United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *104th* CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, MONDAY, MARCH 6, 1995 *No. 41*

House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore [Mr. GOSS].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
March 6, 1995.

I hereby designate the Honorable PORTER J. GOSS to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MORNING BUSINESS

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 1995, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leader limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Georgia [Mr. NORWOOD] for 5 minutes.

REPUBLICAN LEGAL REFORM PACKAGE

Mr. NORWOOD. Mr. Speaker, I rise today in support of the common sense legal reforms we will consider this week. We have the opportunity this week to restore sanity to our legal system. The irresponsible costs added to our Nations' economy by fear of lawsuits must be curtailed. Our reforms add simple principles of common sense to the legal system and will cut down the tremendous expenses Americans face every year in legal fees and increase costs in goods and services.

Our reform package is based on four simple principles. First, we set up a responsible loser pays provision that makes settlement an attractive alternative. The loser pays provision will reduce the urge for lawyers to take suits to trial in an effort to win extravagant damage amounts. Loser pays will lessen the load on our judicial system, and will in no way harm those seeking legitimate claims.

The next reform is to place tighter restrictions on the use of expert witnesses. Our bill will make sure that expert witnesses are in fact experts. It will require the use of scientific theories to be scientific and we will cut down the use of rent-a-scientists. Mr. Speaker, we are not hurting consumers by making expert witness rules stricter, we are helping consumers by limiting the costs that are passed on to them by business, that have to defend themselves against questionable experts.

Our bill will limit the liability of a defendant to a proportional share of their fault in noneconomic damages. One of the most destructive problems with our legal system is join and several liability. Our current rules allow litigants to shake down wealthy defendants for far more damages than they should ever be responsible. It is just plain wrong for the Gates Rubber Co. to have to defend themselves against millions of dollars in damages when a chicken processing plant burns down—especially when that plant had no fire alarms, no sprinkler system, and padlocks on the fire doors. Mr. Speaker, clearly any responsibility owned by Gates is minimal. Our bill will see to it, that responsibility is proportionate.

The fourth principle our reform package is based on is limiting punitive damages. There is clearly a place for punitive damages in our legal system in cases where defendants intended to cause harm to others or acted with a flagrant indifference to the safety of others. But there must be a limit put on punitive damages, particularly when they are imposed on defendants in a reckless manner by vindictive juries—when this happens, we all pay. At some point, punitive damages move from reasonable to ridiculous. In our bill, that point is $250,000 or three times the amount of economic damages whichever is greater. After all, no one in this country should have to check on their liability insurance before serving coffee.

I would encourage my colleagues to consider one further reform as we act on this legislation. Mr. Speaker, if we are to ever contain health care costs in this Nation, we must limit the punitive liability faced by manufacturers and sellers of drugs or medical devices—if those drugs or devices are approved by the FDA. Once FDA approval is legally met, a manufacturer or seller should not face punitive damages. If we do not take this important step forward, health care costs will continue to skyrocket, and the quality of care our Nation receives will be lacking.

Mr. Speaker, our legal reform package is not about hating lawyers. It is about reforming the system to allow lawyers to act more responsibly as a profession. This legislation is not about hurting consumers—in reality, our reforms will remove some of the costly burden consumers have to pay in the marketplace everyday as a result of frivolous lawsuits, without limiting their ability to seek legal remedies when they feel they have been wronged. Mr. Speaker, our legal system is out of control, and it goes far deeper than million dollar cups of coffee, it is the billions of dollars in liability our economy is forced to absorb every year. I urge my colleagues to make these reasonable reforms and resist the pressure to back down, our economy and

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our Nation needs these reforms—please don't back down now.

REPUBLICAN LEGAL REFORM IS A SHAM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Oregon [Mr. DEFAZIO] is recognized during morning business for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, let me start by saying I am not an attorney. I am one of probably a minority in this Congress who is not an attorney.

But I have taken recourse to the courts. I live in the Pacific Northwest. When a scam was run on the Northwest called WPPSS, Washington Public Power Supply System, that promised us five nuclear powerplants to produce power without cost for only $4 billion, and it ultimately cost $10 billion, and all but one was never completed.

I launched a ratepayer lawsuit in court. On the other side of the courtroom were a couple of hundred lawyers.

Now, under this bill, ratepayers will not be suing anymore because they will have to pay for those 200 high-priced corporate lawyers on the other side of the room. I have 1 lawyer, a local guy, pro bono, me, and 26 other citizens. That will not happen anymore under the Republican view of what is wrong with the legal system in America.

There are problems, and the American people are frustrated, but they have perverted that frustration into a bill that is an abomination. The Republican spinmeisters have worked overtime for this week's production, and it is a production. They pretend this is a relief for Main Street America, for people who are overburdened by litigation. But with breathtaking bait-and-switch, they produced a bill beyond the dreams of the most corrupt corporate swindlers in this country.

