Mr. DOMENICI. What is the issue before the Senate?

The PRESIDING OFFICER. The issue before the Senate now is the conference report accompanying H.R. 6. There is 2 minutes equally divided.

Mr. DOMENICI. I understand the distinguished Senator from Wisconsin desires to make a point of order.

Mr. FEINGOLD. Mr. President, I have 1 minute; is that correct?

The PRESIDING OFFICER. That is correct.

The Senate will be in order.

The Senator is recognized.

Mr. FEINGOLD. I have four fundamental concerns with regard to the Energy conference report: it digs us deeper into a budget black hole, it fails to decrease our dependence on foreign oil, it rolls back important consumer protections, and it undermines some of the fundamental environmental laws our citizens rely upon.

The conference report includes direct spending of more than $2.2 billion over the 2006–2010 period, exceeding the amount allocated by the budget resolution, so I hope my colleagues will join me in sustaining a budget point of order.

Mr. President, I make a point of order that the pending conference report violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Was the motion just made?

The PRESIDING OFFICER. A point of order was made.

Mr. DOMENICI. I move to waive the point of order subject to appropriate provisions of the Budget Act.

The PRESIDING OFFICER. The Senator from New Mexico moves to waive the budget point of order.

Mr. DOMENICI. Mr. President, I have 2 minutes; is that correct?

The PRESIDING OFFICER. One minute.

Mr. DOMENICI. One minute. First, this is almost not a point of order. It is $40 million a year. That is because we had $2 billion in direct spending, $2 billion in this whole bill. What we did, when we ended up doing all of the estimating, it was 2.2. So anybody who thinks this point of order is a real budget point of order, it is a nothing point of order. Many times the budget process takes $50 million and rolls it because they are trying to make things meet, and here we are having a point of order making it sound like a bunch—$40 million.

The last comment is this bill reduces the deficit because the tax writing committee came in $6 billion under. We are $200 million a year over. Do the arithmetic. The bill reduces the deficit; it doesn't raise it. I think this is the very reason the waiver provisions in the Budget Act were provided, for mistakes like these in estimating. That is why we have a waiver section. Members should vote in favor of the Domenici motion to waive.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Mexico to waive the Budget Act.

Mr. CRAIG. 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 (Mr. COLEMAN). The clerk will call the roll.

The assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 71, nays 29, as follows:

[Rollcall Vote No. 212 Leg.]

YEAS—71

Akaka	Dodd	McConnell
Alexander	Dole	Mikulski
Allard	Domenici	Murkowski
Allen	Dorgan	Nelson (NE)
Baucus	Durbin	Obama
Bennett	Ensign	Pryor
Bingaman	Enzi	Roberts
Bond	Feinstein	Rockefeller
Brownback	Frist	Salazar
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Hagel	Shelby
Byrd	Harkin	Smith
Cantwell	Hatch	Snowe
Coburn	Hutchison	Specter
Cochran	Inhofe	Stabenow
Coleman	Inouye	Stevens
Collins	Johnson	Talent
Conrad	Landrieu	Thomas
Craig	Levin	Thune
Crapo	Lieberman	Vitter
Dayton	Lincoln	Voinovich
DeMint	Lott	Warner
DeWine	Lugar	

NAYS—29

Bayh	Gregg	McCain
Biden	Isakson	Murray
Boxer	Jeffords	Nelson (FL)
Carper	Kennedy	Reed
Chafee	Kerry	Reid
Chambliss	Kohl	Sarbanes
Clinton	Kyl	Schumer
Cornyn	Lautenberg	Sununu
Corzine	Leahy	Wyden
Feingold	Martinez	

The PRESIDING OFFICER (Mr. THOMAS). On this vote, the yeas are 71, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to and the point of order falls.

The question now is on agreeing to the conference report.

Mr. DOMENICI. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. DOMENICI. Mr. President, I ask for the yeas and nays on the conference report.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 74, nays 26, as follows:

[Rollcall Vote No. 213 Leg.]

YEAS—74

Akaka	Allen	Bennett
Alexander	Baucus	Bingaman
Allard	Bayh	Bond
Brownback	Ensign	Murkowski
Bunning	Enzi	Nelson (NE)
Burns	Frist	Obama
Burr	Graham	Pryor
Byrd	Grassley	Roberts
Cantwell	Hagel	Rockefeller
Chambliss	Harkin	Salazar
Coburn	Hatch	Santorum
Cochran	Hutchison	Sessions
Coleman	Inhofe	Shelby
Collins	Inouye	Smith
Conrad	Isakson	Snowe
Cornyn	Johnson	Specter
Craig	Kohl	Stabenow
Crapo	Landrieu	Stevens
Dayton	Levin	Talent
DeMint	Lieberman	Thomas
DeWine	Lincoln	Thune
Dole	Lott	Vitter
Domenici	Lugar	Voinovich
Dorgan	McConnell	Warner
Durbin	Mikulski	

NAYS—26

Biden	Gregg	Murray
Boxer	Jeffords	Nelson (FL)
Carper	Kennedy	Reed
Chafee	Kerry	Reid
Clinton	Kyl	Sarbanes
Corzine	Lautenberg	Schumer
Dodd	Leahy	Sununu
Feingold	Martinez	Wyden
Feinstein	McCain	

The conference report was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. BINGAMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 397, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

Pending:

Frist (for Craig) modified amendment No. 1605, to make clear that the bill does not apply to actions commenced by the Attorney General to enforce the Gun Control Act.

Frist modified amendment No. 1606 (to amendment No. 1605), to make clear that the bill does not apply to actions commenced by the Attorney General to enforce the Gun Control Act and National Firearms Act.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we have now returned to S. 397. Under a unanimous consent agreement, there are four amendments to be debated, and three of the four will have relevant first degrees. My colleague from Kansas has asked to speak very briefly before we move to the first amendment.

I yield to Senator ROBERTS.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I thank the distinguished Senator for yielding.

There is not another thing, basically, on any of these amendments that has not already been said or that will change anybody's vote. I don't intend

to hold the Senate up, but I want to take a moment to comment on where we are in the legislative schedule and to make a personal request of my colleagues. I don't question the right of any Senator to be heard on the Senate floor. But I must say I do not understand the need to continue debating and discussing all of these amendments on the Friday afternoon before the start of a long month's recess. I ask, could we please cut down on the rhetoric so that we might be able to get along with the people's business and cast our votes. I know the manager wants that. I would probably determine that the minority would like that as well.

I make this request not only as a Senator from Kansas but as the father of a young lady that I will be walking down the aisle tomorrow. Very early this week I informed our leaders in the Senate that I had every intention of being at her rehearsal, and that rehearsal and dinner starts at 5 o'clock. I will be there. So if we must continue on making these statements this afternoon and offering these amendments, I ask that the RECORD reflect that any votes I miss will be the result of me performing my duties as a dad and being with my daughter on the most important evening and day of her life.

Thus, Mr. President, I ask unanimous consent that the RECORD reflect that should I miss votes in the afternoon, it would have been my intention to vote as follows on the Transportation bill, amendments to the gun liability bill, and the gun liability bill itself:

''Yea'' on the Transportation bill; ''nay'' on the Reed amendment No. 1642; ''yea'' on the Frist-Craig first-degree amendment to the Kennedy amendment No. 1615. Should the first-degree amendment not be accepted, I would vote ''nay'' on the Kennedy amendment. I would vote ''yea'' on the Frist-Craig first-degree amendment to the Corzine amendment No. 1619. Should the first-degree amendment not be accepted, it would have been my intention to vote ''nay'' on the Corzine amendment. It would be my intention to vote ''yea'' on the Frist-Craig first-degree amendment to the Lautenberg amendment No. 1620. Should the first-degree amendment not be accepted, it would be my intention to vote ''nay'' on the Lautenberg amendment. Finally, it would be my intention to vote ''yea'' on final passage of the gun liability bill.

I respect and love you all. I admire you all. But while charm and looks and levity may woo us in the start, in the end it is brevity that will win my colleagues' hearts.

I yield the floor.

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

The Senator from Idaho.

Mr. CRAIG. An interesting speech about not making speeches. I yield the floor for the offering of an amendment.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 1620

Mr. LAUTENBERG. Mr. President, I wonder if I might dare to offer my comments after that earlier admonition. But I will do it because we are here for reasons that are obvious to everybody. We are here because our friends on the other side wanted to stop us from offering amendments altogether and are trying to block any suggestion that might be added to make this bill more reasonable or more acceptable.

I call up my amendment and ask unanimous consent that Senator DODD be added as a cosponsor.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself and Mr. DODD, proposes an amendment numbered 1620.

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

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

The amendment is as follows:

(Purpose: To exempt lawsuits involving injuries to children from the definition of qualified civil liability action)

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case against a manufacturer or seller involving an injury to or the death of a person under 17 years of age.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

Mr. LAUTENBERG. Mr. President, I am offering this amendment that poses a question to the Senate. The question is fairly simple: What is more important in our life, in our society, to be on watch for: Is it to protect our Nation's children and to let those know who would assist in harming those children that they are going to be taken to court and be sued and punished, if they can be punished, or for criminal action as well? This refers only to the civil side of things. But what is more important? Is it most important for us to support the NRA, to make sure they are satisfied, to make sure that their dictates to this body—and it is obvious that it is all over the place. Ladies and gentlemen who can hear us in this debate, understand that the other side is willing to block your ability, your family's ability to sue someone who has been neglectful, careless, reckless with the way a gun is handled and to protect them.

Why? Frankly, I cannot figure it out. But apparently our friends on the other side have it all figured out. They just say no. We went through that exercise in our society, and it didn't work. It is not going to work here. Is it to protect our children? Special interests versus the children in America.

This bill—everyone knows—wants to protect the gun industry even, as I said, when they are grossly negligent, reckless, careless. What my amendment says is that there should not be a blanket grant of immunity in cases in which a child is the victim. We identify a child as those children under 17 years of age. How dare we look a mother in the eye and tell her that she cannot hold the people who caused the death or injury to her child accountable? We cannot do it. One has to look deeply into whether there is a constitutional question associated with this. The fifth amendment suggests that you have the right to seek damages—this is not precise language—for injuries.

What this bill says now is that the parents of children killed by gunfire, when someone else is at fault, even if they are careless, reckless, or negligent, cannot seek redress. It has been said before by colleagues that there are numerous industries that would like the same protection so they can go ahead perhaps and not be as careful in making sure their product meets safety standards. But, no, they didn't have the muscle to break their way into this place and ''at gunpoint''—if I may use the expression—jam something through this Senate. And they describe these shamelessly as junk lawsuits—that is hard to understand. The bill says, too bad, sorry about your kid, but we cannot let you harm these big campaign donors of ours. No, no, no. It is kind of sacrosanct. But it is prohibited for every other industry in this world of ours.

If they make a faulty product and if they are negligent in its handling, they can be taken to court and sued. I will provide an example. A criminal goes into a gunshop and asks to look at assault weapons. The dealer lays out deadly weapons on the counter and the dealer says: Just a minute. I have to go in the back. Here are these weapons on the counter. When the dealer returns from the back room, where he said he was going to check something in inventory, the criminal has taken the weapon and left the store.

Can you imagine that outrageous behavior? The lethal weapons were on the counter. The dealer could turn his back for a moment and have someone with criminal intent steal a gun and go out. The dealer cannot be punished for that

outrageous behavior. The next day, that criminal could use that weapon in a drive-by shooting and kill a 6-year-old boy.

If this bill passes in its current form, the parents of that child cannot go to court to sue against that negligent gun dealer. When the parents ask why they can't sue this dealer whose negligence caused their son's death or permanent disability, we can tell them to thank their Senator; get the phone number and office address of their Senator, and they can send their gratitude to that Senator—or their anger and their rage—which they have a right to do.

Mr. President, nearly 3,000 children die from gunshot wounds every year in our country. The Senate ought to try to reduce that statistic and not stand by and permit it to grow.

According to the CDC, the latest statistics show that in 2002, 2,867 children and teenagers died from gunshot incidents in the United States. The CDC also found that firearm-related deaths among children under the age of 15 were 12 times higher here than in 25 other industrialized countries combined. Let me repeat that. Firearm-related deaths among children under 15 in our country were 12 times higher than in 25 other industrialized countries combined. We are not talking about backwoods or primitive countries; we are talking about industrialized countries. They are much more conscious about protecting their population from random gunshots than we are. These are shameful statistics.

So why does it matter whether negligent gun dealers are held accountable? Because when we hold people accountable for their actions, we prevent wrongdoing that will hurt more people in the future. It sends a clear message—hey, if you are not careful with your inventory of guns, if you are not careful of whom you sell that gun to, if you are not careful with what kind of a retailer you distribute your guns to, you are going to pay a price, a stiff price. Maybe it will put you out of business. Maybe you deserve to go out of business. That is what I say. Why should we lock the courthouse doors to our children and the families of children killed or injured by guns?

Mr. President, earlier I used a hypothetical example, but there are thousands of real-life examples of children suffering because of gun industry negligence. There is the story of Tennille Jefferson, the mother of a young son who became another statistic of gun violence. On April 19, 1999, her son, Nafis, was shot and killed by a young man who found a gun on the street belonging to a gun trafficker named Perry Bruce.

Perry Bruce bought this deadly weapon from a gun dealer who had repeatedly sold him guns, despite many obvious signs that he was a gun trafficker. Mr. Bruce had shown a welfare card as his identification; yet, somehow nobody at this store bothered to question how he had thousands of dollars to purchase 10 guns at a time.

Mr. Bruce has stated that the gun dealer ''had to know what I was doing'' and that he was high on marijuana each time he bought guns from this gun dealer.

Gun dealers like this must be held accountable. This bill gives them a free pass to do any darn thing they want, except certain classes of negligence, or negligence per se; otherwise, it is a free pass.

The senior Senator from Virginia spoke so eloquently yesterday about this issue. He pointed out that the vast majority of licensed gun dealers followed the rules, but there are those rogue dealers that act negligently and cause death and injury. Senator WARNER explained it to us that this bill before us gives these rogue gun dealers a pass. This bill says—and I quote Warner—''Go ahead. Do whatever you want.''

Shamefully, the Senate leadership denied Senator WARNER—a distinguished, long-serving Senator, a veteran of World War II—from having a chance to have a vote on his amendment. I didn't think I would be here defending a Republican Senator's chance to offer an amendment, but they made sure that that wasn't going to happen. Even though there is purported respect, affection, and almost reverence for Senator John Warner, they denied him a chance to stand on this floor and offer an amendment. No, the NRA is more powerful than Senator WARNER. It is shameful. In my view, it was so disrespectful to a senior Member of this body.

My amendment takes on pretty much the same issue as Senator WARNER but with a narrower focus. Do those whose actions lead to the death or injury of a child get a free pass? To me, there is only one answer there. I would take my kid over anything that the NRA needs or wants any time.

I would fight like the devil for it. I once carried a gun for it when I served in World War II. So the question before the Senate on my amendment is: Whom do you want to please? Do you want to please mothers, fathers, grandparents, brothers, and sisters? Or do you want to protect the NRA, the gun manufacturers, the gun distributors—those who at times don't give a darn about how they handle these things?

We are going to hear the cry about how we are going to put these innocent people out of business. Out of business? No. We don't want to put them out of business. If they are going to be in the business, and they are legally licensed, they need to be careful and make sure they obey the rules. If they don't, they will pay a price—perhaps criminally, but surely civilly.

If we fail to adopt my amendment, gun dealers are not going to have any accountability, no incentive to behave responsibly, no matter the number of children who die from gun violence. Our criminal justice system brings about punishment—yes, they take the person who committed a violent act or a felony and make them pay. Purportedly, it registers with others who would conduct similar acts, and that is the way we operate.

But here, no. We are saying: Listen, you don't even have to be careful. You can be negligent and reckless. Do what you want. Come on. It is for the gun industry, for the NRA. Whom do we have to respect around here? It is obvious that they think it is the NRA. It is unjust, unfair, and immoral for us, as elected officials, to strip away the rights of children and families who are harmed or killed by gunfire.

Are Senators willing to look in the eye of Tennile Jefferson and tell her the door to the courthouse is barred for her?

I wish to talk about something we know will be pending, and that is the Republican alternative ostensibly to offer the protection these children's families might need from my amendment. To put it bluntly, the Republican sham protection is an insult. It is an insult to America's children. It is an insult to America's parents. It is an insult to this Senate. It is an insult to morality. That is the way it is going to come about.

You are going to say: No, that child's family can be protected by those conditions already laid out for penetrating the shield of protection that the gun industry and the NRA are demanding.

I urge my colleagues to read this so-called alternative, and I urge the public to get this language. Understand what is taking place. Compare my amendment to that which is going to be offered and see which one is serious about offering the opportunity for people to seek compensation in the event of injury.

The Republican language makes clear that children get no special treatment under this bill. It says that children are subject to the same limited exemptions that everyone else has under this bill, approximately three conditions. Negligence and negligence per se are exempt from the prohibition. In our amendment, negligent entrustment and negligence per se are still able to be adjudicated in a court in a civil action.

Our amendment says that the gun violence immunity bill should not apply to children. Please, look at your own families. See what you would do to someone who would harm your child, maybe render them totally disabled for life. How would you react to that? Would you say, Too bad, the courts in America will not allow us to seek redress, to get some measure of compensation? There is never enough money to bring back the health and well-being of a child who was killed or a child who is permanently injured.

This will block legal actions on the behalf of children and their families who are injured or killed. It is about as simple a decision as we get around here. Are there times when the courthouse doors ought to be locked, be shut to children or their families, or shouldn't they?

