

principles a failure to take reasonable precautions against foreseeable dangerous illegal conduct by others is treated no differently from a failure to guard against any other risk.

S. 1805 would abrogate this firmly established principle of tort law. Under this bill, the firearms industry would be the one and only business in which actors would be free utterly to disregard the possibility that their conduct might be creating or exacerbating a potentially preventable risk of third party misconduct. Gun and ammunition makers, distributors, importers, and sellers would, unlike any other business or individual, be free to take no precautions against even the most foreseeable and easily preventable harms resulting from the illegal actions of third parties. Under S. 1805, a firearms distributor could park an unguarded open pickup truck full of loaded assault rifles on a city street corner, leave it there for a week, and yet be free from any negligence liability if and when the guns were stolen and used to do harm.

It might appear from the face of the bill that S. 1805 would leave open the possibility of tort liability for truly egregious misconduct, by virtue of several exceptions set forth in Section 4(5)(i). Those exceptions, however, are in fact quite narrow, and would give those in the firearm industry little incentive to attend to the risks of foreseeable third party misconduct.

One exception, for example would purport to permit certain actions for "negligent entrustment." The bill goes on, however, to define "negligent entrustment" extremely narrowly. The exception applies only to sellers, for example, and would not apply to distributors or manufacturers, no matter how egregious their conduct. Even as to sellers, the exception would apply only where the particular person to whom a seller supplies a firearm is one whom the seller knows or ought to know will use it to cause harm. The "negligent entrustment" exception would, therefore, not permit any action based on reckless distribution practices, careless handling of firearms, lack of security, or any of a myriad potentially negligent acts.

Another exception would leave open the possibility of liability for certain statutory violations, variously defined, including those described under the heading of negligence per se. Statutory violations, however, represent just a narrow special case of negligence liability. No jurisdiction attempts to legislate standards of care as to every detail of life, even in a regulated industry; and there is no need. Why is there no need? Because general principles of tort law make clear that the mere absence of a specific statutory prohibition is not *carte blanche* for unreasonable or dangerous behavior. S. 1805 would turn this traditional framework on its head; and free those in the firearms industry to behave as carelessly as they would like, so long as the conduct has not been specifically prohibited. If there is no statute against leaving an open truckload of assault rifles on a street corner, under S. 1805 there could be no tort liability. Again, this represents radical departure from traditional tort principles.

S. 1805 WOULD REQUIRE THE DISMISSAL OF
PENDING D.C. SNIPER LITIGATION

Litigation is currently pending in Washington State against the manufacturer and dealer from whom John Allen Muhammed and Leo Boyd Malvo obtained the assault rifle used in the D.C. area sniper killings. The lawsuit, brought on behalf of victims' families, alleges in essence that the defendants' negligent practices and inadequate security made this weapon available to Muhammed and Malvo. There is nothing in-

novative or cutting edge about this litigation; and it is certainly not based on any new or liability-expanding theory. Rather, it alleges straightforward negligence, and is analogous to the sort of case that might be brought against a contractor who leaves explosives unguarded at a construction site. Allegedly, the firearm in question was so poorly secured that 17-year-old Lee Boyd Malvo was able simply to pick it up and walk out of the store.

S. 1805, as currently drafted, would require the dismissal of this litigation. The lawsuit pending is a "qualified civil action" under the bill, because the harm came about through the "criminal or unlawful misuse of a firearm;" and the bill clearly provides that any such action "pending on the date of enactment of this Act shall be immediately dismissed."

None of the exceptions enumerated in the bill would operate to save the litigation currently pending in Washington State. It is not based on an alleged statutory violation, but on the alleged failure of the defendants to take due care to secure firearms. Nor does the litigation fit the bill's narrow statutory definition of "negligent entrustment." As noted, that theory would not apply in any event to the manufacturer or distributor, and would not apply to a seller in this case, whose alleged negligence consists not of supplying the rifle to a particular person, but in so failing to secure it that it was literally available to anyone who walked in the door.