It is payback and payoff time, America.

First we have the Corporate Intimidation Act. I have already explained that. It is called loser pays. If the ratepayer wants to go to court and sue a multi-billion-dollar corporation: ''Hey, check your checkbook. If you can afford to pay for all the lawyers they trot into the court, go right ahead.'' I do not think there will be too many lawsuits filed by ratepayers anymore, but maybe that is the objective of this proposed bill.

It is also a blank check for bunco artists. We know that Wall Street is suffering. They are suffering because of litigation, those poor people on Wall Street, those poor thousand-dollar-an-hour poor lawyers. You know, it is tough.

Well, they have a new defense now, and it is called, ''I forget.'' And under this bill, the one coming up on Wednesday, they can say, ''Well, gee, we would have disclosed those defects in our prospectus for you, but I forget.'' So, hire a thousand-dollar lawyer; he forgot. That is now a defense.

But this is for Main Street America, remember that, this is for Main Street America. Sure, it is for Main Street America. Who buys those securities, who gets defrauded? There will not be another Charles Keating under this bill, thank God there will not be another Charles Keating defrauding the taxpayers of millions of dollars. It will not prevent the fraud, but it will prevent the litigation against Charles Keating. That is great. That resolves the problem with the legal system in America.

This is just what main street needs at a time of the bankruptcy of Orange County, the Barings Bank, speculation going on wildly. When your IRA disappears or your little pension plan, because of a bunco artist, don't worry, you will not be able to go to court anymore. That is what this bill is all about.

Finally, we have the tort reform. We have heard a lot of States rights from that side of the aisle. This will take States rights and rip it into shreds; 200 years of State precedents in tort reform will be overruled by the Federal Government only when it protects corporate interests.

You know, there will be a 15-year ban on litigation to get any product, any product, unless a business is harmed, so they will be able to go in and sue for commercial losses. Your wife, husband, mother, son, is killed by a defective product? After 15 years, tough luck. Your company loses some money with the defective product, after 15 years? Welcome to court.

This is for Main Street America? No, it is not for Main Street America. This has one very simple thing underlying it. It used to be that all men and women were equal before the law. Under the new Republican proposal, all dollars are equal before the law, and the corporations have a lot more of them than we do. That is what this is all about, in, many, many ways that are yet to be told. Watch the debate this week, listen, pick up the covers, look underneath. This is not for main street. It is for Wall Street.

DANVILLE HOUSING AUTHORITY: DEMOLITION OF CARVER PARK

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. EWING] is recognized during morning business for 5 minutes.

Mr. EWING. Mr. Speaker, I come here today to discuss an example of the stranglehold on our society by the Government in hopes that by discussing it we can find a better way outside of extremely big government and bureaucracy to address some of our problems.

What is the problem I want to talk about? It is a problem dealing with the Carver Park Housing Authority project in Danville, IL. This poses a very immediate and serious risk to both human health and safety.

The project itself was poorly built in an area, in a flood plane, and the subsoil is unstable and has caused considerable damage to these public housing buildings.

Some years back the project was abandoned and has been for some years totally deserted. But the local housing authority cannot get permission to tear it down.

The city of Danville has even come in and condemned the property, and yet the project stays there, standing there as a beacon, really, of poor government and poor management, costing the city, costing the Federal Government, costing the taxpayers for years and years to keep this crime-ridden area as safe as possible for the citizens of Danville.

We know now what the problem is. but why? Why has this Government not come through and allowed the local housing authority to tear this down? Well, the Department of Housing and Urban Development has failed to authorize the demolition of these structures because of bureaucratic redtape.

To remove the 130 units in this complex, Federal law requires that the Federal Government must replace these 130 units. But Danville does not need these units. They have no demand for these public housing units. But they do need another type of housing unit, section 8 housing. But they cannot get that because they have these other units on the books.

In addition, the Danville Housing Authority has requested section 8 housing several times, but to no avail.

Now, there is a solution to this problem, and we are probably going to take care of it in the next week when we take up the title III of section 302 of the appropriations. There, we are going to allow for specific language which will allow the Department to give waivers so that under 200 units can be destroyed without replacing them.

But this is only a stopgap measure, only a partial solution. But with this, HUD will be allowed to bypass their regulations and rules and tear down these abandoned, crime-ridden structures in this housing development.

But I believe the American taxpayers are really tired of Government that is so bureaucratic, so tied up with its own rules and regulations that we have to pass additional legislation to do something that common sense dictates we should have done.