I urge my colleagues once again to think about the faces of their children. I have 10 grandchildren, and nothing in this world is more important to me than all 10 or any 1 of those 10 grandchildren. I think everybody else, even those who right now are supporting this hard-hearted legislation, even those people I know love their children. They don't want anything to happen to them. They want to protect them as much as they can. I bet whatever devices they can use to protect them they would use.

So come on, think about it when you cast your vote. Look in the mirror one time and challenge your conscience to see how you ought to be voting. Let that be your guide.

Mr. President, I believe we have more time for this amendment. What is the status of the time for our side?

The PRESIDING OFFICER (Mr. BURR). The Senator has 1 minute remaining.

Mr. LAUTENBERG. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator reserves the remainder of his time.

Who yields time? The Senator from Idaho.

AMENDMENT NO. 1644

Mr. CRAIG. Mr. President, under the order, I send a relevant first-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] proposes an amendment numbered 1644.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

The amendment is as follows:

(Purpose: To protect the rights of children who are victimized by crime to secure compensation from those who participate in the arming of criminals)

On page 11, between lines 6 and 7, insert the following:

(D) MINOR CHILD EXCEPTION.—Nothing in this Act shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

Mr. CRAIG. Mr. President, we have just heard the arguments of Senator LAUTENBERG in relation to his amendment. I most assuredly in no way question the sincerity of the Senator and the environment in which this amendment has been offered. But if I can be as direct as I can be, if you want to drive a truck through the middle of the bill, then the Lautenberg amendment accomplishes just that. In the name of children, yes, and we should be sensitive to children. Of course we are. Children are as protected under this proposed law as anyone else because this law says go after the criminal, don't go after the law-abiding gun manufacturer or the law-abiding gun seller.

But if there is negligent entrustment, if that can be proven, certainly if that seller or if that gun dealer or manufacturer is negligent, then anyone can and should bring lawsuits. It is the same issue we faced on previous amendments trying to carve out a special class that gets favored treatment beyond another class, and with children, certainly that would sound like we would want to be more sensitive.

Most of us in the Senate are parents, but you don't have to be a parent to grieve over a child's injury or a child's death. We have many laws on the books at both the State and the Federal level, and some of them are placed by this very Senate to protect our Nation's most vulnerable—our children. We must insist on the enforcement of those laws instead of constantly trying to carve out something special that may not even be that enforceable. How do you protect children on the street? You go after the criminal who is packing the gun on the street. Every year we do that, those deaths go down in America, whether it is a child's death or whether it is an adult's death. The Lautenberg amendment speaks to those 17 years of age and younger.

If those laws are broken by the gun industry, then the bill we are considering today will not shield them from the lawsuits or from the kind of harm that is rendered. If this is the same issue—and it is—we have debated several times to carve out something special, then we should not do that. But what we are saying in the alternative that has just been offered is that the bill allows lawsuits against firearms industries by and for children to the same extent that it does for any other victim of the illegal misuse of a firearm in relation to a gun manufacturer and a gun dealer.

Under this, if a child is injured by some wrongdoing of the gun industry, the lawsuits are not barred. Again, remember yesterday we debated the question of negligence and reckless conduct, and it was very clearly established by a substantially large vote in the Senate that it does not take away the standards of law and the specifications within the Federal law today as it relates to the responsible and legal operation and performance of a gun manufacturer or a licensed Federal firearms dealer.

How do you solve the crisis or the problem so defined by Senator LAUTENBERG? You enforce the law. You go after the criminal. You go after the drug dealer. You go to the streets of America and you sweep them clean of those who would break the law and those who are stealing the guns and those who are misusing the guns, instead of going after a law-abiding legal citizen manufacturing a law-abiding and legal product.

I believe that is the issue, and I ask my colleagues to support us in voting for the alternative and opposing the Lautenberg amendment.

I now yield to Senator THUNE for any comments he would wish to make. What is the time remaining on our side?

The PRESIDING OFFICER. The Senator from Idaho has 15 minutes 10 seconds.

Mr. CRAIG. I yield 10 minutes to the Senator.

Mr. LAUTENBERG. Will the Senator yield for a question and clarification of terms?

Mr. CRAIG. I yield.

Mr. LAUTENBERG. On the question of gross negligence, does gross negligence pierce the prohibition suit?

Mr. CRAIG. If it is spelled out within the context of the Federal law today, it would. Under this bill, it would not unless it could be established as a violation of the current laws of our country and under the current standards. We are not creating a new category as the Levin amendment tried to do as it relates to gross negligence or reckless misconduct. But what was established was negligence, negligent entrustment is not exempt from this law.

Mr. LAUTENBERG. Didn't the Senator from Michigan offer the gross negligence exemption and had it denied because——

Mr. CRAIG. In the broadest sense, he did.

Reclaiming my time, I yield to the Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota is recognized for 10 minutes.

Mr. THUNE. Mr. President, I thank the Senator from Idaho for his leadership on this issue and for yielding time. I rise in strong support of the Protection of Lawful Commerce in Arms Act and in opposition to these amendments that will be offered this afternoon, all of which are designed to gut the underlying legislation.

It has been noted throughout the course of this debate that prosecutions are up, crime is down. That should be the fundamental focus of our efforts—protecting people from crimes committed by firearms.

I come from a State where we view these issues as a part of our personal freedoms, part of the rights that are guaranteed under the Constitution, the opportunity to possess and own firearms. It is a part of the culture of our State, a belief in personal freedom, also coupled with personal responsibility, which is why every year thousands of young South Dakotans take the firearm safety course and learn the responsible use of firearms and then go out and have the opportunity to hunt and recreate and enjoy the great outdoors in our great State.

That was the opportunity I had as a young 12-year-old. I have taught my teenage daughters responsible use of firearms. It is part of our history. It is part of our tradition. It is part of our culture.

The bill before us today would end many of the abusive lawsuits that are often filed, largely with the intent to bankrupt the firearms industry. Contrary to the assertions by some, this

bill is not about the NRA. This bill is about law-abiding gun owners, it is about law-abiding gun dealers, it is about law-abiding gun manufacturers who are having that second amendment right infringed upon by those who are trying to destroy an industry that, for a couple of centuries now, has provided quality workmanship in accordance with Federal and State laws.

This bill is about reestablishing some of the fairness and justice, getting it back into our judicial system. This bill attempts to remedy a system that allows innocent parties—in this case, gun manufacturers and gun dealers—who have abided by the law to become victims of predatory lawsuits.

Furthermore, we are protecting American workers who are in danger of losing their jobs due to the enormous amount of money that must be spent to defend against unfounded lawsuits.

I also support this legislation because it would take the first step in ending what has been now a decades-long trend of using the courts to effect social change. For far too long, the American judicial system has been used as a conduit around the legislative process in an attempt to make public policy or implement social change outside the democratic process.

The aim of this bill is clear: to allow legitimate lawsuits against a manufacturer when the legal principles to do so are present. The bill allows suits against manufacturers who breach a contract or a warranty, for negligent entrustment of a firearm, for violating a law in the production or sale of a firearm, or for harm caused by a defect in design or manufacture.

These are not arbitrary standards, nor are they an approved NRA wish list. They are established legal principles that apply across the board to all industries. People who misuse firearms should pay for their crimes and answer to those they injure. However tragic, a death or an injury caused by a firearm should not create a windfall at the expense of the manufacturer if the manufacturer followed the law.

The manufacturer should not be held responsible for intentional and unforeseen acts of unrelated third parties.

The firearms industry has spent over $200 million in lawsuits. Many of these cases are not filed by injured parties but by city and municipal governments and special interest groups simply looking for the deepest pockets and not the guilty party. This bill would not allow manufacturers in the firearms industry to act as recklessly as they please, as some have asserted.

The firearms industry is one of America's most regulated industries. For example, a firearm is one of the few consumer goods that requires a waiting period or a background check. Unfortunately, some ultimately hope to drive America's gun manufacturers into bankruptcy and eventually out of business. The firearms industry is not only part of our tradition of outdoor and hunting sports, it is an integral part of our military manufacturing base. We cannot allow this industry to be bankrupted by unfounded lawsuits and endless litigation.

S. 397, this underlying bill, is good policy. It is a bipartisan bill with over 60 cosponsors and it mirrors legislation that already exists in 33 States around this country. By supporting this bill we are sending a message that Congress is committed to protecting American jobs and providing further security against predatory lawsuits. I encourage my colleagues to support the underlying legislation and to resist these amendments—these are killer amendments, gutting amendments that would undermine the entire purpose behind this legislation—and allow this legislation to pass and be put in place so the gun manufacturers and dealers of this country can operate in a fair, sensible, and just environment with the goods they produce for American firearms owners.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, may I inquire how much time remains on my side?

The PRESIDING OFFICER. The majority side has 7 minutes 45 seconds, and 53 seconds on the minority.

Mr. CRAIG. I yield 3 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Idaho for his leadership and his articulate explanation of why this is good legislation. We are following the historic principles of civil litigation in America. We had a group of activist, anti-gun litigators who sometimes buddy up with a city or mayor somewhere—usually a big city—and try to conjure up some way to make a legitimate manufacturer of a firearm liable for intervening acts of criminals and murderers.

That has never been the principle of American law, but it is a reality that is occurring today and it threatens an industry that supplies our military with weapons. The Department of Defense is concerned about it and they support this legislation. This industry supplies weapons for our policemen as they go about their duties every day. If we do not watch it, we will end up with no domestic manufacturing and have to import firearms to this country.

The Lautenberg amendment is unprincipled, unjustified, and inconsistent with the good policies of the bill. Why would we want to allow any group of people, whether age or sex or anything else, the nature of their job, be able to pursue a lawsuit that others would not be able to pursue?

Mr. REED. Would the Senator yield for a question?

Mr. SESSIONS. On the Senator's time. How much time do we have?

Mr. CRAIG. I yield time to respond if the Senator wishes.

Mr. SESSIONS. All right. I would be pleased to attempt to answer the question.

Mr. REED. The Senator from Alabama is a lawyer, a Federal attorney, and has made the statement that an intervening criminal act essentially absolves someone of negligence, which I think is a fair response, but yet the statement of torts, which is recognized generally by most lawyers as the statement of basic law in torts, says very clearly that an intervening criminal act does not absolve someone from their own negligence. Because of the standing of the Senator as an attorney, I suggest that his conclusion does not comport with what most people assume is the law of the country.

Mr. SESSIONS. All I know is I won a lawsuit on it. I defended the Veterans' Administration when a veteran went off the grounds and was murdered by a murderer. They tried to sue the VA. They said the VA was negligent in letting him get off the grounds of the VA. We alleged that one could foresee certain things and cited abundant authority to the fact that no one should be held liable and should expect criminality, an intervening criminal act, of that kind.

That is my view of it, but maybe somebody else would not have that view.

The PRESIDING OFFICER. The Senator's time has expired. Does the Senator from Idaho yield additional time?

Mr. CRAIG. I yield additional time.

Mr. SESSIONS. Just 1 minute. It is my view that this is the classic principle of law and we have gotten away from it. We have eroded these practical, realistic, historical principles of liability and, as such, insurance goes through the roof, huge verdicts are being filed against victims. The allegation has been that if somebody had their firearm stolen by a thief, they then become liable if that thief goes and murders somebody. What kind of principle of law is that? Maybe that is not the idea behind this amendment, but that is the way I see it. I do not think it is good.

This bill allows lawsuits for violation of contract, for negligence, in not following the rules and regulations and for violating any law or regulation that is part of the complex rules that control sellers and manufacturers of firearms.

I yield back my time.

The PRESIDING OFFICER. The Senator's time has expired.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this Frist-Craig amendment ensures that nothing in the gun liability bill would limit the right of a person under 17 to recover damages authorized by law in a civil action.

A person suing on behalf of an injured person can sue under traditional tort law as always.

But the underlying Lautenberg amendment would allow lawsuits even

if no law is broken, no product is defective, and no person negligently sold a gun.

These are the types of suits we are trying to stop.

So I urge my colleagues to vote for the Frist-Craig amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, I will close out our side and then the Senator from New Jersey can close.

From 1992 to the year 2003—and this is only in the area of accidental deaths by firearms—dramatically down, 54 percent. From 2001 to 2003, down 13 percent. That category is not quite what the Senator talks about, but it is from 5 to 14 that makes up 1.6 percent of the total deaths by firearms, again dramatically down. Why? These are accidental. These are not on the streets of America. But out on the streets of America, those are also down because we are enforcing the law and going after the criminal.

That is what this is all about. It is not going after law-abiding citizens. I think the Senator from Alabama put it very clearly. All new law is being treaded upon instead of adhering to consistent, known, well-established tort law in America.

I would hope my colleagues will support my amendment, the alternative to the Lautenberg amendment. I oppose the Lautenberg amendment.

I yield back the remainder of my time and would hope that Senators could conclude their remarks as we move to a vote.

The PRESIDING OFFICER. The Senator yields back the remainder of his time.

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, very quickly, not once in my comments did I talk about taking away guns from people. We are discussing this particular issue. There are three reasons that permit penetration of the veil of immunity: negligent entrustment, negligence per se, and defective products. Those who describe negligence as a cause are mistaken.

It was suggested that this would drive a truck through this bill. I want to drive that truck full of children alive and healthy.

I yield back.

The PRESIDING OFFICER. The Senator yields back his time. All time is expired.

Mr. CRAIG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from New Hampshire (Mr. SUNUNU).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 72, nays 26, as follows:

[Rollcall Vote No. 214 Leg.]

YEAS—72

Alexander	Dole	McConnell
Allard	Domenici	Murkowski
Allen	Dorgan	Murray
Baucus	Ensign	Nelson (FL)
Bayh	Enzi	Nelson (NE)
Bennett	Frist	Pryor
Bingaman	Graham	Reid
Bond	Grassley	Roberts
Brownback	Gregg	Rockefeller
Bunning	Hagel	Salazar
Burns	Hatch	Santorum
Burr	Hutchison	Sessions
Byrd	Inhofe	Shelby
Cantwell	Isakson	Smith
Chambliss	Johnson	Snowe
Coburn	Kohl	Specter
Cochran	Kyl	Stabenow
Coleman	Landrieu	Stevens
Collins	Lieberman	Talent
Conrad	Lincoln	Thomas
Cornyn	Lott	Thune
Craig	Lugar	Vitter
Crapo	Martinez	Voinovich
DeMint	McCain	Warner

NAYS—26

Akaka	Durbin	Leahy
Boxer	Feingold	Levin
Carper	Feinstein	Mikulski
Chafee	Harkin	Obama
Clinton	Inouye	Reed
Corzine	Jeffords	Sarbanes
Dayton	Kennedy	Schumer
DeWine	Kerry	Wyden
Dodd	Lautenberg	

NOT VOTING—2

Biden	Sununu

The amendment (No. 1644) was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote and to table the motion.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1620

Mr. CRAIG. Mr. President, the next vote is on the Lautenberg amendment. I ask unanimous consent that the time for voting be reduced to 10 minutes.

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

Mr. CRAIG. I also encourage my colleagues—Jack and I are trying to move these amendments as rapidly as we can. When we have people trying to take 20 minutes to these votes, that does not help us. We are debating them in less time than it is taking us to vote. So please stay around and we can move through these amendments very rapidly.

The PRESIDING OFFICER. The question is on agreeing to the Lautenberg amendment.

Mr. CRAIG. I ask for the yeas and nays on the Lautenberg amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senator is necessarily absent: the Senator from New Hampshire (Mr. SUNUNU).

The PRESIDING OFFICER (Mr. CORNYN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 35, nays 64, as follows:

The result was announced—yeas 35, nays 64, as follows:

[Rollcall Vote No. 215 Leg.]

YEAS—35

Akaka	Dodd	Levin
Bayh	Durbin	Lieberman
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Harkin	Nelson (FL)
Cantwell	Inouye	Obama
Carper	Jeffords	Reed
Chafee	Kennedy	Sarbanes
Clinton	Kerry	Schumer
Corzine	Kohl	Stabenow
Dayton	Lautenberg	Wyden
DeWine	Leahy	

NAYS—64

Alexander	Domenici	Murkowski
Allard	Dorgan	Nelson (NE)
Allen	Ensign	Pryor
Baucus	Enzi	Reid
Bennett	Frist	Roberts
Bond	Graham	Rockefeller
Brownback	Grassley	Salazar
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Burr	Hatch	Shelby
Byrd	Hutchison	Smith
Chambliss	Inhofe	Snowe
Coburn	Isakson	Specter
Cochran	Johnson	Stevens
Coleman	Kyl	Talent
Collins	Landrieu	Thomas
Conrad	Lincoln	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	
Dole	McConnell	

NOT VOTING—1

Sununu

The amendment (No. 1620) was rejected.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1615

Mr. CRAIG. Mr. President, I understand the next amendment in order is the Kennedy amendment.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I understand there is a time limitation. We have 20 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I ask the Chair to remind me when I have 5 minutes remaining.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1615.

Mr. KENNEDY. 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:

(Purpose: To expand the definition of armor piercing ammunition and for other purposes)

On page 13, after line 4, insert the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION.—Section 921(a)(17)(B) of title 18, United States Code, is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) in clause (ii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(iii) a projectile that may be used in a handgun and that the Attorney General determines, under section 926(d), to be capable or penetrating body armor; or

''(iv) a projectile ror a center-fire rifle, designed or marketed as having armor piercing capability, that the Attorney General determines, under section 926(d), to be more likely to penetrate body armor than standard ammunition or the same caliber.''.

(b) DETERMINATION OF THE CAPABILITY OF PROJECTILES TO PENETRATE BODY ARMOR.—Section 926 or title 18, United States Code, is amended by adding at the end the rollowing:

''(d)(1) Not later than 1 year after the date or enactment or this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.

