

and are obtaining immeasurable possibilities for the future.

I ask unanimous consent that this bipartisan letter be printed in the RECORD.

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

U.S. SENATE,

Washington, DC, May 14, 1999.

President WILLIAM JEFFERSON CLINTON,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We are writing to encourage you to finalize bilateral negotiations over Chinese accession to the WTO. For our part, upon conclusion of a market access agreement that clearly advances our economic interests in China, we are committed to granting China permanent Normal Trade Relations status.

Despite the events of this week in Belgrade and China, it is critical that we focus on what is important to America's national interest. Incorporating China into the global trade community through WTO membership; encouraging China to follow internationally accepted trade rules; opening Chinese markets to our manufactured goods, agricultural products, and services; and helping to anchor the economic reform process underway in China, all serve our national interest. The recent events in Belgrade and Beijing are reason neither to weaken those commitments made during Premier Zhu Rongji's visit last month nor to delay conclusion of the accession process.

We look forward to working with you to ensure an early conclusion of these negotiations and China's accession to the WTO.

Sincerely,

Max Baucus, John H. Chafee, Jay Rockefeller, Don Nickles, John Breaux, Chuck Grassley, Dianne Feinstein, Ted Stevens, Tom Daschle, Frank Murkowski, Mitch McConnell, Larry Craig, Orrin Hatch, Conrad Burns, Chuck Hagel, Daniel Inouye, Patty Murray, Harry Reid, Sam Brownback, Bob Kerrey, Pat Roberts, Rod Grams, Daniel K. Akaka, George Voinovich, Ron Wyden, Jeff Bingaman, Richard H. Bryan, Gordon Smith, Slade Gorton, Craig Thomas.

RACE FOR THE CURE

Mr. BAUCUS. Mr. President, I rise today to recognize a very important event.

All over the country, women and men alike are preparing for the "Race for the Cure," a 5-kilometer foot race to raise money in the fight against breast cancer. Each year, the number of participants in the race has grown. Sixteen years after its inception, the Race for the Cure has become the largest 5-K in the world.

I believe this race is widely attended because breast cancer has affected so many people. One in 9 women and approximately 12,000 men are diagnosed with breast cancer every year. So, in some way, everyone—every man, woman, and child is affected by this disease. The Race for the Cure is important because it brings awareness to this disease that is so prevalent today.

This cause and this race are important to me for many reasons. There are

several women who are very important to me who are survivors of this terrible disease. I have learned so much from these women; I have seen their courage and, believe me, I want to underscore that point—very courageous. I have seen their willingness to fight. Through them, I have learned more about the value of life.

We often take for granted the gifts that we have been given. We catch ourselves thinking about what will happen in an hour, or in a couple of days, and we forget to live for right now. The precious time that we have with our loved ones is invaluable. We take too little time with them. Through their struggles to fight breast cancer, these women have shown me the importance of a life lived well. And for that, I thank each of them.

This race is being held in over 95 cities in the United States over the next few weeks. I am proud to say that this weekend, on May 15, the Race for the Cure will be held in Helena, MT, my State's capital. Approximately 3,000 runners will participate. More important, over 300 breast cancer survivors will participate this weekend in the race for life.

Seventy-five percent of the race proceeds are used to provide mammography vouchers and grants for follow-up diagnostic tests for more than 600 women in Montana. Thirty-two health care facilities in my State participate in this program.

I extend my special thanks to the Montana Race organizers Connie Malcom and Bobbie Pomroy and the hundreds of volunteers working together to make this important event occur. Women like Jan Paulsen, a seven-year survivor who will represent my State at the National Race for the Cure here in Washington, DC, on June 5.

Congratulations to everyone involved in this important event and good luck to all!

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Y2K ACT

Mr. WYDEN. Mr. President, as the Senate prepares for a Tuesday cloture vote on the Y2K litigation reform legislation, I want to spend just a few minutes this afternoon trying to describe where I believe we are in the course of the Senate debate and all the bipartisan progress that has been made in the last few weeks on this issue. I especially emphasize the bipartisan focus

that has been taking place in the Senate.