Now, the long-term solution is that we should be able to devise here in this body a type of government that is not so bureaucratic, big government that is not so big, government that is responsive to the taxpayers and to local government needs.

The bureaucratic arm of this Government, in this case the housing and human services department, should have been able to use enough common sense to come forth with legislation, enactments which would give them the discretion to take care of the matters such as this.

I hope that we will pass the language on the appropriations bill next week and be able to move this particular incident out of the way. But we ought to learn from it.

FUTURE OF AMERICA'S WELFARE SYSTEM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. DURBIN] is recognized during morning business for 5 minutes.

Mr. DURBIN. Mr. Speaker, the Congress of the United States is involved in a very important debate on the future of America's welfare system. Both parties have come to the understanding and agreement that the current welfare system is, by and large, a failure. It is a system which is loathed not only by the people who are in the system, but certainly by taxpayers, who see a great deal of waste and misguided policy.

Unfortunately, this debate took a bad turn on Capitol Hill several weeks ago when my Republican colleagues announced one of the first casualties in this debate would be the Federal nutrition programs, programs which have been tried and tested over decades and which have been proven to be dramatic successes.

I went back to my district this last weekend and on Saturday had a town gathering in Quincy, IL, inviting people from the general area to come and tell me their experiences with three specific programs. I would like to share them with you this afternoon.

I think these personal human stories tell a lot more about this welfare reform debate than all the books and statistics and all the high-flying political speeches that you are going to hear in the next several weeks.

The first little fellow I met was named Reed. Reed was the cutest little 7-month-old you could imagine, 20 pounds, bouncing up and down, happiest kid I could ever remember seeing.

His mom told the story about how Reed was not always this way, how he got off to a slow start in life. They could not find an infant formula that worked for him. Finally, they did. A pretty rare commercial infant formula which Reed could tolerate and, in fact, grow very well on.

That formula was provided to that working mother, who is struggling to get by on a low-wage job, by the WIC Program, a Federal program that steps in with low-income families and gives them a helping hand. If you could have seen the smile on Reed's face and his mother's face as they told the story, you can understand that the concept of block-granting these programs and cutting funds for them will cut off children just like that, forcing the mothers of Reed and others across the country into a welfare system that we are trying to pare down.

And then, of course, we had another young lady there, a mother of a little girl named Shay. She had three children. They were in day care homes. Now that is different from the day-care centers that you might drive by. In my part of the world, people have day-care services in their basements, in family rooms, and they are licensed by the State. They provide low-cost day care for mothers who otherwise could not work without it.

Well, she had three children in day care. The Federal Government helps provide for those in day care about $4 a day to feed the kids, a little snack and a little lunch during the course of the day.

One of the proposals before Congress is to eliminate that altogether. What this mother told me was that while she was off working 40 hours a week in a fast food restaurant, working several days a week just to pay for day care, she said $4 a day does not sound like much, but it is $15 per week times 3 kids is 180 bucks per month. She said, ''Congressman, think about what I am earning for a living, $4 or $5 an hour is not much, and the impact it is going to have on me. I need to have affordable day care to stay out of welfare.''

Finally, one of our school superintendents came in and told a story about school lunch. It is nothing short of amazing to me that our Republican friends now want to go after the school lunch program. I have been around here for a few years, and I cannot recall scandals, massive scandals, and waste in the bureaucracy. This is a program administered at the local level that works.

A school superintendent came in to tell the story of a little boy about 10 years old. Several years ago his mother went out for groceries and never came back. That left him with his two brothers and his father alone. Because his father works long hours, it became his burden to basically raise his little brothers.

They come to school each day, those three kids, and the superintendent told me, he said,

> Congressman, make no mistake about it, it is the best meal of the day for them. It may look like just a plateful of spaghetti and pizza to somebody walking through the cafeteria, but these kids wolf it down. Sometimes we have to bring them down to the cafeteria for crackers and milk to keep them going.

So let us not get caught up in all the statistical debate and forget the real people involved. We have got to keep good nutrition programs that are working in place doing their job. We cannot have a strong America without strong children and strong families.

THE EXHAUSTIVE CONCORDANCE TO THE UNITED STATES CONSTITUTION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Tennessee [Mr. WAMP] is recognized during morning business for 2 minutes.

Mr. WAMP. Mr. Speaker, I have happily discovered that many of my colleagues, like I did campaigned with a copy of the U.S. Constitution in our pockets. As one who strongly believes in government strictly according to constitutional principles, I make our Government's defining document the object of constant study. In fact, before almost every speech I give on the House floor, I consult the Constitution to remind myself of, and clarify, the underlying constitutional principle involved.

That is why I am so happy one of my constituents has written and published ''The Exhaustive Concordance to the United States Constitution.'' The book is a valuable treasure for avid constitutionalists like myself.