''(2) The standards promulgated under paragraph (1) shall take into account, among other factors, variations in perrormance that are related to the length of the barrel or the handgun or center-fire rifle rrom which the projectile is fired and the amount and kind or powder used to propel the projectile.

''(3) As used in paragraph (1), the term 'Body Armor Exemplar' means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers.''.

Mr. KENNEDY. Mr. President, I express my strong appreciation to the Senator from Rhode Island, Mr. REED, for his leadership in opposition to this legislation. It has been enormously impressive. Many of us who share his views are grateful for his steadfastness, his hard work, and his perseverance and commitment.

It is preposterous to call this bill the Protection of Lawful Commerce in Arms Act. If we were honest, we would call it the ''Protection of Unlawful Commerce in Arms Act.'' It is a blatant special interest bill to protect gun manufacturers and sellers, even if they recklessly make guns available to criminals and terrorists. This aids and abets the perpetuation of these crimes. With all the urgent challenges facing our country, it is difficult to believe that the Bush administration and the Republican leadership are willing to spend any time at all on this flagrant anti-victim, anti-law-enforcement legislation, let alone push aside the major Defense authorization bill to make room for this debate.

President Bush called for clean passage of the bill without extending the Federal ban on assault weapons, without closing the gun show loophole, and without any other needed reforms in our Nation's laws.

Instead of this special interest legislation, Congress should be considering important bills, such as Senator FEINSTEIN's proposal to regulate .50 caliber weapons. These weapons are particularly dangerous because of their appeal to terrorists. These rifles can shoot down airplanes and destroy armored vehicles. These bullets can even penetrate several inches of steel. They have been called the ideal tools for terrorists. Who are we kidding?

In 1995, a RAND Corporation report identified these weapons as a serious threat to the security of U.S. Air Force bases. In 2003, a U.S. Army intelligence training handbook called this rifle a weapon ''attractive to terrorists for use in assassinations.'' Snipers love them. A study funded by the Department of Homeland Security identified these rifles as an imminent threat to civilian aviation. The report noted that these weapons have been acquired by al-Qaida and even been used to attack our own troops in Iraq.

Barrett Firearms Manufacturing and E.D.M. Arms advertise these assault weapons as capable of destroying multimillion-dollar aircraft with a single hit. Every bullet sold for these weapons puts our troops at risk. But are we working to stop that? No. Instead we are, once again, debating a bill that threatens the safety of the American people in a way that undermines law enforcement and our national security. Instead we are guaranteeing that people who sell these rifles and ammunition will never be held liable for their crimes.

With its raw special interest power, the National Rifle Association has demonstrated that this bill is a top priority for Senate action. They could care less that they are interrupting the important business of protecting our men and women fighting in Iraq and Afghanistan. They are willing to let unsavory gun dealers and gun manufacturers put powerful killing machines in the hands of criminals and terrorists without any regulation or liability. It is a national disgrace that America does more to regulate the safety of toy guns than real guns.

The Republican leadership and the Bush administration will do whatever it takes to give the industry all it wants. The NRA wants gun dealers and manufacturers to be protected from lawsuits. The NRA expects and demands that the Senate take away the courts as the last resort for victims of gun violence. For years the courts have been the only place where negligent and often conspiring gun dealers and manufacturers can be challenged.

The Senate majority leader says this bill is of urgent importance, taking precedence over the Defense bill because the Department of Defense ''faces the real prospect of having to outsource sidearms for our soldiers to foreign manufacturers.'' Guess what. The bulk of contracts to arm our country's military and law enforcement is already held by foreign manufacturers based in Austria, Italy, Germany, Sweden, Jordan, and Belgium. Lawsuits have nothing to do with that.

Furthermore, we have not heard one single company filing for bankruptcy in the absence of this legislation. The truth is that gun industry profits are on the rise. The only two publicly held gun companies in this country have filed recent statements with the Securities and Exchange Commission specifically and emphatically contradicting the claim that they are threatened by lawsuits.

Smith & Wesson filed a statement with the SEC, June 29, 2005, 1 month ago, stating: We expect net product sales for fiscal 2005 to be approximately $124 million, a 5-percent increase over the $117 million reported for fiscal 2004. Firearms sales for fiscal 2005 are expected to increase by 11 percent over the fiscal 2004 level.

In another filing, dated March 10, 2005, Smith & Wesson wrote: In the 9 months ended January 31, 2005, we incurred $4,500 in legal defense costs.

Legal defense costs of $4,500 are supposed to be bankrupting the company? Let's get real.

At the same time, gun manufacturer Sturm, Rugr told the SEC in a March 1, 2005, filing: It is not probable and it is unlikely that litigation, including punitive damage claims, will have a material adverse effect on the financial position of the company.

We have to wonder what the real agenda is here. The level of litigation against gun manufacturers and dealers is miniscule. In a 10-year period, only 57 suits were filed against gun industry defendants out of an estimated 10 million tort suits in America. We are supposed to buy the claim that these lawsuits are unduly burdening the gun industry. No. This legislation is another in a long line of congressional paybacks to the NRA, to the severe detriment of the safety of the American people. The gun lobby has systematically made it more difficult and, in some cases, even impossible for the government to police negligent gun dealers and manufacturers, while making it easier for criminals to buy guns.

Under the Brady bill, a licensed seller of firearms must run a background check through the Federal Bureau of Investigation's National Instant Criminal Background Check System. But at the NRA's demand, Congress drastically narrowed the definition of gun dealer. Reckless and unlicensed dealers are now selling millions of guns to people, including criminals and terrorists, without background checks. All of that is legal because the U.S. Congress kowtowed to the National Rifle Association.

We have a shameless proposal before the Senate today that shields even the most reckless sales in the gun industry. This bill will even protect manufacturers that promote military-style weapons for use in battle in urban scenarios against any foe at any range. It protects manufacturers who brag about their weapons of war and spread them to our streets.

Look at this advertisement from Vulcan. ''Vulcan Armament, the weapons of the special forces. From Afghanistan to Iraq, the guns of the special forces are now on sale in America.''

All you need is a credit card. Call that company and you get that weapon. It is being used by special forces in Iraq. Do you think this bill has anything to do with protecting Americans from that? Absolutely not.

The gun dealer claims: ''From Afghanistan to Iraq, the guns of the special forces are now on sale . . . '' How outrageous can dealers get? But the NRA demands that these sales continue to be unregulated. Credit card, computer, you get your sniper rifle used by the special forces. And are we doing anything about that? Absolutely not.

Congress continues to do their bidding as it has done for years. At the insistence of the NRA, Congress has already tied the hands of law enforcement by cutting Federal funding for the agency that overseas gun dealers and manufacturers. According to the GAO, at the current level of underfunding, the ATF would take 22 years to inspect every gun dealer just once. What kind of enforcement is that? The GAO also tells us that people on the terrorist watch list are routinely buying guns in this country. Under current law, terrorists are not prohibited buyers. At the urging of the NRA, Congress is doing nothing about it. If that weren't enough, under this bill, gun manufacturers and sellers will be exempt from lawsuits even if they sell weapons to terrorists.

I have a GAO report that shows that there were 45 instances where the GAO found firearms-related background checks handled by the FBI resulted in valid matches with terrorist watch list records. Of this total, 35 transactions were allowed to proceed. If they get on the list, they are supposed to notify Homeland Security. But in this case, 35 transactions were allowed to proceed because the background checks found no prohibiting information. What does that mean? The prohibiting information are the categories that would deny them the ability to sell these weapons. For example, if you have had a felony conviction, you can't sell them; illegal immigration, you can't sell them; domestic violence, you can't sell them.

Member of a terrorist organization? You can sell them. Do you think this bill is doing anything about that? Do you think we are doing anything about that? No. It is disgraceful. Absolutely disgraceful.

We already know the terrorists are exploiting the weaknesses and loopholes in the Nation's gun laws. In the caves of Afghanistan our troops found an al-Qaida manual that instructed terrorists on how to buy guns legally in the United States without having to undergo a background check. Al-Qaida understands that we have created a mess that allows, even encourages, criminals and terrorists to traffic in guns.

Why do we in this body continue to ignore it? We are not talking about some hypothetical situation. In 2000, a member of a terrorist group in the Middle East was convicted in Detroit on weapons charges and conspiracy to ship weapons and ammunition to Lebanon. He had bought many of these weapons at gun shows in Michigan. In 1999, only a lack of cash prevented two persons from purchasing a grenade launcher at a gun show in a plot to blow up two large propane tanks in suburban Sacramento. But instead of addressing these real and serious problems, the Senate is considering this outrageous immunity bill that even gives the gun industry protection from administrative proceedings to revoke licenses of dealers who sell to illegal buyers.

This bill will bar State attorneys general from bringing civil actions against gun sellers, even those engaged in so-called straw sales to middlemen who buy guns from prohibited buyers. Why should the industry stop there? At the demand of the NRA, Congress has already exempted the gun industry from Federal consumer safety regulation. But the NRA wants more. It is a disgrace.

The NRA has also persuaded our Government to destroy gun purchasing background records within 24 hours. Our Justice Department refused to examine the gun records of any of the 19 hijackers or 1,200 suspected terrorists rounded up after 9/11. We can know everything about law-abiding citizens in this country, but we can't know about the terrorists purchasing these weapons. Within days of 9/11, we knew who the hijackers were, where they sat on the planes. We saw some of their faces on surveillance videos. We knew what they had charged on their credit cards. We knew where they had gone to school. We knew where they lived, where they traveled. We knew they had tried to get pilot's licenses. We knew they had looked for a way to transport hazardous chemicals. But we didn't know whether our terrorist friends had purchased firearms because we were worried about their privacy rights and their right to bear arms.

Give me a break. Give me a break. Make no mistake, Mr. President, the National Rifle Association clearly comes first in this Senate Republican agenda. This is not just about the immunity bill on the floor today. If this bill passes, it will open the floodgates for NRA's other priorities. None of these priorities will protect our citizens or make this country safer. Designed by the NRA, it promotes the sale of guns by manufacturers if they are sold to criminals. The NRA is lavishly rewarded for lobbying victories, and so are the Members of Congress who do their bidding.

This is an unholy alliance, Mr. President. This bill gives greater protection to the gun industry than Congress has given to any industry, and it is a dangerous precedent. At a minimum, we owe a duty to the police officers who are more in jeopardy because of the increasing number of dangerous weapons and ammunition in the hands of criminals. The Treasury Department already has regulations containing some prohibitions on armor-piercing ammunition. My amendment would expand the ban on that. It can easily be sold over the Internet, no questions asked. That is a disgrace and danger to police officers throughout the Nation.

The NRA would have us believe cop-killer bullets are a myth, they don't exist. Try to tell that to some of the sellers on eBay. Here you go, Mr. President. This chart represents what is on eBay. All you need is one click of the computer, and you can buy these bullets on eBay—armor-piercing bullets. They are $15 on eBay, armor-piercing bullets.

Now let's look at what has happened in the last year, in 2004. The number of police officers killed was 54, and 32 of these officers were wearing body armor. The only bullet that can pierce the armor is the cop-killer bullet. That is what this amendment addresses, the cop-killer bullet. It will stop the sale of the cop-killer bullet. These are the types of armor-piercing ammunition. All you have to do is look at these words, ''hardened steel or tungsten carbide.'' Any terrorist knows what that means. Put those words together, and it goes right through a police officer's armored vest. We have had 54 police officers killed in the line of duty; 32 were wearing body armor.

This is the FBI report of May 16, 2005. I ask unanimous consent that it be printed in the RECORD.

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

FBI PRELIMINARY STATISTICS SHOW 54 LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED IN 2004

WASHINGTON, D.C.—Fifty-four law enforcement officers were feloniously killed in the line of duty in 2004, according to preliminary statistics released today by the FBI's Uniform Crime Reporting (UCR) Program. Nearly half of the officers killed, 26, were in the South; 9 officers were in the Midwest; 9 were in the West; and 7 were in the Northeast. Two were in Puerto Rico, and 1 was in the U.S. Virgin Islands. The number of officers killed was up 2 from the 52 officers killed in 2003.

The 54 officer deaths occurred during 47 different incidents. Police cleared 46 out of the 47 incidents by arrest or exceptional means. One offender is still at large. Of the officers killed, 16 died in arrest situations, 12 died responding to disturbance calls, 7 died investigating suspicious persons or circumstances, 6 were ambushed, and 6 more were killed in traffic pursuits or stops. Two officers were killed while handling mentally deranged persons, 2 died while involved in investigative activities, 2 died in tactical situations, and 1 died handling and transporting a prisoner.

As in previous years, most offenders used firearms to kill police officers in 2004. Of the 52 officers who died from gunshot wounds, 36 were fatally injured with handguns, 12 were shot with rifles, and 4 were killed with shotguns. Offenders used vehicles to kill 2 officers. Thirty-two officers were wearing body armor, 11 fired their own weapons, and 9 attempted to fire their own weapons. Seven of the officers had their service weapons stolen, and 6 were killed with their own weapons.

In addition to the officers feloniously killed, 82 law enforcement officers died accidentally in the performance of their duties in 2004. This is an increase of 1 over the 2003 total of 81 officers killed accidentally.

The UCR Program's publication, Law Enforcement Officers Killed and Assaulted, 2004, is scheduled to be released in the fall. The publication, produced annually, includes final statistics and complete details.

Mr. KENNEDY. That is what this amendment does. Nobody can deny that our policemen and policewomen face a greater threat every day from these armor-piercing weapons and bullets that remain in our community. It is outrageous and unconscionable that such ammunition continues to be sold in the United States.

Mr. President, victims of gun violence and their families oppose this underlying legislation. I wish to mention the organizations that support my amendment. The International Brotherhood of Police Officers, the National Black Police Association, the Hispanic American Police Command Officers, the National Latino Police Officers, and the Major City Chiefs Association representing the Nation's largest police departments all support this amendment.

If you are interested in the security of those who are protecting us on the streets and in our communities and in our homes across this Nation, support my amendment, not a phony amendment that will be put on by the other side.

I withhold my time.

Ms CANTWELL. Mr. President, today I rise to cast another vote in favor of strict control on armor-piercing, cop-killer bullets. I am proud to stand to strengthen the penalties against those who use this ammunition. I also would like to set the record straight on my position on the same amendment last year. Last year, like this year, several Senators offered versions of this measure. I support both strengthening the penalties and the other provisions of the Craig/Frist amendment, as well as the broader definition of banned cop-killer ammunition in the Kennedy amendment, which I believe provides even stronger protection for America's law enforcement officers. That is why I am voting for both of these amendments and why I wish I had been recorded supporting both of these amendments last year.

In preparation for today's vote, it was discovered that my position was inaccurately recorded last year. While Senate rules do not allow for a formal correction of an error from a previous Congress, I today submit for the record that I supported the Frist/Craig amendment last year, just as I do today.

And I particularly thank both the Senator from Idaho and the Senator from Massachusetts for their work on this important issue.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, how much time does Senator KENNEDY have remaining?

The PRESIDING OFFICER. He has 1 minute 39 seconds.

AMENDMENT NO. 1645

Mr. CRAIG. Mr. President, I send a relevant first-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] proposes an amendment numbered 1645.

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

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

The amendment is as follows:

(Purpose: To regulate the sale and possession of armor piercing ammunition, and for other purposes)

On page 13, after line 4, insert the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

''(7) for any person to manufacture or import armor piercing ammunition, unless—

''(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) the manufacture of such ammunition is for the purpose of exportation; or

''(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

''(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

''(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) is for the purpose of exportation; or

''(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;''.

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

''(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

''(A) be sentenced to a term of imprisonment of not less than 15 years; and

''(B) if death results from the use of such ammunition—

''(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

''(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.''.

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uniform standard for the testing of projectiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study conducted under paragraph (1) shall include—

(A) variations in performance that are related to the length of the barrel of the handgun or center-fire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Committee on the Judiciary of the Senate; and

(B) the chairman and ranking member of the Committee on the Judiciary of the House of Representatives.

Mr. CRAIG. Mr. President, I yield 10 minutes to the Senator from Utah.

Mr. HATCH. Mr. President, I have listened to the argument of the distinguished Senator from Massachusetts. To hear it, you would say the sky is truly falling, that this world is just falling apart and that everything being done in law enforcement just doesn't work, and that if we don't do what his amendment says, we are going to be for terrorism and everything else in this world.

I rise to speak against the Kennedy amendment and for the Frist-Craig first-degree amendment.

The first-degree amendment Senator CRAIG just filed would strengthen the penalties for violating the existing ban on armor-piercing ammunition for handguns. It would also create a study on the effects of adopting a performance-based standard for ammunition.

This exact same first-degree amendment passed overwhelmingly last year on the floor of the Senate, and I suspect it will again this year. Let me make clear why the Kennedy amendment, without this first-degree amendment, would be harmful.

The Kennedy amendment would ban nearly all hunting rifle ammunition. It is also opposed by law enforcement organizations such as the Fraternal Order of Police, the largest law enforcement agency or organization in the country.

The fact is that we have laws in this area that are working. The Bureau of Alcohol, Tobacco, Firearms and Explosives, the BATFE, reached the same conclusion in a recent study. The existing laws were adopted in 1986 and prohibit the manufacture and importation, for private use, of handgun bullets made of certain hard metals and specially jacketed bullets. The BATFE found that ''no additional legislation regarding such laws is necessary.''

My friend from Massachusetts believes all we have to do is just keep passing laws and that will solve every problem. The Departments of Justice and Treasury opposed legislation similar to this amendment back when it was first introduced in the 1980s. Congress rejected it then. We ought to reject it now.

