standards in securities fraud class action suits. It would permit a defendant, whether a company or individual, who is sued in state court to proceed into federal court. This legislation would in effect require that every large securities class action be brought into federal court.

The creation of effective national standards will make it easier to protect companies from so-called nuisance shareholder lawsuits. Specifically, the legislation would provide for the shifting of securities lawsuits filed in a state court into the more appropriate federal court, a process called ''removal.'' The removal authority would only apply for class action suits involving nationally-traded securities, such as the New York Stock Exchange. Without removal authority, these companies, whose securities are traded throughout the fifty states, could face liability under federal securities laws in fifty state courts. This widespread liability would undermine the reforms enacted in the 1995 Securities Litigation Reform Act.

Further, this legislation would prevent ''forum shopping,'' a method for nuisance lawsuits to be initiated in the most sympathetic state jurisdiction. This is a very real concern for California. According to a recent study by former Securities and Exchange Commissioner Joseph A. Grundfest, approximately 26% of litigation activity has moved from federal to state court since the passage of the 1995 law. The study elaborates:

> This increase in state court litigation is likely the result of a 'substitution effect' whereby plaintiffs' counsel file state court complaints when the underlying fact appear not to be sufficient to satisfy new, more stringent federal pleading requirements.

California is the home to one-third of the nation's biotechnology companies and medical device companies. These firms have been the source of tremendous growth. Yet these high tech firms are the very ones who face one of every four strike suits and who have had to pay hundreds of millions of dollars in settlements. National standards will address this problem effectively and fairly.

By establishing a uniform system for the movement of cases from state to federal court, Congress can limit abusive lawsuits that inhibit economic and job growth. The Securities Litigation Uniform Standards Act of 1997 will offer important protection for American companies from nuisance lawsuits.

I appreciate the efforts of the Banking Committee and the sponsors, Senator GRAMM and Senator DODD, for their work on this issue and encourage my fellow Senate colleagues to support this legislation.

Mr. JOHNSON. Mr. President, I rise today in opposition to S. 1260, the Securities Litigation Uniform Standards Act. This bill seeks to prevent states from protecting their own citizens from unscrupulous actions by a small minority in the securities industry. We must allow states to protect their own investors, and this further intrusion into states rights is unwarranted by the evidence.

Preempting state remedies now—and requiring fraud victims to seek relief solely under the federal standards promulgated in 1995—could leave investors with severely limited ability to protect themselves against fraud. We should permit the 1995 Private Securities Litigation Reform Act to be interpreted by the courts before we embark on this effort to anticipate future problems with the PSLRA that have not yet arisen. Several federal district courts have issued rulings on the 1995 law that are so restrictive that they threaten almost all private enforcement of securities law—including holding that reckless wrongdoers are no longer liable to their victims under the PSLRA.

The SEC has warned in briefs filed in these cases that such a result would essentially end private enforcement of the federal securities laws. By eliminating state remedies for fraud before knowing whether the courts will finally interpret the PSLRA in a way that provides victims with a viable means to recover their losses, S. 1260 risks not only harming innocent investors but undermining public confidence in our securities markets.

There is no need for any federal action inasmuch as there have been few state securities class actions filed since the PSLRA passed, and most have been in one state. Preemption proponents cite an imaginary ''explosion'' of state suits filed to ''circumvent'' the PSLRA in the two years since its enactment. But the mere handful of state securities class actions filed in 1997—only 44 nationwide—represents a one-third decrease since 1996 and is less than in the three years before the PSLRA was passed. It also is an infinitesimally small percentage of the roughly 15 million civil cases filed in state courts each year. No state other than California has had more than seven securities class actions filed in the two years since enactment of the PSLRA. Given these small numbers, there is no reason why states should not be left free to decide how best to protect their own citizens from fraud.

State laws against securities fraud are part of a dual enforcement system that has served the country exceptionally well since the Depression. States enacted protections against financial schemes in the early 1900s. Congress passed federal securities laws in 1933 and 1934 to complement—not replace—state laws and to stop abuses that caused the 1929 crash. Many states have chosen to provide more expansive investor protections than federal law currently provides—through accountability for aiders and abettors, realistic time limits for filing a fraud claim, and the ability to recover fully from professionals who help perpetrate frauds (like lawyers and accountants) when the main wrongdoer is bankrupt, in jail, or has fled the country. For example, according to the SEC, 49 of the 50 states provide liability for aiders and abettors now unavailable under federal law and 33 states provide longer statutes of limitations for securities fraud actions than current federal law. S. 1260 would take away these important state remedies.

This effort has been underway virtually since the PSLRA passed. It is not based on the new realities created by the PSLRA, but rather to eliminate another form of protection for investors. The SEC has repeatedly expressed concern that federal legislation to preempt state laws is premature. In an April 1997 letter to the President forwarding a lengthy SEC report on the operation of the PSLRA, Chairman Arthur Levitt stated, ''The Commission endorses the ultimate conclusion of this report: it is too early to assess with great confidence many important effects of the [PSLRA] and therefore, on this basis, it is premature to propose legislative changes. . . The one-year time frame has not allowed for sufficient practical experience with the Reform Act's provisions, or for many court decisions (particularly appellate court decisions) interpreting those provisions.'' The SEC reiterated this view in October 1997 testimony before both the House and Senate and has specifically criticized the pending preemption legislation, stating that it ''would deprive investors of important protections.'' SEC Commissioner Norman Johnson, a Republican, has been especially critical: ''Given the possible adverse affect on investor confidence, as well as the long history of effective and concurrent federal and state securities regulation, and the strong federalism concerns raised by preemption . . . extreme caution should be exercised before state courthouse doors are closed to small investors through the preclusion of state class actions for securities fraud.'' While three of the five SEC Commissioners no longer oppose S. 1260, there has been no change in any of the underlying facts that led to the SEC's earlier report and testimony. Commissioner JOHNSON continues to oppose S. 1260.

With more and more Americans participating in the stock market boom, it is more imperative that we maintain these investor protections, not weaken them. According to a front-page article in the November 30, 1997, New York Times, ''Investment Fraud Is Soaring Along with the Stock Market.'' This was only one in a long line of recent articles reporting on widespread fraud in the financial markets—a fact acknowledged by federal and state enforcement officials nationwide. The National White Collar Crime Center reports that corporate financial crime costs $565 billion annually, nearly 12 times the amount of street crime. The New York Attorney General has reported that investor complaints have risen 40% per year in the past two years; the U.S. Attorney in New York City has stated that she has witnessed an ''explosion'' of securities fraud; and the mob has now infiltrated Wall Street. Yet, federal and state enforcement resources are shrinking. As SEC Chairman Levitt observed in December 1997: ''In a market like this, parasites crowd in to feast on the bull's success.'' In light of all this, Congress should strengthen, not weaken, existing deterrents.

This premption of state law is opposed by a broad coalition, including the American Association of Retired Persons; American Federation of State County and Municipal Workers; Consumer Federation of America; Consumers Union; Gray Panthers; Government Finance Officers Association; Municipal Treasurers' Association; National League of Cities; National Association of Counties; National Association of County Treasurers and Finance Officers and many, many others.

Mr. President, I urge my colleagues to join me in opposing this unnecessary and unwarranted federal intrusion into what should appropriately be state law.

Mr. DODD. Mr. President, S. 1260, the Securities Litigation Uniform Standards Act of 1998, is intended to create a uniform national standard for securities fraud class actions involving nationally-traded securities. In advocating enactment of uniform national standards for such actions, I firmly believe that the national standards must be fair ones that adequately protect investors. I hope that Senator D'AMATO, one of the architects of the Banking Committee's substitute, would engage in a colloquy with me on this point?

Mr. D'AMATO. I would be happy to.

Mr. DODD. At a hearing on S. 1260 last October, the Securities and Exchange Commission (SEC) voiced concern over some recent federal district court decisions on the state of mind—or scienter—requirement for pleading fraud was adopted in the Private Securities Litigation Reform Act of 1995 ('95 Reform Act or PSLRA). According to the SEC, some federal district courts have concluded that the '96 Reform Act adopted a pleading standard that was more rigorous than the Second Court's, which, at the time of enactment of the PSLRA, had the toughest pleading standards in the nation. Some of these courts have also suggested that the 95 Reform Act changed not only the pleading standard but also the standard for proving the scienter requirement. At the time we enacted the PSLRA, every federal court of appeals in the nation—ten in number—concluded that the scienter requirement could be met by proof of recklessness.

Mr. D'AMATO. I am sympathetic to the SEC's concerns. In acting now to establish uniform national standards, it is important that we make clear our understanding of the standards created by the '95 Reform Act because those are the standards that will apply if S. 1260 is enacted into law. My clear intent in 1995, and my understanding today, is that the PSLRA did not in any way alter the scienter standard in federal securities fraud lawsuits. The '95 Reform Act requires plaintiffs, and I quote, ''to the state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'' The '95 Reform Act makes no attempt to alter or define that state of mind. In addition, it was my intent in 1995, and it is my understanding today, that the '95 Reform Act adopted the pleading standard applied in the Second Circuit.

Mr. DODD. I agree with the comments of my colleague from New York. I too, did not intend for the PSLRA to alter the state of mind requirement in securities fraud lawsuits or to adopt a pleading standard more stringent than that of the Second Circuit. In fact, I specifically stated during the legislative debates preceding and following the President's veto that the '95 Reform Act adopted the Second Circuit's pleading standard. This continues to be my understanding and intent today. Ensuring that the scienter standard includes reckless misconduct is critical to investor protection. Creating a higher scienter standard would lessen the incentives for issuers of securities to conduct a full inquiry into potentially troublesome areas and could therefore damage the disclosure process that has made our markets a model for other nations. The U.S. securities markets are the envy of the world precisely because investors at home and abroad have enormous confidence in the way our markets operate. Altering the scienter standard in the way envisioned by some of these district court decisions could be very damaging to that confidence.

Mr. D'AMATO. My friend from Connecticut is correct. The federal securities laws must include a scienter requirement that adequately protects investors. I was surprised and dismayed to learn that some district court decisions had not followed the clear language of the '95 Reform Act, which is the basis upon which the uniform national standard in today's legislation will be created.

Mr. DODD. It appears that these district courts have misread the language of the '95 Reform Act's ''Statement of Managers.'' As I made clear in the legislative debate following the President's veto, however, the disputed language in the Statement of Managers was simply meant to explain that the Conference Committee omitted the Specter amendment because that amendment did not adequately reflect existing Second Circuit caselaw on the pleading standard. I can only hope that when the issue reaches the federal courts of appeals, these courts will undertake a more thorough review of the legislative history and correct these decisions. While I trust that the courts will ultimately honor Congress' clear intent, should the Supreme Court eventually find that recklessness no longer suffices to meet the scienter standard, it is my intent to introduce legislation that would explicitly restore recklessness as the pleading and liability standard for federal securities fraud lawsuits. I imagine that I would not be alone in this endeavor, and I ask my good friend from New York whether he would join me in introducing such legislation?

Mr. D'AMATO. I say to the Senator from Connecticut that I would be pleased to work with him to introduce such legislation under those circumstances. I agree that investors must be allowed a means to recover losses caused by reckless misconduct. Should the court deprive investors of this important protection, such legislation would be in order.

Mr. DODD. I want to thank the Senator from New York, the Chairman of the Banking Committee, for his leadership on this bill and for engaging in this colloquy with me. In proceeding to create uniform national standards while some issues concerning the '95 Reform Act are still being decided by the courts, we must act based on what we intended and understand the '95 Reform Act to mean. As a sponsor of both the Senate bill that became the '95 Reform Act and the bill, S. 1260, that we are debating today, I am glad that we have had this opportunity to clarify how the PSLRA's pleading standards will function as the uniform national standards to be created in S. 1260, the Securities Litigation Uniform Standards Act of 1998.

Mr. REID. Mr. President, in 1995, we passed the Private Securities Litigation Reform Act or PSLRA, as it became known. Our intent was to prevent abusive filings by a group of trial attorneys who were using a loophole in our laws. These lawsuits were often entirely without merit and really amounted to strong-arm efforts to get money out of small start-up companies. Our legislation was aimed at putting an end to these strike suits and to a large extent it has succeeded.

Many of these companies could take the capital they were expending on litigation and settlement costs and invest in research in development. They could provide greater returns to their shareholders. They could create more jobs.

Unfortunately, the small group of attorneys who were involved in this loophole found another way to get their frivolous strike suits heard in court. They shifted their efforts to state courts.

The SEC has noted this development saying that this ''apparent shift to state court may be the most significant development in securities litigation'' since the '95 legislation was enacted. Before the '95 Act, few, if any, securities class actions were filed in state court. Since it's enactment, the number of state claims has exploded.

A study by Price Waterhouse found that the average number of state court securities class actions filed in 1996 grew 355 percent over the 1991–1995 average. In 1997, filings were 150 percent greater than the 1991–1995 average. While the number of state court filings dropped slightly in 1997 compared to 1996 it is believed this is due to a strategic desire by plaintiffs' lawyers to undercut the underlying legislation.

According to Stanford Law School official Michael Perino:

> It is possible that plaintiffs' attorneys may simply have strategically chosen not to pursue a significant number of state cases in order to decrease the apparent necessity for Congress to pass a federal preemption statute. Past experience * * * indicates that plaintiffs respond strategically to legislative initiatives that might alter the costs and benefits of securities litigation.

The State court litigation is a loophole around the PSLRA. This is undermining the bipartisan efforts we made in passing the PSLRA to give companies the ability to disclose more information to investors without the fear of being sued. But the threat of being sued in 50 states chills the disclosure of company information to investors.

People are understandably reluctant to make disclosures under the Federal law's ''safe harbor'' provision when their statements can be used against them in state court. According to the SEC, fear of state court liability for forward looking statements was inhibiting the use of the PSLRA's safe harbor.

The time to act on this is now. Delay undermines one of the main policy goals of the PSLRA—greater information flow to investors. Delays will cause a proliferation of litigation in state courts. Delay forces all parties to spend millions of dollars arguing about matters that uniform standards legislation can put to rest.

As time goes on, states will reach different legislative and judicial results—this just furthers the confusion. As President Clinton wrote last year, ''the proliferation of multiple and inconsistent standards could undermine national law.''

We need to prevent this confusion by putting a stop to this end run around Congress. A patchwork system of securities laws undermines America's capital markets. Capital formation is inhibited by overlapping the duplicative legal rules governing securities litigation. Uniform standards legislation ensures that purchasers and sellers of nationally traded securities have similar remedies in securities lawsuits regardless of their state of residence.

It is time to close this loophole and put an end to this high priced extortion that seems to be benefitting only a few trial attorneys.

Mr. LIEBERMAN. Mr. President, I rise today to say a few brief words of support for the bill we are now considering, the Securities Litigation Uniform Standards Act of 1998. I was an original co-sponsor of this important legislation. Through its passage, we in Congress can continue to send the strong message to the nation's securities markets and the country's investors that we first articulated in 1995 with the enactment of the Private Securities Litigation Reform Act: we will not let frivolous lawsuits disrupt our nation's securities markets, devalue our citizens' investments or cut off the free flow of information we all need to make reasoned and well-informed investment decisions.