Through the generosity of this book's editor, Dr. Dennis Bizzoco, of Chattanooga, TN and its publishers, an individual copy for each Member of Congress—Senators, Representatives, Delegates, and the Resident Commissioner—is being made available free of charge. I am happy to report to my colleagues their copy was delivered to them this morning through inside mail.

On the special copy Dr. Bizzoco presented to Speaker GINGRICH last Friday, these words of Thomas Jefferson were inscribed, which remind us all of the power of the U.S. Constitution: ''In questions of power let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.''

I hope that the Members of Congress will use their copy of ''The Exhaustive Concordance to the United States Constitution,'' and if you find it of value, please let Dr. Bizzoco know you appreciate his donation to our public debate by dropping him a short note.

Mr. Speaker, I close by reminding the Nation that this Constitution demands a limited Federal role. This Constitution is the roadmap of good government, and through the 10th amendment it says that issues not clearly defined as being the responsibility of the Federal Government should be returned to the States.

We trust the State officials, the local State officials, with these decisions. We want to give them the money and let them make the decisions on how to spend that money so these big Federal bureaucracies that are inefficient and unfair do not continue.

THE PROPOSAL TO INCREASE THE MINIMUM WAGE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized during morning business for 1 minute.

Mrs. CLAYTON. Mr. Speaker, I rise to urge early hearings on the proposal to increase the minimum wage.

The Speaker has promised to have hearings scheduled. Those hearings should be scheduled soon.

We are slashing the school lunch and breakfast program.

We are removing thousands of women, infants, and children from the WIC Program.

We are cutting education programs, and programs that move teenagers from school to work, including complete elimination of the Summer Jobs Program.

We are slicing away at public housing support programs.

And, while telling the poor they must work to eat, we have yet to give any consideration to a modest increase in the minimum wage.

Mr. Speaker, somewhere in these first 100 days, we should find time to give the millions of minimum wage workers a hearing on the subject to their wages.

If we want to force citizens to work to eat, let us provide a livable wage so that they can earn enough to feed themselves.

PROGRAM CUTS FOR THE POOR TO FUND TAX CUTS FOR THE WELL-TO-DO?

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Colorado [Mr. SKAGGS] is recognized during morning business for 5 minutes.

Mr. SKAGGS. Mr. Speaker, last Thursday the House Appropriations Committee met for 6 or 7 hours to prepare for floor action a bill that will cut some $17 billion from this year's appropriations. It is a lot of money. It can easily pass as merely a statistic in the debate going on in this country these days.

But in those $17 billion of cuts there is a story to be told. That amount represents $1 out of every $7 that this country was going to expend this year on programs to help the poor, those living below the poverty line. And that $17 billion represents $1 out of $100 that this Government was going to be spending on everybody else. One-seventh of our budget to help the least advantaged in this country, one one-hundredth of the budget to help the most advantaged in this country.

And you might ask, why? Why would we be doing that to programs like Women's, Infants and Children, early childhood nutrition programs, which clearly more than pay for the expenditures in better health, better learning, better productivity over a lifetime, and pay for themselves at a ratio of 4 or 5 to 1? Why would we be cutting prenatal care, absolutely essential to prevent low-birthweight babies and early childhood disease? What is the economy to be accomplished there?

Why go after safe schools programs that are critical in our urban neighborhoods, and why cut substantially into the low-income energy assistance program so critical to poor and largely older Americans in the colder parts of this country?

Well, the only answer we can find for taking from the disadvantaged disproportionately than from the advantaged is the tax cut that the majority wishes this Congress to pass, the benefits of which will also accrue largely to the best-off in this society, the top one-fifth, which was the only group in this country that enjoyed real increases in their standard of living during the eighties and early nineties.

This is just the beginning. Soon we will have proposals coming to the floor that will also cut other critical support programs, whether it is child care or food stamps.

I wanted to get some sense of what this was going to mean to the people in my district. I had a meeting this last Saturday morning at the Boulder Day Nursery, in Boulder, CO, where mothers, fathers, and kids came together to try to explain what this complicated, but ultimately critical, interconnected set of programs, from early childhood nutrition to day care to prenatal care to AFDC, had meant in their lives. People who do not want to be dependent on anybody else, who want to get on their feet, who want to be productive citizens, but who, for various reasons—husband and father who took a walk, a tragedy—had to rely on some of these programs.

I will be speaking further about what a central role this kind of support means, not because these people want to stay on the dole, but because they want to make something of themselves, become taxpayers, become productive citizens, and need a sense of community from all of us to get through some difficult times in their lives.

RECESS

The SPEAKER pro tempore. There being no further Members listed for morning hour, pursuant to clause 12, rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 1 o'clock p.m.) the House stood in recess until 2 p.m.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker.

