convicted this person beyond reasonable doubt.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. CHABOT] has expired.

(By unanimous consent, Mr. CHABOT was allowed to proceed for 1 additional minute.)

Mr. CHABOT. Mr. Chairman, let us also be clear that the person who is on death row, if we are talking the death penalty, and I am in this particular instance, that person was already convicted by his or her peers at a fair trial beyond a reasonable doubt. It has already gone through a fairly extensive appeals process.

We are talking about another layer after they have gone through the State appeals, they are at the Federal appeals. I think the gentleman from North Carolina [Mr. WATT] would probably agree that it does not make any sense for people to remain on death row for 10, 12, 16 years.

Mr. WATT of North Carolina. If the gentleman will continue to yield, Mr. Chairman, I just want to make sure that the process that the gentleman has set up for raising constitutional issues is the same process within which this language would fit.

It does not change that process. It does not prolong it any longer than raising a constitutional claim prolongs it.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. CHABOT] has expired.

(At the request of Mr. MCCOLLUM and by unanimous consent, Mr. CHABOT was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. If the gentleman will continue to yield, Mr. Chairman, it is not about the death penalty procedure, it is about somebody coming in with credible evidence of innocence. I just wanted to make sure the gentleman understands.

Mr. CHABOT. Reclaiming my time, Mr. Chairman, I yield to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the point of this is that by doing this new procedure that the gentleman wants us to put into this law today, the gentleman would extend the opportunity for delay, because he would extend the opportunity for another bite at the apple.

Granted, it is not a constitutional right. The gentleman is creating a new one here, to come in under a probably innocent standard of some sort to get into the door for another appeal.

As the gentleman from Ohio [Mr. CHABOT] has stated, somebody might have had 10 or 15 appeals already on a constitutional basis and then they come up with new affidavit, some missing aunt or uncle comes in and says ''At 10 o'clock that night, by golly, I saw him down on Park Avenue, instead of where the crime was committed.''

Here is new evidence. If it had been admitted, maybe a Federal judge will say it is probably something the court would have considered and found the guy innocent for. By golly, they have a new appeal, and it does delay the carrying out.

That is why the District Attorney's Association nationally has said that the Watt amendment would dramatically expand death row inmates' opportunities to relitigate their convictions, and opposes this. That is why they say that the amendment of the gentleman from North Carolina [Mr. WATT] would make it easier for death row inmates to reopen their cases and delay the caseload of death row inmates, delaying their sentences.

Mr. Chairman, I think the gentleman has made a point, the gentleman from Ohio [Mr. CHABOT]. I understand the point of the gentleman from North Carolina [Mr. WATT], but I think the gentleman's point is equally and I believe preferentially made, and I believe this amendment should be defeated, because it would delay further the carrying out of sentences on death row inmates, and not do anything more than add a new door, a new avenue to that appellate process.

Mr. FATTAH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was not going to participate in this discussion, but I think it is important that voices be raised on this subject. Seemingly, to me, since I have come to Washington, people have spent a lot of time trying to make simple things complex.

The gentleman from North Carolina [Mr. WATT] has offered a very simple amendment that says that if there is evidence of innocence that an objective court would consider as a circumstance in which the person would probably be found innocent, then that should allow them an opportunity to bring that matter before the court.

We are off talking about how quickly people should be put to death and all these other matters. Now we have the gentleman who just previously spoke talking about aunts and uncles.

We should not trivialize the matter of innocence in terms of people who should not be victimized in terms of imprisoned in our land, or suffer the ultimate penalty, the death penalty, if in fact they are innocent.

Mr. Chairman, just as the case has been made that there are people who have strung these things out who were obviously guilty, I think that in almost every state of the union we could find examples of people who have been found innocent who have been in prison for long periods of time, and who have been put under the death penalty.

Whether we come to the floor and parade horrendous crimes that have been committed on one hand, and people seemingly have not suffered the appropriate punishment, or rather, whether we would take the time and look at the cases of people who have been jailed year in and year out, some for decades, almost lifetimes, who were absolutely innocent, that the same D.A. associations and others would be just as concerned for innocent Americans being wrongfully convicted and being locked out of an opportunity to present their cases to the court.

Mr. Chairman, the preamble to our Constitution requires us to, in part, participate in the process of creating a justice system in our land. That is our responsibility. It is not our responsibility to join the mob out in front of the jailhouse asking that someone be hung, or killed that night, before a trial and a jury have found them to be absolutely guilty beyond a reasonable doubt.

Mr. Chairman, I would say, finally, being not a lawyer, I am constantly interested in these matters, nonetheless. Reading the trade journal of the American Bar Association in January 1994, January a year ago, there were two interesting articles.

One was about a young man in one of our 50 States who was on death row, and because of some procedural circumstances, could not get his case back before the court, who appeared to be innocent based on all of the evidence now available.

□ 1720

There was another case this same magazine had in it in the same month of a young man who admitted, confessed that he had killed two people in the process of a drug transaction who had now served some 10 years and had been let go and was then a student at that time in law school in another one of our 50 States.

This is an interesting circumstance that now the Congress tonight, after disposing, after voting against the notion of competent counsel for people would now suggest that even if there is probable cause of innocence that that is not in and of itself enough to give them an opportunity to present their case.

Ms. PELOSI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from North Carolina [Mr. WATT] and in opposition to H.R. 729, the Effective Death Penalty Act. I do not believe that this debate is whether we should have a death penalty under circumstances under which it should be imposed. Rather it is about whether a person who is innocent can be spared from having a capital punishment exacted upon them.

The amendment of the gentleman from North Carolina [Mr. WATT] is more necessary now than before, because this crime bill, the series of bills being put together now continues what I consider to be the unfortunate trend of last year's crime bill which made more crimes punishable by the death penalty.

One would think that if one were a strong advocate for capital punishment

that one would also be a strong advocate for competent counsel, as the amendment offered by the gentleman from New York [Mr. SCHUMER] proposed, or the amendment offered by the gentleman from North Carolina [Mr. WATT] to make sure that an innocent person did not receive the death penalty.

A majority of the people in this House clearly believe that procedures governing habeas corpus may need reform, Mr. Chairman, but this bill goes too far in limiting the fundamental right of appeal which is to protect innocent people from being executed and that is why it is so very important that the Watt amendment be given every consideration by this body, hopefully favorable.

What it says, and I think it is very important for our colleagues to understand, as the gentleman from North Carolina [Mr. WATT] has explained what it says, and that it is very important for all of the people of our country to understand what it says, because it affects each and every one of them, every person sitting at home watching this debate has to know that if he or she or any member of their families is ever convicted unjustly and incorrectly of a crime, especially a crime that calls for capital punishment, that he or she would not be able to have recourse should a witness come forward, or DNA evidence prove, or a confession come forward to prove that person's innocence.

The Watt amendment says, and it relates to credible, newly discovered evidence, which had it been presented to the trier of fact or sentencing authority at trial would probably have resulted in the acquittal of the offense for which the death sentence was imposed.

So, my friends, if you are sitting at home on your sofa and one of your children is accused and convicted of a crime and sentenced to the death penalty and has exhausted his habeas corpus procedures, and someone confesses to that crime, tough luck. That is not the American way.

Mr. Chairman, I would like to engage the gentleman from North Carolina [Mr. WATT] in a colloquy to ask him precisely these questions. if someone is convicted of a capital offense and sentenced to death, and a witness comes forward who can prove, who can give credible evidence that the person is probably innocent, would that person not have that opportunity for that witness to come forward?

Mr. WATT of North Carolina. Will the gentlewoman yield?

Ms. PELOSI. I am happy to yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. If this bill passes they would not have that opportunity.