Let me give a couple other facts that are important. The Frist-Craig amendment we are offering here today recognizes, as the Fraternal Order of Police points out, that the current law regarding armor-piercing ammunition is working; that is, it states that it is unlawful to manufacture and import, for private use, handgun bullets made of special hard metals and specially jacketed lead bullets. It also requires the

Attorney General to study and report on whether it is feasible to develop standards for the uniform testing of projectiles against body armor.

The difference that the alternative amendment—the Frist-Craig amendment—makes is in the law's message. It says that if armor-piercing ammunition is used to kill a law enforcement officer, then the maximum penalty available is the death penalty. It doesn't get any tougher than that. If armor-piercing ammunition is used in the commission of a crime that wounds but doesn't kill a law enforcement officer, there will be a mandatory minimum sentence of 15 years.

Let's talk about how this is different. It sends a message to criminals in this country that not only is this ammunition illegal, if they use it to kill law enforcement officers who put their lives on the line every day for our citizens, families, and communities, they will pay the ultimate price.

Mr. President, we should reject the Kennedy amendment. We should follow what law enforcement in this country says. It does not get any better than the FOP. Last year, the Senate rejected the Kennedy amendment 34 to 63 and instead adopted the Frist-Craig amendment by a vote of 85 to 12. We should do that again.

I compliment my colleague for the hard work he has done on this particular bill. I hope we will all vote for the alternative amendment of Senator CRAIG.

I yield the floor.

Mr. CRAIG. Mr. President, how much time remains on my side?

The PRESIDING OFFICER. The Senator from Idaho has 15 minutes.

Mr. CRAIG. I will have a brief comment. Do any of my colleagues wish to comment?

I yield 5 minutes to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I have some great friends in law enforcement. They have served their country and States and communities well over the years. We hunt and fish together at various times. I am not hearing them say this is what they would like to see. If you talk to law officers, what they are concerned about is repeat dangerous offenders getting released on the streets. A police officer never knows when he may face someone like that around the corner, at a traffic stop, or in a domestic violence situation. Those are things that concern them. They do feel sometimes that the criminal justice system is too slow, that the punishment and penalties that are imposed by law never get carried out. Those things frustrate them. That follows through and is consistent with the letters we have received regarding the Kennedy amendment.

I am looking at the Law Enforcement Alliance of America letter, which they wrote to Senator CRAIG. This is a very clear and strong message. They represent 75,000 members in support of law enforcement. They wanted to ''add our voice to the growing group of law enforcement representatives who strongly oppose efforts to gut or kill S. 397, the Protection of Lawful Commerce in Arms Act.''

They refer to this amendment as a ''poison pill'' and object to the term ''cop killer bullet'' as a ''thinly veiled fraud.'' They go on to say:

> This amendment, along with other amendments, should be identified for what they are: an outright attempt to kill S. 397.
>
> Please know that many in the law enforcement community encourage you to continue steadfastly in support of America's gun manufacturers who provide our officers the tools to return home safely at the end of their shift.

Also, the Fraternal Order of Police has written to Senator CRAIG in ''strong opposition'' to the amendment offered by Senator KENNEDY. They say that this will be presented as a ''officer safety issue'' to get dangerous ''cop killer bullets off the shelves.''

Then they add:

> Regardless of its presentation, the amendment's actual claim and effect would be to expand the definition of ''armor-piercing'' to include ammunition based, not on any threat to law enforcement officers, but on a manufacturer's marketing strategy.

Then they add this, which is interesting:

> The truth of the matter is that only one law officer has been killed by a round fired from a handgun which penetrated his soft body armor—and in that single instance, it was the body armor that failed to provide the expected ballistic protections, not because the round was ''armor-piercing.''

They say:

> It is our view that no expansion or revision of the current law is needed to protect law enforcement officers.

That letter is to Senator CRAIG. No additional legislation is needed to protect law officers.

> To put it simply, this is not a genuine [law enforcement] officer safety issue.

They noted that it had been rejected previously—last year, 63 to 34. They say it should be rejected again.

I thank the Chair.

Mr. CRAIG. Mr. President, I believe all that can be said about these two amendments has been said. I hope my colleagues join in voting for the first-degree relevant amendment I have offered that toughens up penalties and recognizes the reality that the law we have today is working to protect our law enforcement community from armor-piercing bullets.

I yield back the balance of my time. Senator KENNEDY can conclude and we can move to a vote.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I have in my hand the Federal Firearms Regulations Reference Guide that bans 14 different types of ammunition today. All we are trying to do is add a 15th. What will the 15th do? It will be limited to cop-killer bullets.

My friends, the Republican amendment says we should study the problem of cop-killer bullets. Our police officers are the ones that are in the line of fire, and we are going to protect them with a study?

If you care about fighting terrorism, you will reject the Republican amendment and vote for my amendment to take real action. If you care about protecting our brave police officers, you will support my amendment. They risk their lives for us every single day.

This is not about hunting. We know duck and geese and deer do not wear armor vests; police officers do. This can save their lives. I hope it will be accepted.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. It is my understanding, under the unanimous consent that the Craig first degree would be the first to be voted on; Kennedy would be the second to be voted on. I ask unanimous consent the second vote be a 10-minute vote. I urge my colleagues to come now, as quickly as we can, to move these votes.

I call for the yeas and nays.

The PRESIDING OFFICER. Without objection, it is so ordered. The second vote will be 10 minutes.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT NO. 1645

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Kansas (Mr. ROBERTS).

Further, if present and voting, the Senator from Kansas (Mr. ROBERTS) would have voted ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 11, as follows:

[Rollcall Vote No. 216 Leg.]

YEAS—87

Alexander	Dayton	Landrieu
Allard	DeMint	Leahy
Allen	DeWine	Lincoln
Baucus	Dodd	Lott
Bayh	Dole	Lugar
Bennett	Domenici	Martinez
Biden	Dorgan	McCain
Bingaman	Durbin	McConnell
Bond	Ensign	Mikulski
Brownback	Enzi	Murkowski
Bunning	Feinstein	Murray
Burns	Frist	Nelson (FL)
Burr	Graham	Nelson (NE)
Byrd	Grassley	Obama
Cantwell	Gregg	Pryor
Carper	Hagel	Reid
Chafee	Harkin	Rockefeller
Chambliss	Hatch	Salazar
Clinton	Hutchison	Santorum
Coburn	Inhofe	Schumer
Cochran	Inouye	Sessions
Coleman	Isakson	Shelby
Collins	Jeffords	Smith
Conrad	Johnson	Snowe
Cornyn	Kerry	Specter
Craig	Kohl	Stabenow
Crapo	Kyl	Stevens

Talent
Thomas
Thune
Vitter
Voinovich
Warner

NAYS—11

Akaka
Boxer
Corzine
Feingold
Kennedy
Lautenberg
Levin
Lieberman
Reed
Sarbanes
Wyden

NOT VOTING—2

Roberts
Sununu

The amendment (No. 1645) was agreed to.

Mr. CRAIG. I move to reconsider the vote.

Mr. ENZI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1615

Mr. CRAIG. Mr. President, the next vote is on the Kennedy amendment. It is a 10-minute vote. Please, everyone, stay here and vote so we can move very rapidly through the next amendments.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. SANTORUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Texas (Mr. CORNYN), the Senator from Kansas (Mr. ROBERTS), the Senator from Oregon (Mt. SMITH), and the Senator from New Hampshire (Mr. SUNUNU).

Further, if present and voting, the Senator from Kansas (Mr. ROBERTS) would have voted ''nay.''

Mr. DURBIN. I announce that on this vote, the Senator from California (Mrs. FEINSTEIN) is paired with the Senator from Kansas (Mr. ROBERTS).

If present and voting, the Senator from California would have voted ''aye'' and the Senator from Kansas would have voted ''no.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 41, nays 64, as follows:

The result was announced—yeas 31, nays 64, as follows:

[Rollcall Vote No. 217 Leg.]

YEAS—31

Akaka
Bayh
Biden
Boxer
Cantwell
Carper
Chafee
Clinton
Corzine
Dayton
Dodd
Durbin
Feingold
Harkin
Inouye
Kennedy
Kerry
Kohl
Lautenberg
Levin
Lieberman
Mikulski
Murray
Nelson (FL)
Obama
Reed
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NAYS—64

Alexander
Allard
Allen
Baucus
Bennett
Bingaman
Bond
Brownback
Bunning
Burns
Burr
Byrd
Chambliss
Coburn
Cochran
Coleman
Collins
Conrad
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Dorgan
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch
Hutchison
Inhofe
Isakson
Jeffords
Johnson
Kyl
Landrieu
Leahy
Lincoln
Lott
Lugar
Martinez
McCain
McConnell
Murkowski
Nelson (NE)
Pryor
Reid
Salazar
Santorum
Sessions
Shelby
Snowe
Specter
Stevens
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NOT VOTING—5

Cornyn
Feinstein
Roberts
Smith
Sununu

The amendment was rejected.

Mr. CRAIG. Mr. President, I move to reconsider the vote and move to lay it on the table.

The motion to lay on the table was agreed to.

PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent that we now proceed to the Corzine amendment as under the order and that there be 5 minutes for Senator CORZINE, 5 minutes for Senator SCHUMER, 5 minutes for Senator CRAIG, to be followed by a vote on the Corzine amendment, with the order for the first-degree alternative vitiated; provided that the Senate then proceed to the Reed substitute with Senator REED to speak for 15 minutes, Senator HUTCHISON for 10 minutes, to be followed by a vote in relation to the Reed amendment as under the order; that following that vote there be 10 minutes equally divided for closing remarks prior to the bill being read the third time and a vote on passage as the order provides.

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 3

Mr. FRIST. Mr. President, I ask unanimous consent that following passage of S. 397, the Senate proceed to the immediate consideration of the conference report to accompany H.R. 3, the highway bill. I further ask unanimous consent there be 15 minutes equally divided between the majority and minority with 30 minutes under the control of Senator MCCAIN. I ask unanimous consent that following the use or yielding back of time, the Senate proceed to a vote on adoption of the conference report with no intervening action or debate.

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

Mr. FRIST. Mr. President, just a clarification. A lot of people will have questions. We had these time allotments and we have asked Senators not to use all of the time that has been allocated. That is the general understanding. With that we have an orderly way of very quickly completing our rollcall votes for the course of the day. But with that, we can explain it over to the side that we are in shape and have a plan in order to finish at a very reasonable hour.

AMENDMENT NO. 1619

The PRESIDING OFFICER. The Senator from New Jersey is recognized for his amendment.

Mr. CORZINE. Mr. President, I call up amendment No. 1619.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. CORZINE] for himself, Mr. LAUTENBERG, Ms. MIKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mrs. BOXER, proposes an amendment numbered 1619.

Mr. CORZINE. I ask unanimous consent that further reading of the amendment be dispensed with.

PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in arming criminals)

On page 13, after line 4, add the following:

SEC. 5. LAW ENFORCEMENT EXCEPTION.

Nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law.

Mr. CORZINE. I ask unanimous consent that Senator DURBIN be added as a cosponsor.

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

Mr. CORZINE. I thank the Chair.

I come to the floor today moved by an event that occurred in my life this week and more importantly the life of a family in New Jersey.

Sometimes there are events that move you to feel passionately. I went to a wake for an officer on Monday night. I actually missed a vote.

The reality is that an officer was gunned down a week before by a gang member, a Blood, on the streets of Newark. This police officer was a man with five children. He was 32 years old, the oldest child of 11.

Violence brought on by the illegal movement of guns in our society and the irresponsible dealing in guns is something that actually costs people's lives. I have an amendment which I have talked about previously. I am a realist and I know where this amendment is going, so we will deal with it on a practical basis.

But my amendment is an effort to protect the rights of law enforcement officers who are victimized by gun violence. I want to make certain that law enforcement officers can seek compensation from gun manufacturers and dealers who participate in arming criminals.

I am not a lawyer, so I can't define negligence with the perfection that maybe others can. I know this amendment is not going to pass, and I know this gun industry immunity bill will pass.

This is a picture of another officer from Orange, NJ. We have heard a lot about Detective Lemongello and his

partner, Officer McGuire. They were shot in 2001. They subsequently brought a case in court and reached a $1 million settlement with the gun dealer, because that gun dealer in West Virginia sold 12 guns to what we call a straw buyer. This straw buyer, by the way, was standing next to a second person who qualified as a potential purchaser of weapons and just handed them off, and then that individual walked out, put them in a car, drove off to New Jersey and sold them on the streets. I call that negligence. It was so negligent and so obviously negligent that the gun dealer, the day after being paid in cash for those 12 guns, called up the AFT and said: We think we made a mistake. We ought to do something about this. And so they called up the AFT. But it was too late, and nothing happened to stop the flow of the guns to New Jersey, but at least they recognized that they had done something wrong.

Detective Lemongello and Officer McGuire brought a lawsuit against this gun dealer. They went to court and received justice, although both cannot return to the streets as police officers. They got a $1 million settlement. One took three bullets, one took two, and the other 11 guns purchased that day in West Virginia were also resold and distributed. I wonder whether one of those guns was the used to murder Police Officer Reeves last week in Newark, NJ.

I think it is time we recognize there needs to be the ability to use both the criminal justice and the civil justice system to protect our citizens, particularly our law enforcement officers.

We have heard from Senator REED, who has done an enormous service to the country, in my view, to bring up so many of the flaws in the arguments that have been made by my colleagues who support this bill.

This bill is not right. We are taking people who protect us at their own risk every day and we are shutting the door to the courthouse in their face. So I believe strongly that we ought to be protecting our law enforcement officers. I passionately believe that because I see it and the distress it brings to families and communities and all who are involved.

My amendment is not a political desire to challenge the NRA or anybody else. And, frankly, I do not understand how anyone could not support this amendment. I do not get it from a commonsense point of view. It is a right and a responsibility that we protect those who protect us.

The PRESIDING OFFICER. The Senator's time has expired

Mr. CORZINE. Mr. President, I will not be asking for a rollcall but a voice vote on my amendment acknowledging the realities and the practical aspects of moving the floor, if that is appropriate.

Mr. CRAIG. Mr. President, no one questions Senator CORZINE's intention or his sincerity as we are all sincere and concerned about making sure that the law enforcement community of this country has the best tools available, has the greatest protection available. We want the laws with them, and we believe the laws are with them. And the Fraternal Order of Police, the world's largest organization, believes the same thing.

Last year, this amendment was opposed by them strongly and they expressed that very clearly. The reason was they do not believe a special category is necessary in that relationship. What is happening here is an attempt to carve out that unique category because we think the law enforcement community is well protected under the current law.

Mr. CORZINE. Will the Senator yield?

Mr. CRAIG. I am happy to yield.

Mr. CORZINE. I point out this year, by decision, the FOP is not taking a position with regard to my amendment.

Mr. CRAIG. That is true, they are not taking a position this year, but I did get permission from Tim Richardson, if there is any question of verifying what I said, that as the executive he would be happy to accept a call.

The point is quite simple. This is an amendment that destroys the underlying intent of the legislation involved. I hope my colleagues would oppose the amendment as they did last year by a substantial vote, 56 in opposition, 38 for it.

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

Mr. SCHUMER. Mr. President, I will not speak on the amendment of the Senator from New Jersey, which I support, but on the underlying provision. It is hard for me to accept the fact that we are taking a special interest, we are taking an industry that deals with something that admittedly can be dangerous, and exempting them from liability and giving them greater exemption than just about anybody else.

We talk about special interests. That is exactly what ''special interests'' means. Giving it to one small group because they have influence rather than for a whole larger group who may also deserve it. Even when somebody is grossly negligent, even when an organization does not abide by the rules, they will still get an exemption. How can we say that to people who are injured, perhaps, as a result of that negligence and carelessness?

I want people to remember the terror brought upon ordinary Americans with the Washington snipers. These terrorists acquired their assault rifle to shoot 13 people. They got the rifle at the Bull's Eye Shooter Supply. Bull's Eye could not account for the sale. Bull's Eye could not account for 230 of its guns. Yet Bull's Eye would be protected when these families sought recompense by this legislation. Who in America would exempt a gun dealer who repeatedly violated the law and put them above those who had lost loved ones?

That says enough. I know my colleagues are eager to move on so I will not speak for much longer. If Members want to know why the American people get fed up with this body, it is legislation such as this that caters to a small, powerful group.

The right to guns is a good thing. I support the second amendment. But no amendment is absolute. Not the first, not the fourth, not any of them, including the second. There are some here who believe only the second amendment should be exalted above all the others. I disagree.

This is an awful piece of legislation, despite my respect for its sponsor. I urge we defeat it.

To reiterate, I rise in opposition to this bill, which will give a free pass to gun dealers and gun manufacturers, even when their products wreak havoc on innocent people.

With all of the important business before the Senate right now, it is shocking that we would spend our time giving unwarranted and unprecedented immunity to an industry whose products, when allowed into the hands of the wrong people, do incredible harm to innocent Americans. We even put off working on a defense bill to do this favor to the gun lobby.

This bill, will literally endanger people's lives because it eliminates the last check we have, on bad gun dealers—the threat of lawsuits.

This bill will hurt victims of gun violence all across America—the innocent men, women and children who will end up being shot and killed if this bill passes because a gun dealer can't or won't keep track of his guns and there is no check on him.

We remember too well the terror that was brought upon ordinary Americans when the Washington snipers, John Allen Muhammad and Lee Boyd Malvo, went on their 23-day shooting spree.

These terrorists acquired the assault rifle that they used to shoot 13 people at Bull's Eye Shooter Supply, and Bull's Eye could not account for that sale.