PRAYER

The Reverend Michael B. Easterling, senior pastor, Madison Avenue Baptist Church, New York, NY, offered the following prayer:

Let us pray:

Lord of all nations, we give You thanks this day for life itself and for the promise of Your faithful guidance and care. You have blessed us in innumerable ways and You have placed in our hands the responsibilities of caring for our world and caring for one another.

May we assume these great responsibilities with conscientiousness and always with great humility.

As we undertake these tasks, will You give to us, Your servants, that wisdom and understanding and compassion we must have if we are to be successful.

Lord of life, lead us in all of our endeavors, that Your truth might be found, that justice and peace might be realities, and that Your eternal will might be done.

In Your holy name we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from Washington [Ms. DUNN] come forward and lead the House in the Pledge of Allegiance.

Ms. DUNN of Washington led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

A WELCOME TO REVEREND EASTERLING

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute.)

Mr. MCDERMOTT. Mr. Speaker, on behalf of my colleagues in the House of Representatives I am delighted to welcome as our guest Chaplain, the Reverend Michael Easterling, senior minister of the Madison Avenue Baptist Church in New York City.

The Reverend Mr. Easterling has served the Madison Avenue Church with great distinction for 10 years, a church that has provided a variety of services to his community located just a few blocks from the Empire State Building. His leadership has meant much to the neediest of people and together with the members of the church, the message of religion has been translated into deeds of justice and mercy to his community.

Mike Easterling and I were classmates together at Wheaton College in Illinois and I have been an admirer of his dedication and his commitment in his ministry. Also, it should be mentioned that Mr. Easterling and our own

Chaplain, Jim Ford, served together as cadet chaplains at the U.S. Military Academy at West Point, NY.

Thank you, Mike, for your prayer today and best wishes in the good work that you do together with the people of Madison Avenue Baptist Church.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget. We kept our promise.

The contract goes on to say that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise: unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we kept our promise; commonsense legal reform to end frivolous lawsuits—we are starting this today;

And still to go: Welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; Senior Citizens' Equity Act to allow our seniors to work without government penalty; congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

SCHOOL SAFETY AND SCHOOL LUNCH

(Mr. DINGELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I was delighted to hear the last person in the well to addres the subject of children. I would like to again address that today.

Last week, my colleagues, we discussed the question of cuts in the School Lunch Program. Today we find that my Republican colleagues propose to zero out the Drug-Free Schools Program and also the Safe Schools Program. This tends to show me that my Republican colleagues know the cost of everything and the value of nothing, because the greatest trust and the greatest treasure that this Nation has is our young people.

To have them in schools which are free of drugs, which are safe, and to see to it that those who have no recourse to adequate nutrition and food supplies at home, to see that they have an adequate school lunch is indeed one of the ways that we not only nurture our greatest treasure, but we look to the future of this country.

REAL REFORM THE ONLY TRULY COMPASSIONATE THING TO DO

(Ms. DUNN of Washington asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous material.)

Ms. DUNN of Washington. Mr. Speaker, let us talk about compassion, because some of our Members seem to have a distorted sense of what that term means when it comes to our Nation's failed welfare policies.

Is it compassionate to continue with a status quo system that for three generations has stripped women of their dignity? Republicans say no. The current system limits the ability of poor women to seek gainful work and condemns those women and their children to a life of hopelessness caught up in the welfare cycle.

That is not compassion, Mr. Speaker. It is destructive to women, to children, and to families.

In fact, because of the disincentives that exist in the current system, many welfare mothers will never be married.

Mr. Speaker, let us not defend the status quo. Instead, let us end a system that traps children in lives of higher rates of domestic abuse and violent crime and inadequate educational opportunities. Let us transform welfare and redefine compassion to mean stronger families, domestic tranquility, and good jobs.

SCHOOL LUNCH PROGRAM

(Mr. UNDERWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, the majority decided again last week not to protect the School Lunch Program, but to include it in a block grant and let the children compete for dwindling Federal dollars against other needy groups.

The majority's vision of America would have schoolchildren fight for their lunch money with programs for the elderly, disabled veterans, and indigent mothers. There is a new bully in the schoolyard. This is a fight where everyone loses. And all this while funding tax breaks for the wealthy. Mr. Speaker, I believe that the majority has extended class warfare into the classroom, but instead of the haves and have-nots, it is the well-fed versus the hungry.

Just as important as military readiness is classroom readiness—the readiness of schoolchildren to learn because their stomachs are not empty. Just as important as a balanced budget amendment is a balanced lunch law, ensuring a nutritious hot lunch to poor school kids.

Let us support classroom readiness and a balanced lunch law.