Ms. PELOSI. And if someone made a confession to the crime?

Mr. WATT of North Carolina. Let me go back because the gentleman from New York [Mr. SCHUMER] has reminded me that under present law they actually would have the right to raise it, but once this bill is passed, they will not have the right to raise it.

Ms. PELOSI. The same thing for any advances in technology; for example, what is happening with DNA, et cetera, that kind of evidence and that opportunity would not be available to the person convicted?

Mr. WATT of North Carolina. Under current law they would have the right to do it, but under this bill they would not have the right to raise it.

Ms. PELOSI. Mr. Chairman, I ask the gentleman from Florida [Mr. MCCOLLUM], would he answer those same questions? If this bill passes would a person not be able to use DNA evidence or new evidence, new technology?

Mr. MCCOLLUM. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Of course he could if it was clear and convincing evidence, he could. That is the standard in our bill, if he could present them with the situation where it would be unquestionable innocent status; if that were the case.

Mr. WATT of North Carolina. If the gentlewoman would yield, before he can ever get to the clear and convincing standard, he has to get into court by raising some constitutional claim, different from innocence. So the gentleman from Florida [Mr. MCCOLLUM] is right, that would be the ultimate standard, but it would not even be able to get into the court.

The CHAIRMAN. The time of the gentlewoman from California [Ms. PELOSI] has expired.

(At the request of Mr. MCCOLLUM, and by unanimous consent, Ms. PELOSI was allowed to proceed for 2 additional minutes.)

Mr. MCCOLLUM. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I do have something else I want to say because I contend what the gentleman is putting forth here today in this rush for 100 days, in your 100-day agenda, is trampling on over 200 years of the rule of law in our country, protecting the rights of the innocent, and people can get up here all day and talk about anecdotes that are devastating and terrible and we all have those stories to tell about people who are guilty, and who abuse the process.

This is not what the Watt amendment is about. The Watt amendment is about protecting the innocent, and the overwhelming number of people in our country I believe want to protect the innocent.

Mr. MCCOLLUM. Mr. Chairman, would the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, I just want to make the point that the gentleman from North Carolina is incorrect that we have to have a constitutional infirmity. You have to have clear and convincing evidence and be able to show ultimately that you have an unquestionable innocence and you can get in. You do not have to have both. It is one or the other; it is not both.

It is basically current law that we have established in here with respect to what we have done in this bill, and the gentleman wants to retreat a little bit from it. We have changed one standard to clear and convincing. There is doubt whether it would be preponderance or clear and convincing. So, we have lowered the standard a little. The gentleman lowers the standard on present law considerably on how you get in on the innocent.

Mr. WATT of North Carolina. Mr. Chairman, would the gentlewoman yield?

Ms. PELOSI. I am pleased to yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I want to be clear on exactly what the gentleman from Florida [Mr. MCCOLLUM] said. The standard is convincing evidence, he says.

Mr. MCCOLLUM. Clear and convincing.

Mr. WATT of North Carolina. That is the ultimate standard we are talking about; that is not the standard for review. The standard for review, based on the Supreme Court's recent ruling, is the standard that I have picked up in my amendment.

Ms. PELOSI. I thank the gentleman from North Carolina for his leadership on this issue.

I urge my colleagues to support the Watt amendment.

The CHAIRMAN. The Chair wishes to inform Members that all remarks are to be addressed to the Chair and not to anyone outside of the Chamber.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the Watt amendment.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, the problem with the Watt amendment is it vitiates the very purpose of habeas corpus reform. It makes an already endless, interminable process increasingly subject to more and more delay.

The fair administration of justice means these matters have to finally come to closure.

John Wayne Gacy spent 14 years appealing, appealing, appealing from the time of his conviction of murdering 27 young men until the time he was executed. These matters have to be brought to closure, not as a matter of statistics, but as a matter of justice to the families of the victims and as a matter of justice to the law itself.

□ 1730

One of the weaknesses of the Watt amendment is there is no requirement of showing due diligence in discovering this new evidence. If one sleeps on his or her rights and years go by and then

something turns up that probably would result, probably, in an acquittal, it seems to me that does not rise to the level of the deprivation of the constitutional right such as would make the reopening of these trials appropriate. This goes on endlessly, endlessly, endlessly; and so without a showing of due diligence that you looked for all the evidence you could and there was a reason why you could not find this—which is not a requirement in this amendment—and probably would be acquitted by virtue of that evidence, rather than unquestionably just does not seem just.

We have Supreme Court cases, Herrera versus Collins, and Schlup versus Delo, both capital cases, that stand for the principle that if you do not show a constitutional error then you have to show that you would unquestionably be released. But, bring these habeas corpus matters to closure. Have the trial as good as you can and then exercise due diligence.

If there is evidence that was not presented at the trial but just across 15 years later and say here is new evidence that probably would result, means there is never any finality to these matters and that in and of itself is unjust.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for yielding. I understand his frustration with the law, and the Gacy case has been cited by both the gentleman from Ohio and the gentleman from Illinois, the chairman.

And I agree with them on the Gacy case, and I agree with them that there have been too many appeals. What I would simply say to the gentleman is the law that you are proposing, other parts of it that deal with the 1 year and the timeliness of appeal and all of these other things deal with cases like Gacy.

Whether the Watt amendment were accepted or not, the Gacy case could not exist if the bill, H.R. 729, were to pass, and, in fact, as I understand it, and the gentleman can correct me, Gacy was from his State and he probably has more familiarity with the specifics of the case than I do, new evidence showing innocence was never one of the reasons that Gacy was able to extend the appeal after appeal after appeal.

Mr. HYDE. My recollection is he had 52 separate appeals.

Mr. SCHUMER. None were on the issue of the Watt amendment. All were on other issues.

Mr. HYDE. Is my figure too high? A staff person of the gentleman from North Carolina [Mr. WATT] was shaking her head.

Mr. WATT of North Carolina. If the gentleman will yield, I was not responding to that. I do not know how many appeals he had. None of them were based on a claim of innocence. That is the point the gentleman from New York [Mr. SCHUMER] is making, and if a person is probably innocent, which is, I mean, that is what your words are, probably innocent, I submit to you he should be given a shot, and that is all this amendment says.

Mr. HYDE. I submit to you he should exercise diligence in finding this new evidence, and absent a showing of due diligence, it is an imposition on the whole judicial system and on justice itself because there is merit, real merit, in bringing these matters to finality and to closure. They would endlessly be open under the gentleman's amendment.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New York.

Mr. SCHUMER. I agree with that. Maybe the gentleman from North Carolina [Mr. WATT] does not. I do. Many do, even on this side of the aisle.

But that is not the issue of the Watt amendment, and what I would say to the gentleman, in all due respect, is the Gacy case and the endless appeals are not what Watt is trying to do. If somebody knew that they had new evidence relating to innocence——

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has expired.

(At the request of Mr. SCHUMER and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. SCHUMER. If the gentleman will continue to yield to me, I would say why, in God's name, would someone who had been convicted and was waiting on death row delay bringing up the fact that there was new evidence that they were innocent. There have been too many appeals. I do not dispute that. But I would say that there are certain exceptions.

I make one other point to the gentleman, the Schlup case was decided January 23, 1995, after the contract was issued, and the election, and I do not mean this as political, but I mean, after all of this happened.

The case, in my judgment, reading the case, requires a standard of probable, probably resulting in conviction of one who is innocent.

To quote on page 28 of the case, ''the Carrier Standard,'' which is what the court decided should be used not the more stringent Sawyer standard, ''Requires the habeas petitioner to show that 'a constitutional violation has probably resulted in the conviction of one who is actually innocent.' ''

On page 24, the court states that, ''This is, indeed, a constitutional standard.''