The House had a vote, as the Presiding Officer knows, this week. Regrettably, it was pretty much along partisan lines. There is certainly nothing partisan about this issue. If we have chaos early in the next century as a result of Y2K frivolous lawsuits, folks are not going to be sitting around asking whether Democrats or Republicans caused it. They are going to be saying: What was the problem? Why didn't the Congress deal with it?

Fortunately, the Senate, unlike the House, has been working in a bipartisan way to deal with this. On the Republican side, Chairman MCCAIN and Chairman HATCH, Senator GORTON, Senator BENNETT, and a variety of Senators have worked with me and Senator DODD, who is the Democratic leader on this issue and has done such a good job on the Y2K committee. And Senator FEINSTEIN has made enormous contributions. She represents California, of course, a State that has a great interest in technology issues.

The most important thing, as the Senate goes to the important Y2K debate next week, is for all of us to recognize that we have taken a completely different approach from that of the House of Representatives. There was no evidence of bipartisanship in the House last week. That has not been the case in the Senate.

I also want to make it clear, both Senate Democrats and Republicans are interested in working with the White House on this legislation. For the White House to veto a responsible Y2K bill would be like throwing a monkey wrench into the technology engine that is driving this Nation's economic prosperity.

I cannot believe the White House would want to do that. I know there are many in the White House who have ideas and suggestions and are talking to Senators of both parties. We are anxious to hear from them, because the Senate is going to move next week to this debate and now is the time for them to come forward with their practical suggestions.

As the Presiding Officer knows, this is a topic that cannot wait. There are a variety of issues before the Senate where the immediacy may not be all that crucial. This is an issue that cannot wait, because if we do not deal with it now, I personally believe what will happen is, early in the next century we really will have chaos as a result of this Y2K situation. The Senate could find itself back in a special session at that time having to deal with it. It is much better to do it now and to do it in a bipartisan way.

I want to spend a few minutes talking about how this effort to make this issue bipartisan and ensure that it is fair to both consumers and business has evolved over the last few weeks.

The legislation that is coming before the Senate early next week is the legislation that began in the Senate Commerce Committee, led in that effort by Chairman MCCAIN and Senator GORTON. Unfortunately, there was a strict party-line vote in the Senate Commerce Committee. I and others said there were a whole lot of features of that original Senate Commerce bill that were just unacceptable to us.

For example, it included language that would have provided what is called a "reasonable effort" sort of defense which just was not fair to the plaintiff and to the consumer, and I and others said that we could not support the bill at that time.

But after it came out of the Senate Commerce Committee, Chairman MCCAIN, to his credit, with other leaders on the Republican side of the aisle, made it clear that they wanted to work with Senator DODD, Senator FEINSTEIN, Senator KERRY, myself, and others to fashion a truly bipartisan bill. I believe that is what the Senate has before it now.

For example, the legislation which is coming before the Senate on Tuesday, which we will vote on Tuesday morning, has a sunset provision in it. We have heard all this talk on the floor of the Senate about how Y2K litigation legislation is going to be changing the tort laws and our legal system for all time, that it is going to be making these changes that are just going to last for time immemorial.

The fact of the matter is, the Y2K legislation sunsets in 2003. It is for a short period of time, and for a period of time to deal with what we think will otherwise be a variety of frivolous lawsuits and unnecessary litigation.

Second, the legislation which will be before the Senate early next week does absolutely nothing to change the tort remedies that consumers would have if they were injured as a result of a Y2K-related problem.

For example, if an individual is in an elevator that falls as a result of a computer failure, and tragically falls, say, 10 floors in an office building, and that individual is badly injured or killed, in that instance all of the existing legal remedies, all of the existing tort remedies that are now on the books, would still apply. The legislation before the Senate now would not touch in any way, not in any way, those remedies for personal injuries that would come about as a result of a Y2K failure.

So those two consumer protections—the sunset provision and ensuring that tort remedies are available to injured consumers—are in place and there to protect the public, and it is important that the Senate know that as we go to the upcoming Tuesday vote.