THIS IS NOT JUDGE WAPNER'S COURT

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, the United States legal system should not imitate Judge Wapner's ''People's Court.'' Our entrepreneurs should not be threatened by organizations like 1–800–LAWYER that encourage American citizens to sue everyone and anyone with little or no reason.

Right now, our legal system is well intentioned, but is not structured with any common sense. We have the chance to provide this common sense with lawsuit abuse and product liability reform.

We cannot continue to allow trial lawyers to enrich themselves at the expense of well-intentioned citizens.

We have citizens in this country afraid to practice their business or produce certain products for fear of being sued. We have Americans who are not getting replacement heart valves because the company that manufactured them was afraid of being bankrupted by an enormous lawsuit.

Let us put an end to out of control litigation and get the legal system in this country back on the right track, as we continue to enact our Contract With America.

CONTRATULATIONS TO THE PENGUINS FOR A TITLE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Youngstown State University, the Penguins, division I, double A, national champion football team, 3 of the last 4 years in a playoff, ladies and gentlemen, were received today at the White House by President Clinton. What a beautiful day for our valley and what a beautiful day for the top football coach in all of America, Jim Tressel, coach of the Penguins.

The greatest record in the last 5 years of any program in the country, led by All-Americans Lester Weaver and Leon Jones, Chris Samarone of Cheney, in Youngstown, OH, Randy Smith, and great quarterback, Mark Grungard, of nearby Springfield Local.

The Penguins defeated Marshall University 2 of those 3 years and defeated Boise State last year.

Ladies and gentlemen, this is the finest program in America. They are typical of the fighting spirit of the people of the Mahoning Valley in Ohio who lost the steel mills but their tenacity is never quit.

Hail to Jim Tressel and the Penguins. And at 3:30, Members, there will be a little reception in 2253. Come on by. The best in America.

NO DEFENSE FOR FAILED WELFARE SYSTEM

(Mr. JONES asked and was given permission to address the House for 1 minute.)

Mr. JONES. Mr. Speaker, it is time to tell the truth about our welfare system. It is not the system that it was designed to be. It is not temporary help for those who are down on their luck. It is a bureaucratic nightmare that has trapped generations of Americans into a cycle of dependency. It is no secret that the welfare system has failed miserably. It does not provide a hand up. It is nothing more than a handout. Americans across the country, including those who receive welfare, are sick of the failed system. We should face the problem and fix the system. Republicans have offered serious proposals to reform welfare, but those on the other side of the aisle are offering nothing more than distortion in a desperate attempt to defend a failed system.

That is not what the American people elected us to do. They elected us to fix a broken system. It is time to reform the welfare system.

REFORM OF THE LEGAL SYSTEM

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute.)

Mr. DEFAZIO. Mr. Speaker, the Republican image meisters and spin artists worked overtime for this week's production in Congress. They tapped a concern of average Americans over the growing litigiousness of our society, but with a breathtaking bait and switch. They have produced a bill beyond the dreams of the most corrupt financial swindler or the most irresponsible corporation. They call it the Common Sense Legal Reform Act.

In reality, it is the corporate dollar liability and litigation shield act.

No. 1, the loser pays. What does that mean? It means if you are an average citizen and you have been aggrieved by an exploding Pinto, if you wanted to sue Ford, you have to be ready to pay for all of Ford Motor Co.'s legal costs. Better think twice before you go to court to sue about an injury with products.

A blank check for bunko artists and new defenses for Wall Street. They forgot to inform you when you invest your pension in a bad deal. The new defense is, I forgot. It is actually written in the bill. It is almost a joke. I forgot. Thousand-dollar-an-hour lawyers and Wall Street forgot.

This is not for main street. It is for Wall Street.

WELFARE: A BETTER WAY

(Mr. NORWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NORWOOD. Mr. Speaker, someone once defined the Federal welfare system as the result of Americans wanting—in the worst way—to help those who have fallen behind.

There must be a way to help people without trapping them in dependency, robbing their self-respect, suffocating their initiative, and paving their way to lives of despair, illiteracy, and illegitimate behavior.

That better way is now working its way through the deliberative legislative process here in the House of Representatives and will be before this body in the next few days.

Foremost, this new approach incorporates the realization that the Federal Government is incapable of undertaking the experiments to produce a new welfare system.

To fulfill that role, we would designate the States as laboratories of innovation, reform, and effective transformation of the welfare system.

We also would eliminate an expensive, unnecessary layer of Federal bureaucracy whose role has been to look over the shoulders of the States and impose a one-size-fits-all straitjacket to restrain administrators for searching for better ways to deliver help to those in need.