My aim here is not to make a claim about the merits of the pending D.C. sniper litigation, but rather to illustrate the scope of S. 1805. Whether or not the defendants in that case were in fact so negligent in their keeping of firearms that they should be found liable for negligence under Washington State law is a question for the courts of that State. The important point here is that under S. 1805, those defendants would be free of liability no matter how careless they had been. It is for this reason that the bill would require the dismissal of that case. And it is this light that one can see the true scope and import of S. 1805. The bill, as currently drafted, would not simply protect against the expansion of tort liability, but would in fact dramatically limit the application of long-standing and otherwise universally applicable tort principles by precluding, or requiring the dismissal of, cases alleging traditional negligence liability.

Sincerely,

SHERMAN J. CLARK.

Mr. LEVIN. The two alleged snipers were both legally prohibited from buying guns, but through the apparent negligence of a gun dealer, they were able to obtain the military-style Bushmaster assault rifle. Reportedly, the gun dealer operated in such a grossly negligent manner that 238 guns inexplicably disappeared from its store. Among the missing guns were the alleged snipers' Bushmaster rifle. Several of the snipers' victims have filed a lawsuit against the dealer and others. Their case might not survive if this bill became law.

This bill would set a dangerous precedent by giving a single industry broad immunity from civil liability and depriving many victims with legitimate cases of their day in court. If it is enacted, other industries will almost certainly line up for similar protections.

Every single gun safety organization has expressed its opposition to this bill. This is special interest legislation. It should not be adopted.

THE LONG REACH OF THE HEAVY
BOMBERS

Mr. JOHNSON. Mr. President, I rise today to draw my colleague's attention to an article published in the November 2003 edition of Air Force Magazine entitled "The Long Reach of the Heavy Bombers."

The article outlines the importance of our Nation's long-range bomber fleet, and in particular notes the increasing role the B-1 bomber is having in our national security planning.

I am extremely proud that Ellsworth Air Force Base in my State of South Dakota is home to the B-1 bombers and crews of the 28th Bomb Wing. Their contributions in Operation Iraqi Freedom were critical to our military success. Although B-1s flew fewer than 2 percent of the combat sorties in Operation Iraqi Freedom, they dropped more than half the satellite guided Air Force Joint Direct Attack Munitions, JDAMs, and maintained a 79 percent mission capable rate. The B-1s were assigned against a broad range of targets in Iraq, including command and control facilities, bunkers, tanks, armored personnel carriers, and surface-to-air missile sites. They also provided close air support for U.S. forces engaged in the field.

Given the demonstrated capabilities of the B-1 and its importance to our military, we need to continue to invest in the technological improvements that will maintain the B-1s role as the backbone of our bomber fleet. I am pleased that Congress enacted legislation earlier this year that will return 23 B-1s to the active inventory, and I look forward to working with the Air Force and my colleagues in the Senate to ensure that we provide the resources necessary to fully upgrade these planes.

I close by commending the men and women stationed at Ellsworth Air Force Base and thanking all of the members of our Armed Forces for their sacrifices on behalf of our Nation's security.

I ask unanimous consent that the article be printed in the RECORD.

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

THE LONG REACH OF THE HEAVY BOMBERS

(By Adam J. Hebert)

In mid-2001, the B-1B was in trouble. Years of fiscal stringencies had left the bomber with a \$2 billion modernization backlog, poor reliability, rising upgrade costs, and some major combat deficiencies.

Secretary of Defense Donald H. Rumsfeld, reflecting the prevailing view, charged the B-1 "is not contributing to the deterrent or to the warfighting capability to any great extent." Indeed, the purported backbone of the Air Force heavy bomber fleet seemed destined for the scrap heap.

Then, things changed, and, just two years later, the B-1B became one of the star weapon systems in Operation Iraqi Freedom. Just 11 aircraft deployed to the combat theater. However, commanders set up and maintained B-1B "orbits" that kept at least one of the B-1Bs in the air around the clock, ready to

engage emerging targets with huge loads of precision weapons.

Mission capable rates soared, and modernization programs were funded and put back on track.

For the Air Force's long-range bombers, the wars in Afghanistan and Iraq provided some of their finest hours. Their performance in many ways validated the service's bomber investment programs. USAF's B-1, B-2, and B-52 bombers were heavily tasked and proved to be highly effective in the two recent wars—and turned in several combat "firsts."

