

For NCSL, the question is not which tort reforms are appropriate, but who makes that decision. The issue is who has responsibility for state civil justice. This is a federalism issue of major consequence. It should not be ignored.

Madam President, what kind of national standard is it that prohibits State laws only when they are more favorable to plaintiffs than Federal law and not when they vary from Federal law to favor defendants? What kind of fairness bill is it that contains such a blatant double standard?

Madam President, the bill before us is called the Product Liability Fairness Act of 1995. If you read the title, it sounds pretty good. Who could be against bringing greater fairness to our product liability system, or to our legal system in general?

There is a list of problems in our legal system that we could all go through. Going to court takes too much time and it costs too much money. There are many stories of plaintiffs winning what seem like absurdly high verdicts or, on the other hand, being denied a day in court by defendants with deep pockets who engage in such hard-ball tactics as investigations into the private lives of plaintiffs, grueling depositions, unreasonable requests for medical and psychological histories of plaintiffs, and multiple motions to dismiss.

As Senator GORTON, one of the lead authors of the bill before us, explained at the outset of this debate:

[T]he victims of this system are very often the claimants, the plaintiffs themselves, who suffer by the actual negligence of a product manufacturer, and frequently are unable to afford to undertake the high cost of legal fees over an extended period of time. Frequently, they are forced into settlements that are inadequate because they lack resources to pay for their immediate needs, their medical and rehabilitation expenses, their actual out-of-pocket costs.

In 1989, a General Accounting Office study found that on average, cases take 2½ to 3 years to be resolved, and even longer when there is an appeal. One case studied by the GAO took 9½ years to move through our court system. In one of many hearings held on this issue over the years, University of Virginia law professor Jeffrey O'Connell explained, and I quote him: "If you are badly injured in our society by a product and you go to the highly skilled lawyer, in all honesty the lawyer cannot tell you what you will be paid, when you will be paid or, indeed, if you will be paid."

Senator GORTON concluded his thought as follows:

Uncertainty in the present system is a reason for change. Plaintiffs, those injured by faulty products, need quicker, more certain recovery—recovery that fully compensates them for their genuine losses. Defendants, those who produced the products, need greater certainty as to the scope of their liability.

I agree with Senator GORTON that there is unfairness in our current legal system. There is unfairness to defendants in some cases, and there is unfairness to plaintiffs. However, this bill does not address the problems faced by plaintiffs at all. There is virtually nothing in this bill to assist those who have been hurt by defective products

and face the difficult burdens of trying to recover damages through our legal system.

For instance, this bill does nothing to address the hardball litigation tactics used by some defendants in product liability cases, such as excessive investigations, depositions, and motions practice that often mars such litigation. It does nothing to help bring to public light documents revealing defendants' knowledge of product defects, or to shorten the time required to litigate these cases and obtain relief.

Instead this bill would limit the money that can be recovered by plaintiffs who manage to navigate the hazards of our legal system and provide in court that they were hurt by defective products. The bill contains any number of provisions addressing compensation to plaintiffs which is too high, but not a single provision addressing the cases in which, as the sponsors themselves acknowledge, compensation is too low.

This bill is not balanced, it is not uniform, and I cannot support it.

Madam President, if I have any additional time remaining, I will be happy to yield to the Senator from Alabama.

Mr. HEFLIN. Madam President, I only want to speak briefly right now relative to this matter. I think the Senator from Michigan has covered the issue on additur very adequately.

In the case of *Dimick versus Schiedt*, a 1935 Supreme Court case, the High Court ruled that the district court lacked the power to deny a plaintiff a new trial, sought on the ground that the jury award of damages was too low, when the trial court judge proposed to increase the damages and the defendant had consented in order to avoid a new trial. The Supreme Court held that the power to increase a damage award, known as an additur, was a violation of the right of trial by jury. According to the Court, the amount of damages must be determined by juries, not judges, in the Federal court, subject to the right of courts to set aside jury awards that are clearly excessive. Some State courts have held that additur violates their State's constitution as well.

That is the major point that I want to make on this issue. Senator LEVIN mentioned this matter pertaining to the lack of uniformity.

I want to also point out that all State courts under the bill and the substitute—any of the substitutes—are to accept as binding precedents in the construing act, the decision of a Federal court of appeals covering this mandate.