So in addition to the practical arguments I would make to the gentleman, who is a fine constitutional lawyer, that the Schlup case, in a sense our new evidence, would render this part of H.R. 729 unconstitutional, and the Watt standard, by simply just reechoing what is existing law as newly done by the Schlup case, does not do damage to the gentleman's general claim that, A, there have been too many appeals, and, B, that we ought limit it.

Mr. HYDE. Let me just say this: I wish you would help us bring these cases to closure. When you have had a trial, a trial that is error free, when you have been convicted beyond all reasonable doubt, and then years later evidence turns up and you are not required to even show that you diligently did everything you could to get whatever evidence you could, it seems to me you are opening the door for never ending these appeals.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

(At the request of Mr. ACKERMAN and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. FOGLIETTA. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Pennsylvania.

Mr. FOGLIETTA. I think our objective here in passing this legislation is not to expeditiously execute people but to execute only those that we are sure are guilty of the capital crime.

Mr. HYDE. How many years does it take? How many years do we wait to find out?

Mr. FOGLIETTA. I do not care how long it takes. We should not be executing innocent people because we want to do it expeditiously.

Mr. HYDE. Do you support the death penalty?

Mr. FOGIETTA. Yes, I do, in certain cases.

Let me ask you, is it correct, I understand your position is that if a person is, or it is determined that a person who is facing execution has cause to believe that he or she is probably innocent that that person should not have an opportunity to present that evidence in court.

Mr. HYDE. I am saying the rule ought to require you to have exercised due diligence to get all of the evidence that leads to your innocence. That is my point.

Mr. FOGLIETTA. Suppose you have not exercised due diligence but you are probably; probably an innocent person should go to jail, should be executed because they did not execute due diligence?

Mr. HYDE. I do not want any innocent person to go to jail, but it seems to me——

Mr. FOGLIETTA. How about a probably innocent person?

Mr. HYDE.. The rule of right reason would say at some point we have to have finality.

Mr. FOGLIETTA. Even if the person is probably innocent?

Mr. HYDE. I do not think it is fair to impose on the system and the families of the victims to have an open-ended appeals process, and that is what the Watt amendment does.

Mr. ACKERMAN. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New York.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

(At the request of Mr. ACKERMAN and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. ACKERMAN. The gentleman from Illinois is no doubt among the fairest Members that I have ever seen in this House, and certainly one of the most compassionate. It seems to me we are talking sort of at different levels over and each other on different issues here.

Whether one is for or against the death penalty, I think most people would agree that this is not a debate on whether or not there are endless appeals and there should be limits for the kinds of the appeals that are going on and things of that nature. I think you could find some general agreement on all sides here.

The question really is this: Supposing somebody has been found guilty and is on death row, who has been convicted and suddenly some evidence does appear that did not exist; there are all sorts of scientific things now, and suppose you and I and somebody with the wisdom of Solomon, maybe even JERRY SOLOMON——

Mr. HYDE. How many years would you permit to elapse between the trial and surfacing of this newly discovered evidence?

Mr. ACKERMAN. If the person is still alive, living, breathing, innocent human being and you would look at the evidence, and you and I and a thousand judges unanimously would say, ''My God, look what happened here, this man is innocent,'' and he was condemned to death.

☐ 1740

And he was condemned to death. How would you propose that he get back before the court? That is really the question. The gentleman put closure to nothing but executing an innocent person.

Mr. HYDE. I yield to the gentleman from Florida.

Mr. MCCOLLUM. I thank the gentleman from Illinois for yielding to me.

Mr. Chairman, I think we need to come up with some clear explanation; that is, here is this section. It says, first of all, that on the first appeal, that you take under habeas corpus, you do not have to have the probable cause certificate that the gentleman from North Carolina wants to amend. You do not have to have it at all the first time. So, if have a guilt or innocence question the first time you go to Federal court after you finish your State lines of appeal or other lines and you petition the first time, guilt or innocence, you do not have to have—guilt or innocence—you do not have to have prerequisites that are in the bill. In addition to that——

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has expired.

(On request of Mr. MCCOLLUM and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. HYDE. I yield further to the gentleman from Florida.

Mr. MCCOLLUM. I thank the gentleman for yielding further.

Mr. Chairman, it is only when you get into the successive petitions after you have already had regular appeals and you have already had your first-time shot at this on guilt or innocence or anything else that the issue arises that the gentleman is making all the noise about.

And in that situation, for the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth appeal, whatever it is, there are three things you have to show. You have to show the basis for the stay and request for relief is not a claim, not previously presented in State or Federal courts. That would certainly qualify if you have new evidence. Or you have to show the failure to raise the claim is, (A) the result of State action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or, (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal prosecution review.

That is where that point comes in. Reasonable diligence on the second, third, fourth, fifth petitions. And there is a third condition, that facts underlying this claim of new facts, new evidence, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the petitioner guilty of the underlying offense.

The problem here is real clear. We want to stop these successive petitions. If you go through it on newly found evidence for second, third, fourth, or fifth, you have to go through what I just described. It seems eminently fair. It involves clear and convincing evidence, et cetera. The first time around, you do not have the same standard. And that is not what the gentleman is amending.

Mr. HYDE. Reclaiming my time, in the Herrera case, the accused's relative 6 years later came up with an affidavit that said, ''He was with me that night.'' So that was supposed to reopen the case, and that would fit in with Mr. WATT'S amendment. The court said, ''No, that is not enough.''

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

(On request of Mr. ACKERMAN and by unanimous consent, Mr. HYDE was permitted to proceed for 2 additional minutes.)

Mr. HYDE. I will yield to the gentleman from New York.

Mr. ACKERMAN. Mr. Chairman, we are trying to work together to remedy some inequities in the system. I think that the frustration of the American people, as has been expressed here, goes to the point that so many technicalities are raised wherein guilty people are extended indefinitely on death row. And that has caused a major frustration, which many of us can understand; that is, guilty people who are finding technicalities.

What is happening here, in trying to remedy that, we have an amendment that goes to a court issue. What happens when it is an innocent person? What we are doing here is not addressing that problem.

Mr. HYDE. The gentleman from Ohio will address that problem.

Mr. ACKERMAN. The question, if I can phrase it, is: Why are we looking to put technicalities in the way of an innocent person coming before the court? That is just as wrong. That is even worse because you are taking away a life.

Mr. HYDE. You would think it is the exclusionary rule, with all these technicalities getting in the way.

Mr. Chairman, I yield to the gentleman from Ohio.

Mr. CHABOT. Mr. Chairman, one point—and many points have been made on both sides—one point that has not been made is that every State has a Governor and the Governors have the final ability to commute a sentence. So if, in fact, one is arguing that at some point there is clearly an innocent person, the Governor can always commute the sentence.

I would also submit that in many instances these folks that are dragging out this death penalty process kill other inmates, kill guards, and ultimately end up on the streets, sometimes, and kill innocent people.

Mr. ACKERMAN. If the gentleman would make a leap of faith and say that we have one innocent person, how does that one innocent person present his case that you and I might agree and everybody might agree is innocent? You are going to kill somebody because we are dealing with other cases that say this is not expedient now——

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

Mrs. MINK of Hawaii. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. MINK of Hawaii asked and was given permission to revise and extend her remarks.)

Mrs. MINK of Hawaii. Mr. Chairman, this amendment which has been offered expresses the fundamental belief that people in this country have about our courts and the judicial system. And that goes to the belief that somehow the system of justice will protect those who are innocent. And what we are doing here today is trying to insert

into legislation which has been proposed that fundamental principle of making sure that no matter how we tamper with the law, no matter what restrictions we put on the right of habeas corpus, no matter what limits we put to it, that if the defendant has newly found evidence that goes to prove his innocence, he ought to have an opportunity to raise that issue before the court and to take it back for a trial. That is all we are saying.

