

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 617, AS MODIFIED

Mr. DOLE. Mr. President, I send a modification to my amendment to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment (No. 617), as modified, is as follows:

On page 19, strike line 12 through line 5 on page 21, and insert the following:

SEC. 107. PUNITIVE DAMAGES IN CIVIL ACTIONS.

(a) FINDINGS.—The Congress finds that—

(1) punitive damages are imposed pursuant to vague, subjective, and often retrospective standards of liability, and these standards vary from State to State;

(2) the magnitude and unpredictability of punitive damage awards in civil actions have increased dramatically over the last 40 years, unreasonably inflating the cost of settling litigation, and discouraging socially useful and productive activity;

(3) excessive, arbitrary, and unpredictable punitive damage awards impair and burden commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and nonprofit entities;

(4) products and services originating in a State with reasonable punitive damage provisions are still subject to excessive punitive damage awards because claimants have an economic incentive to bring suit in States in which punitive damage awards are arbitrary and inadequately controlled;

(5) because of the national scope of the problems created by excessive, arbitrary, and unpredictable punitive damage awards, it is not possible for the several States to enact laws that fully and effectively respond to the national economic and constitutional problems created by punitive damages; and

(6) the Supreme Court of the United States has recognized that punitive damages can produce grossly excessive, wholly unreasonable, and often arbitrary punishment, and therefore raise serious constitutional due process concerns.

(b) GENERAL RULE.—Notwithstanding any other provision of this Act, in any civil action whose subject matter affects commerce brought in any Federal or State court on any theory, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant only if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct by the defendant that was either—

(1) specifically intended to cause harm; or

(2) carried out with conscious, flagrant disregard to the rights or safety of others.

(c) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed 2 times the sum of—

(1) the amount awarded to the claimant for economic loss; and

(2) the amount awarded to the claimant for noneconomic loss.

This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such an award. If a separate proceeding is requested—

(1) evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded; and

(2) evidence admissible in the punitive damages proceeding may include evidence of the defendant's profits, if any, from its alleged wrongdoing.

(e) APPLICABILITY.—Nothing in this section shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by the United States, or by any State, under any law;

(2) create any cause of action or any right to punitive damages;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages;

(5) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(6) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(7) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(f) FEDERAL CAUSE OF ACTION PRECLUDED.—Nothing in this section shall confer jurisdiction on the Federal district courts of the United States under section 1331 or 1337 of title 28, United States Code, over any civil action covered under this section.

(g) DEFINITIONS.—For purposes of this section:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) The term "clear and convincing evidence" means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard shall be more than that required under preponderance of the evidence, and less than that required for proof beyond a reasonable doubt.

(3) The term "commerce" means commerce between or among the several States, or with foreign nations.

(4)(A) The term "economic loss" means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of replacement services in the home, including child care, transportation, food preparation, and household care, costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term "economic loss" shall not include noneconomic loss.

(5) The term "harm" means any legally cognizable wrong or injury for which damages may be imposed.

(6)(A) The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(B) The term "noneconomic loss" shall not include economic loss or punitive damages.

(7) The term "punitive damages" means damages awarded against any person or entity to punish such person or entity or to deter such person or entity, or others, from engaging in similar behavior in the future.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

UNANIMOUS CONSENT
AGREEMENT

Mr. DOLE. Mr. President, I think we have a consent agreement now. I will recite it. If there are any questions I will be happy to respond.

I ask unanimous consent that during the Senate's consideration of H.R. 956, all second-degree amendments to the Dole amendment must be debated during today's session of the Senate.

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

Mr. DOLE. I further ask that any votes ordered on or in relation to second-degree amendments to the Dole amendment, No. 617, occur beginning at 11:15, and that the final vote in the sequence be on or in relation to the Dole amendment, No. 617, as amended, if amended.

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

Mr. HEFLIN. Just a moment. I reserve the right to object.

I mean if the final—oh, I see; in the sequence in relationship. So it does not mean that that is the final vote of the day or anything like that?

Mr. DOLE. No. I wish it were.

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

Mr. DOLE. I further ask that at the hour of 10:15 a.m. there be 1 hour for debate to be equally divided between the two managers for discussion on any of the pending amendments to the Dole amendment.

Mr. HEFLIN. I assume that, in regards to that, it is to the managers, between the managers. That means that people who are opponents to the various amendments rather than the managers would be—

Mr. DOLE. I think that provision is set to accommodate the Senator from Alabama. If the Senator from West Virginia has no objection, I can say to the Members in opposition—

Mr. ROCKEFELLER. The Senator from West Virginia will do it in any way that is equitable.

Mr. HEFLIN. Why not put it that half of the time be under control of Senator HOLLINGS or his designee?

Mr. DOLE. Would that be all right with the Senator from West Virginia?

Mr. ROCKEFELLER. That will be fine.

Mr. DOLE. So I modify the request, time to be equally divided between

Senator GORTON and Senator HOLLINGS or their designees.

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

Mr. DOLE. I further ask that following the disposition of the Dole amendment, as amended, if amended, Senator THOMPSON be recognized to offer an amendment to limit the bill to Federal court cases only.

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

Mr. DOLE. So I say to my colleagues, there will be no votes tonight. But anybody who has a second-degree amendment to the Dole amendment, or anybody who wishes to debate, we will be in session as long as that may take.