Third, the legislation which is before the Senate now eliminates the new and vague Federal defense, "reasonable efforts," which was what was in the

original Commerce Committee legislation. We think that was simply too mushy, too vague. It has been eliminated.

Fourth, after the legislation left the Commerce Committee, there were concerns about a new preemptive Federal standard for establishing punitive damages. Now, under the legislation before the Senate, the current standards as set out in our various States are going to prevail.

Fifth, after the legislation left the committee, we restored punitive damages in the most important cases. If a defendant is acting in bad faith, is engaged in egregious conduct that is offensive to consumers, all of the opportunities for punitive damages will lie. Also, if the defendant is insolvent, there will be a chance for the plaintiff to be made whole in those kinds of instances as well.

So the principle of joint liability for defendants in these key areas is in fact kept in place.

Next, we restore liability for directors and officers when they make misleading statements and withhold information regarding any actual or potential Y2K problem.

So all of that was essentially in the changes which Senator MCCAIN and I brought to the Senate several weeks ago. We thought that that showed a good-faith effort to work with all sides, to work with the technology community, to work with consumer organizations. We consulted with the organizations representing trial lawyers. We thought it reflected a good balance.

After that effort, Senator DODD, the Democratic leader on the Y2K issue, presented a number of other very, very good suggestions, and those have been added as well.

So the Senate now has a Y2K reform bill in front of it where there have been 10 major changes made since this legislation left the Commerce Committee, changes that Senator MCCAIN and I agreed to, that we thought did the job. Senator DODD came forward with some other additional and excellent changes. And Senator MCCAIN, to his credit and effort to be bipartisan, accepted those as well.

So we have now, I think, addressed what has been the original concern of a number of Senators. We keep in place, for example, the States' standards with respect to evidence in these cases. There was a concern by some Senators that somehow this legislation had raised the bar in terms of the plaintiff having to meet higher standards of evidence in order to make their case. We kept the current State evidentiary standards.

So now in fact our standards with respect to evidence track the language in the securities litigation reform bill that was passed and signed into law as well as the 1992 Y2K Information Readiness Disclosure Act. So it is clear that

there is precedent for the evidentiary standards we are using in this legislation.

These are major changes. They were put together by a bipartisan group and together, I think, reflect the kind of legislation that the Senate ought to pass and I think will pass when we get an opportunity to vote on the legislation on the merits.

I will also tell you that this makes the Senate bill a very, very different bill from the legislation the House of Representatives enacted a few days ago. The House legislation in fact had a vague reasonable-efforts defense. We got rid of that after it came out of the Senate Commerce Committee. Senator MCCAIN and I and Senator FEINSTEIN and others looked at the legislation. We got rid of that. We said it is too vague, it is not fair to the plaintiff or the consumer. The House kept it earlier in the week.

The House legislation did not have a sunset date in it. Our legislation does. It says this is going to be for a short time window, until 2003.

A number of other changes which we think are not fair to the plaintiff or the consumer were areas that the House was unwilling to touch. On the directors and officers, they do not take the position that we take. They would limit liability for directors and officers. They do not take the position that we take on proportionate liability. And in fact they do have a higher evidentiary standard for the plaintiff and the consumer than we do.

So the fact is, the Senate will be voting on a very, very different bill. I am hopeful that the Senate will strongly endorse our approach, which we think is fair to both plaintiffs and defendants.

There have been other ideas floated in the last couple of days. I will wrap up just for a few minutes by talking about them, because I think if you look at what is being floated now, our legislation again falls right into the balanced, centrist kind of approach the Senate ought to be taking. I am going to wrap up just by briefly discussing some of these other ideas which have been circulated in the last couple of days.

There are some who would like to limit the legislation only to commercial laws. This would deny the consumer the chance to get a Y2K problem fixed in a timely manner. That is what we do in our legislation. But some who would limit the legislation only to commercial laws would force those who are least able to afford attorneys to go out and have to hire them. Under our bill, the consumer tells the manufacturer or the vendor how they want the problem fixed and they would be able to get the job done in 90 days or less.

