

medical research dollars; women's groups are requesting my continued support for women's health and family planning programs; education groups urge me to continue to increase Federal support for elementary, secondary and higher education.

The Chairman of the Labor, HHS, and Education Subcommittee will face many challenges in this Congress. The most difficult will be finding funding for the Congressional and Presidential priorities within the current fiscal environment and achieving the proper balance so that all priorities can be met.

Continuing my Chairmanship would afford me the opportunity to protect the programs and priorities that I have long championed.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Chair states to all Senators present, I was giving some leeway as the morning business continued. I will now close morning business. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 5, which the clerk will report.

The bill clerk read as follows:

A bill (S. 5) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as the Presiding Officer has noted, we are continuing consideration of class action reform. Yesterday, we had opening statements, which I led off as chairman of the Judiciary Committee, and the ranking member, Senator LEAHY, made his opening statement. Senator HATCH spoke. We will be going to an amendment this morning by Senator DURBIN on mass actions.

The class action bill has as its central focus to prevent judge shopping to various States and even counties where courts and judges have a prejudicial predisposition on cases. The issue of diversity of citizenship has been created in the Federal courts to eliminate favoritism. When diversity jurisdiction was established, it was undertaken in the context of the claimant from one State, illustratively, Virginia coming to Pennsylvania, and the concern there was there might be some favoritism for the local resident in Pennsylvania. So the jurisdictional amount, when I was in the practice of law, was \$3,000. It is now \$75,000 which would put the case in the Federal court where there would be more objectivity. That is what they are trying to do here, to eliminate judge shopping.

If the cases which stay in the State court have two-thirds of the class from

that State, it would go into the Federal court. If one-third or less is not from the State—in the one-third to two-third range—it would be the discretion of the judge.

As I said yesterday, there is, as far as I am concerned, a very important purpose here: to put cases in the Federal court to avoid forum shopping and judge shopping.

With respect to the substantive law, it is my view that the substantive law ought not to be altered. I commented briefly on the Bingaman amendment yesterday where I think it is important that the Federal judges who have the cases would have the discretion to apply State law. But that will be taken up sometime when we debate the matter later.

I want to yield now to Senator MCCONNELL for leadership time or time as he may choose.

Mr. MCCONNELL. Mr. President, I thank the chairman of the Judiciary Committee.

I rise to speak about a case that I believe perfectly illustrates some of the problems with our current class action system. This case is, unfortunately, not at all unique. These outrageous decisions happen all too frequently. The bill currently under consideration will help fix some of these problems.

I have a chart. It is kind of hard to see. Basically, it is a letter that a member of my staff recently got. It included a check. The check is made payable to a member of my staff who received it in the mail. On the check's "Pay to the Order of" line, I have covered up the name of the staffer so she may remain anonymous.

I also obscured the name of the defendant in this case. Plaintiffs' lawyers have already soaked them once, and I do not want to give them the opportunity to do it again. I would hate to see others able to sue the company because they heard the company settled at least one class action lawsuit.

Along with this settlement check, my staffer received a letter which says in part:

You have been identified as a member of the class of . . . customers who are eligible for a refund under the terms of a settlement agreement reached in a class-action lawsuit . . . The enclosed check includes any refunds for which you were eligible.

Imagine her excitement. As you know, Senate staffers are certainly not the highest paid people in town. So this woman on my staff told me she was, indeed, thrilled to anticipate what she might be receiving. And then she looked at the enclosed check to see just how big her windfall was. It was a whopping 32 cents. That is right, she received a check made out to her in the amount of 32 cents. I guess it goes without saying that she was a little bit disappointed to find out her newfound riches had disappeared already.

Do not misunderstand me. I am not suggesting my staffer deserved a bigger

settlement check. In fact, she told me she had no complaint against the defendant, and she never asked to be a part of the lawsuit. Apparently, she just happened to be a customer of the company that was sued, and it was determined that she theoretically could bring a claim against the defendant. So she became a member of "a class" who was due a settlement.

If this does not precisely illustrate the absurdity of the current class action epidemic in this country, I do not know what does. To demonstrate just how far out of whack the system is, let's start with the letter notifying my staffer that she was a member of a class action lawsuit and had been awarded a settlement.

This letter and check arrived via the U.S. mail. The last time I checked, it cost 37 cents to send an envelope through the U.S. mail. The settlement check is only for 32 cents. You can probably see where I am headed with this. It cost the defendant in a class action suit 37 cents to send a settlement check worth 32 cents. I don't have the expertise in economics like my good friend and our former colleague Senator GRAMM of Texas, but I can tell you, forcing a defendant to spend 37 cents to send somebody a 32-cent check does not make much economic sense, and it certainly defies common sense.

Let me point out the most disturbing element about this lawsuit. My staffer researched this case, and it may be of interest to all of our colleagues to note that the unwitting plaintiff received 32 cents in compensation from this class action lawsuit, and her lawyers pocketed in excess of \$7 million—\$7 million. All in all, not a bad settlement if you happen to be a plaintiff's lawyer rather than a plaintiff.

And in case you think my staffer received an unusually low settlement in this litigation, let me quote from the letter accompanying the settlement check:

At the time of the settlement, we estimated that the average [refund] would be less than \$1—

The average refund would be less than a dollar—

for each eligible [plaintiff]. That estimate proved correct.

So you see, while the settlement was being arranged, it was clear each plaintiff on average would receive less than \$1. It was clear that each plaintiff would receive less than \$1. Yet the plaintiffs' lawyers still rake in more than \$7 million.

My colleagues may also be interested to know how much the defendant was forced to spend defending the lawsuit. Knowing the extent of the defense costs is instructive in demonstrating how unjust these abusive suits can be. So we asked the defendant how much it spent defending this suit that provided