URGING MEMBERS TO STAND TOGETHER AND PREVENT REDUCTION OF ENERGY ASSISTANCE TO THE POOR

(Mr. POMEROY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. POMEROY. Mr. Speaker, the temperature reached 15 below zero in North Dakota last night. Unfortunately, the discomfort of the cold was made much worse by the anxiety caused by the news that all of the funds for home heating assistance to the poor had been eliminated by the House Committee on Appropriations late last week.

Thousands of households in my State need help from time to time with high bills brought on by severe winter weather. Most receiving assistance have incomes below $8,000 a year, are elderly with disabilities, or families with young children under the age of 5 in the household.

How in the world could Members of this body eliminate this critical program in order to fund tax cuts for the rich? That is a trade-off that does not make any sense. Maybe they just do not understand. After all, the temperature in Atlanta, GA, today is going to be 75 degrees warmer than in North Dakota.

I call on every Member of this body, Republican and Democrats, who represent citizens coping with tough winters and high heat costs, to stand together and not leave the poorest of the poor out in the cold.

ANOTHER HOLE PUNCHED IN THE CONTRACT WITH AMERICA REPRESENTS A GAP PUNCHED IN AMERICA'S CONSTITUTION

(Mr. WATT of North Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATT of North Carolina. Mr. Speaker, this is a copy of the Constitution of the United States. I want Members to know that in this body it is under siege. Every time our Speaker shows up here and punches a hole in his laminated Contract With America, we can be almost guaranteed that they are punching another hole in the Constitution of the United States.

Last week, it was the fifth amendment of the U.S. Constitution that they punched a hole in systematically; before that, the fourth amendment, habeas corpus, and division of responsibility between the executive and legislative branch.

I will be back here to tell Members every time they do it again. Do not be fooled when they punch that hole in the Contract With America. It is another notch, but it is another gap in the Constitution of the United States.

THE CHICKENS ARE COMING HOME TO ROOST

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, ''the chickens are coming home to roost.'' that is an old saying that applies to what is currently going on in Congress. Republicans are clearly showing who they represent.

Mr. Speaker, the Republicans who won control of the House by a majority of 15 votes are using this slim margin to dismantle all Government programs, even compassionate programs to help needy Americans.

Mr. Speaker, little of this was spelled out in the Contract on America and none of it was discussed with the American people. Few Americans, if any, knew what the Republicans had up their sleeve when Republicans were sworn in on January 4.

Mr. Speaker, all this changed last week however, and the American people now know what the Republicans were hiding up their sleeve when Republicans had to make cuts in programs like school lunches, heating assistance for low-income senior citizens, reductions in hospital and health care for veterans, caps on student loans, as well as other cuts in order to finance a $722 billion tax break for special interests.

Mr. Speaker, last week the chickens came home to their roost. Already, the American people are upset and by large margins disagree and reject the fine print in the shortsighted and meanspirited Republican Contract on America.

IN OPPOSITION TO THE NUTRITION BLOCK GRANT PROGRAM

(Mr. WARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WARD. Mr. Speaker, I rise today in opposition to the nutrition block grant program, which, if enacted into law as the Republican contract seeks to do, will devastate our Nation's children. Despite the rhetoric we hear about creating less government, the fact is this new block grant program will create 50 new programs administered by 50 new State bureaucracies.

Under the Republican family nutrition block grant proposal, child care, nutrition, WIC programs, and others like them will be cut by 5.3; let me rephrase that, $5,300 million. We should not talk about billions, we should talk about millions, because it is a number we can relate to better; $5,300 million cut over 5 years from our women, infant, and children's programs. This is a successful program and should not be changed.

Mr. Speaker, I rise in opposition to these programs. These are mean-spirited Republican ideas.

PROTESTING THE DISMANTLING OF THE SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, I rise today in strong opposition to the Republican dismantling of the school lunch and child nutrition programs.

It has been proven, Mr. Speaker, that children who are not well fed are not well learned. Without proper nourishment, students simply do not achieve to the levels that they are capable. If their bellies are empty, their minds will be, too.

Turning the school lunch and child nutrition programs into block grants to the States will literally mean taking food from the mouths of children. It will result in a significant decrease in the number of lunches that are served daily at our schools.

In my congressional district alone, the California Department of Education estimates that more than 20,000 children will be impacted by this new block grant program.

Mr. Speaker, we need to ensure the future of our children. If we do not raise smart and healthy kids today, we will all suffer tomorrow.

CHILD NUTRITION PROGRAMS AXED

(Mr. JEFFERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JEFFERSON. Mr. Speaker, it has been said that the moral test of government is how that government treats those who are in the dawn of life, the children. Sadly, today Congress is falling extremely short of this test. It is sacrificing the health and well-being of our Nation's most vulnerable in favor of petty political rhetoric, and to safeguard the privileged status of the wealthiest of Americans on the backs of women and children.