This is not a debate about the death penalty. This is not a debate about whether or not we ought to have greater restrictions on the use of the writ of habeas corpus. This is not even about a question of abuse.

This admits all of the necessities that have been found in the majority's legislation and says, ''Yes, but wait a minute, if we put all of these new restrictions into the law, what is going to happen to an individual who might be found innocent because of newly found evidence?''

We are not saying that these defendants have a right to try the case all over again de novo. We are just saying that if there is newly found credible evidence, it gives the courts a point to decide whether this issue is genuine or not genuine, is a technicality or contrived. And that is why the importance of the word ''credible'' evidence, newly discovered.

Certainly, every one of us has a firm understanding of what the court system is, what the guarantees of due process are in this country and what the symbol of justice is for every American. And that is, if you are innocent, no law, no contrived limitation, no restrictions put on by the Congress is going to take that life if there is credible evidence that that individual is innocent.

So I am saying to the majority that has put forth this bill, accept this amendment. It does no harm to the basic tenets that you are trying to impose for all of these other criminals that you do not want to have these endless appeals on technicality.

Innocence is not a technicality. It is basic to our understanding of what the courts are supposed to protect.

Individuals, perhaps, could not come before the courts of law in a timely way. Due diligence for a defendant is not the same as due diligence for the prosecutor or for the State. It is extremely difficult to come up with evidence to prove your innocence. But when they do, they ought to have their day in court.

So I urge this House to accept the Watt amendment and perfect it so that we do not have to go back and say we passed a law today in the Congress that does not protect the rights of the innocent in this country.

Mr. Chairman, I rise in opposition to habeas corpus reform in the Effective Death Penalty Act, H.R. 729, which would severely diminish the constitutional rights of State prisoners. Habeas corpus is the only means by which State prisoners who believe they have been wrongly or unconstitutionally convicted may appeal to the Federal courts to review their convictions. Particularly in cases where the death penalty is rendered, it is unquestionable that full opportunity for judicial review must be conferred upon the accused.

I am particularly concerned that H.R. 729 would strictly limit the time period during which habeas corpus petitions could be filed, and confines each individual to a single appeal. With the intricacies and numerous requirements in capital cases, 1 year is an inadequate period of time for recruitment of attorneys willing to handle Federal death penalty cases and subsequent preparation and filing of habeas petitions. To additionally limit those convicted to a single appeal unrightfully circumscribes the fairness of the judicial process in these cases. I agree that valuable time in the courts must not be occupied by unreasonably persistent cases, but discretion should remain with the courts with regard to availability of habeas corpus appeals.

The reasoning behind these unnecessary provisions is that prisoners on death row allegedly delay the filing of habeas petitions and file petitions that are frivolous. However, facts from the Judiciary Committee show that from 1976 to 1991, Federal habeas courts granted relief in more than 40 percent of death penalty cases on the basis of serious constitutional error. These decisions reconfirm our essential constitutional rights.

If the problem is that habeas appeals hamper the business of Federal courts, why does H.R. 729 fund the use of competent counsel in postconviction proceedings and not actual death penalty trials? Federal funding to States for counsel in death penalty cases should compel States to appoint attorneys proficient and experienced in death penalty cases. To require quality representation only after the death penalty has been rendered presents a grave inequity that harms the judicial process.

I am also concerned that H.R. 729 narrows the claims that a Federal court can consider in death penalty cases to claims previously raised and rejected in State courts, even if State decisions were incorrect. Eliminating Federal review of such claims would result in differential enforcement of constitutional rights from State to State, potentially producing 50 different explanations of Federal constitutional provisions. The American Bar Association has lodged its ''vigorous opposition'' to this provision which it predicts will ''insulate virtually all State criminal proceedings from Federal review.'' It is paramount that Federal court access to meaningful review in death penalty cases be preserved.

H.R. 729 will greatly compromise constitutional rights of prisoners, judicial fairness, and jurisdiction of Federal courts in serious death penalty cases. This bill would irresponsibly speed up habeas corpus appeals without ensuring that those on death row have full access to judicial review, safeguards against wrongful executions, and access to qualified counsel. I strongly urge my colleagues to cast a vote in opposition to H.R. 729.

Mr. SCHUMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just would like to make a couple of points on this debate, just to take up where we left off before.

I think, again, just to reiterate: The issue in the Watt amendment is not endless appeals. There are other parts of H.R. 729, a bill I supported when we voted it out of subcommittee, that deal with the endless appeals.

□ 1750

In my judgment I would concede the point. I think it is right that defense lawyers have used appeal, after appeal, after appeal. They are morally opposed to capital punishment, and so they feel they should use every means to prevent it from happening, something I disagree with, and that is why I support 729.

But the issue the gentleman from North Carolina brings up is not related to that. It is not related to endless appeals. It deals with the rare instance where there is new evidence, and not just any new evidence, not just something out of a lawyer's head, but something that on initial review by a judge would probably change the result of the trial. Therefore, the new evidence cannot be relatively immaterial, nor can it be not credible. It has to be credible evidence that is material so that the jurors would have said, ''When the judge looks at the new evidence, there would be a reversal.'' That is a pretty high standard.

In fact, and this is the point I would like to make to the gentleman from Florida, the gentleman from Ohio and the others, it is such a relatively tough standard that a recent case, the Schlup case, said that that was the standard based on not any statute, but based on the Constitution. The standard that the gentleman from North Carolina has wisely incorporated in his amendment is the exact standard found in the Carrier case as cited in Schlup. I ask, ''Do you know what that means, ladies and gentlemen? It means we could reject the Watt amendment, and it would still be required constitutionally.''

This is not an issue up for legislative discretion. This is an issue in the Constitution.

I say to my colleagues, ''I don't blame the other side for not putting the Watt amendment in their bill. Their bill was first drafted before this case, but, fellows and ladies, show a little flexibility. The Supreme Court has made a ruling. You shouldn't be fighting a ruling that is going to exist whether you like it or not, and I don't think, as somebody who believes that there have been too many appeals, I don't think it's going to do damage to that. But don't fight it for the sake of fighting it.''

There is a case. There is something that was issued only—today is February 8? It was 3 weeks ago, on January 23, 1995, an opinion by Judge Stevens joined in by the majority of the court that says, quote, the Carrier standard requires the habeas petition to show that, quote, a constitutional violation has probably resulted in the conviction of one who is actually innocent.

The point made by the gentlewoman from Hawaii [Mrs. MINK] and my colleague, the gentleman from New York [Mr. ACKERMAN], and others is this: If the new evidence is significant enough that it would probably change the jury.

I say to my colleagues, ''You can't make this stuff up. It's got to be real. Then why not?''

Those of us who believe in capital punishment; I am among them; were criticized last year for putting in a bill that had 60 new capital punishments. Those who believe in capital punishment want to make sure that it is done fairly and equitably, want to make sure that, if there is overwhelming new evidence, say the DNA evidence that the gentleman talks about, so it is almost crystal clear that the wrong person is on death row; it does not happen that often, but it does happen; is not executed. Those of us who believe that the ultimate sanction is sometimes called for should want to make sure that, when there is credible new evidence that would in a judge's mind, and most of the judges are appointees of Ronald Reagan and George Bush, in that judge's mind mean that the jury would probably, not possibly, but probably, overturn the case, would support this simple amendment. It would eliminate most of the endless appeals. The amendment would not eliminate most of the endless appeals; you know that, and I know that; it would simply provide a small, tightly constructed and constitutionally required window when there is new evidence.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I just heard my good friend, the gentleman from New York [Mr. SCHUMER] talk about that they do not make it up. In California, we had a judge named Rose Bird who was opposed to the death penalty and found every single thing that she could to stop the death penalty, even of those that were guilty.

