

going to be one of his great challenges, but he has the experience and ability to make it to work.

I, frankly, am one who is of the opinion that if a person has been in the field actually prosecuting cases, actually working at night with IRS agents and Customs agents and Immigration agents and FBI agents and DEA agents, and all of these law enforcement officers, dealing with their supervisors and bosses, they know something that somebody who has never done that cannot understand. They have a comprehension of the difficulty of our Government to work efficiently and productively. They also, if they are good at it, have proven to be successful at it. That is how you judge success in leadership, such as being a criminal division chief or a U.S. attorney—how well you can get these agencies to work together.

So I am excited about that. I have known him for a long period of time. I can say, without hesitation, that when he was selected as U.S. attorney in New Jersey, and I was a U.S. attorney myself at that time, everyone knew that was a promotion on merit. His reputation for excellence and skill and legal ability had been known throughout the Department of Justice for some time. His appointment there was received throughout the entire Department of Justice with great pride and hope for success. And indeed, he had a highly successful record.

So I just want to say from my personal experience with him, having served with him, having known him for many years, and having known his reputation among those who worked closely with him, that he has all the gifts and graces that are required to be a great Secretary of Homeland Security.

I know they say: Well, he should turn over these documents. First, let me say this: They are not his documents. These are documents of the U.S. Department of Justice, memorandums they have. There is a legitimate concern about Members of this Congress using every confirmation we have to see what they can drag out so they can dig through memoranda and documents that represent private conversations within the executive branch.

What would we think in the Senate if the President got mad at us and said: I want to see every document that was sent between you and your legislative assistant on all these issues. We would not like that. We would say: Well, we ought to have some right to talk to our staff and communicate with one another and have private conversations and think through these issues. If we tell our staff that everything they say is going to be made public the next day or they cannot put something in a memorandum because it may be on the front page of a newspaper the next day, maybe that would diminish the natural quality of our communication. In fact, it might inhibit good communication.

Back on February 7 of this year, the Department of Justice responded to

this request that was sent to Mr. Mueller of the FBI. It requested "the unredacted version of a classified three-page FBI document, dated May 10, 2004, regarding the interrogation of detainees at Guantanamo Bay." The Justice Department's response was this. It was not Judge Chertoff's response. He has been on the Federal bench as a Federal judge, with a lifetime appointment, which he is willing to give up, from the appellate court, a highly prestigious thing in itself, to serve his country to be involved in protecting this country.

Indeed, when asked why he was willing to do that, he said: When asked to serve in a way to protect my country, I could not say no.

They said this:

We have carefully considered your request, but concluded that the unredacted document cannot be released in response to your request because it contains information covered by the Privacy Act, 5 United States Code 552a, as well as deliberative process material.

That is not an insignificant matter. Deliberative process material involves efforts by the executive branch to study an issue, to deliberate on it and formulate a position.

The decision an agency makes is public, but everything they do in deliberating that should not be produced willy-nilly just because somebody in Congress wants to go on a fishing expedition.

It goes on to say:

We note, however, that the document is comprised of FBI messages that were not sent by or addressed to Judge Chertoff and it contains no reference to him by name or otherwise.

I don't think this is anything unusual and dramatic and unexpected that this document should be rejected. I believe the Department of Justice has considered it carefully and rendered an opinion that is fair and just. I support them on it. I know there are certain times documents need to be produced, but there are reasons why documents should not be produced willy-nilly. The Department has considered this carefully and rendered this opinion.

I admire Judge Michael Chertoff. He is a first-rate lawyer. He is a man of incredible experience. As chief of the Criminal Division of the Department of Justice, he had an opportunity to see firsthand the difficulties and challenges of the war against terrorism. He performed admirably in that position, as he has in every other position he has held in our Government. He can make so much more money in private practice. He could take a quiet position and stay as a lifetime-appointed Federal circuit judge. But he turned that down to serve our country. This Nation will benefit from his service. I am so glad the committee voted to refer him out positively. I am confident he will be confirmed.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Maine.

Ms. COLLINS. Mr. President, I thank my colleague from Alabama for his excellent statement. I appreciate the perspective he brings. Given his own experience as a U.S. Attorney, he has a special appreciation for that part of Judge Chertoff's career, and his endorsement will carry a lot of weight with our colleagues.