I was a proud supporter of the 1995 Act, which restored some rationality and common sense to the laws regulating federal securities litigation. That bill set specific standards for federal private class actions alleging securities fraud, so that those deserving of compensation received it, while those seeking only to profit from the filing of an abusive suit did not. Unfortunately, in the wake of that Act, some enterprising plaintiffs' attorneys have turned to State courts to file abusive suits. Through these State court actions, plaintiffs' attorneys have effectively circumvented the reforms the 1995 Act put in place, reforms we in Congress overwhelmingly embraced in the 1995 Act.

Were the regulation of nationally traded securities a matter of purely local concern, I might agree with those who see nothing wrong with this phenomenon—who argue that each State should be free to set for itself the laws governing actions in its courts. But we clearly are not dealing here with something of only local concern. To the contrary, the securities governed by this bill—and it is important to emphasize this point—are by definition trading on national exchanges. As we all know, securities traded on national exchanges are bought and sold by investors in every State, and those investors rely on information distributed on a national basis. It simply makes no sense to open those who make statements about national securities on a national basis to class actions brought under 50 separate State regulatory regimes—not if we want efficient and well-functioning securities markets, that is. In short, not only is a uniform standard appropriate in this case; it provides perhaps the quintessential example of something that should be subject to one set of standards nationwide.

For this reason, it is not surprising that this bill has the support, not only of a significant portion of the Congress, but also of both the SEC and the Administration. As someone involved for many years in efforts to reform our nation's litigation system, I can say with confidence that the fact that both the SEC and the Administration support this bill speaks volumes to the merits of this bill.

Let me close, Mr. President, by thanking the principal sponsors of this bill, particularly Senators DODD, D'AMATO, GRAMM and DOMENICI. They have worked hard to accommodate all legitimate concerns raised about this bill, working particularly closely with both the SEC and the Administration, and making significant changes to the bill as it moved to the floor. I join with them in urging my colleagues to pass this important legislation today.

Mr. WELLSTONE. Mr. President, I rise today to oppose S. 1260, the ''Securities Litigation Uniform Standards Act of 1997.''

Mr. President, we are considering legislation that would risk imperiling the financial security of those individuals most susceptible to fraud. The American Association of Retired Persons opposes this legislation based on the bill's anti-investment character and the heightened dependence of senior citizens on investment. I find it very odd that in a time when the stock market is doing so well that some of my colleagues are considering exposing Social Security to the vagaries of the booms and busts of Wall Street, we are preventing the states from protecting their citizens from securities fraud. In a time when more Americans are relying on investments for financial security—especially retirees—we are rolling back protections.

Many states, my own included, have laws which provide for increased penalties for fraud perpetrated against Seniors and the disabled—the Minnesota statute mentions securities specifically—and Congress has always given the states great leeway in protecting their consumers. In Minnesota, there is an additional civil penalty of $10,000 for each violation where deceptive trade practices, false advertising, or consumer fraud are perpetrated against elderly and disabled persons.

Not only are seniors and the disabled at great risk for fraud, they are increasingly becoming investors and they are least able to recoup the income lost. It is devastating for anyone to lose their life savings through a lie, to have their pension wiped out, but for Americans on a fixed income—it will destroy them, Mr. President.

I cannot support this legislation. It is bad for investors, it is terrible for seniors and the disabled, and it addresses a problem which does not exist at the expense of consumers.

I urge its rejection.

Mr. REED. Mr. President, as a supporter of the Private Securities Litigation Reform Act of 1995 I am pleased to support S. 1260, the Securities Litigation Uniform Standards Act of 1998.

The bill will create a uniform standard for securities class action lawsuits against corporations listed on the three largest national exchanges.

Class action suits are frequently the only financially feasible means for small investors to recover damages.

Yet, such lawsuits have also been subject to abuse, draining resources from corporations while inadequately representing the interests of investor plaintiffs.

Mr. President, in 1995, I voted to curtail such abusive litigation. It was obvious then that some class action suits were being filed after a precipitous drop in the value of a corporation's stock, without citing specific evidence of fraud.

These lawsuits inflict substantial costs upon corporations, harming the business and its shareholders. Unfortunately, since passage of federal procedures protecting corporations from such suits there has been some attempt by class action plaintiffs to circumvent these safeguards by filing similar lawsuits in state courts.

Mr. President, this Act will preempt this circumvention, creating a national standard for class action suits involving nationally traded securities. I favor this legislation because it recognizes the national nature of our securities markets, provides for more efficient capital formation, and protects investors.

However, Mr. President, it is essential to recognize that preemption marks a significant change concerning the obligations of Congress.

When federal legislation was enacted to combat securities fraud in 1933 and 1934, federal law augmented existing state statutes. States were free to provide greater protections from fraud to their citizens, and many have.

The Chairman of the Securities and Exchange Commission has testified concerning the traditional system by which securities have been regulated: through both public and private lawsuits in both state and federal courts.

Many of my colleagues voted for the 1995 legislation knowing that if federal standards failed to provide adequate investor protections, state suits would provide a necessary backup.

With passage of this legislation, my colleagues and I have now accepted full and sole responsibility to ensure that fraud standards allow victimized investors to recoup lost funds.

Only a meaningful right of action against those that defraud guarantees investor confidence in our national markets.

A uniform national standard concerning fraud provides no benefit to markets if issuers can, with impunity, fail to ensure that consumers receive truthful, complete information on which to base investment decisions.

Specifically, my support rests on the presumption that the liability standard was not altered by either the 1995 Act or this legislation.

I strongly endorse the Report which accompanies this legislation, which states clearly that nothing in the 1995 legislation changed either the scienter standard or the previous pleading standards associated with the most stringent rules, those of the Second Circuit.

The reason such standards were not changed in 1995 is that they are essential to providing adequate investor protection from fraud.

I have been deeply troubled by the ruling of several federal district courts which, ignoring the clear legislative history of the 1995 Act, have either changed the requirements of scienter in a fraud case or have invalidated the proper pleading standard for a 10b-5 action.

Mr. President, let me be clear: nothing in the act addressed the scienter standard: which has quite rightly been held by every Circuit to rule on the issue to include recklessness.

With regard to proper pleadings: the PSLRA requires plaintiffs to plead specific facts ''giving rise to a strong inference'' that the defendants acted with the required state of mind. Prior to the 1995 legislation, some circuit courts allowed scienter to be averred generally. However, the PSLRA's heightened standard was specifically linked to the most stringent pleading standard at the time, that of the Second Circuit. That standard allows a plaintiff to establish a case by either pleading motive and opportunity or recklessness.

Mr. President, I believe that SEC Chairman Levitt, who has a lifetime of experience as both an investor and regulator of markets, has been the most articulate concerning the need for a recklessness standard concerning the scienter requirement.

In October 21, 1997 testimony before the Subcommittee on Finance and Hazardous Materials of the House's Committee on Commerce, Chairman Levitt said:

> In my judgment, eliminating recklessness from the securities anti-fraud laws would be tantamount to eliminating manslaughter from the criminal laws. It would be like saying you have to prove intentional murder or the defendants gets off scot free. . . . If we were to lose the reckless standard, in my judgement, we would leave substantial numbers of the investing public naked to attacks by fraudsters and schemers.

In testimony before the Banking Subcommittee Chair by Senator GRAMM, on October 29, 1997, Chairman Levitt further articulated his position regarding the impact a loss of recklessness would have. He said:

> A uniform federal standard that did not include recklessness as a basis for liability would jeopardize the integrity of the securities markets, and would deal a crippling blow to defrauded investors with meritorious claims. A higher scienter standard would lessen the incentives for corporations to conduct a full inquiry into potentially troublesome or embarrassing areas, and thus would threaten the disclosure process that has made our markets a model for nations around the world.

I think the danger that a loss of recklessness posses to our citizens and our markets is clear.

Mr. President, equally important is a pleading standard that allows victimized investors to recover their losses. The reason for allowing a plaintiff to establish scienter through a pleading of motive and opportunity or recklessness is clear. As one New York Federal District Court has stated, ''a plaintiff realistically cannot be expected to plead a defendant's actual state of mind.''

Since the 1995 Act allows for a stay of discovery pending a defendant's motion to dismiss, requiring a plaintiff to establish actual knowledge of fraud or an intent to defraud in a complaint raises the bar far higher than most legitimately defrauded investors can meet.

The SEC has been clear on this point and it has been well recognized by the supporters of both the 1995 and 1998 Acts that neither changed the preexisting standards.

Mr. President, I am pleased that the Chairman of the Committee and the Ranking Member of the Subcommittee, a prime sponsor of this legislation, have today articulated their belief that including reckless behavior in the definition of fraud is essential to the protection of our markets. I join them in their pledge to sponsor legislation should such protections be threatened.

As a result, the legislative history of both bills well establishes that the scienter standard, as well as the pleading standard of the Second Circuit Court of Appeals, remains totally intact. Therefore, it is now clear that federal district court rulings that have held otherwise are clearly in error.

Mr. President, I ask unanimous consent to have printed in the RECORD an analysis, preformed for me by the staff of the SEC, of cases adjudicated under the 1995 Act.

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

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, April 20, 1998.

TED LONG,
Legislative Counsel, Offices of Senator Jack Reed, Hart Senate Office Building, Washington, DC.

DEAR MR. LONG: The attached responds to your request for staff technical assistance with respect to S. 1260, the ''Securities Litigation Uniform Standards Act of 1997.'' This technical assistance is the work of the staff of the Securities and Exchange Commission; the Securities and Exchange Commission itself expresses no views on this assistance.

I hope the attached is responsive to your request.

Sincerely,

RICHARD H. WALKER,
General Counsel.

Attachment.

PLEADING STANDARD SCORECARD

(As of April 17, 1998)

I. Cases Applying the Second Circuit Pleading Standard:

1. City of Painesville v. First Montauk Financial Corp., 1998 WL 59358 (N.D. Ohio Feb. 8, 1998).
2. Epstein v. Itron, Inc., No. CS–97–214 (RHW), 1998 WL 54944 (E.D. Wash. Jan. 22, 1998).
3. In re Wellcare Mgmt. Group, Inc. Sec. Lit., 964 F. Supp. 632 (N.D.N.Y. 1997).
4. In re FAC Realty Sec. Lit., 1997 WL 810511 (E.D.N.C. Nov. 5, 1997).
5. Page v. Derrickson, No. 96–842–CIV–T–17C, 1997 U.S. Dist. LEXIS 3673 (M.D. Fla. Mar. 25, 1997).
6. Weikel v. Tower Semiconductor Ltd., No. 96–3711 (D.N.J. Oct. 2, 1997).
7. Gilford Ptnrs. L.P. v. Sensormatic Elec. Corp., 1997 WL 757495 (N.D. Ill. Nov. 24, 1997).
8. Galaxy Inv. Fund, Ltd. v. Fenchurch Capital Management, Ltd., 1997 U.S. Dist. LEXIS 13207 (N.D. Ill. Aug. 29, 1997).
9. Pilarczyk v. Morrison Knudsen Corp., 965 F. Supp. 311, 320 (N.D.N.Y. 1997).
10. OnBank & Trust Co. v. FDIC, 967 F. Supp. 81, 88 & n.4 (W.D.N.Y. 1997).
11. Fugman v. Aprogenex, Inc., 961 F. Supp. 1190, 1195 (N.D. Ill. 1997).
12. Shahzad v. H.J. Meyers & Co., Inc., No. 95 Civ. 6196 (DAB), 1997 U.S. Dist. LEXIS 1128 (S.D.N.Y. Feb. 6, 1997).
13. Rehm v. Eagle Fin. Corp., 954 F. Supp. 1246, 1252 (N.D. Ill. 1997).
14. In re Health Management Inc., 970 F. Supp. 192, 201 (E.D.N.Y. 1997).
15. Marksman Partners, L.P. v. Chantal Pharmaceutical Corp., 927 F. Supp. 1297, 1309–10, 1309 n.9 (C.D. Cal. 1996).
16. Fischler v. AmSouth Bancorporation, 1996 U.S. Dist. LEXIS 17670 (M.D. Fla. Nov. 14, 1996).
17. STI Classic Fund v. Bollinger Industries, Inc., No. CA 3:96–CV–0823–R, 1996 WL 866699 (N.D. Tex. Nov. 12, 1996).
18. Zeid v. Kimberley, 930 F. Supp. 431 (N.D. Cal. 1996).

II. Cases Applying a Stricter Pleading Standard than the Second Circuit:

A. Cases Holding that Motive and Opportunity and Recklessness do not Meet Pleading Standard.

1. Mark v. Fleming Cos., Inc., No. CIV–96–0506–M (W.D. Okla. Mar. 27, 1998).
2. In re Silicon Graphics Sec. Lit., 970 F. Supp. 746 (N.D. Cal. 1997).
3. In re Comshare, Inc. Sec. Litig., Case No. 96–73711–DT, 1997 U.S. Dist. LEXIS 17262 (E.D. Mich. Sept. 18, 1997).
4. Voit v. Wonderware Corp., No. 96–CV. 7883, 1997 U.S. Dist. LEXIS 13856 (E.D. Pa. Sept. 8, 1997).
5. Powers v. Eichen, No. 96–1431–B (AJB), 1997 U.S. Dist. LEXIS 11074 (S.D. Cal. Mar. 13, 1997).
6. Norwood Venture Corp. v. Converse Inc., 959 F. Supp. 205, 208 (S.D.N.Y. 1997).
7. Friedberg v. Discreet Logic, Inc., 959 F. Supp. 42, 48–49 (D. Mass. 1997).
8. In re Glenayre Technologies, Inc., 1997 WL 691425 (S.D.N.Y. Nov. 5, 1997).
9. Havenick v. Network Express, Inc., 1997 WL 626539 (E.D. Mich. Sep. 30, 1997).
10. Chan v. Orthologic Corp., et al., No. CIV–96–1514–PHX–RCB (D. Ariz. Feb. 5, 1998) (dicta).

B. Cases Holding only that Motive and Opportunity do not Meet Reform Act's Pleading Standard:

1. Novak v. Kasaks, No. 96 Civ. 3073 (AGS), 1998 WL 107033 (S.D.N.Y. Mar. 10, 1998).
2. Myles v. MidCom Communications, Inc, No. C96–614D (W.D. Wash. Nov. 19, 1996).
3. In re Baesa Securities Litig., 969 F. Supp. 238 (S.D.N.Y. 1997).
4. Press v. Quick & Reilly Group, Inc., No. 96 Civ. 4278 (RPP), 1997 U.S. Dist. LEXIS 11609, at *5 (S.D.N.Y. Aug. 8, 1997).

III. Examples of Cases with Language Questioning Recklessness as a Basis of Liability (All Cases Previously Listed Above):

1. In re Silicon Graphics Sec. Lit., 970 F. Supp. 746 (N.D. Cal. 1997).
2. Friedberg v. Discreet Logic, Inc., 959 F. Supp. 42, 49 n.2 (D. Mass. 1997).
3. Norwood Venture Corp. v. Converse Inc., 959 F. Supp. 205, 208 (S.D.N.Y. 1997).