I have also heard the gentleman from Florida [Mr. MCCOLLUM] state that there are processes which, if they find new evidence, that they can bring this forward. I have heard him state it on the floor, and I also heard that the have a Governor that can take a look at the case, and so there are several mechanisms that enable, if someone is innocent, either new evidence, or the Governor, or due process, that that can be brought forward.

And I agree. We did have the Alton Harris case of a person who was guilty, and I appreciate it because of the sympathy, because it does drag out a process where the guy admitted, yet we kept on going, and I understand that is not what we are talking about.

But this gentleman feels that we do have a process in which someone that is innocent could bring that new evidence forward and that, if we allow the gentleman's amendment, we have got a hundred Rose Birds out there that will oppose any death penalty.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, I just make two quick points.

First, if there is a judge who is opposed to the death penalty and refuses to implement the law of the land, we should not eliminate any change that an innocent person has a right to some appeal. We should get rid of the judge, and, as I understand it, that is just what the people in California did in the case of the judge the gentleman is talking about. That was the appropriate remedy. Because there are some judges who either go too far one way or the other, Mr. Chairman, we should not change the law for them. We should change them.

The second point I will make to the gentleman is this one:

If there is no Watt amendment, and if 729 passes, there will be no route after the first appeal for evidence of innocence to enter into the case.

Mr. CUNNINGHAM. Reclaiming my time, Mr. Chairman, I would like to have the gentleman from Florida [Mr. MCCOLLUM] explain again. As I understand it, there is that route.

Mr. SCHUMER. Not after the first appeal.

Mr. MCCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, there is a way after the first appeal and successive petition. I read it earlier in the RECORD. I am not going to reread the whole thing again, but:

> If you can demonstrate there is newly discovered evidence which you couldn't have easily and reasonably discovered the first time around, and if it's clear and convincing evidence that if it goes before a court would result in innocence, then you can go produce that.

Mr. Chairman, it is clearly written into our bill.

What we say here is based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review the first time around, and the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error no reasonable factfinder would have found the petitioner guilty of the underlying offense.

Mr. CUNNINGHAM. I have a question for the gentleman from Florida, and let me ask a question.

If, say, for example, DNA results came up of just recent technology that proved that the individual was innocent? Would they have a right to retrial or to be——

Mr. MCCOLLUM. Mr. Chairman, would the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Certainly they would, if it is clear and convincing evidence.

Mr. CUNNINGHAM. What happens if someone comes up and admits to the crime? Would that person also have the same rights?

Mr. MCCOLLUM. If that was clear and convincing evidence, it was very clear that would have found the petitioner, would not have found the petitioner, guilty the first time around.

Mr. CUNNINGHAM. So there is surely a way in which, if a person is innocent and evidence appears, that person has many motives to——

Mr. MCCOLLUM. Absolutely and unquestionably so, and in addition to that I might add to the gentleman that a Governor of a State could always commute. That power exists.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from New York.

Mr. SCHUMER. We are back where we were in the discussion previously, I believe, between the gentleman from North Carolina and the gentleman from Florida.

I say to my colleagues, It is true, as the gentleman from Florida states, that if you were already in the door, he had appealed for some other reason that was recognized, the clear and convincing standard would be allowed.

But I would ask the gentleman to pose the question this way:

If we found the petitioner had undergone the first appeal, had been found guilty, and let us say a year later, because under the new law it would not be 10 years or 8 years; a year later they found the DNA evidence, but there is no route——

The CHAIRMAN. The time of the gentleman from California [Mr. CUNNINGHAM] has expired.

(On request of Mr. SCHUMER and by unanimous consent, Mr. CUNNINGHAM was allowed to proceed for 1 additional minute.)

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from New York.

□ 1800

Mr. CUNNINGHAM. Mr. Chairman, I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, if there was no other way for this person to get back into that court, then it is my understanding that the capital sentence would have to be taken, even with the DNA evidence, even with the clear and convincing evidence, for the very reason that the standard for review which the gentleman from North Carolina [Mr. WATT] puts in his amendment is not in H.R. 729 or existing law.

So there would be no way, I must sincerely disagree with my friend from Florida, there would be cases where this new evidence would occur.

Mr. CUNNINGHAM. Say Elton Harris, who admitted to his guilt after 14 years and said that he admitted he was

guilty, and all of a sudden it proved that he was not guilty. You are telling me there is no way that if we had DNA evidence or if someone admitted to the guilt, that he would not be protected?

Mr. SCHUMER. I am not familiar with the details of the Harris case. But, yes, I would say to the gentleman that if in that case Harris had no other way to beg back into court, then, yes.

Ms. NORTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to respond to a number of issues that have been raised in this debate. First of all, the Watt amendment does not talk about innocence, but uses a word which is much stricter in the law, and that is that the matter would probably have resulted in an acquittal. That is a very high standard. We are not using the more amorphous word ''innocent'' here.

Moreover, you have just rejected the Schumer amendment. More than half of all attorneys handling capital trials have had no previous death penalty experience. So the probability of finding newly discovered evidence is great, and we are not even willing to say that a man or woman standing on trial for his or her life should have competent counsel.

At the very least then we ought to say if incompetent counsel has not found evidence, newly discovered evidence can be brought forward.

There was discussion of due diligence here. It may be in the bill, but the fact is it is a judge-made rule in any case, and probably the court would find, based on the way courts have looked at these matters in the past, that if due diligence had not been exercised, the court would be more likely to find this was not newly discovered evidence at all.

We are dealing with a situation where 40 percent of death penalty cases heard in the Federal courts have been granted relief because of significant constitutional error. I submit to you, Mr. Chairman, judges have been sitting all these years, where they detest these cases and would love not to find relief, and have been easily finding relief.

We have a problem here. The problem we have is that these cases have been tried, often by people who are not competent to try them. At the very least you would think if newly discovered evidence overlooked by such counsel could be found, that the person would get a second petition.

The 40 percent of the cases I speak of where significant constitutional error was found have been found in the last few years, since 1976. And we are talking about judges appointed by the two previous Presidents.

We are talking in the last 10 years about petitions representing only 4 percent of all civil filings. Whatever is the problem in the Federal courts, it is not presented by habeas corpus petitions. And while I can understand the need to reduce the number, surely given this new rule for truly exceptional cases, for cases that can find their way through this narrow hole where the person probably would have been acquitted—and we are not talking about innocence, we are talking about acquittal, and that has a fixed meaning in the law—surely, that person should be able to get into court.

This does not open a large hole. I am left to ask, what are the Federal courts for if not for looking at cases where newly discovered evidence means that the person would probably have been acquitted?

As to Governors, I say to you, this is not a country where Governors or Members of Congress ought to judge whether constitutional rights have been violated. So it is certainly not the appropriate remedy to move from the courts to the Governor, who will look to the polls and decide whether he ought to exercise a remedy that is almost never exercised. That is no remedy. That is not a remedy at law; that is a political remedy. There should not be a political remedy for a constitutional right.

This is the death penalty we are talking about. This is the great habeas corpus remedy we are talking about. The bill more than protects the rights of the victims and their families. We create here the kind of right that I believe the average American would want us to protect.

Mr. GUTIERREZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, my colleague, the gentleman from North Carolina [Mr. WATT], has offered a reasonable and sensible amendment to this very unreasonable bill today, and I congratulate my friend and colleague for his spirited defense of the Constitution.