How much time is remaining for the debate today?

The PRESIDING OFFICER. The Senator from Maine has 76 minutes remaining. The minority is out of time.

Ms. COLLINS. Mr. President, I inquire of the Presiding Officer, the 76 minutes is for today's debate, as opposed to tomorrow's; correct?

The PRESIDING OFFICER. The Senator is correct.

Ms. COLLINS. Mr. President, I know of no further requests for time on our side this evening so I am prepared to yield back, and I do, the 76 minutes.

The PRESIDING OFFICER. Time is yielded back.

Ms. COLLINS. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Ms. COLLINS. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

PASSAGE OF THE CLASS ACTION FAIRNESS ACT

Mr. GRASSLEY. Mr. President, I would like to thank my colleagues for supporting S. 5, the Class Action Fairness Act, which we passed last week and which is set to be considered in the House this week. This little bill that Senator KOHL and I first introduced back in the 105th Congress is finally at the finish line. Little did I know it was going to take five Congresses to get it done. But we had to do it. The abuses in the class action system are real, and this is a good first step at fixing some of them.

Although the Class Action Fairness Act was always a bipartisan bill, we had to negotiate numerous compromises to garner enough support to defeat a filibuster here in the Senate. In the end, this bill is a good example of what we can accomplish when we work together in a bipartisan fashion. The final passage vote of 72 to 36 is proof positive of that.

So I am pleased that we are on the verge of getting class action reform to the President's desk. There are many

colleagues that I would like to thank in the Senate for their leadership and support—Majority Leader FRIST, Republican Whip MCCONNELL, Chairman SPECTER, Senator HATCH, Senator SESSIONS, Senator KOHL, and Senator CARPER. I also want to thank their staff as well for a job well done—Allen Hicks, Eric Ueland and Sharon Soderstrom with the majority leader; John Abegg and Kyle Simmons with Senator MCCONNELL; Harold Kim, Michael O'Neill and David Brog with Chairman SPECTER; Kevin O'Scanlin with Senator HATCH; William Smith and Cindy Hayden with Senator SESSIONS; and John Kilvington with Senator CARPER. I would like to acknowledge in particular Jeff Miller with Senator KOHL, who worked closely with my staff on this bill over the years. Finally, I would like to thank Rita Lari Jochum, my Judiciary Committee chief counsel, who has worked on this bill since 1998, and whose legal skills and determination were instrumental in getting this bill passed in the Senate.

Mr. SANTORUM. Mr. President, I regret that I was unable to vote on final passage of S. 5. I was traveling with President Bush in Pennsylvania.

I wish to express my support of the Senate passage of S. 5, the Class Action Fairness Act. As a cosponsor of this legislation, I am pleased that the Senate passed a bill that will help prevent the serious problem of class action abuse.

The Class Action Fairness Act is a modest bipartisan bill that addresses some of the most serious abuses by allowing more large interstate class actions to be heard in Federal court, and by implementing a "Consumer Class Action Bill of Rights" to protect consumers.

S. 5 will expand Federal jurisdiction over large, interstate class actions. Since the founding of this country, Federal diversity jurisdiction has existed over cases between citizens of different States involving large amounts of money. However, because of the way that some have interpreted the law, class action cases involving parties from many states and millions of dollars largely have been excluded from this rule and are confined to State court. The Class Action Fairness Act closes this loophole by creating Federal jurisdiction over large multi-State class actions.

I ask that the RECORD reflect that, had I been here, I would have voted in favor of S. 5, the Class Action Fairness Act. In passing this legislation in the Senate, we have taken a constructive step in addressing the abuses in the civil justice system while maintaining the rights of consumers.

Mr. OBAMA. Mr. President, I rise today to discuss the Class Action Fairness Act of 2005. As both a lawyer and a citizen, I am a strong believer in class actions as a way for ordinary people who have been wronged by a corporation to band together and seek justice. Some of our great advances in

civil rights and consumer protections have come from these actions.

But there is overwhelming evidence that there are abuses in the class action system that should be addressed. When multimillion dollar settlements are handed down and all the victims get are coupons for a free product, justice is not being served. And when cases are tried in counties only because it's known that those judges will award big payoffs, you get quick settlements without ever finding out who's right and who's wrong.