Mr. REED. Mr. President, as this legislation makes clear, those rulings that reject the reckless standard, or the Second Circuit's pleading standard are clearly wrong and a threat to the security of our markets.

Mr. President, with assurances that proper protections for investors will remain in place, I am pleased to support the 1998 Act, thus moving toward an efficient, national uniform standard for securities class action lawsuits.

I trust that higher courts will adhere to current principles of legislative history and case law to rule that the pleading and scienter standards continue to protect investors and that we will remain true to our commitment and fix any error.

Additionally, as expressed in votes during the mark-up of this legislation, I am concerned that the definition of class action, as currently included in the bill, is too broad.

Specifically, by defining a class as those whose claims have been consolidated by a state court judge, the bill infringes upon the rights of individual investors to bring suit; a situation sponsors have sought to avoid. I hope that this issue can be resolved today on the floor.

Finally, I have appreciated the expert analysis that the Chair, Commissioners, and staff of the Securities and Exchange Commission have provided on this issue. I thank them for their assistance.

Ms. MIKULSKI. Mr. President, I rise to support the Securities Litigation Uniform Standards Act. I supported the 1995 Private Securities Litigation Reform Act for three reasons: to stop the bounty hunters, to put the person who had lost the most money in charge of class action suits, and to penalize people who commit fraud.

I have been very disturbed and disappointed to hear from many Maryland biotechnology and high technology companies that the 1995 reforms are being circumvented and, that in some respects, nothing has changed.

Why has nothing changed even though we enacted those important reforms? Because some have refused to accept the law of the land. Rather than abide by congressional efforts to protect small companies that create jobs and help to maintain our robust economy, a small group of specialized lawyers have simply shifted their filings to state courts.

Enacting this uniform standards legislation would close this loophole and enable Congress to finish the job of eliminating abusive securities litigation that hampers and harms our economic future

Uniform standards would only involve class action suits with at least 50 plaintiffs involving nationally traded securities. These claims were rarely filed in state courts until federal reform became law in December 1995.

This exposure of national companies and their shareholders to lawsuits by 50 different sets of rules amounts to a balkanization of securities law that boosts legal fees, distracts companies from creating jobs, and erodes the value of shareholder investments.

I have heard from Maryland CPAs, venture capitalists, and Maryland companies along the I–270 High-Tech Highway that these uniform standards are needed.

I believe that much of our economic future is in new and developing industries such as high technology and biotechnology. New, high-tech jobs are created only when companies generate capital to allow them to move into new fields. Without a balanced and uniform legal system free of loopholes, these companies must spend too much on frivolous litigation and not enough on investments to generate jobs.

Mr. President, this legislation is about perfecting the important reforms we passed in 1995 to protect our emerging industries as they strive to innovate and create jobs. Promoting job creation is one of my economic principles, and I am pleased to support this legislation today.

Mr. HATCH. Mr. President, I rise today to speak about S. 1260, the Securities Litigation Uniform Standards Act of 1998. I am pleased that this bill is being acted upon today. Enactment of this bill will implement the underlying purpose of the Private Securities Litigation Reform Act of 1995 by establishing uniform standards governing private securities litigation.

The Private Securities Litigation Reform Act of 1995 provided a ''safe harbor'' for forward-looking statements in order to encourage companies to make voluntary disclosures regarding future business developments. This objective was important to provide an environment in which companies could provide more information to potential investors without undue risk of litigation.

Since passage of the 1995 Act, however, actions are often filed in state courts in order to circumvent these very protections. The resulting threat of frivolous lawsuits and liability under state law discourages corporate disclosure of forward-looking information to investors, eroding investor protection and jeopardizing the capital markets that are so important to the productivity of the fast-growing sectors of our economy.

Uniform liability standards eliminate this threat and the drag on our economy which it causes. The enactment of this bill will, I believe, be a great impetus for new businesses, especially those in the rapidly growing high-tech and bio-tech fields of our economy. This bill thereby creates a business atmosphere that encourages, rather than inhibits economic growth.

I hope my colleagues will join me in supporting passage of S. 1260, the Securities Litigation Uniform Standards Act of 1968.

Mr. GRAMS. Mr. President, I rise in strong support of S. 1260, the Securities Litigation Uniform Standards Act, which is necessary to preserve the intent of the Public Securities Litigation Reform Act of 1995. This bipartisan legislation is narrowly drafted to correct an unexpected consequence of the Public Securities Litigation Reform Act and is supported by the White House and the Securities and Exchange Commission (SEC).

Following enactment of the 1995 Act, it became apparent that trial lawyers were up to their old tricks by circumventing the intent of the law by bringing frivolous class action law suits in state courts, rather than in Federal court. Although brought in a different forum, this action yields the same result—namely raising the cost to investors, workers, and customers. As a member of the conference committee on the 1995 Act, I can assure you that this is not the intent of Congress.

As its name implies, S. 1260 preserves the 1995 Act by establishing uniform standards governing private class actions involving nationally traded securities. This bill does not interfere with the ability to bring criminal suits in state courts or for individuals to seek relief in state courts. Rather, this Act simply requires that class action lawsuits against nationally traded securities be filed in Federal court.

I urge my colleagues to support this legislation and hope that it will be approved expeditiously so as to preserve the intent of the 1995 Act.

Mr. KERRY. Mr. President, I would like to thank the Senators DODD and GRAMM for their work in bringing this legislation before us today. I support this effort to reestablish the reasonable limitations the Congress established in 1995 with respect to class action lawsuits alleging the commission of securities fraud in connection with the purchase or sale of a covered security. This was a warranted and important step, and the efforts to effectively nullify it by bringing such suits in state courts must be halted, which this legislation does by requiring all class action suits of this type be brought in federal courts.

While fraudulent actions by a company's management can destroy an individual investor's retirement nest egg, a frivolous suit filed against a start-up high-technology company can stop that business dead in its tracks. We need to protect the rights and interests of both shareholders and entrepreneurs. Although no law can do that perfectly, I believe this legislation will bring us as close as possible to the correct balance.

The high technology sector has played an important part in the economic development of Massachusetts and the nation. This sector, which has been the most frequent target of securities strike suits, is critical to our future economic growth and the creation of highly skilled, family-wage jobs. Frivolous strike suits have had a chilling effect on start-up high-technology, biotechnology, and other growth businesses.

After the growth of frivolous strike suits during the first part of this decade, passage of the Securities Litigation Reform Act in 1995 was successful to a large degree in limiting strike suits in federal court. But litigants are too often circumvented its impediments to frivolous lawsuits by bringing actions in state court, reinvigorating the threat to emerging companies.

The Securities Litigation Reform Act's limits on discovery fishing expeditions, until a court rules on the merits of a case, does not apply in state court, and plaintiffs have begun to file state lawsuits in order to gain access to important company information—too often this has permitted ''fishing expeditions'' into corporate files to try to find evidence of fraud. Actions such as these frustrate the intent of the reform law. Moving these cases to federal court should eliminate these meritless ''fishing expeditions.''

Strike suits in state courts also have had a chilling effect on the number of companies which have released forward-looking statements on earnings. Companies fear that if the information on earnings that they release proves to be inaccurate, they will be held liable in state court. The lack of accurate, forward-looking information on companies makes it more difficult for investors to make informed judgments about their future. Reducing suits to those that can meet federal court standards should give these companies the confidence to release voluntarily their future earnings estimates, which should increase the efficiency of capital and reduce future stock volatility in our markets.

Finally, the Securities Litigation Reform Act included important provisions which restrict the use of ''professional plaintiffs,'' eliminate bounty payments, limit attorneys' fees, assure class action lawsuit members receive notice of settlement terms, and restrict secret agreements under seal. None of these protections is available for class action suits brought in state courts.

Moving all class action securities lawsuits to federal court should lead to the creation of a more favorable, stable climate for businesses while preserving important remedial means for shareholders with legitimate complaints about inappropriate corporate activities. Investors should gain better information about the marketplace. A diminished threat of abusive strike suits will strengthen the ability of businesses to provide investors with more information.

I believe this helps to restore the balance we seek on behalf of all Americans, both those who are investors and those who are entrepreneurs and managers. I will support its passage and complement those who have brought it to passage.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

The Senator from New York.

Mr. D'AMATO. Mr. President, I know there are a number of amendments. I ask my colleagues, in the interest of moving forward if they would submit those amendments so we can start working on them.

The PRESIDING OFFICER. The Senator from New York has 2 minutes 36 seconds remaining. The time has expired on the side of the Senator from Maryland.

Mr. SARBANES. Once an amendment is sent to the desk we can have time to proceed; is that correct?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 2395

(Purpose: To provide that the appropriate State statute of limitations shall apply to certain actions removed to Federal court)

Mr. SARBANES. I send an amendment to the desk for myself, Senator BRYAN and Senator JOHNSON.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. SARBANES], for himself, Mr. BRYAN and Mr. JOHNSON, proposes an amendment numbered 2395.

Mr. SARBANES. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 9, between lines 9 and 10, insert the following:

"(d) APPLICABILITY OF STATE STATUTE OF LIMITATIONS.—Notwithstanding subsection (b), an action that is removed to Federal court under subsection (c) shall be subject to the State statute of limitations that would have applied in the action but for such removal.

On page 9, line 10, strike "(d)" and insert "(e)".

On page 10, line 12, strike "(e)" and insert "(f)".

On page 10, line 17, strike "(f)" and insert "(g)".

On page 14, between lines 10 and 11, insert the following:

"(3) APPLICABILITY OF STATE STATUTE OF LIMITATIONS.—Notwithstanding paragraph (1), an action that is removed to Federal court under paragraph (2) shall be subject to the State statute of limitations that would have applied in the action but for such removal.

On page 14, line 11, strike "(3)" and insert "(4)".

On page 15, line 15, strike "(4)" and insert "(5)".

On page 15, line 20, strike "(5)" and insert "(6)".

Mr. SARBANES. Mr. President, Senator CLELAND has been here for some time on the floor. I know he wishes to speak to the bill, and in the course of those remarks would be speaking to this amendment, so I yield the floor. I hope that Senator CLELAND will be recognized.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Georgia.

Mr. CLELAND. Mr. President, I rise today to express my reservations about the merits of S. 1260.

I served as Georgia's Secretary of State and Commissioner of Securities for many years. I was responsible for administering Georgia's securities laws and providing investor protection for Georgia residents.

We are all aware that the securities markets are an integral part of our nation's economy and that we have experienced tremendous growth in these markets. Nearly half of all American households now invest in the stock market either directly or through mutual funds. These are not just rich people trying to become richer. These are primarily middle class Americans seeking to fund their children's education, to save up for a down payment on a home, and to provide a decent standard of living for themselves in retirement. In 1990, only 17.8 percent of all Americans invested in equities but that figure has grown dramatically, and one in three households now own securities.

Unfortunately, these successes have led to a tremendous increase in fraud and abuse. Recently, top securities watchdogs in the United States have warned that the explosion in the stock market has led to a sharp rise in securities sales fraud and stock price manipulation. Several studies have shown that many Americans lack the financial sophistication to protect themselves from fraud. At a town meeting in Los Angeles, SEC Chairman Levitt cautioned that investors are "more vulnerable than ever to fraud." This concern has been echoed by others who point to a disturbing rise in the level of securities fraud and there are many allegations that organized crime is seeking a foothold in certain sectors of the securities marketplace.

It is unclear whether there is any means for defrauded investors to recover stolen money under federal law following the passage of the 1995 PSLRA, which severely limits the rights of defrauded investors. Preemption of state remedies under S. 1260 could lead investors with no ability to protect themselves against fraud. Several federal district courts have issued rulings on the 1995 law that are so restrictive that they threaten almost all private enforcement—including holding that reckless wrongdoers are no longer liable to their victims under the PSLRA. I strongly disagree with this interpretation because Congress, when it crafted the PSLRA, it did not intend to eliminate recklessness as a standard of liability. On the contrary, it is my understanding that the PSLRA did not, in any way, alter the scienter standard in federal securities fraud suits.

Let us be clear about who suffers in the cases of securities fraud—it is retirees living on fixed incomes, young families struggling to make ends meet and save for their children's education, teachers, and factory workers. Each day, devastating cases are brought to the attention of securities regulators and law enforcement officers. Indeed, financial fraud is a serious and growing problem. No discussion about securities litigation reform is complete without serious consideration of the potential impact on small investors across the country. The elimination of state remedies against fraud could be catastrophic for millions of Americans. The fundamental purpose of securities law is to protect investors, something that S. 1260 does not adequately address. In fact, S. 1260 is designed merely to protect big business.

The confidence in our securities markets results, in part, because of the cooperative enforcement system that has served the United States exceptionally well since the Depression. Substantive securities regulation in this country began at the state level. In 1911, the State of Kansas enacted the nation's first Blue Sky Law. Other states quickly adopted their own version of such legislation. Congress passed federal securities laws in 1933 and 1934 to complement—not replace—state laws and to stop abuses that caused the 1929 crash.

Many states have chosen to provide more expansive investor protections than federal law currently provides—through accountability for aiders and abettors, realistic time limits for filing a fraud claim, and the ability of investors to recover fully from professionals who help perpetrate frauds when the primary wrongdoer is bankrupt, in jail, or has fled the country.

In the late 1980s as Secretary of State, I conducted a series of public hearings to focus on securities fraud taking place in Georgia. This led me to recommend a number of changes to strengthen Georgia's securities laws. These changes established significant disclosure requirements for those dealers offering and selling certain stocks within or from the state of Georgia. These recommendations were unanimously enacted as amendments to the Georgia Securities Act, and gave my staff more tools to effectively deal with securities fraud. The Georgia legislature also installed securities fraud as a predicate offense for purposes of liability under the RICO statute. I am pleased to report that the efforts of the Georgia General Assembly are the rule rather than the exception. According to the SEC, 49 of the 50 states provide liability for aiders and abettors now unavailable under federal law, and 33 states provide longer statutes of limitations for securities fraud actions than current federal law. Mr. President, S. 1260 would undermine these important state remedies.

Simply put, S. 1260 is an affront to the efforts of state governments across the country to locally protect their public investors from fraudulent securities transactions. For example, this bill reinforces the unduly short statute of limitations in federal law. In effect, federal law rewards those perpetrators of fraud who successfully conceal the fraud for more than three years. A majority of states have statutes of limitations that are longer than the federal statute. As currently written, S. 1260 would preempt those state laws. Furthermore, the definition of "class action" contained in this bill is overly broad. I have been informed that the definition of "class action" in S. 1260 would allow single suits filed in the same or different state courts to be rolled into a larger federal class action, and this was never contemplated or desired by individual plaintiffs.

Another cause for concern is that under S. 1260, defrauded state and local pension funds are barred from recovering from corporate wrongdoers in state court. Since many remedies have already been foreclosed in federal court, the state or local government and its taxpayers may be required to make up losses in the pension fund resulting from fraudulent securities transactions. If state and local governments are creatures of state law, shouldn't they be entitled to pursue state remedies?