Standing up for the Constitution puts you in a minority in this body these days. Standing up for the ideas of our forefathers is considered a radical idea in this body these days.

Looking to the sacred document that has guided our ideas for what is right and wrong for more than 200 years is apparently no longer part of our contract with the people anymore.

So I thank the gentleman from North Carolina [Mr. WATT], for this important amendment, and for reminding us that the Constitution still matters.

This amendment simply states that prisoners sentenced to death will be able to file a second habeas petition if newly discovered evidence shows that the person is likely to be found innocent.

Let me repeat, because this should sound so logical to everyone that you might think that I have somehow misstated the Watt amendment: newly discovered evidence that shows that a person is likely to be innocent.

Now, I understand the desire to get tough on crime and criminals. I share the desire to crack down on crime. I believe we should get tough on criminals. I was proud to support a crime bill during the last session that moved our Nation toward that goal. It made it harder to get military-style weapons. It increased funding for prisons. It increased preventive measures. It was an important start, Mr. Chairman.

We should continue to build on that start. I think we should do more to make criminals pay for their crimes. I think we should do more to protect our families from criminals.

That is the real purpose, or should be, of anticrime legislation. Yet my colleagues have lost sight of the true goal of anticrime legislation. The goal is to protect our families, Mr. Chairman, to protect our homes, to protect our neighborhoods. I challenge any of my colleagues who support this measure to demonstrate to me how this bill helps us reach any of those goals I just stated.

How have we reached a point in our anticrime debate that we have lost interest in the Constitution? Have we reached a point in our anticrime debate that newly discovered, clear, credible evidence of innocence does not win you the opportunity in America, just the opportunity for a new trial, in this, the greatest country in the world?

☐ 1810

How does denying the possibility, the mere possibility of a new trial for a person who may be innocent, Mr. Chairman, help us make our families and streets safer? How does it make our families feel safer in their homes? How does it make our kids feel safer on the way to school? We all know the answer. Denying habeas when new evidence suggests innocence does not protect our communities. We all know it. It merely gives us a sound bite for the news this evening. It gives us a headline to cheer about tomorrow morning. It merely allows us to pat ourselves on the back and convince ourselves that we are doing something to protect the neighborhoods that we are all so concerned about.

But we are not, Mr. Chairman. This is not, and I repeat, this is not about the right of criminals. This is about the right of all of us, including the Members in this body, all of us in this room, all of our families, all of the people that we represent, their right, their fundamental right, their constitutional right as Americans not to be punished for a crime that they did not commit. Their right, our right to have a chance, a fair chance to prove our innocence.

Justice and fairness can be frustrating at times. Sometimes justice and fairness takes a little more time than we want it to take. But what separates us from nations that value vengeance over justice, revenge over fairness? It is this, that we have a way of doing things differently in this country. That is what this amendment is all about.

Mr. FOX of Pennsylvania. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the call has come out as to how we make the streets safer in the United States. We make the streets

safer by making sure we have swift justice with certainty when it comes to capital offenses. The U.S. citizens are asking who protects the victims from murder? The deceased victims cannot speak but their families can. And they have told us in great numbers that they want to make sure there is certainty that sentences, especially where dealing with a capital offense like murder.

As a former Montgomery County assistant district attorney in Pennsylvania, I can tell my colleagues when I worked on the crime victims bill of rights in Pennsylvania, the people of this country and of my commonwealth want to make sure there is certainty when it comes to the offense of murder.

Habeas corpus relief is a concept whose time has arrived. The endless appeals are inappropriate. The proposed amendment would drastically expand the possibilities for death row inmates to reopen cases where there was no trial that had any kind of constitutional error.

I urge my colleagues to adopt this habeas corpus reform. It is a step in the right direction to protect crime victims.

Mr. CONYERS. Mr. Chairman, there is a major omission in the bill that goes to the heart of due process and fundamental fairness: An innocent man should never be executed.

The McCollum bill gives a criminal defendant ''one bite at the apple'' but would not permit any appeals after the 6-month deadline has passed except in the difficult-to-imagine situation where there is clear and convincing evidence of innocence and no reasonable juror would find the petitioner guilty.

The amendment that we are considering will substitute preponderance of the evidence instead of the more restrictive standard in the McCollum bill.

This amendment simply states that the Federal courts should always be available to hear claims of innocence when based on newly discovered evidence. Representative MCCOLLUM's standard is far better suited to judge and dispose the claim rather than a standard of whether to really hear the claims in the first place.

If this is intentional, then it is a sly smokescreen to cut off all claims based on innocence. I would hope that is not the case and that the majority is willing to support this amendment.

Claims of innocence in habeas proceedings are not part of a far-fetched scenario that can never happen in this day and age. The truth is this is all too common. In fact, the Supreme Court decided a case just this January 23, 1995, that shows how easily this can occur.

The facts in Schlup versus Delo are that a prison inmate accused of murder argued that a videotape and interviews in the possession of prosecutors showed he could not have committed the murder but in the information was not revealed to him until 6 years after his conviction. The Court ruled that Mr. Schlup should be allowed to raise his claims of innocence.

There is case after shocking case of similar horror stories:

James Dean Walker had served 20 years in prison when one of his codefendants confessed that he had pulled the trigger that killed a Little Rock police officer. Walker's gun had not been fired but he had been convicted on the testimony of a witness who said she had seen him shoot the officer. The eighth circuit, which had denied his first habeas petition 16 years earlier, agreed in 1985 that he should be freed.

Rubin ''Hurricane'' Carter was convicted of murder in 1967 and served in prison for 18 years even though the witnesses whose identification led to their convictions later recanted their identifications. The conviction was reversed after a Federal judge ordered prosecutors to turn over evidence, including failed polygraph tests, which showed the witnesses were lying. Carter was set free.

Robert Henry McDowell was almost executed for a crime that the victim initially told police was committed by a white man. McDowell was black. The North Carolina supreme court reversed a trial court order granting him a new trial but the fourth circuit ordered him to be released after the police reports were made public.

False identifications, witnesses recanting, death-bed confessions, these are all too familiar to those who defend death row inmates. Access to Federal courts is vital.

This bill may achieve the goal of speedier executions but the cause of justice will not be served. It is an admission of failure to pursue one without the other. Support the amendment that prevents executing an innocent person.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MCCOLLUM. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 151, noes 280, not voting 3, as follows:

[Roll No. 105]

AYES—151

Abercrombie	Engel	Johnson, E. B.
Ackerman	Eshoo	Johnston
Baldacci	Evans	Kanjorski
Barrett (WI)	Farr	Kaptur
Becerra	Fattah	Kennedy (MA)
Beilenson	Fazio	Kennedy (RI)
Bentsen	Fields (LA)	Kennelly
Berman	Filner	Kildee
Bishop	Flake	Kleczka
Bonior	Foglietta	LaFalce
Boucher	Ford	Lantos
Brown (CA)	Frank (MA)	Levin
Brown (FL)	Frost	Lewis (GA)
Brown (OH)	Furse	Lofgren
Bryant (TX)	Gejdenson	Lowey
Clay	Gephardt	Luther
Clayton	Gibbons	Maloney
Clement	Gonzalez	Manton
Clyburn	Gordon	Markey
Coleman	Green	Martinez
Collins (IL)	Gutierrez	Matsui
Collins (MI)	Hall (OH)	McCarthy
Conyers	Hamilton	McDermott
Coyne	Hastings (FL)	McKinney
de la Garza	Hefner	McNulty
DeFazio	Hilliard	Meehan
DeLauro	Hinchey	Meek
Dellums	Hoyer	Menendez
Dixon	Jackson-Lee	Mfume
Doggett	Jacobs	Miller (CA)
Durbin	Jefferson	Mineta
Minge	Rivers	Thompson
Mink	Rose	Thornton
Moakley	Roybal-Allard	Thurman
Mollohan	Rush	Torres
Nadler	Sabo	Towns
Neal	Sanders	Tucker
Oberstar	Sawyer	Velazquez
Obey	Schroeder	Vento
Olver	Schumer	Visclosky
Ortiz	Scott	Ward
Owens	Serrano	Waters
Pallone	Skaggs	Watt (NC)
Pastor	Slaughter	Waxman
Payne (NJ)	Spratt	Williams
Pelosi	Stark	Wise
Pomeroy	Stokes	Woolsey
Rahall	Studds	Wynn
Rangel	Stupak	Yates
Reed	Tanner	
Reynolds	Tejeda	