In fact, Bull's Eye couldn't account for over 230 of its guns. This bill would protect gun dealers like Bull's Eye from lawsuits by the families of the sniper victims.

And this wasn't a dealer operating under the radar. In fact, Bull's Eye was inspected by the ATF not once, not twice, not even three, but four times in the 6 years prior to the sniper shootings. And what did those inspections reveal? They revealed that Bull's Eye could not account for over 160 guns missing from its inventory.

One of these guns was used by the DC snipers to kill ten innocent people and injure three others. It was only after people died that ATF did a real investigation and found that it was not 160, but 238 guns that were missing.

But it was still open and doing business.

What recourse did the sniper victims and their families have while they were

waiting for the government to act? These victims sued the gun dealer for negligence, and won a $2.5 million settlement.

That won't bring back the innocent people who were killed by the snipers. But it gives these victims what we are all entitled to when someone else's negligence does us harm—our day in court and the opportunity to achieve justice.

This bill would shield bad dealers like Bull's Eye from justice. It would say to people like the victims of the DC snipers—''I'm sorry but you have no right to your day in court because Congress has made a special exception for bad gun dealers.''

We don't do this for other industries, but due to pressure from the gun lobby we are being asked to carve out a special exception to an industry that makes and sells what are, in the hands of the wrong people, very deadly weapons.

In Philadelphia, a small child found a gun on the street and accidentally shot a 7-year-old boy. That boy's mother was able to recover a settlement from the gun dealer, who negligently sold multiple guns to a gun trafficker. One of those guns ultimately caused her son's death. This bill would deny that mother her day in court.

And it's not just about money. Gun dealers and manufacturers also agree to implement safer practices as a result of these negligence suits. This bill would give bad dealers and manufacturers no incentive to enact these safer practices.

Lawsuits against bad dealers, or dealers who are too lazy to adequately keep track of their inventories, do not affect the right of law-abiding Americans to safely use guns to hunt or collect.

But this bill does wipe away the right of American citizens to have their day in court. This bill destroys that right and slams the courthouse door in the faces of gun crime victims who are trying to make sure that gun dealers are responsible.

We have heard some of my colleagues talking here about the importance of responsibility. Well this bill says that everyone should be responsible—except the gun industry. You get a free pass. The rules that apply to every other industry in America don't apply to you.

Our court system works. And when a frivolous or baseless lawsuit is brought, there are rules to make sure that it doesn't go forward.

We should allow the system to continue to work. It worked for two New Jersey police officers who won a $1 million settlement from a dealer who negligently sold 12 guns to a straw buyer. It worked when the dealer agreed to implement safer sales practices to prevent criminals from getting guns.

That is why I also want to encourage my colleagues to support the amendment being offered by my friend from New Jersey, Senator CORZINE. This sensible amendment will allow law enforcement officers like those two New Jersey police officers to obtain justice when careless sellers allow guns to get into the wrong hands.

So the system needs to work for all Americans—and Congress shouldn't create special rules for special interest groups, especially when the lives of so many people are literally at stake.

I urge my colleagues to vote against this bill.

The PRESIDING OFFICER. The question is on agreeing to the Corzine amendment.

The amendment (No. 1619) was rejected.

AMENDMENT NO. 1642

Mr. CRAIG. Mr. President, we have one amendment remaining, the amendment of Senator REED. There is a time agreement on that amendment.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I call up amendment numbered 1642.

I ask the Presiding Officer to let me know when I have reached 10 minutes.

My amendment has an overarching purpose, to preserve the right of an individual to sue for negligence when they have been harmed and when that negligence can be fairly attributed to a gun manufacturer, gun dealer, or a gun trade association. It does not depart from the principles of the law. In fact, it braces the fundamental principle of the law which says if someone owes you a duty of care and violates that duty and you have been harmed, you have a right to go into court.

The legislation before the Senate not only sweeps away the rights of individuals but sweeps away the rights of municipalities, counties, and other government entities. This is one of the major reasons the advocates have been talking about in this legislation. They have said there has been a rash of suits by municipalities, not about recovering damages, but about undercutting and undermining the gun industry.

I am reluctant to change what I think is well-settled law and well-settled practice, but if we are confronted with this legislation, I propose we step back and perhaps reluctantly eliminate suits by municipalities, but for goodness sakes, we can have and maintain suits by individuals.

The reason this legislation is before the Senate is because they claim there is a crisis. But if you look at the financial reports of these companies—of Smith & Wesson and Sturm, Ruger—there is no crisis. The financial report of Smith & Wesson indicates they are actually reducing the amount of their reserve to cover these types of suits, which is a strong indication, because it is real dollars, that this threat is dissipating. It is not becoming more enhanced. This crisis is manufactured. And it is, indeed, evaporating.

This suit will deny ordinary people, our constituents, their voice before the courts when they have been harmed. No one is going out and getting shot so they can bring a lawsuit. That is preposterous. They are being shot because people have been either criminal or negligent or both. We have criminal laws to deal with criminals, but we have a well-established body of civil practice which allowed an individual to go in and be compensated, receive damages for the harm they have suffered.

This legislation, the underlying legislation, would bar the door to courthouses for real people. Who are some of these real people? We all know about the most notorious incidents in the last several years, the Washington, DC snipers. If this legislation passed in the last Congress, and it was on the verge of passing, these people would have been denied their day in court.

Ted Franklin is the husband of Linda Franklin, a resident of Arlington, VA. On October 14, 2002, Linda Franklin was a 47-year-old analyst for the FBI. She had two children and a loving husband. She, like so many of us do, was in the parking lot of Home Depot loading up purchases for their new home when she was killed by the sniper.

How did the sniper get his weapon? Well, a teenaged boy walked into a gunshop in Washington State and apparently shoplifted a 3-foot-long assault weapon. The manager did not know about it and he did not know where over 200 weapons were. That is gross negligence, certainly, the kind of fact that would get you before a court. She was killed. A 47-year-old, dependable worker of the FBI.

Margaret Walekar is the wife of Premkumar, who was shot at the age of 54 while he was refueling his cab at a gas station. Tonight, as you fill up your automobile at a gas station, just think, someone else was doing that and innocently was killed and the heart of the causation of that tragic event was the negligence.

After this legislation passes, if it does, that negligent gun dealer and that negligent manufacturer who contributed the weapons would not be held liable for the death of this man.

Carlos Cruz is the husband of Sarah Ramos. They had one son, age 7. She was 34 and was sitting on a bench in front of a post office on October 3, 2003, waiting for a ride to take her to her baby-sitting job when she was shot and killed by the Bushmaster assault weapon shoplifted from that negligent gun dealer in Washington State.

I could go on and on and on. These are innocent victims. These are our neighbors. These are our constituents. These are the people we will tell, unless we adopt the Reed amendment, you have no value in the eyes of the court. You have no voice in that court. You are not important.

Who is important? The National Rifle Association. The gun lobby. The gun dealers. They are important. But these good people are not important.

At a minimum, we have to allow the tort law of the various States that has been worked out to be operative for these individuals. Certain States, very few, have restricted—again at the behest of the gun lobby—certain activities. I don't object to that. But that is

more the normal course of activity since tort law is the province typically of the State. But no State is going as far as this legislation. No State is going to the extent of practically barring all claims.

Now the proponents will stand up and say, no, no, wait, we have exceptions. These exceptions have been carefully crafted to prevent the very cases I have spoken about and we have spoken about from getting to court. These are the real cases. This is what happens. People buy guns through straw purchases. That activity is virtually totally immunized by this legislation. As a result, we are going to see, I think, more reckless behavior.

We have already identified through the reporting system of the ATF and other gun shops across this country that have records and are supplying hundreds of guns to crime scenes, some within a short period of time. A weapon is purchased and a few days later found at a crime scene. If they are behaving that way now under the cloud of potential litigation, what will they do when they feel totally immunized, free, uninhibited, to be grossly negligent? The result, of course, is not some academic statistics. The result is people such as Linda Franklin.

I note that a few moments ago, in Senatorial time, we took a vote on legislation that would at least have given children the ability to use the existing tort laws of their State without the conditions and encumbrances of this legislation. That provision by Senator LAUTENBERG was struck down. That amendment failed.

What about the case with respect to the Washington sniper where Iran Brown, a 13-year-old boy, was walking to class? All of us who were here vividly remember watching the television set, vividly remember seeing the reports of a young boy walking to the Benjamin Tasker Middle School in Lanham, MD, and being shot by a sniper. The fear that grasped everyone here, parents particularly, that their child could be the next victim, that their school could be the next target, was palpable. He was rushed to a nearby medical center. Thank goodness, after a month in critical condition he survived. What if he had been critically injured or paralyzed? Who was going to pay for that young child's life and recovery if he could not allege that the negligence of the gun dealer contributed to his injury?

That is the reality. This legislation is actually modeled on the legislation adopted by the State of Idaho. Certainly that is a State that is proud of its tradition of recreational shooting and hunting. This State adopted this legislation. They recognized the problem and they took exactly the same steps we have taken. If municipalities and public interest groups are going after the gun dealers or gun manufacturers because they want to make a political point, we are not going to allow victims in Idaho who have been shot to be able to raise their voice in court?

Texas has a similar statute. They put restrictions upon municipalities, they put restrictions upon groups that might take political suits, and we have heard about those suits, but they have let ordinary citizens have a much more expansive right to go to court than anything included in this legislation before the Senate.

So we are not even being consistent with the States of Idaho and Texas and many others and we are usurping the role of States which traditionally set the standards for tort actions in their own States'. That is an interesting position for people who I used to think were faithful to this notion of State rights, State practice, local control, and let the people of Rhode Island, Idaho, and Massachusetts, let those people decide.

We are deciding if this Reed amendment fails and we pass the underlying bill that these people—Linda Franklin and James Franklin, the husband of the victim, and Lisa Brown, the mother of Iran Brown—are not worth it.

They don't mean anything. You have heard people say these are junk lawsuits. Are these lives junk? They are not.

We have a chance at least to preserve the right of individuals who have been harmed by the alleged negligence of gun dealers, gun manufacturers, and gun trade associations to get their case before a judge, to ask 12 fellow Americans to decide: Was there a duty by that defendant of more care, more attention, more foresight? Was that duty violated? Was I injured as a result of that and, therefore, should I be compensated by that person?

If we fail to adopt this amendment, we are sending a very strong message.

The PRESIDING OFFICER. The Senator has consumed 10 minutes.

Mr. REED. That message is, these people don't matter. The only thing that matters is the gun lobby. That would be a terrible message to send. I urge passage of the amendment and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise to speak against the substitute. This is a complete substitute for the bill. In effect, it guts the bill. It does exactly the opposite of what the bill is intended to do, and that is to stop abusive predatory lawsuits against law-abiding businesses for damages caused by the criminal misuse of their products by others.

Senator REED mentioned some terrible situations regarding the Washington serial killer and said that those victims would not be able to sue the gun seller who was presumed to be negligent. In fact, that gun seller was found to have violated the laws that are required to be met and his license was revoked. So I believe under our bill—and it would be our opinion under our bill—that those people would be able to sue that gun seller. The other side has a legal opinion to the contrary, but we disagree with that.

The bill says, what is not included in this bill is a lawsuit which is brought against a seller for negligent entrustment or negligence, per se. So I think you could have brought that lawsuit. In fact, those lawsuits were settled.

What we are talking about is a substitute that appears to bar lawsuits but, in fact, allows lawsuits by cities and counties against firearms manufacturers and sellers if there is a State legislature approving the lawsuit or the State Attorney General brings the suit. So everything that we have been voting on would be reversed. If a State legislature says: We are going to allow a city to sue, the city would be able to sue.

We are here not to bar legitimate lawsuits. We are not here to bar lawsuits if a gun malfunctions. What we are trying to do is stop gun manufacturers from having to answer lawsuit after lawsuit after lawsuit for the criminal misuse of that product. If this amendment is passed, the bill before us will be gutted and will be of no use. We are trying to stop frivolous lawsuits against law-abiding citizens and law-abiding gun manufacturers. It does not stop lawsuits for negligence of the gun itself or violations of the law by the gun seller.

I hope my colleagues will see through this substitute and stay with the intent of the bill—to stop the frivolous lawsuits against the gun manufacturer or the misuse of the product, not the defectiveness of the product itself.

I yield the floor.

Mr. HATCH. President, I rise to speak against this substitute amendment that we are now considering. This is yet another attempt to undermine the very purpose of the Protection of Lawful Commerce in Arms Act.

This amendment creates two loopholes so large that you could drive a truck through them. It would allow lawsuits for lawfully making or selling nondefective guns as long as either the State legislature approves, or a State attorney general brings a lawsuit on behalf of a government.

Unfortunately, some governmental entities are part of the problem here. Cash-strapped cities and counties across the country bring these junk lawsuits in an attempt to snare money from gun makers and sellers for their lawful activities. To suggest that State legislative approval will serve as a sufficient check on this problem makes no sense. These lawsuits already have the tacit approval of their state legislatures. And we already know well that some State attorneys general are not above pursuing political agendas. This would only encourage them to bring more of these types of suits.

So this amendment would not eliminate in any meaningful way the very lawsuits that the gun liability bill is designed to address. And furthermore, it would not even apply to any pending cases. So lawsuits brought against the gun industry by New York City and Washington, DC, to cite two examples,

would go forward under this substitute amendment.

This bill is about the integrity of our legal system. It is about protecting law-abiding small businesses from being overwhelmed by junk—yes, junk—lawsuits. And these are not just any small businesses—they also happen to be critical suppliers to our military. In my book, this alone makes them worthy of our protection.

We have acted before when we needed to protect others who were besieged or potentially besieged by unscrupulous trial lawyers. We did it for light aircraft manufacturers. We did it for food donors. We did it for medical implant manufacturers. We did it for charitable volunteers. We did it for makers of anti-terrorism technology. And we need to do it here.

We cannot continue to allow these lawsuits that turn traditional tort law on its head. We cannot continue to blame law-abiding citizens for the acts of criminals. We cannot continue to witness the corruption of our legal system and do nothing.

This substitute would do nothing, or at least it would do nothing good. I urge my colleagues to vote against the Reed amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, let me take a very few minutes because I do want to get on with the vote. First, the underlying legislation would deny the attorney general of Texas the right to defend the people of Texas in court with a suit, I believe. Second, the legislature in Texas could not authorize suits. They could under my amendment. But more importantly, going back to the Washington sniper, none of the carve-outs, none of the caveats would reach that. I don't think it is a matter of dispute. Negligent entrustment has been defined in the bill as supplying a qualified product by seller for use by another person where the seller knows or should know. There is no allegation that the seller knew that the young person came in and shoplifted the weapon. In fact, he could argue that there was no sale involved whatsoever. It was shoplifting. But that was negligence because I think we all agree that gun sellers have an obligation to keep their weapons under control.

With respect to negligence per se, that is an unexcused violation of some enactment or administrative law. There are many States in the country that don't recognize that as a theory of tort recovery. Again, you would have to show they violated the law, they violated an administrative rule. In the case of Bushmaster, the situation is such that I don't believe there is any relevant legislation that says that an owner has to do anything in a way that would give rise to this negligence, per se.

My point is that the legislation before us would effectively carve out all these suits. That is entirely correct.

We are faced with a choice. This amendment does not allow these so-called political suits by municipalities, by political subdivisions, by groups, but it should allow individuals who have been harmed to have their day in court.

I hope we can prevail.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Is the Senator ready to yield back the balance of his time?

Mr. REED. Is the Senator ready?

Mr. CRAIG. I would be so inclined to with this simple statement. There are 62 Senators who are cosponsors in a bipartisan way of the underlying bill. The Reed substitute, as the Senator from Texas has said, simply guts it, changes the whole intent of the bill very dramatically. I urge my colleagues to vote against the Reed substitute.

I yield back the balance of my time.

Mr. REED. I yield back my time.

Mr. CRAIG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to amendment No. 1642. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. ROBERTS), the Senator from Oregon (Mr. SMITH), and the Senator from New Hampshire (Mr. SUNUNU).

Further, if present and voting, the Senator from Kansas (Mr. ROBERTS), and the Senator from Oregon (Mr. SMITH) would have voted ''nay.''

Mr. DURBIN. I announce that on this vote, the Senator from California (Mrs. FEINSTEIN) is paired with the Senator from Kansas (Mr. ROBERTS).

If present and voting, the Senator from California would vote ''aye'' and the Senator from Kansas would vote ''no.''

The result was announced—yeas 33, nays 63, as follows:

[Rollcall Vote No. 218 Leg.]

YEAS—33

Akaka	DeWine	Leahy
Bayh	Dodd	Levin
Biden	Durbin	Mikulski
Bingaman	Feingold	Murray
Boxer	Harkin	Nelson (FL)
Cantwell	Inouye	Obama
Carper	Jeffords	Reed
Chafee	Kennedy	Sarbanes
Clinton	Kerry	Schumer
Corzine	Kohl	Stabenow
Dayton	Lautenberg	Wyden

NAYS—63

Alexander	Cochran	Frist
Allard	Coleman	Graham
Allen	Collins	Grassley
Baucus	Conrad	Gregg
Bennett	Cornyn	Hagel
Bond	Craig	Hatch
Brownback	Crapo	Hutchison
Bunning	DeMint	Inhofe
Burns	Dole	Isakson
Burr	Domenici	Johnson
Byrd	Dorgan	Kyl
Chambliss	Ensign	Landrieu
Coburn	Enzi	Lieberman
Lincoln	Pryor	Specter
Lott	Reid	Stevens
Lugar	Rockefeller	Talent
Martinez	Salazar	Thomas
McCain	Santorum	Thune
McConnell	Sessions	Vitter
Murkowski	Shelby	Voinovich
Nelson (NE)	Snowe	Warner

NOT VOTING—4

Feinstein	Smith
Roberts	Sununu

The amendment (No. 1642) was rejected.