This mandate, in my judgment, is clearly unconstitutional and contrary to article III of section 1 of the Constitution, which provides that the judicial power of the United States shall be vested in one Supreme Court, which has always been construed to mean that State courts must follow the decisions of the Supreme Court and not the lower Federal courts.

With the addition of the punitive damage additur provision in the sub-

stitute, there is an expansion by Congress of an extraordinary nature to encroach on the power of the State courts. Rules concerning the use of additur and remittitur have always been left to the State courts, as have also every other State rule of civil procedure.

I just wanted to mention that. I think there are others who are desiring to speak. I yield the floor at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is recognized to speak up to 10 minutes.

Mr. GLENN. Parliamentary inquiry. Is there a 5-minute limit on speeches this morning?

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania has been allocated 10 minutes to speak, after which there is a 10:30 a.m. vote.

Mr. GLENN. I thank the Chair.

Mr. SANTORUM. Madam President, I yield 5 minutes of my time to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

#### STOP THE DEMAGOGING

Mr. INHOFE. Madam President, I thank the Senator from Pennsylvania for yielding a portion of his time. I do not think I will take the 5 minutes.

After the trauma and the tragedy that we have gone through in Oklahoma, it has diverted our attention from many of the other significant things that are taking place in this body. I think the most significant thing, second only to that tragedy in Oklahoma, is the tragedy, the revelation that was recently discovered of what is going to happen to Medicare in America and the demagoging that is taking place in this and other bodies concerning that trauma.

Specifically, a report was released by the Medicare trustees that has come to the incontrovertible conclusion that our Medicare system, in absence of change, is going to go broke in the year 2002, approximately 6½ years from now.

I think it is important to look and see who was it who looked at the data, who studied the actuarial reports and came to that conclusion.

There are six members of the Board of Trustees of Medicare. They are Robert Rubin, the Secretary of the Treasury, who was appointed by President Clinton; Robert Reich, Secretary of Labor, appointed by President Clinton; Donna Shalala, Secretary of HHS, appointed by President Clinton; Shirley Carter, Commissioner of Social Security, appointed by President Clinton; and Stanford Ross and David Walker.

Four of the six members are appointments and work in the Clinton administration, and they have come up with the conclusion that Medicare will, in

fact, go broke in the year 2002. I think we know the reasons for it, and I will not get into that.

Quoting from the report, it says, Medicare is "severely out of financial balance and the trustees believe that Congress must take timely action to establish long-term financial stability for the program. The trustees believe that prompt, effective and decisive action is necessary."

Madam President, these are the trustees that were appointed by President Clinton, and what has happened since that time? Absolutely nothing. We have not heard one word out of the Clinton administration. We hear a lot of people criticizing Republicans because we want to do something to save a system, and they come up and say, "The Republicans are suggesting that they are going to cut Medicare in order to pass a tax reduction." Nothing could be further from the truth, and that certainly is not true. But for the President to do nothing in facing this crisis is something that cannot be tolerated.

The proposal that has been discussed by the Budget Committee chairman, Senator DOMENICI from New Mexico, has suggested that we put caps on the system, somewhere around 7 to 7.5 percent growth caps. In other words, the Republican budget is suggesting not that we have cuts in Medicare, but that we have increases in Medicare, but those increases will be capped somewhere between 7 and 7.5 percent, at an amount that has been actuarially determined that we will now have Medicare and it will not go bankrupt in the year 2002.

Right now, Madam President, we have some 36 million people on Medicare. It is projected by the time 2002 comes, we will have something like 50 million Americans, 20 percent of all Americans, including myself, will be eligible for Medicare at that time.

So I only say, it is time to stop the demagoging. We have a very serious problem on our hands. I believe the Republicans have a solution to that problem, but we should be getting some leadership from the White House at this time. This is not something with which we should be playing politics.

I yield back to the Senator from Pennsylvania.

#### A CRISIS IN MEDICARE

Mr. SANTORUM. Madam President, I thank the Senator from Oklahoma for his comments. I wholeheartedly agree with him. I think this is a question of leadership, what kind of leadership we are going to see not only out of the White House but out of the U.S. Senate.