NOES—280

Allard	Dunn	Lazio
Archer	Edwards	Leach
Armey	Ehlers	Lewis (CA)
Bachus	Ehrlich	Lewis (KY)
Baesler	Emerson	Lightfoot
Baker (CA)	English	Lincoln
Baker (LA)	Ensign	Linder
Ballenger	Everett	Lipinski
Barcia	Ewing	Livingston
Barr	Fawell	LoBiondo
Barrett (NE)	Fields (TX)	Longley
Bartlett	Flanagan	Lucas
Barton	Foley	Manzullo
Bass	Forbes	Martini
Bateman	Fowler	Mascara
Bereuter	Fox	McCollum
Bevill	Franks (CT)	McCrery
Bilbray	Franks (NJ)	McDade
Bilirakis	Frelinghuysen	McHale
Bliley	Frisa	McHugh
Blute	Funderburk	McInnis
Boehlert	Gallegly	McIntosh
Boehner	Ganske	McKeon
Bonilla	Gekas	Metcalf
Bono	Geren	Meyers
Borski	Gilchrest	Mica
Brewster	Gillmor	Miller (FL)
Browder	Gilman	Molinari
Brownback	Goodlatte	Montgomery
Bryant (TN)	Goodling	Moorhead
Bunn	Goss	Moran
Bunning	Graham	Morella
Burr	Greenwood	Murtha
Burton	Gunderson	Myers
Buyer	Gutknecht	Myrick
Callahan	Hall (TX)	Nethercutt
Calvert	Hancock	Neumann
Camp	Hansen	Ney
Canady	Harman	Norwood
Cardin	Hastert	Nussle
Castle	Hastings (WA)	Orton
Chabot	Hayes	Oxley
Chambliss	Hayworth	Packard
Chapman	Hefley	Parker
Chenoweth	Heineman	Paxon
Christensen	Herger	Payne (VA)
Chrysler	Hilleary	Peterson (FL)
Clinger	Hobson	Peterson (MN)
Coble	Hoekstra	Petri
Coburn	Hoke	Pickett
Collins (GA)	Holden	Pombo
Combest	Horn	Porter
Condit	Hostettler	Portman
Cooley	Houghton	Poshard
Costello	Hunter	Pryce
Cox	Hutchinson	Quillen
Cramer	Hyde	Quinn
Crane	Inglis	Radanovich
Crapo	Istook	Ramstad
Cremeans	Johnson (CT)	Regula
Cubin	Johnson (SD)	Richardson
Cunningham	Johnson, Sam	Riggs
Danner	Jones	Roberts
Davis	Kasich	Roemer
Deal	Kelly	Rogers
DeLay	Kim	Rohrabacher
Deutsch	King	Ros-Lehtinen
Diaz-Balart	Kingston	Roth
Dickey	Klink	Roukema
Dicks	Klug	Royce
Dingell	Knollenberg	Salmon
Dooley	Kolbe	Sanford
Doolittle	LaHood	Saxton
Dornan	Largent	Scarborough
Doyle	Latham	Schaefer
Dreier	LaTourette	Schiff
Duncan	Laughlin	Seastrand

Sensenbrenner	Stump	Wamp
Shadegg	Tate	Watts (OK)
Shaw	Tauzin	Weldon (FL)
Shays	Taylor (MS)	Weldon (PA)
Shuster	Taylor (NC)	Weller
Skeen	Thomas	White
Skelton	Thornberry	Whitfield
Smith (MI)	Tiahrt	Wicker
Smith (NJ)	Torkildsen	Wilson
Smith (TX)	Torricelli	Wolf
Smith (WA)	Traficant	Wyden
Solomon	Upton	Young (AK)
Souder	Volkmer	Young (FL)
Spence	Vucanovich	Zeliff
Stearns	Waldholtz	Zimmer
Stenholm	Walker	
Stockman	Walsh	

NOT VOTING—3

Andrews	Sisisky	Talent

□ 1831

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COX of California: Strike section 104 and insert the following:

SEC. 104. EFFECT OF PRIOR STATE CONSIDERATION.

(a) EXHAUSTION OF REMEDIES.—Section 2254(b) of title 28, United States Code, is amended to read as follows:

''(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State. A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless through its counsel it waives the requirement expressly.''.

(b) STANDARD OF DEFERENCE TO STATE JUDICIAL DECISIONS.—Section 2254 of title 28, United States Code, is amended by adding at the end the following:

''(g) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was decided on the merits in State proceedings unless the adjudication of the claim—

''(1) resulted in a decision that was based on an arbitrary or unreasonable interpretation of clearly established Federal law as articulated in the decisions of the Supreme Court of the United States;

''(2) resulted in a decision that was based on an arbitrary or unreasonable application to the facts of clearly established Federal law as articulated in the decisions of the Supreme Court of the United States; or

''(3) resulted in a decision that was based on an arbitrary or unreasonable determination of the facts in light of the evidence presented in the State proceeding.''.

In the proposed new section 2259(b) of title 28, United States Code, added by section 111, strike ''section 2254(d)'' and insert ''subsections (d) and (g) of section 2254''.

Mr. COX of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. COX of California. Mr. Chairman, I also ask unanimous consent that debate be limited on both sides, for purposes of this amendment and any amendment thereto, to 10 minutes on each side.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. WATT of North Carolina. Mr. Chairman, reserving the right to object, I am trying to figure out why we want to limit debate. Could the gentleman enlighten us? I just want to find out what the amendment does and what is the justification for limiting debate on it.

Mr. COX of California. Mr. Chairman, if the gentleman will yield, in informal discussions on the floor prior to offering the amendment, our side was asked whether we would be agreeable to a limitation on debate. It is not my personal intention in any way to limit debate, but there were Members on the Democratic side who were interested in proceeding in a timely fashion. That is the only purpose for the unanimous consent request that is now on the floor.

Mr. WATT of North Carolina. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. CONYERS. Mr. Chairman, reserving the right to object, could I ask, are there more than two amendments on the gentleman's side? It seems to me that there is only one amendment on our side. Can the gentleman give us an idea on that?

Mr. COX of California. Mr. Chairman, if the gentleman will yield, for that purpose I would defer to the gentleman from Florida [Mr. MCCOLLUM].

Mr. CONYERS. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, if the gentleman will yield, I believe there are two amendments altogether. There may be three. It seems to me the gentleman from Texas, Mr. FIELDS on our side, and also the gentleman from Texas, Mr. LAMAR SMITH, each had amendments. I do not know of any others, and I do not know their intent about offering those amendments.

Mr. CONYERS. If they are going to offer them, would the gentleman just ask them to provide copies to this side, please?

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from California [Mr. COX] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to offer a simple common sense amendment to H.R. 729. My amendment, which I am calling the Harris amendment, provides that a habeas writ will not be granted when State court decision reasonably interprets and Federal law reasonably interprets the facts of the case and reasonably applies the law to the facts, or to put it simply, State decisions that are reasonable on the law and the facts will be upheld by a habeas review.