Mr. CRAIG. I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. At this point, there are 10 minutes of debate equally divided.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I yield to my colleague for his closing remarks.

Mr. REED. Mr. President, first, I thank Senator CRAIG for a very deliberate and civil debate. I thank my staff, Steve Eichenauer.

The legislation before us is not about the facts. There is no crisis in litigation affecting the gun manufacturers. These are the litigation trends of Smith & Wesson: In 2001, 32 cases by municipalities; 10 by product liability. It declined steadily, with four cases ending on appeal and two cases with respect to personal liability. That is not a graph showing a crisis in litigation. The slope is going the wrong way. There is no crisis. There is no threat to procurement of military weapons. That is also conjured up out of thin air.

This is not about legal principle. A fundamental legal principle in this country is if you are wronged by the negligence of another, you can go to court. This is not about legal principles. We have had talk about intervening criminal activities taking away the negligence of another. That is not what the statement of torts, which is the black letter law of the country, states. These exceptions in the bill have been carefully crafted to prevent lawsuits, not to enable appropriate lawsuits to go forward.

It is not a failure of State courts to act. They have been acting. These cases have been going down under current State law. They are being handled by the States. It is about power, sheer naked power by the National Rifle Association—the power to take us off the Defense bill, the power to take us from that bill which would consider the quality of life and the safety of our troops to go to this legislation, the power to take us away from debate on stem cells which will save people and help people, so we can protect people who deal in dangerous weapons. It is about power; it is not about principle.

But there is something else. If this legislation passes, what incentive will there be for a gun dealer or gun manufacturer to act reasonably? There is a rogues' gallery of gun dealers—Realco

Guns in Maryland, Southern Police Equipment in Richmond—all across the country—Atlantic Gun and Tackle in Bedford Heights, OH. Hundreds of guns are sold and are ending up at crime scenes. If they are this blatant and reckless now, what do they do when we say, ''Don't worry, no one can touch you''? It will create huge disincentives.

Finally, what we are doing today is silencing the voices of victims of gun violence, silencing people who have been wronged through the negligence of another. This is not about trying gun manufacturers for someone else's fault, this is about their own responsibility.

Think tonight about what happened in Washington with the snipers. An FBI employee loading material at a Home Depot parking lot—shot. Some of that was attributed to the negligence of a gun dealer. That lady's husband and family would be silenced. Think about the young boy walking to his school in Maryland—shot. His family would be silenced. Think about the cabdriver filling up his cab. Tonight when we fill up our cars, think for a second, what if you were struck down, caught up in that web of violence. What if your family knew part of that was the result of the negligence of a gun dealer, a gun manufacturer. Who will take care of your family? Who will take care of you if you are paralyzed? We are telling those good people, our constituents: You are not worth it; the NRA is more important. You will suffer. If you don't have the money, you will be on charity. That will take care of you.

This is wrong. It is wrong morally, it is wrongly legally. We should vote against this legislation. I passionately hope we do.

I yield back my time.

Mr. ALLEN. Mr. President, I rise today in strong support of the Protection of Lawful Commerce in Arms Act.

Contrary to the concept of individual responsibility—for the past decade, the U.S. firearms industry has been under assault by legal activists attempting to hold this industry somehow legally responsible for the criminal conduct of others. Some of these suits are intended to drive gunmakers out of business by holding manufacturers and dealers liable for the criminal acts of others. It has been reported to me that to date, the total cost for the firearms industry in defending themselves from these suits exceeds $200 million.

Moreover, these lawsuits seek a broad range of remedies relating to product design and marketing. Their demands, if granted, would create major impediments on interstate commerce in firearms and ammunition, including unwanted design changes, overly burdensome sales policies, and higher costs for purchasers.

S. 397, which we are in the midst of debating, is desirable legislation and I am proud to be a cosponsor of this bill. This legislation will help curb frivolous litigation against a lawful American industry and the thousands of the men and women it employs. Imagine if General Motors or an auto dealer were to be held liable for an accident caused by a reckless or drunk driver in one of their manufactured vehicles or sue Budweiser. Likewise, businesses legally engaged in manufacturing or selling firearms should not be liable for the harm caused by people who use that firearm in an unsafe or criminal manner. This legislation does carefully preserve the right of individuals to have their day in court with civil liability actions for injury or danger caused by negligence on the firearms dealer or manufacturer or defective product, a standard in product liability law.

Moreover, these frivolous lawsuits against honest, legal companies put our national security and our military at risk. Since the late 1960's, the U.S. military has relied on private industry to supply our soldiers, our sailors, our airmen, and our marines. In 2004–2005 alone, the military has contracted to buy more than 200,000 rifles, sidearms and machine guns. And these numbers do not include new purchases for our Federal law enforcement agencies, such as the Department of Homeland Security. In addition, the Army fires about 2 billion rounds of ammunition each year. While the Army does manufacture a portion of that ammunition, it purchases half of its ammunition from private companies.

The bottom line is, these frivolous lawsuits can shut down the very same companies that are supplying our armed forces, our Federal law enforcement agencies, and our local and State police. Even the Department of Defense understands the implications that these lawsuits have on the firearms. In a letter dated July 27, 2005, from the Department to my colleague, Senator SESSIONS, DoD states, ''We believe that passage of S. 397 would help safeguard our national security by limiting unnecessary lawsuits against an industry that plays a critical role in meeting the procurement needs of our men and women in uniform.'' That is from the Department of Defense, not something created by the NRA or the proponents of this legislation.

This legislation enjoys broad support. In addition to the NRA, business and insurance groups such as the National Association of Manufacturers, U.S. Chamber of Commerce, National Association of Wholesaler-Distributors, National Federation of Independent Business, and the American Insurance Association all support S. 397. These lawsuits pose a threat to any business that makes or sells any lawful, nondefective product that can be misused by third parties.

National and local unions such as the United Auto Workers, International Association of Machinists and Aerospace Workers, and United Mine Workers support this bill because the firearms and ammunition industry provides good jobs for working Americans.

National hunting and wildlife conservation groups support S. 397, because excise taxes on firearm and ammunition sales fund wildlife management projects in the States. If these lawsuits wipe out the industry, these funds will vanish.

This bill is not a gun control bill; we should save that debate for another time. We should not saddle this lawsuit abuse legislation with anti-gun amendments that seek to infringe upon the Second Amendment rights of Virginians and Americans ability to protect themselves and their families. If Senators need to look to gun control, the best gun control measures are to enforce existing gun laws, which do more to keep illegal guns out of the hands of criminals than passing new and additional burden on the sale of firearms to honest gun-owners. Criminals commit gun-related crimes and we should focus our attention on these criminals rather than further restricting the rights of law-abiding citizens.

S. 397 will stop lawsuits that are designed not to recover damages from criminal or culpable parties, but which are designed to financially damage the industry or force regulatory changes that would restrict their legal business and strangle second amendment rights across the Nation. We have a responsibility to protect those rights and to stop the use of the courts to usurp legislative prerogatives.

I respectfully urge my colleagues to support this legislation and to oppose extraneous amendments that would weaken or delay it from passing. Please protect the rights of our constituents and the legal business that is unjustly threatened by these reckless lawsuits; and let us preserve the balance between the legislative and judicial branches of government.

Mrs. BOXER. Mr. President, this bill is part of the special interest agenda being pushed by the NRA and the Republican leader. First they managed to stall the reauthorization of the assault weapon bank, even though the bill saved lives and kept out police officers safer. Now they are looking to grant sweeping protections to gun manufacturers and dealers who recklessly sell guns that cause thousands of deaths in this country each year.

Contrary to what supporters of this bill are saying, this is not ''tort reform'' and this will not, as the White House said, ''help curb the growing problem of frivolous lawsuits.''

They call this bill the ''Protection of Lawful Commerce in Arms Act.'' They give it a nice name to make it sound like they are protecting trade. What if we called it the ''Shield Gun Makers From Lawsuits When Their Defective Gun Blows Your Child's Arm Off Act?'' Or, ''You're Off the Hook if You Sell Guns to Criminals and They Use Those Guns to Murder People Act?'' I guess those names just don't have the same ring to them.

How about a little truth in advertising here—''Protect the Unlawful Commerce in Arms Act?'' I don't think so. Make no mistake, this bill is an

erosion of victims' rights. This bill puts the gun industry ahead of the rights of individuals. Ahead of the Dix family. These are real people, real victims. The doors of the courthouse would have been shut to the family of Kenzo Dix, who ultimately settled with Beretta.

This case was brought by the parents of Kenzo, a 15-year-old boy who was unintentionally shot and killed by a young friend with a defectively designed gun. Kenzo's friend Michael thought that he had unloaded his father's gun when he replaced the loaded magazine with an empty one. But the design of the gun failed to reveal the hidden bullet in the chamber, and this bullet killed Kenzo.

Beretta could have easily designed the gun with inexpensive, well-known features that would have prevented Kenzo's death. They could have included an internal lock to prevent Michael from firing the gun, or an effective loaded-chamber indicator to alert Michael that the gun was loaded. Although Beretta was long aware of the need for these features, it refused to include them.

Imported guns are subject to safety standards. But because domestic firearms are currently exempt from Federal consumer product safety oversight, the Consumer Product Safety Commission cannot compel gunmakers to include needed safety devices, as it routinely does with manufacturers of other products.

So court cases like Dix v. Beretta are the only way we can ensure gunmakers do the right thing. It is the only way. We know that just 1 percent of the gun dealers supply 57 percent of the guns used in crimes. None of us can ever forget the terror and horror wrought by the DC-area snipers. And no one here can forget the role that Bull's Eye Shooter Supply of Tacoma, W.A, played in that terror. Bull's Eye says it ''lost'' the assault rifle used by the DC area snipers to murder 12 people.

In just 3 years, Bull's Eye says it managed to ''lose'' 237 other guns as well. This is unbelievable. How did Bull's Eye ''lose'' all of those weapons? Clearly, the victims of Bull's Eye's gross negligence should have their day in court. In all it supplied guns traced to at least 52 crimes.

But if the Senate caves to the gun lobby and passes this bill, dealers like Bull's Eye will be able to continue business as usual. This bill eliminates any real incentives for the gun industry to act more responsibly. This can only result in more victims in the future like those killed by the DC area snipers.

This bill would bar cases including those brought by two New Jersey police officers, David Lemongello and Ken McGuire. They won a settlement from a pawn shop dealer who negligently sold twelve guns to a straw purchaser.

How does a straw purchaser work? This is one way: A criminal wants to buy several guns for his gang. He knows he can not buy it because he is a felon. So he gets his girlfriend who does not have a criminal record to go to the sales counter with him, and she buys the guns for him. The gun dealer knows something is wrong here, this young woman wanting to buy all these guns, but the dealer wants the money and goes ahead and sells the guns to the girl.

As a result of the police officers' suit, the West Virginia dealer changed its policies and now no longer engages in large-volume gun sales. Two other dealers in the same town also changed their policies. So the lawsuit brought about responsible behavior and our people are safer.

I want my colleagues to consider the outcome of this lawsuit. For two brave police officers, justice was done. The dealer was held accountable for its reckless sale to a straw purchaser, and now the dealer operates more responsibly. And no one declared bankruptcy.

This outcome was only possible because this special interest immunity bill had not yet become law.

Police and big city mayors oppose the bill before us. They say it will just make battling illegal guns more difficult and make police officers' lives more dangerous, more deadly. They oppose immunizing gun manufacturers against civil liability because it would remove much of their legal incentive to behave responsibly. It would just encourage bad manufacturers to remain bad, while giving good manufacturers the green light to become lax.

In my home state of California, we used to have a law that shielded gunmakers from liability, but the governor signed legislation repealing that law 2 years ago. Today in California, gun manufacturers like everyone else are responsible for making their products as safe as they can be.

We are safer today in California, but that margin of safety will disappear if Congress gives the gun industry special legal immunity.

In 1999, the late Senator John Chafee and I introduced the Firearms Rights, Responsibilities, and Remedies Act, which would have preserved the right of local governments and individuals to hold the gun industry accountable for avoidable gun violence.

Congress not only failed to pass our bill; the House and now many of my colleagues have charged off in the opposite direction to protect gunmakers while putting the rest of us at greater risk.

Who do we represent here? I ask my colleagues that we think about the 30,000 Americans killed every year by guns, and 12,000 children wounded each year by guns.

I urge my colleagues to listen to the police officers walking the beat, to Lynn Dix, the mother of Kenzo Dix, and to all the other mothers who have lost their children to gun violence, and to victims of the DC snipers' rampage. Listen to them and vote against this extremist bill.

Mr. FEINGOLD. Mr. President, I have already registered my disappointment at the majority leader's decision to cease work on an important defense authorization bill in order to move to the bill before us, S. 397. Today, I would like to speak about S. 397, the gun liability bill, and some of the amendments relating to firearms that have been offered to it.

Listening to the debate on this bill, the American people might get the impression that there are just two sides to this issue. On one side are those who view the right to bear arms as absolute and oppose any proposals that could remotely be considered as restrictions on that right. On the other side are those who view gun use as an evil in our society that must be limited in any way possible. Sometimes the rhetoric gets turned up so high that reasoned analysis and debate is obscured. That is unfortunate.

I have never accepted the proposition that the gun debate is a black and white issue, a matter of ''you're with us, or you're against us.'' Instead, I have followed what I believe is a moderate course, faithful to the Constitution and to the realities of modern society. I believe that the second amendment was not an afterthought, that it has meaning today and must be respected. I support the right to bear arms for lawful purposes—for hunting and sport and for self-protection. Millions of Americans own firearms legally and we should not take action that tells them that they are second-class citizens or that their constitutional rights are under attack. At the same time, there are actions we can and should take to protect public safety that do not infringe on constitutional rights. I supported the amendment offered by the senior Senator from Wisconsin regarding child safety locks and was pleased that the Senate approved this measure, which does not infringe on the rights of law-abiding citizens to own and use guns.

I do not believe that granting special liability protection to the gun industry is necessary to protect the right to bear arms, however. There is no evidence that liability lawsuits threaten the existence of the gun industry in America. I believe it would be a mistake to impose a nationwide standard of tort liability on this industry that is more lenient than the standard that applies to the manufacturers or suppliers of any other product. The gun industry, like other industries, owes a duty to consumers of reasonable care, and juries of citizens are best able to define that standard as they do in tort cases of every imaginable type every day in this country.

Giving sweeping liability protection will cut off the rights of those injured by negligence and set a very dangerous precedent for how Congress treats corporate wrongdoers. I will, therefore, vote against S. 397.

I realize that many have very strong feelings about gun issues. But I also believe that most Americans favor a

moderate approach. That is the approach I intend to follow. My approach may not satisfy those on the extremes of this debate, but I believe it reflects the commonsense views of reasonable Americans who regret that this issue has become the subject of such overheated rhetoric.

Mr. LEVIN. Mr. President, the misnamed Protection of Lawful Commerce in Arms Act would rewrite well-accepted principles of liability law, providing one industry, the gun industry, legal protections not enjoyed by other industries. In addition, this bill would set a dangerous precedent by giving a single industry broad immunity from civil liability and deprive many victims of gun violence with legitimate cases of their day in court.

Law enforcement and community groups oppose the gun industry immunity bill because they understand its negative impact on the legal rights of gun violence victims. The list of law enforcement groups opposing this bill includes the International Brotherhood of Police Officers, the Major Cities Chiefs Association, the National Black Police Association, and the Michigan Association of Chiefs of Police as well as police departments from around the country. The bill is also opposed by many organizations in Michigan including the League of Women Voters of Michigan, the Michigan Partnership to Prevent Gun Violence, and local chapters of the Million Mom March.

Tort law has been traditionally left to the States to define, and if changes have been necessary, Congress has usually deferred to State legislatures to make those changes. This bill seeks to impose a Federal tort regime that would significantly restrict the ability of State courts to hear and decide cases involving grossly negligent or reckless conduct by gun dealers and manufacturers, even where existing State law would permit such cases.

Some have argued that this legislation would protect the gun industry from frivolous lawsuits meant to bankrupt the entire industry. While most gun dealers and manufacturers conduct their business responsibly, this gun industry immunity legislation would provide broad protection from liability even in these cases where gross negligence or recklessness lead to someone being injured or killed. The issue here is not whether innocent manufacturers or gun dealers should be held accountable for the criminal actions of those who use their product. Manufacturers and dealers of guns have a right to make and sell guns. However, that right is not unlimited. It comes with some responsibility. Like every other business in this country, people who are in the gun business have a responsibility to conduct that business with reasonable care. If a member of the gun industry fails to do so, and their negligence or recklessness leads to someone being killed or injured, they should not be immune from suit.

As this bill is currently written, it is not sufficient that persons injured as a result of a gun manufacturer or dealer's negligence or reckless conduct prove their case; with a few exceptions, they would also have to show that the actions of the manufacturer or dealer were illegal to recover damages. This is a radical departure from not only common law but also from principles of fairness and the protection of victims' rights.

What if a gun dealer is not violating the law, but is reckless or grossly negligent in the way they maintain their inventory or secure the weapons they are selling? Tragically, we had such a situation in the 2002 DC area sniper shootings. Last year, the victims of the DC area sniper shootings won a multi-million-dollar settlement from Bulls Eye Shooter Supply for their negligence relative to the assault rifle used in the shootings. According to published reports, audits by the Bureau of Alcohol, Tobacco, Firearms and Explosives indicate that 238 guns had gone missing from Bull's Eye's inventory and over 50 had been traced to criminal acts since 1997. Had this gun industry immunity bill been enacted prior to the DC area sniper shootings, the victims would have been unable to even have their case against Bull's Eye Shooter Supply heard in court.