As Air Force planners describe it, the B-1Bs served as "roving linebackers," circling the battlespace and waiting for a call instructing them to unleash deadly satellite guided Joint Direct Attack Munitions. B-1Bs and B-52Hs performed close air support strikes for ground forces, and the venerable B-52H, the last of which was built in 1962, delivered laser guided bombs using newly installed Litening targeting pods. B-2s used new deployable shelters and were "turned" at a forward location to perform additional combat missions.

At least once, B-7B, and B-52H aircraft all were employed in the same strike package.

NO SURPRISE

"It is no surprise that those aircraft and platforms were used in the way they were," said Maj. Gen. David A. Deptula, Air Combat Command's director of plans and programs. He said that the results of bomber usage over the past two years have confirmed what proponents of long-range strike capabilities had said for a long time: The range, payload, precision capabilities, and flexibility of bombers make them a superb weapon whose uses go well beyond mere "carpet bombing."

Gen. John P. Jumper, the Air Force Chief of Staff, offered one example of the new way of doing business. A combat controller in Afghanistan sent enemy coordinates "up to a B-52 at 39,000 feet, and the B-52 put laser guided munitions down" on a target that was only 1,000 feet in front of friendly forces.

"That's the effect of close air support," Jumper said. "You [didn't] see the airplane or feel the heat from the engines, but the precision was even better than we were able to do in Vietnam."

"This is not a surprise," Deptula said, noting that USAF decided years ago to push for improved bomber defensive systems, data links, and the ability to deliver smart weapons, all with an eye to making long-range systems effective in the future.

In the zero-sum game of defense budgeting, however, long-range strike has clearly suffered at times.

For example, DOD's response to the chronic underfunding of the B-1 fleet was not to fully fund the program but rather was to slash its numbers. USAF announced in 2001 that it would retire one-third of the B-1B fleet—dropping it from 93 to 60 aircraft—consolidate what remained at two bases, and use the savings to eliminate the \$2 billion modernization backlog.

Some bomber partisans were up in arms, but the plan has worked, so far as it goes. Within the slimmed-down fleet, 36 B-1B aircraft were kept combat ready, with the other 24 in training status, depot maintenance, or test. That has been sufficient for the wars of recent years. Officials have long maintained that they would prefer a small fleet of effective aircraft to a large fleet of deficient systems.

The B-1B's MC rate—the percentage of aircraft ready to perform their primary mission at any given time—has increased steadily since the decision.

The Institute for Defense Analyses, a federally funded research center, determined

back in 1995 that B-1B MC rates are heavily dependent upon sufficient spare parts, equipment, and personnel. Until the retirements began, the Air Force was never able to give the bomber the sustained support it required.

The B-1B MC rate has risen from 61 percent in 2001 to 66 percent in 2002 and 71 percent this year. For the bombers deployed in support of Gulf War II, the rate was even better—79 percent. (The B-2 and B-52 bombers supporting OIF posted MC rates of 85 percent and 77 percent, respectively).

This marks a dramatic turnaround. In the 1990s, B-1B mission capability typically logged around 60 percent.

WHEN LINES BLUR

The line between strategic and tactical systems—never as distinct as it may have appeared—forever has been blurred, and the bombers have proved adept at flying "tactical" missions (while some fighters have proved equally adept at the "strategic mission"). Close air support is no longer the exclusive domain of the A-10 tank-killer aircraft. F-117 fighters carried out numerous strategic strikes in Baghdad and elsewhere. Officials point to this jumbling of operational use as a success in the shift to effects-based operations.

At times, B-1s were able to use moving target indicator radars to perform the functions normally reserved for dedicated intelligence-surveillance-reconnaissance (ISR) aircraft—an airpower first, according to U.S. Central Command.

Each bomber in the Air Force fleet now is capable of delivering JDAMs, which offer targeting flexibility. The JDAM cannot only hit fixed targets with near-precision accuracy in all weather conditions but also be quickly programmed to attack a fleeting "emerging target." One strike against Iraq's Republican Guard Medina Division required a B-2 to reprogram its JDAMs, en route to the target, to take advantage of new intelligence coming in from a Global Hawk unmanned aerial vehicle.