State and local government representatives are unequivocal in their opposition to S. 1260. The National League of Cities, the U.S. Conference of Mayors, the Government Finance Officers Association, and the National Association of State Retirement Administrators all reject the bill in its current form.

Mr. President, I am not convinced that the federal preemption of state anti-fraud protections is a necessary step. Preemption supporters emphasize an ''explosion'' of state suits filed to circumvent the PSLRA in the two years since its enactment. Yet the number of state securities class actions filed in 1997—only 44 nationwide—represents a 33 percent decrease since 1996 and is lower than the number filed in any of the three years before the PSLRA was passed. In addition, most of the state court cases have been filed in California. No state other than California has had more than seven securities class actions filed in the two years since the enactment of the PSLRA. Mr. President, if a problem exists, then it should be addressed in Sacramento, not Washington, and I understand that California has already established a legislative commission to study its laws and make changes if necessary. Other states should be free to decide how to protect their own citizens from fraud.

Mr. President, I support the right of investors to seek legal remedies against those persons selling fraudulent securities. I have supported an investor's right to seek redress through mediation, arbitration, and civil litigation. While I worked to streamline the regulatory process in Georgia, I opposed amendments to federal regulations that would have impaired the ability of a state to protect its investors. Here in the Senate, my focus remains the same. For this reason, I oppose S. 1260.

Thank you Mr. President. I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I believe that my colleague, the Senator from Maryland, is going to speak to this amendment. This amendment would indeed promote forum shopping for those lawyers to look for the State that had the longest statute of limitations.

I point out the Lampf decision, which will be referred to. After that decision, in a sample of actions brought in the State courts, 43 of them were filed within the 4-year period of time—43 out of a total of 44. So we do not believe this amendment will do anything other than to promote forum shopping for the longest period of time, and that it really counteracts the Supreme Court's decision, which has not worked a hardship on plaintiffs who have a legitimate suit or seek to bring it.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maryland.

Mr. SARBANES. Mr. President, this amendment, as the Senator from New York has indicated, goes to the question of the statute of limitations, and it seeks to preserve the State statutes of limitations.

Let me quickly review the history. In the Lampf case, which my colleague referred to, the Supreme Court significantly shortened the period of time in which investors may bring securities fraud actions. On a 5 to 4 vote—in other words, in a very closely divided Court—the Supreme Court held that the applicable statute of limitations is 1 year after the plaintiff knew of a violation, and in no event more than 3 years after the violation occurred. In other words, once the violation occurs, if the plaintiff never finds out about it and 3 years pass, you can't do anything about it, even though, of course, one of the hallmarks of securities fraud is concealment and deception specifically designed to keep them from finding it out.

The other aspect was 1 year after the plaintiff knew of the violation. Now, this is shorter—this statute of limitations —than those that exist in private securities actions in the law in 33 of the 50 States, as my distinguished colleague illustrated earlier with his map.

Testifying before the Banking Committee in 1991, SEC Chairman Richard Breeden stated:

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

Chairman Breeden went on to point out that many cases come to light only after the original distribution of securities. The Lampf cases could well mean that, by the time investors discover they have a case, they are already barred from the courthouse. The FDIC and the State securities regulators joined the SEC in 1991 in favor of overturning the Lampf decision. In fact, Chairman Levitt testified before the Securities Subcommittee of our committee in April of 1995:

> Extending the statute of limitations is warranted because many securities frauds are inherently complex and the law should not reward the perpetrator of a fraud who successfully conceals its existence for more than 3 years.

Chairman Levitt reaffirmed his support for a longer statute of limitations before the committee as recently as March 25, 1998. I continue to believe that this time period in the Federal legislation does not allow individual investors adequate time to discover and pursue violations of securities law, but we raised that issue before and that issue was decided.

So this amendment isn't trying to change the time period for securities fraud actions brought in Federal court. This amendment seeks to fix a related problem that will be created by this bill. Because of the overly broad definition of a class action, this bill creates a flaw; namely, that the Federal statute of limitations will now apply in an unfair manner to State cases. Cases that were timely filed under State statute of limitations may now be removed to Federal court and then dismissed under the shorter Federal statute of limitations.

Mr. BRYAN. Mr. President, will the Senator from Maryland yield for a question?

Mr. SARBANES. I yield to my colleague.

Mr. BRYAN. Is the Senator indicating that an investor who files in a State court in a timely fashion after having consulted with legal counsel that said, yes, this is a timely action—and we shall assume for the sake of the discussion meritorious—can have his action, in effect, dismissed by having it removed to the Federal court and the shorter statute of limitations of 1 to 3 years as is required under Federal law?

Mr. SARBANES. Exactly.

Mr. BRYAN. It will wipe them out.

Mr. SARBANES. Investors who file in a timely fashion under State law may find their lawsuits dismissed because, contrary to their intention, and in many instances unbeknownst to them that this would happen, they find themselves lifted out of a State court, put into the Federal court, and at that point the shorter statutes of limitations apply. So their suit is dismissed for failure to meet a shorter time requirement that they couldn't have known was going to be applied to them.

This problem is created in part because of the broad definition of what is a class action that is in this legislation. So you could have an individual investor who finds himself classified as part of a group, although he was not part a group. He filed it on his own. He had his own lawyer, and he wasn't in collusion with anybody else in doing this. Or you could have 50 identified investors—say, school districts, or water and sewer districts—that get defrauded. If there are more than 50, they can be lifted out of the State court and put into the Federal court. When they went into the State court, they met the statute of limitations. But when they get lifted out of the State court and put in the Federal court, they then have to comply with this shorter statute of limitations, and they find themselves dismissed for failure to meet the shorter time requirement.

Mr. BRYAN. So the perpetrator of the fraud, if I understand what the Senator from Maryland is saying, has the ability to wipe out the small investor by removing the cause of action to the Federal court, even though that case was filed timely under State law and even though the small investor says, Look, I want to have this action continued at the State level. So the Senator is saying, if I understand the Senator from Maryland correctly, that the power to wipe out this cause of action, to wipe out any possibility for relief, are now providing that to the perpetrator of the fraud?

Mr. SARBANES. That is correct.

Mr. BRYAN. The perpetrator of the fraud is allowed to do that under this?

Mr. SARBANES. That is right. What this amendment does, very simply, is it provides that when the investors are removed from the State court to the Federal court, they can bring their State statute of limitations with them. If they filed in the State court, and they complied with the statute of limitations, they ought not to find themselves taken into Federal court and then being told they do not comply with the shorter statute of limitations and they are out of the courthouse when they, in fact, complied at the State level with the State statute of limitations.

This is to deal with this unfairness whereby an investor can file a timely suit under State rules and without advance warning later be dismissed under a different set of rules. Anyone who wished to bring the suit in the Federal court would have to abide by the 1- and 3-year limitation of Lampf. But this is clearly unfair to an investor who is acting in a reasonable manner.

This amendment is supported by a broad coalition of government officials and consumer groups. The National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, and others have written to express their support for an amendment to allow plaintiffs to carry State statute of limitations with them in cases filed in State court which are removed to Federal court. The Consumer Federation of America has joined as well.

I hope my colleagues will support this amendment. It is an effort to deal with what, I think, is a very specific and definable flaw in this legislation. I don't think investors going into a State court, timely under State law—and I refer back to the comments of Chairman Breeden and others about the complexities of these cases, the difficulty of discovering the fraud, the difficulty of bringing the suit once the fraud is discovered—that they then ought to find themselves foreclosed altogether from any equitable relief simply by removal to the Federal court and the application of the shorter statute of limitations.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I rise in opposition to the amendment. The purpose of this amendment is, obviously, to thwart the underlying rationale for the legislation.

My colleagues have already pointed out that there are 50 jurisdictions with different statutes of limitations in them. My colleague from Nevada has worked long and hard on the issue of trying to extend the statute of limitations at the Federal level, which is an effort that I applaud and support. After the Lampf decision, I thought it is worthwhile. I don't disagree with him on that. I disagree with my colleague from Maryland. That is not the issue.

The issue, of course, is not whether or not there is a statute of limitations at the Federal level but whether or not you are going to allow 50 different individuals to apply State statute of limitations on nationally traded securities accounts on national markets. The purpose of this bill is a uniform standard for which nationally traded securities are traded on national markets.

If you are going to allow 50 different jurisdictions to apply 50 different statutes of limitations, you have just destroyed the very purpose of the legislation. Vote against the bill if you want. But you can't very well vote for this amendment and then vote for the bill. It doesn't make any sense at all.

Of course, this idea that this has been a great disadvantage, let me share some hard facts with my colleagues about what has happened, because in order to make this amendment a Federal limit, you have to have information backing it, supporting it, underlying it, which indicates there is a problem here.

The evidence since 1991, when the Lampf decision was rendered, clearly refutes the contention that State courts are necessarily a safety net for meritorious claims. The evidence of that would lead one to the opposite conclusion. The statute of limitations was shortened, as my colleague from Nevada and the Senator from Maryland pointed out, by a Supreme Court decision in 1991. That was 4 years, between 1991 and 1995, before we passed the 1995 litigation reform bill.

So it is kind of an interesting 4 years to look at. You have the Lampf decision in 1991. We passed in 1995 the litigation reform bill. What happened between 1991 and 1995? There is almost no evidence, none, that plaintiffs brought securities fraud cases in class actions against nationally traded securities in State courts during 1991 and 1995—no evidence of it at all. That would be the time you might do it because there the law said, of course, you could go into State courts and use the State statute of limitations. If you want to take advantage of it, that period of time would certainly be an indication of what was going on.

There is evidence that many of the suits brought in State courts since the 1995 act are well within the 1 to 3 years. Again, let me emphasize that I don't have any difficulty with the notion of having a longer period. I agree with my colleague on that.

But he knows and I know we have been through that. We haven't been successful in extending it. Now, maybe someday we can. Maybe we can convince others. But that is a different debate—an important debate but a different debate. The debate here raised by this amendment is, do we allow the 50 different jurisdictions, 33 States which do better, 17 which do worse—by the way, in 17 States you would be disadvantaged between what the Federal law provides and what the State courts do. So you get a mixed bag on this.

But since 1995, most of the actions that have been brought in the statute of limitations were brought well within the 1 year of the discovery or 3 years of when the fraud was committed, which is what the Lampf decision allowed and provided for. In fact, it is worthwhile to note that in some of these cases the suggestion somehow that the statute of limitations is a problem is ludicrous on its face. Three suits were filed against Intel Corporation within 48 hours of an adverse earnings announcement—48 hours; three lawsuits were filed within 48 hours. One in 3 years. It is ridiculous; these lawsuits are being filed almost momentarily in many cases.

We have a second case of the EMC corporation. A case was filed within 20 hours of an adverse announcement. The notion somehow that this a great effort to discover fraud in these cases—the notion somehow that those of us in support of this bill in any way want to discourage investors from bringing legitimate lawsuits as plaintiffs is totally wrong.

And part of what we rest our case on, Mr. President—let me share with my colleagues what you could find on your Internet this morning, not a year ago or 5 years ago or 6 months ago. It is entitled ''Stock Disasters.'' ''Stock Disasters'' it is called. That might suggest we have had some real fraud going on—''Stock Disasters.'' You hit on your little mouse here, and you hit on ''Top Stock Losers of the Day.'' Boom, this page pops up. You have to get this one, and then you get this one.

What does it show you? It lists stock fluctuations, stocks that lost money, stocks that gained money. That is all.

Mr. D'AMATO. Will the Senator yield for a question?

Mr. DODD. I am happy to yield to my colleague.

Mr. D'AMATO. Let me ask the Senator, does the underlying legislation in any way limit the Securities and Exchange Commission from bringing any action to recover for disgorgement where there is fraud?

Mr. DODD. None whatsoever.

Mr. D'AMATO. There is no statute of limitations?

Mr. DODD. Absolutely none.

Mr. D'AMATO. So the SEC can bring these actions but the strike lawyers can't wait indefinitely and pick a forum. That is what the Senator is saying. But certainly the SEC can still bring these actions at any time that it discovers fraud.

Mr. DODD. My colleague from New York is absolutely correct. The point we have been trying to make here is that if you go here —and ''Stock Disasters'' is the title of this, Mr. President—and then you switch on ''Stock Disasters''—and the stocks decline in a couple cases, some stocks going up—there is no allegation here of fraud or mismanagement, merely stock fluctuations.

Stock disasters? That is not a disaster. It is 10:52 this morning. That is how these suits are filed. It is ludicrous to somehow suggest we are talking about deep fraud in these cases. All we are trying to do is slow this down so that legitimate plaintiffs can bring lawsuits, and also legitimate investors particularly—and a lot of these companies, by the way, I point out, Mr. President, a lot of these companies, if you look at the losers as of 10:52 this morning, are your small high-tech firms.

That is the future of our economy, by the way. That is the knowledge-based economy of our country for the 21st century. Let some predator law firm go out there because they get a slight stock fluctuation and bring a lawsuit against them, having to spend millions of dollars to defend the company, you lose the company. Who benefits from that? I tell you who does. The law firm. That is who does. That is all this is about, the bottom line. That is all this is about.

So we talk here about the statute of limitations. Again, I am all for extending it. I think there is a case to be made on that. But to say here with nationally traded securities on national markets, these exchanges, that you are going to have to go through 50 different jurisdictions is to defeat the very purpose of what we are trying to do here. And that is, with nationally traded securities and national exchanges, we ought to have a uniform standard. I would have it be a bit longer, but that is not the issue before us. What is before us is whether or not we are going to have one standard here so that we can try to have some predictability and a little fairness in this process.

Certainly what we have seen, of course, is a rush to the courthouse, and that is why I think this amendment is unnecessary. And if its adoption were to occur, it would destroy the very purpose which has brought us here at this point in our debate.

For those reasons, Mr. President, I urge rejection of the amendment.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Maine.

Ms. COLLINS. Mr. President, I rise in support of the amendment to preserve the state statute of limitations for cases removed to Federal court under this legislation.

I intend to vote for this bill. But in doing so, I think it important to be straightforward about what S. 1260 does. This is a bill that preempts state law. Specifically, it preempts securities antifraud statutes for certain types of class action cases.

I generally oppose preemption, as I think it overlooks the considerable wisdom that exists at the local level. Not without some measure of discomfort, I am nonetheless inclined to vote for this bill, because I find considerable merit to the contention that large class-action cases against companies whose securities are sold in the national marketplace may well belong in the Federal courts. Otherwise, Congress' ability to regulate our national securities markets in an era of international investing is arguably impeded.

I feel strongly, however, that if we are going to preempt state law and impose a single federal standard, it must be a fair one, and that is not the case with the federal statute of limitations. Under federal law, a securities fraud suit must be brought within one year of when the fraud was or should have been discovered, but in no instance after more than three years have elapsed.