Another tragic example involving an innocent victim of gun violence is that of Danny Guzman. On Christmas Eve 1999, Danny Guzman was shot and killed in Worcester, MA. The gun used in the shooting was found nearly a week later by a 4-year-old child and was turned over to police. The gun had no serial number.

The investigation following the shooting revealed the gun was one of several stolen by employees of Kahr Arms. It was discovered that one of the employees in the Kahr manufacturing facility had stolen the gun used to kill Danny Guzman and sold it to buy crack cocaine. Publicly available records indicate this employee of the Kahr facility had been addicted to cocaine and was ''habitually stealing money to support his cocaine habit.''

In March of 2000, the police arrested the Kahr employee who later pled guilty to the gun thefts. The investigation also led to the arrest of a second Kahr employee who also pled guilty to stealing a gun.

According to a complaint that was filed by Danny Guzman's family, Kahr Arms not only apparently hired a drug addict with a record of criminal charges, but the company also chose not to utilize basic security measures that could have prevented the theft, or an inventory tracking system that could have determined that guns were missing. According to the family's complaint, Kahr Arms did not conduct background checks on employees. The company did not install metal detectors, security cameras, x-ray machines, or other devices to ensure that employees did not walk off with guns.

Despite the fact that Kahr Arms manufactures several types of ''ultra compact'' handguns, the company did not track its inventory in any meaningful way. And according to the complaint, from February 1998 to February 1999, approximately 16 shipments of handguns from Kahr Arms failed to arrive at their points of destination.

The lawsuit that was filed by Danny Guzman's surviving family members alleges the wrongful death based on Kahr Arms alleged negligence. While the defendants moved to dismiss this case on April 7, 2003, the Massachusetts Superior Court denied the motions. If the bill before us is enacted, the court would be required to dismiss the case against Kahr Arms.

Responsible gun dealers and manufacturers do not need immunity from liability, and we should not be protecting the reckless and negligent ones.

A letter to members of Congress from 75 law professors from universities around the country illustrates the extensive negative impact that this bill would have on the rights of innocent gun violence victims. Here's a few excerpts:

> It might appear from the face of the bill that S. 397 and H.R. 800 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, negligent sales to gun traffickers who supply criminals, as in the above example, 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. 397 and H.R. 800 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, or against selling hundreds of guns to the same individual, under this bill there could be no tort liability.''

I ask unanimous consent that a copy of this letter be printed in the RECORD.

I offered an amendment to help address this problem in the bill. Many recklessness and gross negligence suits are not based on a violation of the law, but on a violation of a standard. My amendment would have provided that reckless or grossly negligent conduct by gun dealers or manufacturers, in other words, those whose own actions are a proximate cause of someone's death or injury, may be held liable in civil court for the damages they caused. This approach would have preserved well-established principles of our tort law. No one proposes, and this amendment did not propose, to make members of the gun industry responsible for the actions of criminals. This amendment would have made sure members of the gun industry are still responsible for their own reckless or negligent conduct.

It is truly unfortunate that the majority in the Senate did not adopt my amendment to protect the rights of victims of gun violence and to hold members of the gun industry accountable for their own actions when they lead to the injury or death of another person. I am also disappointed that the Senate failed to adopt amendments that would have protected the rights of children and law enforcement officers to file suit against irresponsible gun dealers and manufacturers who continue to contribute to the gun violence problem in our country.

We should not infringe upon the rights of gun violence victims in order to provide a single industry with immunity from liability. If this bill is enacted, other industries will almost certainly line up for similar protections. This is unwise legislation and it should not be adopted.

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL,
Ann Arbor, Michigan.

DEAR SENATORS AND REPRESENTATIVES: As a professor of law at the University of Michigan Law School, I write to alert you to the legal implications of S. 397 and H.R. 800, the ''Protection of Lawful Commerce in Arms Act.'' My colleagues, who join me in signing this letter, are professors at law schools around the country. This bill would represent a substantial and radical departure from traditional principles of American tort law. Though described as an effort to limit the unwarranted expansion of tort liability, the bill would in fact represent a dramatic narrowing of traditional tort principles by providing one industry with a literally unprecedented immunity from liability for the foreseeable consequences of negligent conduct.

S. 397 and H.R. 800, described as ''a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others,'' would largely immunize those in the firearms industry from liability for negligence. This would represent a sharp break with traditional principles of tort liability. No other industry enjoys or has ever enjoyed such a blanket freedom from responsibility for the foreseeable and preventable consequences of negligent conduct.

It might be suggested that the bill would merely preclude what traditional tort law ought to be understood to preclude in any event—lawsuits for damages resulting from third party misconduct, and in particular from the criminal misuse of firearms. This argument, however, rests on a fundamental misunderstanding of American tort law. American law has never embraced a rule freeing defendants from liability for the foreseeable consequences of their negligence merely because those consequences may include the criminal conduct of third parties. Numerous cases from every American jurisdiction could be cited here, but let the Restatement (Second) of Torts suffice:

§ 449. TORTIOUS OR CRIMINAL ACTS THE PROBABILITY OF WHICH MAKES ACTOR'S CONDUCT NEGLIGENT

If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, *or criminal* does not prevent the actor from being liable for harm caused thereby. (emphasis supplied)

Similarly, actors may be liable if their negligence enables or facilitates foreseeable third party criminal conduct.

Thus, car dealers who negligently leave vehicles unattended, railroads who negligently manage trains, hotel operators who negligently fail to secure rooms, and contractors who negligently leave dangerous equipment unguarded are all potentially liable if their conduct creates an unreasonable and foreseeable risk of third party misconduct, including illegal behavior, leading to harm. In keeping with these principles, cases have found that sellers of firearms and other products (whether manufacturers, distributors or dealers) may be liable for negligently supplying customers or downstream sellers whose negligence, in turn, results in injuries caused by third party criminal or negligent conduct. In other words, if the very reason one's conduct is negligent is because it creates a foreseeable risk of illegal third party conduct, that illegal conduct does not sever the causal connection between the negligence and the consequent harm. Of course, defendants are not automatically liable for illegal third party conduct, but are liable only if—given the foreseeable risk and the available precautions—they were unreasonable (negligent) in failing to guard against the danger. In most cases, moreover, the third party wrongdoer will also be liable. But, again, the bottom line is that under traditional tort 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. 397 and H.R. 800 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 risk, no matter how high or foreseeable, 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. And they could engage in this negligent conduct persistently, even with the specific intent of profiting from sales of guns that are foreseeably headed to criminal hands. Under this bill, a firearms dealer, distributor, or manufacturer 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. A firearms dealer, in most states, could sell 100 guns to the same individual every day, even after the dealer is informed that these guns are being used in crime—even, say, by the same violent street gang.

It might appear from the face of the bill that S. 397 and H.R. 800 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, negligent sales to gun traffickers who supply criminals (as in the above example), 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. 397 and H.R. 800 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, or against selling 100s of guns to the same individual, under this bill there could be no tort liability. Again, this represents radical departure from traditional tort principles.

My aim here is simply to provide information, and insure that you are not inadvertently misled about the meaning and scope of S. 397 and H.R. 800. As currently drafted, this Bill would not simply protect against the expansion of tort liability, as has been suggested, but would in fact dramatically limit the application of longstanding and otherwise universally applicable tort principles. It provides to firearms makers and distributors a literally unprecedented form of tort immunity not enjoyed or even dreamed-of by any other industry.

Professor Sherman J. Clark, University of Michigan Law School; Professor Richard L. Abel, UCLA Law School;

Professor Barbara Bader Aldave, University of Oregon School of Law; Professor Mark F. Anderson, Temple University Beasley School of Law; Professor Emeritus James Francis Bailey, III Indiana University School of Law; Professor Elizabeth Bartholet, Harvard Law School; Professor Peter A Bell, Syracuse University College of Law; Professor Margaret Berger, Brooklyn Law School; Professor M. Gregg Bloche, Georgetown University Law Center; Professor Michael C. Blumm, Lewis and Clark Law School; Professor Carl T. Bogus, Roger Williams University School of Law; Professor Cynthia Grant Bowman, Northwestern University School of Law; Director of the MacArthur Justice Center and Lecturer in Law; Locke Bowman, University of Chicago Law School; Professor Scott Burris, Temple University Beasley School of Law; Professor Donna Byrne, William Mitchell College of Law; Professor Emily Calhoun, University of Colorado School of Law; Professor Erwin Chemerinsky, Duke Law School; Associate Clinical Professor Kenneth D. Chestek, Indiana University School of Law; Associate Professor Stephen Clark, Albany Law School; Professor Marsha N. Cohen, University of California Hastings College of the Law.

Professor Anthony D'Amato, Northwestern University School of Law; Professor John L. Diamond, University of California Hastings College of Law; Professor David R. Dow, University of Houston Law Center; Professor Jean M. Eggen, Widener University School of Law; Associate Professor Christine Haight Farley, American University, Washington College of Law; Associate Professor Ann E. Freedman, Rutgers Law School-Camden; Professor Gerald Frug, Harvard Law School; Professor Barry R. Furrow, Widener University School of Law; Associate Clinical Professor Craig Futterman, University of Chicago Law School; Professor David Gelfand, Tulane University Law School; Professor Phyllis Goldfarb, Boston College Law School; Professor Lawrence Gostin, Georgetown University Law Center; Professor Michael Gottesman, Georgetown University Law Center; Professor Stephen E. Gottlieb, Albany Law School; Professor Phoebe Haddon, Temple University Beasley School of Law; Professor Jon D. Hanson, Harvard Law School; Professor Douglas R. Heidenreich, William Mitchell College of Law; Professor Kathy Hessler, Case Western Reserve University School of Law; Professor Eric S. Janus, William Mitchell College of Law; Professor Sheri Lynn Johnson, Cornell Law School;

Professor David J. Jung, University of California Hastings College of Law; Associate Professor Ken Katkin, Salmon P. Chase College of Law, Northern Kentucky Univ.; Professor David Kairys, Temple University Beasley School of Law; Professor Kit Kinports, University of Illinois School of Law; Professor Martin A. Kotler, Widener University School of Law; Professor Baily Kuklin, Brooklyn Law School; Professor Arthur B. LaFrance, Lewis and Clark Law School; Professor Sylvia A. Law, NYU School of Law; Professor Ronald Lasing, Lewis and Clark Law School; Professor Robert Justin Lipkin, Widener University School of Law; Professor Hugh C. Macgill, University of Connecticut School of Law; Professor Mari J. Matsuda, Georgetown University Law Center; Associate Professor Finbarr McCarthy, University Beasley School of Law; Director (Retired Professor) Christine M. McDermott, Randolph County Family Crisis Center, North Carolina; Professor Joan S. Meier, George Washington University Law School; Professor Naomi Mezey, Georgetown University Law Center; Professor Eben Moglen, Columbia Law School; Professor Dawn C. Nunziato, George Washington University Law School; Professor Michael S. Perlin, New York Law School; Clinical Professor Mark A. Peterson, Northwestern School of Law, Lewis and Clark College.

Professor Mark C. Rahdert, Temple University Beasley School of Law; Professor Denise Roy, William Mitchell College of Law; Professor Joyce Saltalamachia, New York Law School; Clinical Assistant Professor David A. Santacroce, University of Michigan School of Law; Professor Niels Schaumanm, William Mitchell College of Law; Professor Margo Schlanger, Washington University School of Law; Professor Marjorie M. Shultz, University of California Boalt School of Law; Senior Lecturer Stephen E. Smith, Northwestern University School of Law; Professor Peter J. Smith, George Washington University Law School; Professor Norman Stein, University of Alabama School of Law; Professor Duncan Kennedy, Harvard Law School; Professor Frank J.Vandall, Emory University School of Law; Professor Kelly Weisberg, University of California Hastings College of the Law; Professor Robin L. West, Georgetown University Law Center; Professor Christina B. Whitman, University of Michigan School of Law; Professor William M. Wiecek, Syracuse University College of Law; Professor Bruce Winick, University of Miami School of Law; Professor Stephen Wizner, Yale Law School; Professor William Woodward, Temple University Beasley School of Law.

Mr. CRAIG. Mr. President, as the sponsor of this legislation, I rise to clear up any questions that might arise when tying to understand the intent of S. 397 and what its enactment would accomplish. The Protection of Lawful Commerce in Arms Act will eliminate predatory lawsuits that would otherwise cripple an entire industry.

First, let me make two points about what the bill will not do. Nothing in the bill is intended to allow ''leapfrogging'' over the gun dealer to the manufacturer. The negligent entrustment provision applies specifically to the situation where a dealer knows or reasonably should know that a dangerous person is purchasing a firearm with the intent to commit, and does commit a crime with that firearm. When the manufacturer has done nothing but sell a legal, nondefective product according to the law, the negligent entrustment provision would not allow bypass of the gun dealer to get to the deeper pockets of the manufacturer.

It is also important to make sure that it is clear that the ''administrative proceedings'' section will have no effect on the ability of the Department of Alcohol, Tobacco, and Firearms or any administrative agency to revoke licenses or otherwise engage in administrative proceedings to punish bad acting manufacturers, distributors, or dealers, or otherwise enforce the laws and regulations that apply to them.

The bill's definition section describes abusive suits in which a party is seeking relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.'' This definition clearly does not describe ATF enforcement proceedings. ATF is authorized to begin enforcement proceedings when a violation of our Nation's Federal gun laws has occurred. The use or misuse of the product is irrelevant to whether ATF may begin an administrative proceeding.

In fact, ATF does not use administrative enforcement proceedings to seek ''relief'' for the ''misuse'' of a product. The law does not require there be a ''use''—let alone a ''misuse'' of the product—in order for ATF to act. ATF can begin a license revocation proceeding against a dealer for even a single violation of Federal firearms laws, regardless of whether the gun is ever ''used'' or ''misused'' by anyone. ATF can begin proceedings based on recordkeeping violations, for instance, even if no firearm ever leaves the dealer's place of business.

Some have tried to suggest that a dealer selling a gun without doing the proper paperwork or meeting other legal requirements might count as ''misuse.'' This stretches the term ''use'' beyond all rational meaning, and I believe the courts of our Nation would agree. For instance, the Supreme Court has held that firearms ''use'' in a violent or drug-trafficking crime requires ''active employment.'' *Bailey* v. *U.S.*, 516 U.S. 137 (1995). If there is no ''use'' of the gun—only a sale—then there can be no ''misuse.''

But even if we were to consider an illegal sale to be ''misuse,'' we must look at the last part of the definition: A ''qualified civil liability action'' involves the ''criminal or unlawful misuse of a qualified product by the person or a third party.'' If we were talking about an ATF action, then ''the person'' would be ATF itself. Obviously, that is not what ATF claims in an administrative proceeding. So we could only be speaking of a misuse by ''a third party''—and in an enforcement proceeding, neither the dealer nor the ATF is a ''third party.''

For all of these reasons, I think it is very clear that the language in this bill about ''administrative proceedings'' should in no way prevent any action by ATF to enforce the firearms laws of the United States. It is only intended to prevent—and, I believe, only does prevent—abuse of the courts and of various administrative processes that could be manipulated unfairly at the State or local level. Furthermore, it is worth noting that since the term ''administrative preceeding'' is part of the definition of a ''qualified civil action,'' then all of the exemptions of the bill permitting an action to proceed would

equally apply to an administrative proceeding.

However, to make this intent absolutely clear, Senator FRIST and I have offered an amendment to the exemptions section of the bill that would add ''an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18, United States Code, or chapter 53 of the Internal Revenue Code of 1986.'' The sections of the US Code I just referenced are also known as the Gun Control Act and the National Firearms Act. Again, this would underscore what is the plain intent of the bill—to allow enforcement of our Nation's firearms laws through administrative proceedings.

Second, I want to give some examples of exactly the type of predatory lawsuits this bill will eliminate. I think it is important that we all understand the current abuse of the legal system to implement radical policies that could not be accomplished through the democratic process and understand that after passing S. 397, we will finally put an end to that abuse.

One key element of the legislation is to provide for the dismissal of pending litigation. Dismissals should be immediate—not after trial. Courts should dismiss on their own motion, instead of forcing defendants to incur the additional costs and delay of filing motions and arguing. Let me emphasize that S. 397 recognizes these lawsuits are an abuse of courts and law-abiding businesses and individuals, and I would respectfully submit that it should be the goal of our Nation's courts to eliminate those abuses as swiftly as possible, when enactment of S. 397 gives them the authority to do so.

In City of New York v. Beretta USA Corp. et al. currently set for trial on September 7 in Federal court in Brooklyn, NY, the plaintiff has asserted that industry members have created a ''public nuisance.'' The lawful sale of a highly regulated product later misused by criminals is not a public nuisance;and has never been considered a public nuisance in American jurisprudence.

Another suit expected to be affected by S. 397 is the District of Columbia and nine individual plaintiffs, Lawson, et al. that have sued members of the firearms industry, under a statute that unbelievably imposes automatic and absolute liability. The law in question says you are liable ''without regard to fault or proof of defect.'' There is also a case pending in Federal court in the District of Columbia in which a gun manufacturer is being sued under this very statute, Charlot v. Bushmaster. The companies being sued under the District ''automatic'' liability law have no defense.