The purpose of my amendment is to prevent the use of endless appeals to frustrate the punishment of already convicted criminals, including first degree murders. We do not have a Federal Criminal Code. We have, in chief, a State criminal justice system. When one commits murder, rape, robbery, and so on, all of these are offenses against State law.

Our Federal criminal jurisprudence is a gloss on that State criminal justice system. The Federal procedural rules, in fact, operate in many cases as a frustration to the State system. So we find that there are egregious cases, and all too many of them, of convicted first degree murderers who have run all of their appeals in the State criminal justice system, who then get another bite, and another bite at the apple, seemingly endlessly in the Federal system, and who have been able, through the abuse of the habeas device, to postpone their executions, seemingly indefinitely.

I said I am calling this the Harris amendment. It is so named after Robert Alton Harris, the notorious first degree murderer who postponed for well over a decade his own execution through the abuse of the device of Federal habeas corpus, statutory habeas corpus.

Harris, even before the murder conviction that was the subject of that long legal odyssey, was already a murderer. He had been convicted of murdering a 19-year-old boy in California. For this he served 2 years and 5 months, and he was out on parole, went out on parole, and he and his brother decided that they ought to rob a bank.

They went after the San Diego Trust and Savings Bank. They decided they needed to steal a getaway car. So they headed out for the Jack-in-the-Box, in San Diego, and they spotted two high school sophomores, John Mayeski who was 15, and Michael Baker was 16, sitting in their Ford LTD eating Jack-in-the-Box hamburgers.

Let me quote from the January 17, 1990, San Francisco Chronicle article about this terrible crime.

Armed with a 9mm Luger automatic pistol, Robert Harris commandeered Mayeski's car and ordered the two boys to drive him to a

wooded area near Miramar Lake. He promised them no one would be hurt.

Daniel Harris, who later became the chief prosecution witness against his brother, followed in another car. He testified that they drove to the lake, where Robert Harris fired two rounds into Mayeski, then went after Baker, who was running for his life.

''I went over to John after he was shot. I looked at him for three or four seconds, I guess. I heard some screaming from the bushes, then three or four shots,'' said Daniel, who served three years in Federal prison for his role. Later after he was arrested, Robert Harris boasted to his cellmate that he told the terrified Baker boy to quit crying and die like a man. When the boy started to pray, Harris said, ''God can't help you now, boy. You're going to die.'' After the murders, Robert Alton Harris and his brother finished the boys' half-eaten hamburgers. They then went on to rob the bank. In one of the great ironies of this case, one of the police officers who ended up apprehending Robert Alton Harris was the father of one of their murdered boys.

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Unfortunately, this case is not unique. There are many, many cases like this. But Robert Alton Harris' case took a long time to lead to his conviction.

It was 1979, a year later, when the Superior Court pronounced judgment on him. It was years later when finally the Governor denied his application for clemency. It was years later when he filed his ninth State habeas corpus petition, and he was already then on his fourth Federal habeas corpus petition. In 4 days, Harris filed a fifth and sixth Federal habeas corpus petition. He was not executed, even though this crime occurred in 1978, until 1992.

To repeat, this crime that I have described in some detail occurred in 1978. The judgment was pronounced in 1979, but it was not until 1992, a total delay of 13 years from judgment, that Robert Alton Harris finally finished abusing Federal habeas corpus and was executed. That made him only the second person executed in California under our death penalty since 1978.

We have 400 prisoners sentenced to death in California since the State reinstated the death penalty in 1978. Only two, Robert Alton Harris and David Mason, have been executed.

Today there are 125 California death penalty cases before the Federal courts, and because of the abuse of Federal statutory habeas corpus and this device of endless appeals, we will never perhaps be able to execute these convicted first-degree murderers.

As the Powell Commission wrote, ''The relatively small number of executions as well as the delay in cases where an execution has occurred makes clear that the present system of collateral review,'' referring to statutory habeas corpus, ''operates to frustrate the law.''

Opponents of reform correctly state that our whole system of criminal justice rests on the premise that it is better for 10 guilty men to go free than for one innocent man to suffer, and for that reason, the Constitution requires the States and the Federal Government to provide every criminal defendant the full panoply of protections assured by the Bill of Rights, an unrivaled arsenal of procedural and substantive rights. And that is why, after cases have been fully litigated through the State judicial system, habeas corpus review is available in Federal court, a duplicative system of review that, as Justice Lewis Powell has written, ''is without parallel from any other system of justice in the world.''

The question before us today is not the availability of that habeas review, but, rather, the standard that the Federal courts will use so that we can avoid the kind of repetition and abuse that we saw in the Robert Alton Harris case and that we see in so many cases throughout the country.

The reasonableness standard that I am proposing is already used for factual determinations in habeas cases pursuant to statute and for legal determinations in many cases. This reasonableness standard respects the coordinate role of the States in our constitutional structure, while assuring ample Federal review of State determinations of law and fact.

It strikes a sensible balance that is consistent with the interests of defendants, victims, and States. It is supported by crime victims and law enforcement professionals around the country, including the National District Attorney's Association, which has written to all of us in this Chamber about urging our support for what they call the Cox amendment, what I am calling the Harris amendment, the California District Attorneys' Association, my home State, DA's around the country through the National DA's Association, and as I mentioned, Citizens for Law and Order, and victims' rights groups from across the country and coast to coast, Democrat and Republican attorneys general alike, including the AG's in Texas and California, Democrat and Republican.

I urge your strong support for this strong habeas reform.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is there a Member who wishes to speak in opposition to the amendment?

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 10 minutes in opposition of the amendment.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

What we have here in this full and fair concept is a throwback to an outmoded idea first advanced in the other body that would effectively end all rights of habeas corpus, if minimal State guarantees are satisfied. In other words, there would be no right of Federal review unless the State court decision is totally arbitrary. This makes the previous one-bite-of-the-apple position of the gentleman from Florida [Mr. MCCOLLUM] of which we argued about and against, look absolutely great.

This is probably the throwback amendment to habeas corpus of all throwbacks. I mean, this would effectively end habeas corpus today at the Federal level. It almost says that: Let each State do their own thing on habeas corpus and forget Federal habeas review. That's a totally untenable position that I am surprised my friend, the gentleman from California, would even drag it out on the floor at this late hour.

This would end even the very modest advances in the McCollum bill, which are very few, indeed.

The CHAIRMAN. The Committee will rise informally in order that the House may receive a message.

MESSAGE FROM THE PRESIDENT

The SPEAKER pro tempore (Mr. LIGHTFOOT) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

PARLIAMENTARY INQUIRY

Mr. WATT of North Carolina. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WATT of North Carolina. How can we rise out of the Committee of the Whole without a motion to that effect? I did not hear anybody make a motion. It is strictly a technical point, but there are some procedural rules that apply in this body, I thought.

The SPEAKER pro tempore. The Chair will inform the gentleman from North Carolina the Committee of the Whole can rise informally just for the purpose of receiving a message.

Mr. WATT of North Carolina. Informally.

The SPEAKER pro tempore. Yes. A motion is not required just for the purpose of receiving a message.

Mr. WATT of North Carolina. I thank the Chair for enlightening me.

The SPEAKER pro tempore. The Committee will resume its sitting.

EFFECTIVE DEATH PENALTY ACT OF 1995

The Committee resumed its sitting.

Mr. CONYERS. Mr. Chairman, in continuing my opposition against the biggest throwback amendment of all, I must express my shock and disappointment at the gentleman from California for really attempting to end Federal habeas corpus, if even the most minimal State guarantees are satisfied.