Toward the end of major combat, a B-1B orbiting above western Iraq showed the value of the Air Force's heavy bombers in a new way. Intelligence sources on the ground got a tip on the location of former Iraqi dictator Saddam Hussein. The information was beamed to a B-1B circling in the area. Just 12 minutes later, the target lay in ruins, though Saddam may have gotten out shortly before the roof fell in. After dashing to Baghdad and programming in the coordinates, the B-1B had precisely dropped four 2,000-pound JDAMs where Saddam was thought to be.

In addition to deploying 11 B-1Bs, Air Force leaders reported they sent to war four B-2s and 28 B-52s. These 43 aircraft flew a total of 505 sorties between March 20 and April 18, but, as was true in the Afghan war, the bombers' impact was out of all proportion to their numbers. One official noted that at third of all the aim points struck in Iraq were hit by that small bomber force.

Jumper made special note of the bomber impact in the now famous sandstorm that struck Iraq March 25. "You couldn't see your hand in front of your face," he said, and war commentators began to ponder the significance of the "pause" in the war.

"While the commentators were rattling on," said Jumper, USAF's bombers and other aircraft were at work. With the Air Force's ISR systems able to see through the sand, and GPS-guided weapons unhindered by the weather, "B-1s and B-52s were up there pounding the heck out of [the Medina Division]," Jumper said. "I'd like to ask the commander of the Medina Division when he thought the pause was."

"AMAZING" POWERS

Gen. T. Michael Moseley, who led the allied air war, had another anecdote on the ef-

fectiveness of long-range systems. From the United States, a B-2 stealth bomber for the first time delivered 80 500-pound bombs in a single run.

Moseley said the ability to fly from Whiteman AFB, Mo., and drop those 80 weapons against an Iraqi troop concentration was "an amazing capability to bring the [commander's] quiver."

The success of the bombers in Iraq and Afghanistan has not dramatically changed the Air Force's plans for the aircraft. Because the Air Force has used only a small number of bombers in recent wars, USAF planners still say the existing bomber inventory will be adequate until around 2038. Also helpful is the fact that only one bomber was lost in the two major combat operations. In December 2001, a B-1B, doomed by numerous onboard failures, crashed in the Indian Ocean on its way to Afghanistan.

The Air Force believes an inventory of 60 B-1Bs (36 combat coded); 21 B-2s (16 combat coded); and 76 B-52s (44 combat coded) will suffice.

"About 150 bombers is the right number," said Brig. Gen. Stephen M. Goldfein, USAF's director of operational capability requirements. There has been "no sea change in the number of bombers required," because of recent experience, Goldfein said. The Air Force's inventory plan "includes some reserve," he added, but the preferred number remains stable.

In recent years, lawmakers have often disagreed and pushed for larger numbers of bombers. There have been several unsuccessful attempts to restart B-2 production, with proponents saying the aircraft could be produced much less expensively now that the research and development expenses are already paid.

Citing the lack of any new bomber production, Congress for years has been successful in forcing the Air Force to maintain 18 attrition reserve B-52s that the service considers surplus. A total of 94 B-52Hs remain in service, although only 44 are considered primary mission aircraft.

Congress, led by North Dakota lawmakers, has added funds needed to keep 18 BUFFs at Minot AFB, N.D., configured exactly the same as the rest of the B-52 fleet. Goldfein noted that, despite the service's interest in retiring the 18 aircraft, doing so wouldn't save the Air Force any money. Congress pays the bill, so the savings would be for the taxpayers.

Congress also may force the Air Force to restore some or all of its recently retired B-1Bs. By late summer, three of the four Congressional defense oversight committees had passed legislation mandating that 23 of the 32 deactivated Bones be restored to service.

In the bills, lawmakers offered the \$20.3 million needed to bring the B-1s back from the boneyard—but not the much larger amount required to keep the B-1Bs in service. Officials say this unfunded mandate threatens to undo the progress the Air Force has made improving the health of the B-1B fleet.