Every American deserves their day in court. This bill, while not perfect, gives people that day while still providing the reasonable reforms necessary to safeguard against the most blatant abuses of the system. I also hope that the Federal judiciary takes seriously their expanded role in class action litigation, and upholds their responsibility to fairly certify class actions so that they may protect our civil and consumer rights. Senator SPECTER has pledged to work on these issues and address these serious concerns in the future, and I look forward to joining him so we can improve this law.

RULES OF PROCEDURE

Mr. LUGAR. Mr. President, pursuant to the requirements of paragraph 2 of Senate Rule XXVI, I ask unanimous consent to have printed in the RECORD the rules of the Committee on Foreign Relations for the 109th Congress adopted by the committee on February 1, 2005.

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

RULES OF THE COMMITTEE ON FOREIGN RELATIONS

(Adopted February 1, 2005)

RULE 1—JURISDICTION

(a) Substantive.—In accordance with Senate Rule XXV.1(j), the jurisdiction of the Committee shall extend to all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Acquisition of land and buildings for embassies and legations in foreign countries.
2. Boundaries of the United States.
3. Diplomatic service.
4. Foreign economic, military, technical, and humanitarian assistance.
5. Foreign loans.
6. International activities of the American National Red Cross and the International Committee of the Red Cross.
7. International aspects of nuclear energy, including nuclear transfer policy.
8. International conferences and congresses.
9. International law as it relates to foreign policy.
10. International Monetary Fund and other international organizations established primarily for international monetary purposes (except that, at the request of the Committee on Banking, Housing, and Urban Affairs, any proposed legislation relating to such subjects reported by the Committee on Foreign Relations shall be referred to the Committee on Banking, Housing, and Urban Affairs).
11. Intervention abroad and declarations of war.

12. Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

13. National security and international aspects of trusteeships of the United States.

14. Ocean and international environmental and scientific affairs as they relate to foreign policy.

15. Protection of United States citizens abroad and expatriation.

16. Relations of the United States with foreign nations generally.

17. Treaties and executive agreements, except reciprocal trade agreements.

18. United Nations and its affiliated organizations.

19. World Bank group, the regional development banks, and other international organizations established primarily for development assistance purposes.

The Committee is also mandated by Senate Rule XXV.1(j) to study and review, on a comprehensive basis, matters relating to the national security policy, foreign policy, and international economic policy as it relates to foreign policy of the United States, and matters relating to food, hunger, and nutrition in foreign countries, and report thereon from time to time.

(b) Oversight.—The Committee also has a responsibility under Senate Rule XXVI.8, which provides that ". . . each standing Committee . . . shall review and study, on a continuing basis, the application, administration, and execution of those laws or parts of laws, the subject matter of which is within the jurisdiction of the Committee."

(c) "Advice and Consent" Clauses.—The Committee has a special responsibility to assist the Senate in its constitutional function of providing "advice and consent" to all treaties entered into by the United States and all nominations to the principal executive branch positions in the field of foreign policy and diplomacy.

RULE 2—SUBCOMMITTEES

(a) Creation.—Unless otherwise authorized by law or Senate resolution, subcommittees shall be created by majority vote of the Committee and shall deal with such legislation and oversight of programs and policies as the Committee directs. Legislative measures or other matters may be referred to a subcommittee for consideration in the discretion of the Chairman or by vote of a majority of the Committee. If the principal subject matter of a measure or matter to be referred falls within the jurisdiction of more than one subcommittee, the Chairman or the Committee may refer the matter to two or more subcommittees for joint consideration.

(b) Assignments.—Assignments of members to subcommittees shall be made in an equitable fashion. No member of the Committee may receive assignment to a second subcommittee until, in order of seniority, all members of the Committee have chosen assignments to one subcommittee, and no member shall receive assignments to a third subcommittee until, in order of seniority, all members have chosen assignments to two subcommittees.

No member of the Committee may serve on more than four subcommittees at any one time.

The Chairman and Ranking Member of the Committee shall be ex officio members, without vote, of each subcommittee.

(c) Meetings.—Except when funds have been specifically made available by the Senate for a subcommittee purpose, no subcommittee of the Committee on Foreign Relations shall hold hearings involving expenses without prior approval of the Chairman of the full Committee or by decision of the full Committee. Meetings of subcommittees shall be scheduled after consultation