I do not think the consumer wants to spend months and even years waiting in line after all the other frivolous lawsuits go forward before theirs. I think

people want to get their problems solved and want to get them solved quickly. The fact is, under our legislation, if the consumer, if the plaintiff, is not treated fairly, if the consumers do not believe they get a fair shake, they can go out and file suit on the very first day—the very first day—and be in a position to have their issue aired immediately.

Some of the other proposals that have been offered would offer no protection for small business from punitive damages. Without some protection, a small business could be facing an avalanche of lawsuits. Putting a small business out of business is, in my view, an odd way to try to fix the Y2K problem. But what Senator DODD did, with the valuable additions that he made, was the kind of approach that I think really does protect the small business and deal with the issue of small businesses and punitive damages responsibly. Unlimited joint liability, and we have heard some who have advocated that, would declare open season on anybody in the wholesale or in the retail chain. You do that, and there is absolutely no protection for the small business mainstream retailer.

Now, what has been interesting is that some who have opposed the efforts that our bipartisan group has made on the Y2K issue have said that we are against small business and that small business does not get a fair shake under our legislation.

The fact of the matter is that hundreds of small business organizations have endorsed the bipartisan legislation that is before the Senate. I think the idea of having unlimited joint liability really would be inequitable to the small business. Certainly, we ought to make sure those small businesses that are most vulnerable get a fair shake.

Other approaches just do not offer the incentives to business that we

think are necessary to help fix the Y2K problem. They just force the consumer into the courtroom, really give businesses no reason to help mitigate the Y2K situation.

This isn't a partisan issue. It affects every computer system that uses date information. Every piece of hardware, every piece of an operating support system, and every software program that uses date-related information may be affected. It is not a design flaw.

There has somehow been spread across the country the notion that all of this stems from design flaws in our computer systems. It was an engineering trade-off. To get more space on a disk and in memory, the precision of century indicators was abandoned. It is hard for all of us to believe today that disk and memory space used to be at a premium, but it was. In the early 1960s, for example, computer memory cost as much as \$1 million for what today can be purchased for less than \$100. No computer programmer thought that the programs written then would still be running in the year 2000, but they are.

The trade-off became the industry standard, and computers cannot work at all without industry standards. Those standards are the means by which programs and systems exchange information.

I guess you could try to solve the Y2K problem by just dumping all the old layers of computer code that have been accumulated in the last few decades, but that is not a realistic way to proceed. Everybody involved, from CEOs to all of the people doing basic programming, need to continue the painstaking process of making sure that all systems are Y2K compliant. Our goal ought to be to bring every information technology system into Y2K compliance as soon as possible. That ought to be our principal focus and, at the same time, we ought to make sure,

as our legislation does, that there is a good safety net in place.

I am very hopeful that the Senate will pass this legislation. We all know that the economic good times that we have seen recently are being driven by technology. I have said repeatedly that if there is a veto of a bipartisan, responsible Y2K bill, that really would be like throwing a monkey wrench into the technology engine that is driving our Nation's prosperity. There is no other way to put it. We have to get a good bipartisan Y2K reform bill on the President's desk. We need to do it now.

I am hopeful that the White House will work with us constructively in the days ahead. I think the changes that have been made since this legislation originally came out of the Senate Commerce Committee do the job. I can tell you, having heard from Senator MCCAIN and Senator HATCH and Senator DODD and Senator FEINSTEIN, we are open to other ideas and suggestions as well. But we have to get this legislation moving. We have to get it signed. It is too important.

I hope our colleagues get a little bit of R&R over the weekend. This has been a long week with the juvenile justice legislation. That bill and Y2K and other subjects are coming up next week, which will be hectic as well. I am very hopeful our colleagues will support the bipartisan Y2K bill that we will have before us Tuesday at 9:45.

Mr. President, I yield the floor.

RECESS UNTIL MONDAY, MAY 17,
1999

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until Monday, May 17, 1999.

Thereupon, the Senate, at 3:29 p.m., recessed until Monday, May 17, 1999, at 12 noon.