I served for five years as the head of the Maine department that regulates financial institutions, and I can tell you from personal experience that a three-year limitations period is too short. The reality is that, even with due diligence, some frauds are not discovered within that time frame. Indeed, the very object of a fraud is to deceive the other party to the transaction for as long as possible.

The limited partnership cases of the last decade illustrate my point. The victims of those frauds were largely elderly, largely trusting, and largely lacking in financial sophistication. It is no wonder that in many of those instances, they did not, and even within reasonable care, could not have, discovered the fraud within three years of its commission.

It is not just my opinion that the Federal limitations period is inadequate. The Securities and Exchange Commission has taken the position that the period is too short.

This is an instance in which the Maine Legislature has shown more wisdom than the Federal Government. Under the law of my state, the limitation period is two years from the date the fraud was, or with reasonable care, should have been discovered, with no outside limit. That gives innocent investors the opportunity to obtain redress for fraud as long as they act with reasonable diligence.

I can understand the argument for a single, Federal standard in this area, but I cannot accept preempting a state standard that is far more consistent with reality. While the best remedy would be to change the Federal limitations period for all securities fraud cases, that issue is not before us today. Thus, we should take the next best step, which is to preserve the state statutes for cases that are removed to Federal court under this legislation.

What this amendment will not do is harm high-tech companies. What it will do—maybe not this year or next, but at some point—is to protect innocent, unsuspecting investors, who are victimized by a securities scam that could not reasonably have been discovered within three years. Thus, I urge my colleagues not to wait until we have such victims, but to stop the problem before it occurs by supporting this amendment.

I thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Nevada.

Mr. BRYAN. Mr. President, I commend the Senator from Maine for her, I think, most illuminating statement in terms of the problem that we face with the shorter statute of limitations. She is absolutely correct. Her State—and my own—apparently, if I understood the distinguished Senator, has a 1- and 5-year statute; 5 years is the outside. That is what we have in Nevada as well.

The testimony beyond refutation is that a 3-year statute is simply too short. The Securities and Exchange Commission, which has all of the resources available to the Federal Government, much more so than any individual investor, tells us that on average it takes more than 3 years to do the investigation, to bring the cause of action. Certainly the small investor is seriously disadvantaged here, so I thank her for her comment and her leadership.

Let me just make a couple of comments. I know we have talked about this in the context of the debate on the bill, but the unfairness of this legislation to the small consumer can best be described: Heads the perpetrator of the fraud wins; tails the small investor loses. This is a ''no win'' proposition for the small investor.

The thrust of this legislation is to say that the traditional class action lawsuit should no longer be available at the State court level. And, by ''traditional class actions'' we mean individual plaintiffs who are bound together by a common lawyer who files on behalf of a lot of people who have been victimized by the identical fraud. That is really what a class action traditionally has been.

Our friends on the other side say there have been some abuses. I acknowledge that there may have been some abuses there. I would be willing to work with them in dealing with the abuses. But here is the ingenious and unfair part of this. The proponents say, ''The individual has a right to file an action at the State court level, would have all the rights currently available under State law—the longer statute of limitations, the accomplice liability, the joint and several, the RICO provisions.'' OK, that sounds somewhat fair, although as we have pointed out, most small investors simply don't have the resources to bring such a case. But let's suppose that your teachers' pension fund, or what we have in Nevada, the public employee retirement system—suppose they bring an action at the State level: One plaintiff, one lawyer, and, lo and behold, they have discovered 4 years after the fact of fraud that the public employee retirement system fund has been ripped off by a monstrous fraud. They file suit in State court.

Surely you would think it would be possible for that one plaintiff to pursue a remedy under State law. But here is how the bill is crafted. Without the permission or consent of that public employee retirement system, if there are 49 other plaintiffs who file against the perpetrator of the fraud, then involuntarily, without the permission of the public employee retirement system, they can be forcibly removed from the State court and those rights that exist under State law are effectively divested from them. So in the hypothetical that I cite, a monstrous fraud, which may have cost the public employee retirement system literally millions and millions of dollars, discovered sometime after 3 years for the first time and filed timely under the law—it would be possible for the perpetrator of the fraud to actually get other plaintiffs to file to build up a number of 50, thereby removing the case from State jurisdiction. And once it gets to the Federal court, lo and behold, what happens: the hammer falls because at the Federal level, because of the Lampf decision, the statute of limitations is 3 years, the outside bar.

So here you can have literally tens of thousands of public employees or teacher retirement funds or an Orange County type of investment in which you may have a million or more taxpayers who are unable to recover simply because the perpetrator of the fraud is allowed to remove the single case from State court jurisdiction. What is the fairness of that?

The able and distinguished chairman of the committee says the SEC can bring the action. That is true. But we have been told on many, many occasions that the SEC simply does not have the resources; that both the current chairman and previous chairman, in the time I served with the distinguished chairman of the committee and my colleague and good friend from Connecticut, have repeatedly told us that the SEC simply does not have the resources to pursue all of the fraud out there, and therefore the private cause of action is an absolutely essential and critical part of the regulatory structure, the structure that has created the safest and most efficient market in the world.

Why are we making these changes? Because we are told that we must worship at the shrine of uniformity, that there is a rush to the courthouse door; 44 cases out of 15 million is a rush to the courthouse door? Many, many States have had no cause of action filed at all, at all. I think in my own State of Nevada there has been one. A rush? I must say, I do not think that makes the argument.

If uniformity is an end to itself, isn't it a fairly persuasive argument to say 49 of the 50 States have laws that hold aiders and abettors liable? These are the accomplices, these are the lawyers, the accountants, the investment advisers who participated with the primary individual involved in the fraud to create the loss to the innocent investor—49 out of 50 States say those people ought to be liable, too. They are not, under the 1995 legislation. So if uniformity is to be the standard by which this debate is to be judged, what is wrong with that uniformity?

What we have here, and I regret to say this, it is a systematic attempt to close the courtroom door to innocent investors, small investors in this particular instance that we are debating here. We are talking about an institutional investor who could be taken involuntarily to the Federal court. I don't understand the public policy argument that says that is somehow meritorious. I concede that maybe you could argue preemption if you develop a broader statute of limitations at the Federal level to protect them. Maybe that is a possibility. Maybe we could reach a compromise there. Then maybe you could argue preemption.

But the proponents of this measure—with due respect to my colleague from Connecticut, he does support a longer statute of limitation—but the primary thrust of getting this legislation, the folks who have opposed and resist this, have resisted the longer statute of limitations. So, in effect, we take two weapons away from the small investor: The right at the Federal level to a longer statute of limitations—Lampf took that weapon away from the small investor—and now we are going to go one step further and take it away from that small investor who is filing at the State level, not as part of a class action but as an individual. And I must say I think the unfairness of that is —all of this is being done in the name of, whether it is 39 cases or 44 cases out of 15 million, filed annually.

I come from a part of the country where we understand what ''rush'' is. The gold rush. There was an exodus of people coming out West. But 44 people? I wouldn't call that a gold rush. That would be a trickle.

So I must say, this is a terribly, terribly important investor protection. My colleague from Maryland and I, we know how to count the votes. We know this legislation is going to pass. But even if you are for this legislation, please, please, I implore you to consider what you do to the small investor who is filing in State court. He or she gets involuntarily wiped out by the perpetrator of fraud by removing that case to the Federal court system where the shorter statute of limitations prevails.

I yield the floor.

Mr. SARBANES. Mr. President, I understand that the leadership doesn't intend to have votes much beyond 6 o'clock or thereabouts, and I suggest to my colleague that we set aside this amendment and do the next amendment, which I will send to the desk, which actually is interrelated in concept with this amendment, and that we have a vote on the two amendments beginning about 5:40.

Mr. D'AMATO. Mr. President, we cannot confirm that it is the intention of the leadership on both sides to curtail votes as of any specific time. However, it would seem to me to be appropriate, notwithstanding that, to move to support the Senator's request that we stack the two amendments with a vote starting at 5:40 for the first one, and thereafter undertake a vote on the second one. Then, of course, if the leadership has decided no further votes, we can put that matter over.

We are looking to shop that right now. I believe that will be the case, but we are waiting for final confirmation. If the Senator wishes to make his request on the basis that we will proceed to our first vote at 5:40 on the pending amendment and that thereafter, immediately after that vote, take up the second amendment and seek a vote on that, I will certainly join in that request.

Mr. SARBANES. For ordering votes, we should not have any second degree.

Mr. D'AMATO. Yes.

Mr. SARBANES. Just to sketch it out, it was my assumption then in the morning we will have one other amendment to offer. We will do that amendment and then final passage is my expectation.

Mr. D'AMATO. That is my expectation, and I will make that recommendation to the leader. Subject to the concurrence of the leaders, I imagine we then will have debate, hopefully limited to, let's say, an hour equally divided on the third amendment, and then go to final passage. How much time does the Senator want in between the third vote and final passage?

Mr. SARBANES. Of course, we have used up all the debate time. What should we have, 10 minutes on each side before final passage, or 30 minutes equally divided before final passage?

Mr. D'AMATO. We can work that out and make that request later, but I certainly will not be opposed to 30 minutes equally divided before final passage.

Mr. SARBANES. Mr. President, I ask unanimous consent to set aside the current amendment, and I will send an amendment to the desk, and that no second-degree amendments be in order to either, and that the vote begin on the amendment to be set aside at 5:40, to be followed by a vote on the amendment which will be sent to the desk.

Mr. D'AMATO. Mr. President, before that amendment is set aside, I ask for the yeas and nays and indicate that I will move to table at the appropriate time.

The PRESIDING OFFICER (Mr. COATS). Is there a sufficient second on the request for the yeas and nays?

Mr. DODD. 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. SARBANES. 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. SARBANES. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The Senator's request is withdrawn.

AMENDMENT NO. 2396

(Purpose: To make amendments with respect to the definition of a class action, and for other purposes)

Mr. SARBANES. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. If there is no objection, the pending amendment is set aside.

Mr. SARBANES. I apologize to the Chair. I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Maryland [Mr. SARBANES], for himself, Mr. BRYAN and Mr. JOHNSON, proposes an amendment numbered 2396.

Mr. SARBANES. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 10, strike line 24 and all that follows through page 12, line 11 and insert the following:

''(2) CLASS ACTION.—

''(A) IN GENERAL.—The term 'class action' means any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(i) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; and

''(ii) questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members.

On page 16, strike line 3 and all that follows through page 17, line 13 and insert the following:

''(B) CLASS ACTION.—

''(i) IN GENERAL.—The term 'class action' means any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; and

''(II) questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members.

On page 17, line 14, strike ''(C)'' and insert ''(ii)'' and move the margin 2 ems to the right.

On page 17, line 21, strike ''(D)'' and insert ''(C)''.

Mr. SARBANES. Mr. President, this amendment interrelates with the other amendment that has been set aside on which a vote will occur later.

The sponsors of this bill say their goal is to wipe out frivolous class-action lawsuits alleging securities fraud. What are class-action lawsuits? They are lawsuits brought by a single person, not just on his own behalf, but on behalf of other persons similarly situated. In other words, one person can bring a lawsuit on behalf of an anonymous and potentially enormous group of people.

Why do we allow someone to bring such a lawsuit? Because in many situations, it is the only economical way people can pursue remedies. If a large number of people have each suffered a relatively small loss, it may not be economical for any one of them to pay the costs of a lawsuit. There are many examples of class-action suits by investors who have been defrauded. It is a tool that allows individuals to share the cost of a lawsuit when they are injured.

Because they can be brought on behalf of a potentially enormous class, on occasion they can be misused to coerce defendants into settlement. This is the abuse about which the sponsors of the legislation complain. They argue that companies are coerced by flimsy securities fraud class-action suits, that it is cheaper for the company to settle rather than to fight them, and that these class actions are being misused.

I share the view that frivolous securities fraud class-action suits should not be tolerated, either in Federal court or in State court, and lawyers who file worthless suits hoping to extort a settlement should not be able to pursue that practice. But this bill reaches beyond the frivolous class action.

Here is the problem. The definition of class action in this bill is too broad.

It will prevent investors from bringing individual actions solely on their own behalf in State court. Since they were enacted over 60 years ago, the Federal securities laws have preserved the right of individual investors to bring securities fraud suits under State law. This system has worked well. State remedies offer important protections to investors where Federal remedies fall short.

But the definition that is contained in this bill for ''class action'' is too broad. The bill has a three-pronged definition of ''class action.'' And these prongs permit individual investors to be brought into Federal court against their will. The bill includes, as a class action, any group of lawsuits in which damages are sought on behalf of more than 50 persons, even if the suits are brought by separate lawyers without coordination.

So to tie it into the previous amendment, what happens is an investor goes into State court, in a timely fashion, he files an individual suit, and if 50 others do the same thing, they can be removed to Federal court as, quote, a ''class action,'' although it is not a class action as a class action is ordinarily considered or ordinarily defined. They lift them out of the State court and put them into the Federal court, and they are shut out because of the statute of limitations.

Individual investors ought not to have to lose their remedies under State law in order to deal with the problem of frivolous class actions. And so the amendment that is offered narrows the bill's definition of ''class action'' to a suit brought on behalf of unnamed parties similarly situated. We do not use this ''50 investor'' definition which means unwary people are going to be trapped and lose their remedy.

Now a broad coalition of State and local government associations have written to us supporting this amendment—the National Association of State Retirement Administrators as well. Here is what they have to say about the definition of ''class action'' in the bill.

The definition of ''class action'' contained in S. 1260 is overly broad. The definition of ''class action'' in S. 1260 would allow single suits filed in the same or different courts to be rolled into a larger class action that was never contemplated or desired by individual plaintiffs and have it removed to Federal court. Claims by the bill's proponents that individual plaintiffs would still be able to bring suit in Federal court are belied by this provision.

If we can narrow the definition of ''class action'' to a proper class action, and then that is taken into Federal court, then the statute of limitations will apply, if that prevails.

On the other hand, if you are going to have a definition of ''class action'' that is so broad that individual investors can be covered, they ought not be subjected to the risk of losing their suit altogether because it is removed in a Federal court and they are bound by a statute of limitations that they had no idea was going to come into play in their instance.

So, Mr. President, I very strongly urge this amendment. I think it corrects a very important weakness in this legislation. We can narrow the definition of who is covered by the class action so we no longer have to worry about the individual investor being shut out unfairly. I think we ought to significantly improve this legislation and narrow it so it applies to what it is asserted it is meant to apply to, and does not apply to individual investors who I think need to have their remedies preserved in the State courts.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, let me tell you basically what this amendment would do. This amendment would have the unintended effect—and I cannot believe that my colleague would want for that to happen—of opening up the whole question of the class-action suits being able to be moved to State courts. It would effectively allow lawyers to circumvent the purpose, the very purpose of this bill since so-called ''huge'' mass actions could still be brought in the State court.

So what we have is the problem of high-growth companies, small high-growth companies that traditional class actions may be brought against by the strike lawyers; namely, they are expensive and timely to defend, and the plaintiffs are often forced to settle, regardless of the merits, to avoid excessive litigation costs. That is exactly what we are trying to deal with. There should be a uniform standard, and there should be a uniform procedure. And that is why we moved these nationally traded securities.