It would likely cost somewhere between \$1.1 billion and \$2 billion to keep those aircraft in service through the end of the decade. That funding "has to come from somewhere," Goldfein noted.

The existing arrangement of consolidating the B-1Bs at Ellsworth AFB, S.D., and Dyess AFB, Tex., has enabled the increased mission capable rates through simplified maintenance and parts requirements. Fully funding the smaller fleet's modernization plans brought on a "host of improvements," Goldfein added.

INCREMENTAL UPGRADES

With no new bomber production on the books, and old debates over restarting B-2

production or pursuing an FB-22 variant of the F/A-22 Raptor seemingly on the back burner, the current emphasis is on incremental upgrades. Numerous programs to improve bomber effectiveness are ongoing.

Situational awareness improvements, the Link 16 data link, laser targeting pods, and computer enhancements will continue to make each bomber a more efficient war machine. And upcoming weapons such as the Joint Air-to-Surface Standoff Missile and the Small Diameter Bomb will further broaden the range and number of targets bombers can precisely attack.

ACC officials say that, at this point, almost every improvement serves a dual purpose. Upgrades are expected to both sustain and modernize. Sustainment doesn't just mean keeping the aircraft aloft, either—the aircraft must remain valuable fighting machines. "We're looking at 2040," one B-52 official said. "Unless we can come to the war, they won't need us."

The Air Force is trying to get additional targeting pods on its B-52s, Deptula said. "We're looking at using [Fiscal 2003 and 2004 funds] to get as many targeting pods as we can," by using money set aside for the war on terrorism.

Goldfein said the service is interested in increasing the availability of the B-2's deployable shelters. Because of the sensitive low observable finish on the B-2, the bomber must be maintained in a climate-controlled shelter. Deployable shelters, reportedly set up at the Indian Ocean atoll of Diego Garcia, increased the flexibility of the B-2 for Gulf War II. The Air Force is "looking to expand" their use, Goldfein said.

As Air Force officials tell it, existing bombers will continue to get better and there is no urgent need to field a new system. Recapitalization is "a huge piece" of force structure planning, Deptula said, but USAF has some time to make proper assessments and make wise decisions.

The old way of procurement—planning a new system to replace an old one—"isn't completely gone." Deptula said, "but the fact of the matter is, with respect to the long-range strike platforms formerly known as bombers, their lifetime is viable for many, many years into the future."

The Air Force does not expect to see a dramatic technological breakthrough anytime soon. However Deptula believes that hypersonics research now being done at Air Force Research Laboratory may hold the key to breakthrough strike capabilities in the future.

TRANSITION PERIOD

"We are in a transition period . . . when it comes to technologies for long-range strike," he said. Reusable hypersonic propulsion has been difficult to develop, he noted, but it remains worth the effort because the technology offers revolutionary responsiveness, reach, and range. "We're not there yet," Deptula noted.

Improvements to existing systems are expected to bridge the gap until scientists "solve some of these technological challenges that will get us to the next step in potential capability," he said.

In Deptula's view, the break-through will not come until sometime in the next decade. That timing seems to mesh cleanly with financial realities.

"Our legacy platforms are viable through 2025," said Deptula, "and when we enhance them with all these modifications, they are going to continue to increase in capability." It's a nice fit, he went on, because major funding for future long-range systems probably won't be available "until the 2010-2020 time frame, because we have such a pressing need to recapitalize our fighter force in the next decade."

The Air Force is holding to its November 2001 bomber roadmap, which laid out a notional plan to begin a new long-range strike program sometime around 2012-15. Officials say there is no need to rush into a new strike program, because USAF would spend billions developing a system that may not be significantly better than what is available today.

Features such as stealth, high speed, long loiter time, large payload capacity, and flexibility are well-understood goals for any future strike capability. However, there is great uncertainty. Officials are loath to say a follow-on system will be a "B-3" or even a bomber.