I think the rhetoric to date has not served this institution well. There is, indeed, a crisis in Medicare. I know there are a lot of folks on the other side of the aisle who are saying we knew about this crisis, you folks denied there was a health care crisis. We are not talking about a health care cri-

sis, we are talking about a Medicare crisis. We are talking about a trust fund problem that says there is not enough money in the trust fund to be able to fund Medicare past a 7-year window. That is immediate, that is real, and that is something that we have to deal with, and I believe we will only deal with if we do so in a bipartisan way.

If this becomes a partisan issue where one seeks to take political gain at the expense of doing something that is responsible action, we will not succeed and the trust fund will continue to go further and further to the brink of insolvency, and we will be left with not a lot of options but very dramatic choices that are going to affect a lot of taxpayers and a lot of seniors and the availability of Medicare benefits into the future.

The other comment I keep hearing is, "Well, this crisis has been around a long time and we have known. This is not the first trustees report that has been published that says Medicare is in trouble and will go bankrupt in a few years."

That is true. In fact, over the last 10, 15 years, the average solvency of the Medicare trust fund has been about 12 years. Now it is at 7, which is I think a low. That is the shortest timeframe that we have seen recently where Medicare is in trouble and scheduled to go bankrupt. So it is important, but we are usually running around 12, 14 years as the average.

So why the big hullabaloo now? The reason for that is, once we get through the next 12 years or so, to the year 2010, we can do that pretty well by doing a fix. Senator DOMENICI's budget calls for roughly \$250 billion in reductions in the growth rate of Medicare over the next 7 years. That will fix Medicare, again, to make it solvent for about 12 years from now, which will be about average of where the fund has been.

The problem with that is not the 12 years, it is what happens in the 13th, 14th, 15th year and beyond, because after 12 years from now or 13 years from now that is when the baby boomers begin to retire and that is when Medicare really takes off.

Spending in Medicare just goes up astronomically once the baby boomers and that big chunk of the population starts getting into this program. So when we look at Medicare funding now, we have to look at it with a whole new ball game in mind. We have to preserve the long-term funding and solvency of this program through a period where we are going to see a rapid escalation, not in the cost of Medicare and inflation, but in the number of people in the program.

So when we look at Medicare now, and I hope we will have this informed discussion, that we will look at it over the long term recognizing that Medicare costs, just by demographic reasons, are going to escalate beyond what we have ever seen before in the history of the Medicare program.

So I am hoping we can have this kind of constructive dialog and we will not use brinkmanship for political gain, that we will have a good, bipartisan solution to the problem that faces this country.

I yield the floor.

#### TRIBUTE TO THE NORTH DAKOTA STATE UNIVERSITY WOMEN'S BASKETBALL TEAM

Mr. DORGAN. Madam President, I want to take some time today to belatedly honor the North Dakota State University women's basketball team. Outside of North Dakota, most people probably don't know that this team won the NCAA division II national championship. Not only did they win it this year, but the Bison women have won this honor for 3 straight years. I think they deserve some national recognition.

The NDSU women had the additional honor of being the first ever division II women's team to make it through a season undefeated. This remarkable team ended its season 32-0, and they did it by focusing on one game at a time.

I think we can all learn some important lessons about life by watching these champions—about perseverance, about working together and helping each other, about being a good sport.

I want to congratulate each of these women for the year of hard work that culminated in their ultimate victory: seniors Linda Davis and Lynette Mund who provided experience and leadership, juniors LaShalle Boehm, Jessica DeRemer, Jenni Rademacher, and Lori Roufs; sophomore Kasey Morlock, who was the most valuable player of the tournament, and her fellow sophomores Rhoda Birch and Andrea Kelly; and freshmen Tanya Fischer, Erica Lyseng, Amy Ornell, and Rachael Otto.

These women are even more special because they will not be making millions of dollars playing in the NBA when they graduate. They are playing basketball because they love the game, and in the process they are serving as good role models for many young girls who need active, successful young women to look up to.

A lot of the credit for the success of the NDSU program rests with Head Coach Amy Ruley. She has led the Bison to four championships in the last five seasons. In fact, she is doing such a good job that the University of Illinois and Long Beach State—two division I schools—both wanted her for their programs, but I was glad to hear recently that she has decided to stay with us in North Dakota.

We also can not overlook the assistant coaches, Kelli Layman and Kathy Wall; student assistant Darci Steere; volunteer assistant Robin Kelly; student trainer Nikki Germann; and student manager Mary Schueller. Their work behind the scenes plays an important role in the team's success.