Senator DODD spoke to this, the nationally traded securities going to a Federal forum. This amendment changes the predominance requirements in the bill's class action definition. This effectively would gut the bill by encouraging State actions which would not qualify as a class action contained in the act. As a result, these class actions would not be able to be removed to the Federal court. And so you have mass action lawyers representing a large number of plaintiffs on an individual basis in either a single action or a group action.

The ''class action'' definition in the bill was worked out with the SEC. We have worked that out, and it is comprehensive enough to close the loophole. But it also provides State courts with guidance. It says ''up to 50 people.'' That is the bright line. When you get over 50 people, OK, that is the class action. And so this bill does not prevent individual investors from pursuing State court remedies, nor will it prevent a small group of investors from pooling their resources to pursue a claim under State law, but it will stop the strike action suits, the forum shopping that we have attempted to limit, because we have seen that dramatic increase.

I think Senator DODD, when he pointed out what the record was, I think it was a handful, what, five or six cases in a period of years, in all of the years, ballooning up to 40-plus in 1 year. What was that?

Mr. DODD. If my colleague would yield.

Mr. D'AMATO. Yes.

Mr. DODD. Our colleagues have made much of this notion that there has not been this great degree of activity. Try, if you will, to just keep these numbers in mind. These are the actions filed in State court for fraud in class actions against publicly traded companies.

In 1992, there were four cases filed all across the country. In 1993, there was one case filed all across the country. In 1994, there was one case filed all across the country. I do not have numbers for 1995. But they are four, one, and one.

Mr. D'AMATO. Six cases.

Mr. DODD. Then in 1996—we passed a law in 1995—59 cases were filed in State court; and in 1997, 1998, the number did drop down to about 38. But you compare that—they want to talk about how the number fell off to 38 from 59. What they do not want to mention to you is, in 1994 and 1993 and 1992 you had a total of six cases; in 1993 and 1994, one case—one case. And then it jumps, as we see in these other examples of where it moves to.

So I say to my colleague and the chairman of the committee, this is quite clear. And if they wanted to get to statute of limitations problems, why didn't they file more of those cases in that period?

Mr. D'AMATO. Mr. President, I think my colleague, by answering the question, points out quite clearly—it was my impression heretofore that he had mentioned a number of cases, but six cases in 3 years, jumping to 10 times that, 59—slightly less than 10 times that in 1 year—in 1 year—I think it proves the point. And that is why the necessity of seeing to it that we have a uniform standard, that you cannot go forum shopping. And that is why this Senator, at the appropriate time, will move to table the pending amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, this is a very complicated area of law. I know our colleagues are going to come to the floor and want to know what this is all about.

In effect, this amendment would have the impact of creating even further uncertainty in the definition of a class action. It does not provide more certainty; it is less certainty. I think it would upset the very carefully crafted and very balanced definition worked out with the Securities and Exchange Commission.

The reason it took us a little time to get this bill to our colleagues was because we took so much time working with the SEC to try and define these areas. What our colleagues are offering is an amendment that would disrupt the definition worked out with the SEC in this area.

Clearly, with all due respect, the tremendous amount of expertise in crafting it—I am not going to suggest to my colleagues that we have a perfect definition in the bill. But certainly this one is not perfect either. But if you are going to trust one or the other, it seems to me the one worked out with the Securities and Exchange Commission, I urge my colleagues, makes a lot more sense.

Neither of these definitions tracks word for word what is in rule 23. Rule 23—trust me when I tell you this rule 23 goes on for pages, pages. It is one of the more lengthy definitions of class actions that there is. So, we are not tracking that word for word. We are trying to pick up the essence of it. It is tremendously complicated.

We think this definition we have worked out with the Securities and Exchange Commission provides the right kind of balance.

The bill originally had a limit of 25 plaintiffs, now raised to 50 for a single lawsuit. This is by no means an exact science. I am the first to say that if we find shortly that number is not working as well as we would like, we would change it. Anybody who claims they have a word on high as to what is the perfect number here is deluding themselves. It is a number we chose because we thought it made sense based, again, on our discussions with the SEC.

With all due respect to the authors of this amendment, it does undercut what we have tried to achieve here. I want to emphasize to our colleagues, you don't have to agree with every agency and what it suggests and does. But on this definition worked out with the Securities and Exchange Commission, if you want some predictability and some knowledge-based definition, the one we have in the bill is the way to go. To come up all of a sudden with a new one here that I don't think enjoys the kind of expertise that we have been able to achieve through working with the SEC would be unfortunate and could create a lot more problems.

For those reasons, I urge the defeat of this amendment.

Mr. BIDEN. Mr. President, I opposed the 1995 Securities Litigation Act for several reasons—including the precedent-setting changes to this country's judicial system without the input of the Judiciary Committee.

I support the Sarbanes amendment for similar reasons—relating both to procedure, and to substance.

In the past, bills that made changes to the rules that govern citizen's access to State courts were referred to the Judiciary Committee, to enable the committee with expertise to review and work on the legislation.

While my colleagues on the Banking Committee had the opportunity to examine the specific, substantive changes this bill would make to our Nation's securities laws, it seems to me that we have once again skipped a very important step in the process.

The securities litigation bill we are considering on the floor today preempts State court statutes of limitations in securities fraud cases—and yet again the Judiciary Committee was not given the opportunity to examine the issue.

In 1991, the Supreme Court significantly shortened the statute of limitations for Federal securities fraud actions—to the shorter of 3 years after the fraud occurs or 1 year after it is discovered.

Then-SEC Chairman Richard Breeden called the new time limit ''unrealistically short.'' But, S. 1260 would compound the problem by applying the Federal time limit to State actions removed to Federal court—even though it is shorter than the time limit applicable to actions in 33 of the 50 States.

This bill would not only leave investors without State court remedies when brokers and dealers make fraudulent statements when selling corporate stock—but it would also tell them that they need only conceal their fraud for 3 years before being absolved of responsibility in Federal court as well.

And the new time limit will apply even though the 1995 Securities Litigation Act raised the standard investors must meet to win a class action suit—you now have to prove a falsehood was made with clear intent to deceive.

That's incredibly tough to prove.

I will admit, some frivolous lawsuits are filed. And some lawyers do make too much from a suit—leaving defrauded investors too little.

But, immunizing Wall Street professionals who can successfully hide their lies for 3 years is not the answer.

I support the Sarbanes amendment and urge my colleagues to do the same. We should protect the small investor—not let white collar criminals go unpunished.

Mr. D'AMATO. Mr. President, I know my colleague from Nevada is going to speak to this issue, and I ask unanimous consent at 5:30 today the Senate proceed to a vote on or in relation to the Sarbanes amendment 2395, to be immediately followed by a vote on or in relation to amendment 2396, the matter we are now considering, with no amendments in order to the amendments. I finally ask that the time until 5:30 be equally divided between the proponents and opponents. I have no intention of using any of the time, but that all the time be yielded to my colleague.

Mr. SARBANES. Reserving the right to object, and I do not object, subsequent to that, then, I take it what the leadership would like to do is try to finish, so we will offer a third amendment and debate that. We hope the time will not be too long on that. Then we would be able to vote on that amendment and then on final passage.

Mr. D'AMATO. That is correct.

Mr. SARBANES. I have no objection.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York?

Without objection, it is so ordered.

The Senator from Nevada.

Mr. BRYAN. I don't want to prolong this debate unnecessarily. I realize several of my colleagues have time constraints.

Let me say I think the Senator from Maryland has crafted an amendment that is eminently fair. He is using the definition of the Federal Rules of Civil Procedure. The notion that we get involved in describing what is a class action based upon an arbitrary number of individual plaintiffs—some of whom could be private citizens, some could be pension funds, and could be State agencies—makes no sense to me.

So I believe, in trying to provide some sense of balance and fairness—so we do not get a situation where we have discussed throughout a good part of the afternoon that an individual who files an action by himself or herself with his or her lawyer alone, no other coplaintiffs involved, immediately after the discovery of a fraud, that would be 3 to 3 years and 2 months after the fraud occurred—should be allowed to pursue that cause of action and not be involuntarily sucked up into Federal court because 49 other people may have filed similar action, and to give to the errant defendant, the perpetrator of the fraud, the ability to manipulate the process so that the perpetrator of the fraud can file some phony plaintiff's actions, getting up to the threshold of 50, and then have the case removed, the individual plaintiff, the individual pension fund, the individual retirement fund, then having been effectively deprived of pursuing a cause of action that may be meritorious without question.

I certainly urge my colleagues to thoughtfully reflect. This is the Federal Rules of Civil Procedure. They have been around since 1939. Why should we craft some kind of a special rule as to what constitutes a class action, the effect of which deprives individuals—not people filing on behalf of a similarly situated class, but individuals—their opportunity to recover on a fraud perpetrated upon them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Very briefly, the essence of this comes down to this, because this is very complicated.

How does this work? It is a State court judge that has to make this determination as to whether or not these individual suits get consolidated. It is not a Federal judge; it is a State court judge. Obviously, a State court judge has broad discretion in making that determination. Even if he does do that, if an individual feels he does not belong in that grouping—obviously, we are trying to avoid a case where there are 50 or more individual actions that effectively operate as a single action, which would thus gut the bill and the uniform way in which we are attempting to deal with litigation issues.

As I said, the decision to consolidate these individual actions must be with a State court judge, and then if the individual feels as though they really don't belong in that case, the State court judge has broad discretion to take that individual out.

There are a lot of protections here. This is not heavy handed at all. It is a way to try and avoid exactly creating new loopholes where plaintiffs seek to consolidate individual cases and thus evade the provisions of this legislation.

But that decision is the State court judges' decision and to their broad discretion. And secondly, the individual has the opportunity to go to that State court judge and make the case that they don't really belong in that class action. That State court judge has the broad discretion of keeping that person out of that class.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I don't know if it is appropriate at this time, if all time is yielded back, and I know at 5:30 we will vote.

VOTE ON AMENDMENT NO. 2395—MOTION TO TABLE

Mr. D'AMATO. Mr. President, if it is appropriate now, I move to table the Sarbanes amendment and 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 motion to lay on the table the amendment of the Senator from Maryland. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCAIN (when his name was called). Present.

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—69

Abraham	Ashcroft	Bennett
Allard	Baucus	Bingaman
Bond	Grams	McConnell
Boxer	Grassley	Mikulski
Brownback	Gregg	Moseley-Braun
Burns	Hagel	Murkowski
Campbell	Harkin	Murray
Chafee	Hatch	Nickles
Coats	Helms	Reid
Cochran	Hutchinson	Robb
Coverdell	Hutchison	Roberts
Craig	Inhofe	Roth
D'Amato	Jeffords	Santorum
Daschle	Kempthorne	Sessions
DeWine	Kerry	Smith (NH)
Dodd	Kohl	Smith (OR)
Domenici	Kyl	Stevens
Enzi	Landrieu	Thomas
Faircloth	Leahy	Thompson
Feinstein	Lieberman	Thurmond
Frist	Lott	Torricelli
Gorton	Lugar	Warner
Gramm	Mack	Wyden

NAYS—30

Akaka	Durbin	Lautenberg
Biden	Feingold	Levin
Breaux	Ford	Moynihan
Bryan	Glenn	Reed
Bumpers	Graham	Rockefeller
Byrd	Hollings	Sarbanes
Cleland	Inouye	Shelby
Collins	Johnson	Snowe
Conrad	Kennedy	Specter
Dorgan	Kerrey	Wellstone

The motion to lay on the table the amendment (No. 2395) was agreed to.

VOTE ON AMENDMENT NO. 2396 — MOTION TO TABLE

Mr. D'AMATO. Mr. President, what is the pending business?

The PRESIDING OFFICER. The question is on agreeing to Amendment No. 2396 offered by Mr. SARBANES.

Mr. D'AMATO. Mr. President, I move to table and 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 motion to lay on the table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCAIN (when his name was called). Present.

The result was announced—yeas 72, nays 27, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—72

Abraham	Faircloth	Lott
Allard	Feinstein	Lugar
Ashcroft	Ford	Mack
Baucus	Frist	McConnell
Bennett	Gorton	Mikulski
Bingaman	Gramm	Moseley-Braun
Bond	Grams	Murkowski
Boxer	Grassley	Murray
Breaux	Gregg	Nickles
Brownback	Hagel	Reid
Burns	Harkin	Robb
Campbell	Hatch	Roberts
Chafee	Helms	Roth
Coats	Hutchinson	Santorum
Cochran	Hutchison	Sessions
Collins	Inhofe	Smith (NH)
Coverdell	Jeffords	Smith (OR)
Craig	Kempthorne	Snowe
D'Amato	Kerrey	Specter
Daschle	Kohl	Stevens
DeWine	Kyl	Thomas
Dodd	Landrieu	Thurmond
Domenici	Leahy	Warner
Enzi	Lieberman	Wyden

NAYS—27

Akaka	Byrd	Durbin
Biden	Cleland	Feingold
Bryan	Conrad	Glenn
Bumpers	Dorgan	Graham

Hollings	Lautenberg	Sarbanes
Inouye	Levin	Shelby
Johnson	Moynihan	Thompson
Kennedy	Reed	Torricelli
Kerry	Rockefeller	Wellstone

The motion to lay on the table the amendment (No. 2396) was agreed to.

Mr. SARBANES addressed the Chair.

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

AMENDMENT NO. 2397

(Purpose: To preserve the right of a State or a political subdivision thereof or a State pension plan from bringing actions under the securities laws)

Mr. SARBANES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. SARBANES], for himself, Mr. BRYAN, Mr. JOHNSON and Mr. BIDEN, proposes an amendment numbered 2397.

The amendment is as follows:

On page 10, between lines 16 and 17, insert the following:

''(f) STATE ACTIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(2) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

On page 10, line 17, strike ''(f)'' and insert ''(g)''.

On page 15, between lines 19 and 20, insert the following:

''(5) STATE ACTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

On page 15, line 20, strike ''(5)'' and insert ''(6)''.

Mr. SARBANES. Mr. President, I offer this amendment on behalf of myself, Senator BRYAN, Senator JOHNSON, and Senator BIDEN. I will be very quick, because the manager has indicated he will accept this amendment.

This amendment preserves the right of State and local governments and their pension plans to bring securities fraud suits under State law. They have never been professional plaintiffs. They have never abused the system. They have to go through an elaborate process to even bring suit. They obviously are concerned with protecting the public and the taxpayers, and it seems to me a reasonable exemption from the provisions of this bill as it applies to these governmental units.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, we have no objection. As the Senator has indicated, these classes are comprised solely of States, counties, and other public entities. There is no record of such class-action suits being brought. I might add, local governments, for the most part, school districts in particular, are typically precluded from investing in stocks, particularly in these stocks. We accept the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 2397) was agreed to.

Mr. D'AMATO. Mr. President, I am aware of no further amendments, but I ask unanimous consent that the Senator from Oklahoma be recognized for the purpose of propounding a unanimous-consent request, and that the Senator from California—I think I have 2½ minutes left. I yield 1 minute to the Senator from California.