Industry, think tanks, and Air Force officials are all studying what is within the "art of the possible," and USAF wants to keep the broadest possible range of options on the table. These options include traditional bombers, unmanned systems, hypersonic air-space vehicles, conventionally armed ballistic missiles, and even space-based weapons. Current time-lines give the Air Force a decade to explore the options.

ACC's Long-Range Global Precision Engagement Study—a look at future strike requirements—noted that the US is pushing for a capability to conduct high-speed strikes against emerging targets anywhere in the world on short notice. However, it has limited options in this area. Conventional ballistic attack missiles, derived from the nation's nuclear ICBM force, "offer increased strike flexibility," but the financial and political cost would be high, the report noted.

Another area for improvement concerns stealth. The B-2 bomber's low peacetime MC rates stem from the high-maintenance nature of its low observable coatings. The aircraft is also largely relegated to nighttime use in high-threat environments. Yet the B-2 remains the only stealthy strike system largely unhindered by distance or basing concerns.

In the future, the F/A-22 and F-35 fighters will offer around-the-clock stealthy strike capability, noted the study, but the B-2 will continue to be the only stealthy, deep strike penetrator for the foreseeable future. The F/A-22 and F-35 have more limited combat ranges.

The study did not advocate a specific course. However, it did highlight the importance of speed. The advent of hypersonic weapons and platforms would permit "prompt global strike from significant ranges and reduce the risks associated with forward basing," the report noted. Compared to ballistic missiles and cruise missiles, it went on, reusable platforms have high utility "in all lesser threat scenarios, enhancing their cost-effectiveness across the spectrum of conflict."

ADDITIONAL STATEMENTS

TRIBUTE TO MARGARET ANN HOFFMAN

• Mr. BUNNING. Mr. President, I pay tribute to Margaret Ann Hoffman of Walton, KY on being recognized as one of America's top principals in the 2003 National Distinguished Principal Program by the U.S. Department of Education.

The annual National Distinguished Principals Program was established in 1984 to honor elementary and middle school principals who set high standards for the pace, character, and quality of the education their students receive.

Ms. Hoffman, a principal at Fort Wright Elementary School, in Covington, KY, has been recognized by the U.S. Department of Education for her tireless work in exhibiting excellence at Fort Wright Elementary School and has made outstanding contributions to the Covington community. Ms. Hoffman sets an example of excellence for the rest of the faculty, and the faculty follows that example. She inspires her students to achieve academically and contribute to the community.

I know ask my fellow colleagues to join me in thanking Margaret Ann Hoffman for her dedication and commitment to the education of America's future. In order for our society to continue to advance in the right direction, we must have principals like Margaret Ann Hoffman in our schools, and communities, and lives. She is Kentucky at its finest.●

IN HONOR OF MIKE ELWOOD

• Mr. WYDEN. Mr. President, I rise today to acknowledge and honor a very important constituent, as well as a very important program in my State and across the Nation—CASA for Children. "CASA" is short for Court Appointed Special Advocate, and it is a program that is made up of extraordinary men and women who find it in their hearts to devote their time and energy to help some of the neediest of their community's children. CASAs come from all walks of life, all professions, and all educational and ethnic backgrounds, and their mission is to advocate for the best interests of children who find themselves, through no fault of their own, under the jurisdiction of the juvenile court system.

As we see all too often in public service, far too many children find themselves enmeshed in the juvenile court system due to abuse, neglect or abandonment. Once in the court system, these kids can find themselves cruelly buffeted by legal battles and their parents' continuing poor choices. Some find themselves in multiple foster care situations at a very young age, and many are eventually permanently removed from the care of their birth parents. CASAs serve their communities by becoming an independent advocate for a child as a sworn officer of the court. They spend time with health professionals, teachers, parents, prospective parents, and the children themselves to help the court reach the best possible conclusion for the interests of the child.

CASA came to Oregon in 1985 under the leadership of Judge Stephen Herrell and citizen advocate, Susan Holloway. For Almost 20 years, CASA has trained Oregon volunteers to be the eyes and ears of the court, making independent objective recommendations regarding the best interests of children.

In Oregon, we have a CASA leader who personally exemplifies the very best of my State in his legacy of commitment to the future of Oregon's children. Mike Elwood, who has been both