Another example of a lawsuit captured by this bill is the case of Ileto v. Glock, pending in Federal court in Los Angeles, CA, against Glock and a distributor, RSR. The United States Ninth Circuit Court of Appeals said Glock and RSR could be sued for a criminal shooting when Glock sold the pistol to a Washington State police department and the distributor RSR never owned, nor sold, nor possessed the firearm.

Yet another example are the suits pending against members of the firearms industry by cities like Gary, IN and Cleveland, OH even though the States of Indiana and Ohio have themselves passed State laws similar in purpose and intent to S. 397.

In the past few days, lawyers from anti-gun interest groups have rushed to the courthouse to file at least three lawsuits, one in New York and two in Pennsylvania against manufacturers Sturm Ruger, Phoenix Arms, and Hi-Point, and I suspect there will be more suits filed in the days and weeks ahead. While we do not know all the facts yet, in one of these cases we do know that the sale by the dealer was of a single firearm made by an employee of that dealer who was an off-duty federal law enforcement agent and the firearm in that case was only transferred to the buyer after he or she filled out the required paperwork and after the background check by the FBI, as required under the Brady Act.

Congress is properly acting here under its Commerce Clause powers, as we have done many times in the past. We are also rightly concerned, as is the Department of Defense, that if these lawsuits succeed in driving gun manufacturers out of business, the national defense will be harmed. The same is true for our homeland security, as these same companies make the firearms used by law enforcement, including the Capitol Police, of which my distinguished colleague, the Democratic Leader Mr. REID was once a proud member.

The Constitution also, I believe, imposes upon Congress the duty to protect the liberties enshrined in the Bill of Rights which includes the second amendment. If the firearms manufacturers are driven out of business, that second amendment will be nothing more than an illusion.

Mr. President, I hope these comments will be helpful for anyone seeking additional information about the intent and—I believe—the impact of enacting S. 397, the Protection of Lawful Commerce in Arms Act.

Mr. WARNER. Mr. President, I rise today to share my views on the legislation before the Senate, S. 397, the gun liability bill.

From the outset, let me make clear: I am a strong supporter of measured, balanced, and fair tort reform. In my over 27 years in the Senate, I have consistently supported measures to reform our legal system when such measures benefit the American people as a whole, benefit our Nation's economy, and still remain fair to legitimate victims who have been wrongfully injured due to the wrongful actions of another.

Without a doubt, the gun , liability bill tries to address a very real problem in America. There is no question that the gun industry in this country is under legal siege from frivolous lawsuits. These lawsuits threaten the very vitality of the gun industry in America and, by extension, the ability of those of us who enjoy hunting, sport shooting, and the collecting of vintage guns, as I have done nearly all of my life. In my view, there is no question that law abiding gun manufacturers and law-abiding gun dealers deserve some measure of fair, balanced legal reform.

But equally true is that the gun liability bill before us today is an overly broad solution to a serious problem because it will immunize from legitimate lawsuits for negligence those very few, I repeat, very few irresponsible gun dealers and manufacturers in the industry whose actions, again and again, contribute to violent crime in this country.

This wide grant of immunity undoubtedly comes with unintended consequences.

For example, we know that under this bill, if it were law at the time, the victims of the DC area sniper shootings would have been unable to pursue their claim against an unbelievably negligent gun dealer who allowed the snipers to steal the weapon they used to kill so many innocent victims. This wasn't the first time this dealer had been negligent in accounting for its gun inventory. Indeed, it had previously lost over 200 weapons over a short period of time. This dealer had a track record of again and again losing firearms. That is why they were sued, and that is why the dealer ultimately settled the sniper victim's lawsuit for $2.5 million. The gun liability bill, though, would have rewarded this dealer's bad behavior by granting it immunity for these egregious acts.

I offered an amendment to correct this flaw. My amendment would have ensured that the 99 percent of law-abiding gun dealers in America would be protected from frivolous lawsuits, but ensured that those very few irresponsible gun dealers were not rewarded with immunity for their bad behavior. Unfortunately, procedural maneuvers made by others in accordance with Senate rules prevented me from obtaining an up-or-down vote on my germane amendment. So these defects in the bill remain uncorrected.

Over the course of the past week, these issues, both the pros and cons of this bill, have been extensively debated here in the Senate. The issues are clear. On the one hand, the need for tort reform for the gun industry is very real. On the other hand, I believe this is an overly broad measure that will likely treat some future victims of gun crimes unfairly.

These factors are not easy to weigh.

But as I went through the process of examining this legislation and listening to the debate, one particular point seemed to always stick out above all others. And that is the preeminent importance of America's national security.

As the chairman of the Senate Armed Services Committee, I recently requested that the Department of Defense review this legislation. In its reply, the Department's Office of General Counsel stated that the Department supports this gun liability legislation because it ''would help safeguard our national security by limiting unnecessary lawsuits against an industry that plays a critical role in meeting the procurement needs of our men and women in uniform.'' I ask unanimous consent to include a copy of this letter in the RECORD.

(See exhibit 1.)

The PRESIDING OFFICER. Without objection, so ordered.

Mr. WARNER. Indeed, the gun industry does play a crucial role in helping to equip the men and women of our Armed Forces. Companies like Beretta U.S.A., Colt Manufacturing, and others supply a host of weapons and small arms that are vital to our military.

This fact is significant because the truth of the matter is that, for a variety of complex reasons, America's military is increasingly being forced to turn to foreign sources for new technology. We simply cannot afford to lose more and more technical expertise if we want to ensure that our men and women in uniform will always have the best equipment and the best technology in the world. Our national security is dependent on having homegrown talent and expertise, and this legislation will help ensure that we do.

Ultimately, it is for these reasons that I have decided to cast my vote in support of this legislation.

EXHIBIT 1

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, July 29, 2005.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are pleased to provide you with the Department of Defense's view on S. 397, a bill to ''prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.''

The Department of Defense strongly supports this legislation.

We believe that passage of S. 397 would help safeguard our national security by limiting unnecessary lawsuits against an industry that plays a critical role in meeting the procurement needs of our men and women in uniform.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this letter for the consideration of the committee.

Sincerely,

DANIEL J. DELL'ORTO,
Acting.

Mr. CRAIG. Mr. President, last year, we promised the cosponsors of this legislation that we would return to this issue and seek a fair opportunity to consider a bill free of any poison pill amendments.

Thanks to the leadership of Senator FRIST and the cooperation of our colleagues on both sides of the aisle, that day has come.

This bill will end an outrageous abuse of our courts and law-abiding American businesses.

This bill will not prevent a single victim from obtaining relief for wrongs done to them by anyone in the gun industry.

S. 397 will only stop one narrowly-drawn kind of lawsuit: predatory lawsuits seeking to hold legitimate, law-abiding businesses responsible for harm done by the misdeeds of people over whom they had no control.

We called this bill the Protection of Lawful Commerce in Arms. That is precisely what it is designed to do—to protect lawful commerce in the firearms that supply our nation's military and peace officers, and the millions of law-abiding citizens who acquire guns as collectors, hunters, target shooters, or for self-defense.

I am pleased that the Senate will shortly be voting on this legislation, but before we do, let me express my thanks to a number of people who made this possible.

I would like to thank the 61 cosponsors of this legislation for their support and encouragement—and the colleagues who counseled with me on shaping the debate and who spoke on the floor, especially Senators SESSIONS, CORNYN, GRAHAM, KYL, COBURN, BURR, THUNE, CHAMBLISS, HUTCHISON, HATCH, BOND, and, of course, the lead Democrat sponsor of this legislation, Senator BAUCUS.

As I have said, special thanks to the Republican majority leader and whip for their leadership and the resources of their offices, including the help of their talented staff, in particular, Eric Ueland and Sharon Soderstrom, and Jim Hippe; Kyle Simmons, John Abegg, Laura Pemberton, Brian Lewis and Malloy McDaniel.

I would also like to thank the Democrat leader, Senator REID, for his constructive input in moving us to the end of this debate.

I am especially grateful to have had the help of the Judiciary Committee, and in particular Brett Tolman of Chairman SPECTER's staff, and James Suehr.

Let me also thank the staff who spent many early and late hours working on this legislation and the debate: William Henderson, William Smith, Mary Chesser, Bob Taylor, Don Dempsey and Andy Moskowitz, James Galyean, Chip Roy, Ajit Pai, and Wendy Fleming. I want you all to know you were all part of an historic effort, and your hard work is appreciated.

Finally, I would like to thank the distinguished gentleman from Rhode Island, Senator REED, for his courtesy as we worked together to manage a difficult debate. Although we disagree on the issue, he has never been disagreeable, and I appreciate the tone he brought to the debate.

And now, Mr. President, I urge my colleagues to pass this legislation, and I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, last year, I promised the cosponsors of this important legislation that we would return with a fair opportunity to work our will against the wrong kind of amendments and attempt to establish a clear record on what I think is a very important decision that the Senate is about to make.

I offer a very special thanks to Senator FRIST for his cooperation and all of my colleagues who have helped bring this bill to the Senate floor in the method we have and the success we have had.

This bill is intended to do one thing, and that is to end the abuse that is now going on in the court system of America against law-abiding American businesses when they violate no law. But because the product they sell in the marketplace may ultimately be misused in a criminal act, therefore someone, including some of my colleagues, would suggest that law-abiding business person is liable. I suggest and I think the Senate tonight will say they ought not be. But if that law-abiding citizen violates the law or produces a faulty product, then they are liable. That is the law today.

What we have crafted is a very narrow exemption from predatory lawsuits seeking to hold legitimate, law-abiding people responsible for the harm done by the misdeeds of people over whom they have no control. That is what S. 397 is all about. You can put all kinds of different explanations around it, but the reality is very clear and the legislation is really very simple. It is straightforward. It is intended to be. It is intended to stop those kinds of abusive lawsuits.

Mr. President, I think we have concluded. If my colleague does not have anything more to say, my colleague and I yield back the remainder of our time.

AMENDMENT NO. 1606, AS MODIFIED

The PRESIDING OFFICER. The Frist amendment No. 1606, as modified, to amendment No. 1605, as modified, is agreed to.

The amendment (No. 1606), as modified, was agreed to.

AMENDMENT NO. 1605, AS MODIFIED

The PRESIDING OFFICER. The Criag amendment No. 1605, as modified, as amended, is agreed to.

The amendment (No. 1606), as modified, 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 question is, Shall the bill, as amended, pass?

Mr. CRAIG. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. ROBERTS), the Senator from Oregon (Mr. SMITH), and the Senator from New Hampshire (Mr. SUNUNU).

Further, if present and voting, the Senator from Oregon (Mr. SMITH) and the Senator from Kansas (Mr. ROBERTS) would have voted ''yea.''

Mr. DURBIN. I announce that on this vote, the Senator from California (Mrs. FEINSTEIN) is paired with the Senator from Kansas (Mr. ROBERTS).

If present and voting, the Senator from California would vote ''no'' and the Senator from Kansas would vote ''yes.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 65, nays 31, as follows:

[Rollcall Vote No. 219 Leg.]

YEAS—65

Alexander	Domenici	McCain
Allard	Dorgan	McConnell
Allen	Ensign	Murkowski
Baucus	Enzi	Nelson (FL)
Bennett	Frist	Nelson (NE)
Bond	Graham	Pryor
Brownback	Grassley	Reid
Bunning	Gregg	Rockefeller
Burns	Hagel	Salazar
Burr	Hatch	Santorum
Byrd	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Jeffords	Specter
Coleman	Johnson	Stevens
Collins	Kohl	Talent
Conrad	Kyl	Thomas
Cornyn	Landrieu	Thune
Craig	Lincoln	Vitter
Crapo	Lott	Voinovich
DeMint	Lugar	Warner
Dole	Martinez	

NAYS—31

Akaka	DeWine	Lieberman
Bayh	Dodd	Mikulski
Biden	Durbin	Murray
Bingaman	Feingold	Obama
Boxer	Harkin	Reed
Cantwell	Inouye	Sarbanes
Carper	Kennedy	Schumer
Chafee	Kerry	Stabenow
Clinton	Lautenberg	Wyden
Corzine	Leahy	
Dayton	Levin	

NOT VOTING—4

Feinstein	Smith
Roberts	Sununu

The bill (S. 397), as amended, was passed, as follows:

S. 397

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 ''Protection of Lawful Commerce in Arms Act''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under art. IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) MANUFACTURER.—The term ''manufacturer'' means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) QUALIFIED PRODUCT.—The term ''qualified product'' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) QUALIFIED CIVIL LIABILITY ACTION.—

(A) IN GENERAL.—The term ''qualified civil liability action'' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief'' resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) and action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26, United States Code.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(D) MINOR CHILD EXCEPTION.—Nothing in this Act shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) SELLER.—The term ''seller'' means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE.—The term ''State'' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term ''trade association'' means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE.—The term ''unlawful misuse'' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

SEC. 5. CHILD SAFETY LOCKS.

(a) SHORT TITLE.—This section may be cited as the ''Child Safety Lock Act of 2005''.

(b) PURPOSES.—The purposes of this section are—

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(c) FIREARMS SAFETY.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

''(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

''(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

''(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

''(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

''(3) LIABILITY FOR USE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

''(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

''(C) DEFINED TERM.—As used in this paragraph, the term 'qualified civil liability action'—

''(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

''(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

''(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

''(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.''.

(2) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(A) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(B) by adding at the end the following:

''(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

''(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

''(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.''.

(3) LIABILITY; EVIDENCE.—

(A) LIABILITY.—Nothing in this section shall be construed to—

(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(ii) establish any standard of care.

(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 6. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

''(7) for any person to manufacture or import armor piercing ammunition, unless—

''(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) the manufacture of such ammunition is for the purpose of exportation; or

''(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

''(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

''(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) is for the purpose of exportation; or

''(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;''.

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

''(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

''(A) be sentenced to a term of imprisonment of not less than 15 years; and

''(B) if death results from the use of such ammunition—

''(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

''(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.''.

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uniform standard for the testing of projectiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study conducted under paragraph (1) shall include—

(A) variations in performance that are related to the length of the barrel of the handgun or center-fire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Committee on the Judiciary of the Senate; and

(B) the chairman and ranking member of the Committee on the Judiciary of the House of Representatives.

SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

Mr. INHOFE. Mr. President, I submit a report of the committee of conference on the bill (H.R. 3), and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3), to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of July 28, 2005.)

Mr. INHOFE. I understand we have 15 minutes divided evenly between the majority and minority, and the Senator from Arizona has up to 30 minutes.

I ask now to recognize the Senator from Arizona for up to 30 minutes.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, this is a remarkable piece of work. I want to assure my colleagues that I will not take a half hour, but I will take a few minutes to talk about some of the interesting and egregious and remarkable aspects of this bill.

There is an old saying about evil, and that is, if you do not check it or reverse it, then it just continues to get worse. I have to say, I haven't seen anything quite like this, although I have seen some pretty bad things in the years that I have been here.

It is $286.4 billion, terrifying in its fiscal consequences and disappointing for the lack of fiscal discipline it represents. I wonder what it is going to take to make the case for fiscal sanity here. If you had asked me years ago, I would have said that the combination of war, record deficits, and the largest public debt in the country's history would constitute a sufficient perfect storm to break us out of this spending addiction—and I would have been wrong. I think we can weather almost any storm thrown at us. This week's expenditures, I think, are a pretty good example.

I mentioned before, we are all the beneficiaries of the foresight of President Eisenhower and the Congress that helped to shepherd the original highway bill legislation. I have carried it to the floor before. It is about that thick. It has two demonstration projects in it.

This is just a small example of some of the provisions in this bill, which are unnumbered pages. The conferees didn't even have time to number the pages. I have no idea how many billions are in here. Some, I am sure, are very good projects. Many of them are interesting. Some of them are entertaining. Just glance right here: Parking facility in Peoria, IL, $800,000. A parking facility in a highway bill.

The original bill as proposed by President Eisenhower and adopted by the Congress had two demonstration projects. Now we have a lot. No one has counted them yet. No one has counted these projects because we have not, of course, had time because they have been stuffed in late, in the middle of the night.

Not surprisingly, my colleagues have come to me and begged: Please make this short; I have a plane to catch. Please don't take too long; I have a plane to catch. I have to get out of here.

Of course, it is just a coincidence that we happen to be considering this legislation just before we leave.

How do we celebrate? Let me count the ways.

Section 1963, Apollo theater leases. The section would require the Economic Development Administration to lease and improve the Apollo Theater, in Harlem, New York.

The Apollo Theater in Harlem, NY.

Midway Airport, directs the Coast Guard, in consultation with the Department of Transportation, to make grants or other funding to provide for the operation of Midway Airport.

This is not an airport bill; this is a highway bill.

Expands the authority of the State of Oklahoma in environmental matters to extend over ''Indian country'' within that State.

Let me say that again.

Expands the authority of the State of Oklahoma in environmental matters to extend over ''Indian country'' within that State.

I don't know what that costs. But what in the world is it doing on a highway bill?

Requires for Treatment as a State under EPA regulations, an Indian Tribe in Oklahoma, and the State of Oklahoma, must enter a cooperative agreement to jointly plan and administer program requirements.

What is that all about? No one has ever brought it to my attention as chairman of the Indian Affairs Committee. I admit it is a long-neglected committee—at least until recently.

Eligibility to Participate in Western Alaska Community Development Quota Program. Designates a community to be eligible to participate in the Western Alaska Community Development Program established under the Magnuson-Stevens Act.

It may be worthwhile. I have no clue. What in the world does it have to do with a highway bill?

This is one of the most remarkable I have ever seen. I have been talking about these for years and years, but this is truly remarkable. This is a ''technical adjustment.''

This section would overturn a decision by the 9th Circuit Court of Appeals.