Mr. BIDEN. Will the Senator yield? I believe a unanimous-consent agreement had room for me to offer an amendment at sometime, and I intend on doing that, although I will not ask for a rollcall vote. I will be a very good boy if you listen for 5 minutes, and then I will withdraw the amendment.

Mr. D'AMATO. I have no objection. I ask that the Senator be recognized to offer an amendment.

AMENDMENT NO. 2398

(Purpose: To amend the bill with respect to title 18, United States Code)

Mr. BIDEN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 2398.

Mr. BIDEN. Mr. President, I ask unanimous consent that the 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. . FRAUD AS PREDICATE OFFENSE.

Section 1964(c) of title 18, United States Code, is amended by striking '', except'' and all that follows through ''final''.

Mr. BIDEN. Mr. President, I will be necessarily brief because I have over the years learned to count, and I do not believe I have the votes for this amendment, but I want to make two relatively brief points.

First of all, in 1970, the Congress greatly assisted the fight against organized crime by adopting the Racketeering Influence and Corruption Organizations Act. We know it as RICO.

RICO included a private civil enforcement provision with enhanced penalties, including triple damages for racketeering behavior in furtherance of a criminal enterprise engaged in certain, what they call predicate offenses, including murder, arson, bribery, wire fraud, bankruptcy fraud, and securities fraud—securities fraud.

At the request of the Securities and Exchange Commission and the industry, though against the wishes of law enforcement and State regulators, in 1995, the Securities Litigation Act effectively eliminated securities fraud as a grounds for private civil RICO proceedings. Many of us disagreed with carving out the securities fraud for special status, Mr. President, and protection from application of the civil RICO statute. In fact, my amendment was intended to preserve many civil RICO securities fraud claims and was accepted last time by the full Senate. Unfortunately, it was dropped in committee.

Last November, the Federal grand jury in Manhattan indicted 19 individuals, including two reputed mob chieftains known as ''Rossi'' and ''Curly,'' for their role in the alleged plot to manipulate a thinly traded stock, so-called penny stocks, and for threatening brokers to drive up the prices.

There is an article that was published that says ''The Mob on Wall Street.'' I ask unanimous consent that an except from this article be printed in the RECORD.

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

[From Business Week, Dec. 16, 1996]

THE MOB ON WALL STREET

(By Gary Weiss)

In the world of multimedia, Phoenix-based SC&T International Inc. has carved out a small but significant niche. SC&T's products have won raves in the trade press, but working capital has not always been easy to come by. So in December, 1995, the company brought in Sovereign Equity Management Corp., a Boca Raton (Fla.) brokerage, to manage an initial public offering. ''We thought they were a solid second- or third-tier investment bank,'' says SC&T Chief Executive James L. Copeland.

But there was much about Sovereign that was known to only a very few. There were, for example, the early investors, introduced by Sovereign, who had provided inventory financing for SC&T. Most shared the same post office box in the Bahamas. ''I had absolutely no idea of who those people were,'' says Copeland. He asked Sovereign. ''I was told, 'Who gives a s—. It's clean money.' '' The early investors cashed out, at the offering price of $5, some 1,575 million shares that they acquired at about $1.33 share—a gain of some $5.8 million.

By mid-June, SC&T was trading at $8 or better. But for SC&T shareholders who did not sell by then, the stock was an unmitigated disaster. Sovereign, which had handled over 60% of SC&T's trades early in the year, sharply reduced its support of the stock. Without the backing of Sovereign and its 75-odd brokers, SC&T's shares plummeted—to $2 in July, $1 in September, and lately, pennies. The company's capital-raising ability is in tatters. Laments Copeland: ''We're in the crapper.''

A routine case of a hot stock that went frigid. Or was it? Copeland didn't know it, but there was a man who kept a very close eye on SC&T and is alleged by Wall Street sources to have profited handsomely in the IPO—allegedly by being one of the lucky few who sold shares through a Bahamian shell company. His name is Philip Abramo, and he has been identified in court documents as a ranking member, or *capo*, in the New Jersey-based DeCavalcante organized crime family.

James Copeland didn't know it. Nobody at SC&T could have dreamed it. But the almost unimaginable had come true: Copeland had put his company in the hands of the Mob.

Today, the stock market is confronting a vexing problem that, so far, the industry and regulators have seemed reluctant to face—or even acknowledge. Call it what you will: organized crime, the Mafia, wiseguys. They are the stuff of tabloids and gangster movies. To most investors, they would seem to have as much to do with Wall Street as the other side of the moon.

But in the canyons of lower Manhattan, one can find members of organized crime, their friends and associates. How large a presence? No one—least of all regulators and law enforcement—seems to know. The Street's ranking reputed underworld chieftain, Abramo, is described by sources familiar with his activities as controlling at least four brokerages through front men and exerting influence upon still more firms. Until recently Abramo had an office in the heart of the financial district, around the corner from the regional office of an organization that might just as well be on Venus as far as the Mob is concerned—the National Association of Securities Dealers, the self-regulatory organization that oversees the small-stock business.

A three-month investigation by Business Week reveals that substantial elements of the small-cap market have been turned into a veritable Mob franchise, under the very noses of regulators and law enforcement. And that is a daunting prospect for every investor who buys small-cap stocks and every small company whose stock trades on the NASDAQ market and over the counter. For the Mob makes money in various ways, ranging from exploiting IPOs to extortion to getting a ''piece of the action'' from traders and brokerage firms. But its chief means of livelihood is ripping off investors by the time-tested method of driving share prices upward—and dumping them on the public through aggressive cold-calling.

In its inquiry, Business Week reviewed a mountain of documentation and interviewed traders, brokerage executives, investors, regulators, law-enforcement officials, and prosecutors. It also interviewed present and former associates of the Wall Street Mob contingent. Virtually all spoke on condition of anonymity, with several Street sources fearing severe physical harm—even death—if their identities became known. One, a former broker at a Mob-run brokerage, says he discussed entering the federal Witness Protection Program after hearing that his life might be in danger. A short-seller in the Southwest, alarmed by threats, carries a gun.

Among Business Week's findings:

The Mob has established a network of stock promoters, securities dealers, and the all-important ''boiler rooms''—a crucial part of Mob manipulation schemes—that sell stocks nationwide through hard-sell cold-calling. The brokerages are located mainly in the New York area and in Florida, with the heart of their operations in the vicinity of lower Broad Street in downtown Manhattan.

Four organized crime families as well as elements of the Russian Mob directly own or control, through front men, perhaps two dozen brokerage firms that make markets in hundreds of stocks. Other securities dealers and traders are believed to pay extortion money or ''tribute'' to the Mob as just another cost of doing business on the Street.

Traders and brokers have been subjected in recent months to increasing levels of violent ''persuasion'' and punishment—threats and beatings. Among the firms that have been subject to Mob intimidation, sources say, is the premier market maker in NASDAQ stocks—Herzog, Heine, Gedule Inc.

Using offshore accounts in the Bahamas and elsewhere, the Mob has engineered lucrative schemes involving low-priced stock under Regulations S of the securities laws. Organized crime members profit from the runup in such stocks and also from short-selling the stocks on the way down. They also take advantage of the very wide spreads between the bid and ask prices of the stock issues controlled by their confederates.

The Mob's activities seem confined almost exclusively to stocks traded in the over-the-counter ''bulletin board'' and NASDAQ small-cap markets. By contrast, New York Stock Exchange and American Stock Exchange issues and firms apparently have been free of Mob exploitation.

Wall Street has become as lucrative for the Mob that it is allegedly a major source of income for high-level members of organized crime—few of whom have ever been publicly identified as having ties to the Street. Abramo, who may well be the most active reputed mobster on the Street, has remained completely out of the public eye—even staying active on the Street after his recent conviction for tax evasion.

Mob-related activities on the Street are the subject of inquiries by the FBI and the office of Manhattan District Attorney Robert M. Morgenthau, which is described by one source as having received numerous complaints concerning mobsters on the Street. (Officials at both agencies and the New York Police Dept. did not respond to repeated requests for comment.)

Overall, the response of regulators and law enforcement to Mob penetration of Wall Street has been mixed at best. Market sources say complaints of Mob coercion have often been ignored by law enforcement. Although an NASD spokesman says the agency would vigorously pursue reports of Mob infiltration, two top NASD officials told Business Week that they have no knowledge of Mob penetration of member firms. Asked to discuss such allegations, another high NASD official declined, saying: ''I'd rather you not tell me about it.''

The Hanover, Sterling & Co. penny-stock firm, which left 12,000 investors in the lurch when it went out of business in early 1995, is alleged by people close to the firm to have been under the control of members of the Genovese organized crime family. Sources say other Mob factions engaged in aggressive short-selling of stocks brought public by Hanover.

Federal investigators are said to be probing extortion attempts by Mob-linked short-sellers who had been associated with the now-defunct Stratton Oakmont penny-stock firm.

Mob manipulation has affected the markets in a wide range of stocks. Among those identified by Business Week are Affinity Entertainment, Celebrity Entertainment, Beachport Entertainment, Crystal Broadcasting, First Colonial Ventures, Global Spill Management, Hollywood Productions, Innovative Medical Services, International Nursing Services, Novatek International, Osicom Technologies, ReClaim, SC&T, Solv-Ex, and TJT. Officials of the companies deny any knowledge of Mob involvement in the trading of their stocks, and there is no evidence that company managements have been in league with stock manipulators. These stocks were allegedly run up by Mob-linked brokers, who sometimes used force or threats to curtail short-selling in the stocks. When support by allegedly Mob-linked brokerages ended, the stocks often suffered precipitous declines—sometimes abetted, traders say, by Mob-linked short-sellers. The stocks have generally fared poorly (table, page 99).

Not all of the stocks were recent IPOs, and they were often taken public by perfectly legitimate underwriters. International Nursing, for example, went public at $23 in 1994 and was trading at $8 in early 1996 before falling back to pennies. Short-sellers who attempted to sell the shares earlier this year were warned off—in one instance by a Mob member—market sources assert. International Nursing Chairman John Yeros denies knowledge of manipulation of the stock.

What this all adds up to is a shocking tale of criminal infiltration abetted by widespread fear and silence—and official inaction. While firms and brokerage executives who strive to keep far afield of the Mob often complain of NASD inaction, rarely do such people feel strongly enough to share their views with regulators or law enforcement. Instead, they engage in self-defense. One major brokerage, which often executes trades for small-cap market makers, keeps mammoth intelligence files—to steer clear of Mob-run brokers. A major accounting firm keeps an organized-crime expert on the payroll. His duties include preventing his firm from doing business with brokerages linked to organized crime and the Russian Mob.

Mr. BIDEN. Mr. President, they are not talking about legitimate traders; they are talking about the mob's attempt to infiltrate Wall Street. It seems to me for us to carve out of the original legislation an exemption from RICO predicate statutes securities fraud is a serious mistake. But it would also be a serious mistake for me to push this issue without the votes at this point, because I realize there is an attempt to bring this legislation to a close.

I think it is bad legislation generally. I think it is a serious mistake to have done this, but I also have been here long enough, as I said, to be able to know where the votes are.

I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 2398) was withdrawn.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Senator from California be recognized for 1 minute and thereafter, the sponsor of the legislation who has not spoken today, Senator DOMENICI, who has been tied up in committee, has asked to be recognized for up to 5 minutes. Then I ask unanimous consent that we go to final passage.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California is recognized for 1 minute.

Mrs. BOXER. Thank you very much, Mr. President.

The question before the Senate today is the following: How many securities litigation laws should there be relative to class-action lawsuits involving nationally traded securities?

I believe the answer is one. And I believed the answer was one when we had this debate in 1995. And even though I advocated for a stronger law at that time, I always thought there ought to be one law.

We, as policymakers, must establish a regulatory environment in which investors have sufficient rights and remedies while also ensuring that the high-growth industries of our economy, many of which are located in my home State of California, are provided the stability and the certainty they need to expand, grow, and create jobs.

This bill does just that. It is narrowly crafted to address only the issue of class action lawsuits and nationally traded securities—I think this is very important. It defines and limits class-action lawsuits. It applies only to nationally traded securities. It is a bill which I am proud to support.

Chairman Levitt, who I respect greatly, Chairman of the SEC, is supportive of this legislation, and I think his words should carry a great deal of weight. We ought to give this law a chance to work in the Federal court and not see this law go to 50 different State courts. This would be very disruptive and it doesn't make sense for nationally traded securities.

If, after a time, we feel the law isn't good enough, isn't strong enough, isn't working as we had envisioned, we can revisit it and address it as necessary. But I think today we ought to support this bill, as drafted, and assert there ought to be one law when it comes to class action lawsuits involving nationally traded securities.

So, Mr. President, I am pleased to join the Chairman of the Banking Committee and the ranking member on the Securities Subcommittee, Senator DODD, in support of this bill. I yield the floor, and I yield the time back to the Senator from New York.

The PRESIDING OFFICER. The Senator from New Mexico has 5 minutes.

Mr. DOMENICI. Mr. President, I will not use that amount of time.

I just want to say how pleased I am that today we are going to close the loop and make sure that the small group of entrepreneurial plaintiff lawyers who were taking advantage of our securities laws are now going to follow a uniform law in the States and in the Federal courts.

It was in 1990 that Senator Sanford of North Carolina, who passed away just recently, and I introduced the first legislation on this issue. We did so because we found that a small group of plaintiff's lawyers were engaged in the business of finding meritless lawsuits to file, but since they were class action lawsuits, they would have to get settled. We found a trend across the country where they settled all these cases rather than have jury trials. A small cadre of lawyers became rich, and, as far as we can find out, very few stockholders benefited.

We passed the first bill to tighten up the rules in the Federal court system in 1995. It is the only bill where we overrode President Clinton's veto. And tonight I think we will pass, by an even more overwhelming number, the culmination of this effort. The bill will keep plaintiffs' lawyers from picking State courts to do what we have precluded them from doing in the Federal courts. This bill will stop them from doing what we know they already are doing—they look for a sympathetic state forum where they can get these lawsuits filed.

This is legislation that helps the high-tech companies that get started in America. We have testimony that the Intel company—that great American company—had they faced one of these kinds of suits when they were in their infancy, they are almost certain that they would not exist today. We do not know how many other companies now do not exist because they faced these kinds of lawsuits.

But essentially we are doing an exciting thing for growth, prosperity, and we are harming and hurting no one with legitimate complaints against corporations for fraud, misrepresentation, and malfeasance.

As I said, I rise today in strong support of S. 1260, the ''Securities Litigation Reform Uniform Standards Act of 1998'' and I want to commend the Majority Leader for bringing this bill to the floor this week. Few issues are more important to the high-tech community and the efficient operation of our capital markets than securities fraud lawsuit reform.

I am pleased to serve as an original co-sponsor of this legislation with Senators D'AMATO, DODD, and GRAMM—a bill to provide one set of rules to govern securities fraud class actions.