I thank my colleagues on both sides for agreeing to this request.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I ask unanimous consent if I could proceed as in morning business for 5 minutes?

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

TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. COCHRAN. Mr. President, it was my honor, a unique honor and special pleasure to serve in this body as the State colleague of John C. Stennis for 10 years. I deeply appreciated the bond of friendship, respect and trust that developed between us as we worked together to represent the interests of the State of Mississippi, and its citizens, in the U.S. Senate.

He had already established a reputation for intelligent leadership in this body when I arrived here, and I considered it my good fortune to be able to learn first hand from him and from his example. We were never rivals. We talked almost every day. He was always friendly and courteous to me, as he was with every other Senator. Although we were members of different political parties, that did not interfere with or detract from our relationship.

Our State has had its share of demagogues, as all other States have, and I have deplored their excesses and have been embarrassed by them. But in Senator Stennis we saw a man as pure in heart and deed with less inclination to inflame the passions of the voters with exaggerated and flamboyant rhetoric as any we have ever elected to public office, and I admired him for that. He preferred to win a debate or an election on the basis of the well argued evidence, rather than to prey upon the fears or suspicions or prejudices of the audience.

He was the kind of Senator I try to be.

During his more than 41 years of service as a U.S. Senator, he was steady, conscientious and extraordinarily successful in every assignment and undertaking.

From his earliest days to his last days he gave the full measure of energy

and his ability to the service of this body and to his State. He saw that as his duty, and he took that as seriously as anyone who has ever served here.

Others have recalled in their speeches the positions of responsibility he held and the legislation he authored and caused to be adopted. There were many of each, and they are persuasive testimony to his effectiveness as a Senator. I will not try to recount all of them.

What may not be as easily measured is the influence he had in the Senate by the force of his character. He was the epitome of rectitude, of fairness, of decorum. His selection to be the first chairman of the Senate's Select Committee on Standards and Conduct was an illustration of the view that others in the body had of him, and the confidence they had in him to do what was right and just.

That is why he was so admired and appreciated in Mississippi. He got things done that helped our State, and its people, but he was more than an effective Senator. He was totally honest and trustworthy.

Mississippi will forever honor the memory of John C. Stennis.

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

The PRESIDING OFFICER (Mr. DEWINE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. 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. ROCKEFELLER. Mr. President, I ask unanimous consent to speak as if morning business.

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

Mr. ROCKEFELLER. Mr. President, I thank the presiding officer for his patience.

MEDICARE

Mr. ROCKEFELLER. Mr. President, I am here to talk about the Medicare Program. In the recent days, I have noticed all kinds of people expressing deep concern for Medicare. That is comforting, because there is more than enough reason to be concerned.

Let me get right to the point. The Republican leaders in Congress, and the chairs of both Budget Committees in Congress, want to balance the budget in 7 years. If they keep their word and leave Social Security and defense spending completely alone, that will require cuts totaling \$1.2 trillion.

If they throw in the tax cuts for top income-earners that will require another whopping \$345 billion to finance those cuts. Now here's the key point for anyone concerned about Medicare: as we have seen in papers distributed by the Senate Budget Committee itself, this drive for a balanced budget—and presumably some tax cuts—will require cuts in Medicare to the

tune of \$250 to \$300 billion in 7 years. Medicaid will also have to help out with \$160 to \$190 billion in cuts.

The recent talk about Medicare is not really saying this. It is all about the need to shore up the Medicare trust fund, because it could be insolvent in 7 years. It is all about the idea of restructuring Medicare to save the program. The argument we are hearing is that Medicare has to be drained of \$300 billion to save the program. A curious argument.

Somehow, I think we need to make sure Americans, especially the 37 million senior citizens and disabled citizens who rely on Medicare, aren't being sold a bill of goods.

The fact is that the terms set by the leadership on the other side of the aisle—balance the budget by 2002, leave defense alone, and throw in some tax cuts—may require a raid on Medicare to get the job done.

That is why I am here.

My basic reaction to all this talk is to urge the Republican leaders to simply show us precisely what you mean. I am speaking as someone who cast my vote, several times, for a very precise, very specific plan to reduce the federal deficit by \$600 billion. It included savings in Medicare. The 1993 budget and deficit reduction plan was based on the simple concept of shared responsibility, and spread the burden fairly.

Along with spending cuts to reduce the deficit, it did important things like expand the tax credit for working families to make sure work is a better choice than welfare in this country.

But for all of the fire and brimstone heard this year about the need to balance the budget and now "save" the Medicare Program, we have yet to see a budget resolution, a budget plan, a single detail on just how everyone making the noise intends to achieve these impressive goals.

Of course, the President is reacting by saying essentially "show me." He submitted his budget on time. He offered a health care plan that tied Medicare savings to comprehensive health care reform. He rejected the idea of a constitution amendment on the Republicans' terms, and so of course, he is asking for some specifics.

I cannot conceive of a budget that meets the conditions of the other side of the aisle—stay away from Social Security, do not touch defense, no new revenue, and tax cuts for corporations and the wealthy—without huge cuts in Medicare.

And make no mistake about it, \$250 to \$300 billion of cuts in Medicare will mean higher deductibles and premiums for seniors, lower fees for hospitals and doctors, and a lot worse. If there is such a budget that can side-step Medicare, we are simply saying "show us." We have put our cards on the table for the past 2½ years when it comes to health care, Medicare, and deficit reduction.

While all of this talk and born-again interest in Medicare's solvency gets