As I said previously, this bill completes the work I began more than 6 years ago with Senator Sanford of North Carolina. Back in the early 1990's, Senator Sanford and I noticed that a small group of entrepreneurial plaintiffs' lawyers were taking advantage of our securities laws and the federal rules related to class action lawsuits to file frivolous and abusive claims against high-technology companies in Federal courts.

Often these lawsuits were based simply on the fact that a company's stock price had fallen, without any real evidence of fraud. Senator Sanford and I realized a long time ago that stock price volatility—common in high tech stocks—simply is not stock fraud.

But, because it was so expensive and time consuming to fight these lawsuits, many companies settled even when they knew they had done nothing wrong. The money used to pay for these frivolous lawsuits could have been used for research and development or to create new, high-paying jobs.

So, we introduced a bill to make some changes to the securities fraud class action system. Of course, since we were up against the plaintiffs' lawyers, the bill didn't go anywhere for awhile.

After Senator Sanford left the Senate, the senior Senator from Connecticut, Senator DODD, and I continued to work hard on this issue. In 1995, with tremendous help from Chairman D'AMATO and Senator GRAMM, we passed a law. The Private Securities Litigation Reform Act of 1995 passed Congress in an overwhelmingly bipartisan way—over President Clinton's veto of the bill.

And since enactment of the Reform Act, we have seen great changes in the conduct of plaintiffs' class action lawyers in federal court. Because of more stringent pleading requirements, plaintiffs' lawyers no longer ''race to the courthouse'' to be the first to file securities class actions. Because of the new rules, we no longer have ''professional plaintiffs''—investors who buy a few shares of stock and then serve as named plaintiffs in multiple securities class actions. Other rules make it difficult for plaintiffs' lawyers to file lawsuits to force companies into settlement rather than face the expensive and time consuming ''fishing expedition'' discovery process.

Now, it looks like our new law has worked too well. Entrepreneurial trial lawyers have begun filing similar claims in State court instead of federal court to avoid the new law's safeguards against frivolous and abusive lawsuits. Instead of one set of rules, we now have 51—one for the Federal system and 50 different ones in the States.

According to the Securities and Exchange Commission, this migration of claims from Federal court to State court ''may be the most significant development in securities litigation'' since the passage of the new law in 1995.

In fact, prior to passage of the new law in 1995, State courts rarely served as the forum for securities fraud lawsuits. Now, more than 25 percent of all securities class actions are brought in State court. A recent Price Waterhouse study found that the average number of State court class actions filed in 1996—the first year after the new law—grew 335 percent over the 1991–1995 average. In 1997, State court filings were 150 percent greater than the 1991–1995 average.

So, there has been an unprecedented increase in State securities fraud class actions. In fact, trial lawyers have testified to Congress that they have an obligation to file securities fraud lawsuits in State court if it provides a more attractive forum for their clients. Imagine that—plaintiffs' lawyers admit that they are attempting to avoid federal law.

These State court lawsuits also have prevented high-tech companies from taking advantage of one of the most significant reforms in the 1995 law—the safe harbor for predictive statements. Under the 1995 law, companies which make forward-looking statements are exempt from lawsuits based on those statements if they meet certain requirements. Companies are reluctant to use the safe harbor and make predictive statements because they fear that such statements could be used against them in State court. This fear chills the free flow of important information to investors—certainly not a result we intended when we passed the new law.

So today, the Senate will vote to create one set of rules for securities fraud cases. One uniform set of rules is critical for our high-technology community and our capital markets.

Without this legislation, the productivity of the fastest growing segment of our economy—high tech—will continue to be hamstrung by abusive, lawyer-driven lawsuits. Rather than spend their resources on R&D or creating new jobs, high-tech companies will continue to be forced to spend massive sums fending off frivolous lawsuits.

When I first worked on this issue, executives at Intel Corporation told me that if they had been hit with a frivolous securities lawsuit early in the company's history, they likely never would have invented the microchip. We should not let that happen to the next generation of Intels.

This bill also is important to our markets. Our capital markets are the envy of the world, and by definition are national in scope. Information provided by companies to the markets is directed to investors across the United States and throughout the world.

Under the Commerce Clause of the U.S. Constitution, Congress has the authority to regulate in areas affecting ''interstate commerce.'' I cannot imagine a more classic example of what constitutes ''interstate commerce'' than the purchase and sale of securities over a national exchange.

Not only does Congress have the authority to regulate in this area, it clearly is necessary and appropriate. Right now, in an environment where there are 50 different sets of rules, companies must take into account the most onerous State liability rules and tailor their conduct accordingly. If the liability rules in one State make it easier for entrepreneurial lawyers to bring frivolous lawsuits, that affects companies and the information available to investors in all other States. One uniform set of rules will eliminate that problem.

Mr. President, I again want to commend my colleagues for their work on this important bill. I understand that this is a bi-partisan bill which has the support of the SEC and at least 40 Senators. I think by the end of the day, many, many more Senators will join us in supporting this bill. Thank you, Mr. President.

Mr. D'AMATO. Mr. President, I have one more unanimous consent. The Senator from Nevada has asked to speak for up to 3 minutes. I ask unanimous consent that he be given that and then we go to final passage.

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

The Senator from Nevada.

Mr. BRYAN. I thank the Presiding Officer.

I thank the chairman for his courtesy.

Mr. President, this is a vote that I believe that my colleagues who support the measure—and I am not unmindful of how the votes lie—will live to rue. At a time when investor fraud is mounting with billions and billions of dollars, we have a consistent, steady course of action where we are systematically depriving individual small investors from protections.

This adds a further limitation to the statute of limitations. And 37 out of the 50 States provide a greater remedy. This provides a limitation in terms of the ability of an investor to file an action against an accomplice. And 49 out of 50 States provide that remedy. We take that away in this course of action.

Most States provide a remedy for joint and several liability so that an investor who is defrauded may recover the full amount of his or her loss from any one of the individual investors. If this legislation had been in place at the time of the Keating fraud, where Keating himself was, in effect, judgment proof, there would have been no ability to recover against the fraudulent activity of the accomplices—the accountants, the lawyers, and others.

That is why, contrary to the assertion by the proponents, this is not a plaintiff's lawyer's argument that is being made in opposition to this. There are some abuses, and we should confine ourselves to that. That is why all of the governmental institutions who are charged with their public responsibility as stewards of investment funds, retirement funds, municipalities, school districts, States, all have expressed their opposition to the legislation, because they recognize that the taxpayer, himself or herself, is frequently defrauded by this course of action.

So this is a bad piece of legislation. And we continue on a slippery slope in eliminating basic investor protections. The small guys get dealt out of the game with this legislation. The victims, they can take care of themselves. But for the millions and millions of small investors who have confidence in our markets, who are coming in—one out of every three in the country—they are the big losers in this legislation.

Mr. SARBANES. Will the Senator yield?

Mr. BRYAN. I am happy to yield.

Mr. SARBANES. I want to commend the Senator from Nevada for a very powerful statement and for his very strong presentation of the arguments. All I want to say to my colleague is, I am confident in making the prediction that events down the road, when the investors come in, innocent people, and say, ''We didn't have a remedy,'' he will be proven correct.

Mr. BRYAN. I thank the Senator from Maryland for his comments. He has stood tall, not only in this legislation but in the 1995 legislation on behalf of small investors. That is what this matter is all about. There is no sympathy for plaintiff lawyers. That is not the argument, as the Senator from Maryland and I and others who oppose this legislation know. We are talking about protecting small investors in America who, I believe, are left with fewer defenses as a result of this.

I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I will be very brief on this. And we have been through this. The last time it was a 5-day debate. We ought to take some solace in the fact that we have done this in half a day. And let me commend my colleagues, all of them, who have been involved in this and over some period of time.

But I say, Mr. President, this is a very sound piece of legislation that can make a huge difference today. That investor that my colleague, the distinguished Senator from Nevada, talks about, that is the investor that deposits their hard-earned money in the securities of struggling businesses, high-tech companies that are the primary targets of these lawsuits. And it is these industries that represent the knowledge-based economy of our 21st century.

Too often we have seen predator lawyers out there go after them. What we are trying to do with this bill is to tighten up the loophole, to make it possible for these companies to grow while simultaneously—simultaneously—seeing to it that investors can bring a rightful cause of action, as plaintiffs, where fraud has been committed.

This is going to make for a far sounder system for people in this country. And I predict to my colleagues that we will see economic growth in these firms and businesses, where they can avoid the kind of tremendous expenditures that have had to be laid out to fight frivolous lawsuits and end up as settlements, costing fortunes with, of course, cases being thrown out of court.

So I predict to my colleagues, this will be a vote they will be very proud of in the years ahead to avoid these frivolous lawsuits we have seen in the past. I urge passage of the legislation.

Mr. D'AMATO. I ask unanimous consent that Senator KOHL be recognized for a request, and then I will call for the yeas and nays.

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

Mr. KOHL. Thank you, I say to Senator D'AMATO.

CHANGE OF VOTE—ROLL CALL VOTE NO. 132

Mr. KOHL. Mr. President, on rollcall vote No. 132, I voted no. It was my intention to vote aye. Therefore, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

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

Mr. D'AMATO. 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.

Mr. D'AMATO. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 79, nays 21 as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—79

Abraham	Frist	Mack
Allard	Gorton	McConnell
Ashcroft	Graham	Mikulski
Baucus	Gramm	Moseley-Braun
Bennett	Grams	Murkowski
Bingaman	Grassley	Murray
Bond	Gregg	Nickles
Boxer	Hagel	Reed
Breaux	Harkin	Reid
Brownback	Hatch	Robb
Burns	Helms	Roberts
Campbell	Hollings	Rockefeller
Chafee	Hutchinson	Roth
Coats	Hutchison	Santorum
Cochran	Inhofe	Sessions
Collins	Jeffords	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Domenici	Landrieu	Thurmond
Enzi	Leahy	Warner
Faircloth	Lieberman	Wyden
Feinstein	Lott	
Ford	Lugar	

NAYS—21

Akaka	Dorgan	Levin
Biden	Durbin	McCain
Bryan	Feingold	Moynihan
Bumpers	Glenn	Sarbanes
Byrd	Inouye	Shelby
Cleland	Johnson	Torricelli
Conrad	Lautenberg	Wellstone

The bill (S. 1260), as amended, was passed, as follows:

S. 1260

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 ''Securities Litigation Uniform Standards Act of 1998''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Private Securities Litigation Reform Act of 1995 sought to prevent abuses in private securities fraud lawsuits;

(2) since enactment of that legislation, considerable evidence has been presented to Congress that a number of securities class action lawsuits have shifted from Federal to State courts;

(3) this shift has prevented that Act from fully achieving its objectives;

(4) State securities regulation is of continuing importance, together with Federal regulation of securities, to protect investors and promote strong financial markets; and

(5) in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the Private Securities Litigation Reform Act of 1995, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators and not changing the current treatment of individual lawsuits.

SEC. 3. LIMITATION ON REMEDIES.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 16 of the Securities Act of 1933 (15 U.S.C. 77p) is amended to read as follows:

''SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REMEDIES.

''(a) REMEDIES ADDITIONAL.—Except as provided in subsection (b), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

''(b) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

''(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(c) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

''(d) PRESERVATION OF CERTAIN ACTIONS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), a class action described in paragraph (2) of this subsection that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(2) PERMISSIBLE ACTIONS.—A class action is described in this paragraph if it involves—

''(A) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(B) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

''(i) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(ii) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(e) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(f) STATE ACTIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(2) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

''(g) DEFINITIONS.—For purposes of this section the following definitions shall apply:

''(1) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(2) CLASS ACTION.—

''(A) IN GENERAL.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(B) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(3) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

(2) CONFORMING AMENDMENTS.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(A) by inserting ''except as provided in section 16 with respect to class actions,'' after ''Territorial courts,''; and

(B) by striking ''No case'' and inserting ''Except as provided in section 16(c), no case''.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended—

(1) in subsection (a), by striking ''The rights and remedies'' and inserting ''Except as provided in subsection (f), the rights and remedies''; and

(2) by adding at the end the following new subsection:

''(f) LIMITATIONS ON REMEDIES.—

''(1) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

''(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(2) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

''(3) PRESERVATION OF CERTAIN ACTIONS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(B) PERMISSIBLE ACTIONS.—A class action is described in this subparagraph if it involves—

''(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(ii) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

''(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(II) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(4) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(5) STATE ACTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

''(6) DEFINITIONS.—For purposes of this subsection the following definitions shall apply:

''(A) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(B) CLASS ACTION.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(C) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(D) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

SEC. 4. APPLICABILITY.

The amendments made by this Act shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I am trying to have an announcement for the Members. But I need to check with a couple of people in just a moment. So if the Senator from Iowa would like to proceed with statements, I would like to maybe interrupt in a moment.

Mr. LEAHY. Mr. President, while the leader is on the floor—if the Senator from Iowa will withhold for just a moment—I know the leader is trying to get a schedule together. I just wanted to note, because there has been some question over here on this side of the aisle, that on S. 2037, the WIPO bill, or the digital new millennium copyright legislation, there is absolutely no objection to going forward with it. I suggest that there will be unanimous support for it over here. I just wanted to advise the distinguished majority leader of that fact.

Mr. LOTT. I might respond to the fact that we do want to get that bill done. We have run into a possible technical problem that we are trying to work out, as you well know.

Mr. LEAHY. I understand what the leader wants to do. I wanted to make sure that he understands this side of the aisle is ready and raring to go.

Mr. LOTT. Mr. President, for the information of all Senators, the Senate has now passed the second of the four high-tech bills that we had been working on and have worked to get agreements. And we have been successful in that. It is our intent at the earliest opportunity to consider and pass the WIPO bill, even though I understand there may be a technical problem with the blue slip issue involving the House of Representatives. We are trying to check that out, and also the immigration bill that the Senator from Michigan has been working on, and Senator KENNEDY from Massachusetts.

It would be our intent to call up that immigration bill, if we do not do it before noon on Monday, with the possibility of stacked votes on Monday afternoon about 5:30. I am not asking unanimous consent to that effect right now. I have discussed that with Senator ABRAHAM, and Senator KENNEDY. But I would need to check that with Senator DASCHLE and others.

But I want the Members to know that we need to complete action on these high-tech bills. A lot of great work has been done. We have been able to pass two of them. We are very close to being able to get the other two done. Our intent is to stay with that until we get it completed.

The Senate will now begin the DOD authorization bill.

Having said all of that, there will be no further votes this evening, and the Senate will consider the DOD authorization bill throughout Thursday's session of the Senate. I had hoped there would be opening statements. But I understand we will just lay the bill down, and then we will begin tomorrow.

But I want the RECORD to show that I was requested to have the remainder of the night for the DOD authorization bill so that we could get 2 or 3 hours on it. We are not going to be able to do that. But I am certainly prepared and willing, and wanted to do that.

UNANIMOUS-CONSENT REQUEST— S. 2057

Mr. LOTT. Mr. President, I now ask unanimous consent the Senate turn to S. 2057, the DOD authorization bill.

Mr. ABRAHAM. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senate majority leader has the floor.