With the near elimination of the school lunch and breakfast programs and the Food Stamp Program, among others, our colleagues on the other side of the aisle have hit nearly 5 million of America's children, our most previous resource, where it could very well hurt them the most—in their stomachs. Mr. Speaker, that is a shame.

The proposed rescissions this House will be asked to vote on soon are mean-spirited and close to a declaration of war on women and children. Child nutrition programs, undeniably, have been marked by many signs of success. There is a positive connection between child nutrition programs and educational attainment.

Low-income children who participate in these programs achieve higher standardized test scores than low-income students who do not. Decreased tardiness and absenteeism have also resulted from these programs.

In conclusion, Mr. Speaker, these nutrition programs have made it easier for children to do what we want them to do when they go to school—to learn.

Let us not take this chance away from our children.

PROVIDING FOR CONSIDERATION OF H.R. 988, ATTORNEY ACCOUNTABILITY ACT OF 1995

Mr. GOSS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 104 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 104

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 988) to reform the Federal civil justice system. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed seven hours. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The CHAIRMAN. The gentleman from Florida [Mr. GOSS] is recognized for 1 hour.

Mr. GOSS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. HALL], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, as part of our ongoing commitment to fulfilling the Contract With America, today we consider the first of a series of commonsense legal reform measures. Americans are all too familiar with abuses and indefensible judgments spawned by our legal system. Almost every American can recall reading in a paper or seeing on TV some episode that boils their blood or elevates their blood-pressure about a system run amok—enough is enough.

People across our Nation have called upon us to restore some basic fairness and reason to the judicial process now. I would guess that most Americans probably agree that the $3 million judgment recently awarded to a woman who spilled hot coffee in her lap was unreasonable. While the plaintiff in that case, and likely her lawyer too, now may rest comfortably on that judgment, the rest of America can expect to pay more for lukewarm coffee in the future. ''Beware of hot coffee'' signs are springing up at drive-in windows. Clearly, the system is out of balance and needs reform. And that is what we are doing here today. House Resolution 104 is an open, fair, and hopefully noncontroversial rule that allows us to consider H.R. 988. I am pleased that this resolution was reported out of the Rules Committee on a unanimous voice vote—with the full support of the minority.

Specifically, House Resolution 104 provides 2 hours of general debate and a total of 7 hours for any germane amendments Members may wish to offer under an open amendment process. Majority and minority members of the Judiciary Committee who testified on this measure at our hearing on Friday suggested that 7 hours of amendments plus 2 hours of general debate should provide Members ample opportunity to discuss the bill.

In fact, the timing in this rule was agreed upon in friendly negotiations with minority members of the Rules Committee. While the gentlelady from Colorado [Mrs. SCHROEDER] indicated

that some technical aspects of H.R. 988 may take time for nonattorneys to fully appreciate, she suggested that only 5 hours of amendment time would have been sufficient—we have offered 7. In fact, the minority members of the Rules Committee and the minority members of the Judiciary Committee indicated that they anticipate very few amendments from their side of the aisle.

Mr. Speaker, in 1989, Americans filed more than 18 million civil lawsuits against each other. That is about 1 suit for every 10 adults in America. Meanwhile, the number of lawyers and the profits of the legal service industry have been exploding. In 1970, there were only 355,000 attorneys in America. Today, that number has more than doubled, to nearly 1 million. I doubt anyone would claim our quality of life has doubled because of all those attorneys. Revenues to the legal industry have grown at a pace that exceeds that even of health care costs. I am delighted that the House is now beginning to address these disturbing trends by reconsidering some our system's current incentives. The Attorney Accountability Act of 1995 seeks to discourage frivolous lawsuits while encouraging good faith settlement negotiations by plaintiffs and defendants alike. The bill provides for a modified loser pays rule for certain civil suits brought in Federal court. By requiring that litigants who reject reasonable pretrial offers of settlement pay a portion of their opponents' legal costs, the Attorney Accountability Act should to more fruitful good faith negotiations. While making changes to our legal system that should make that system work better for all Americans, this bill also preserves America's unique contingency fee tradition—which is often crucial to ensuring access to the courts and our justice system by the poor.

Mr. Speaker, I support this bill and this fair and open rule.

☐ 1430

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

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HALL of Ohio asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. HALL of Ohio. Mr. Speaker. I would like to commend my colleague from Florida, Mr. GOSS, for ably describing this rule which will allow consideration of H.R. 988, the Attorney Accountability Act. This is a rule which caps the overall time allowed for the amendment process at 7 hours. Normally, I am opposed to time caps on complex legislation such as this; however, the Rules Committee did reach a bipartisan agreement on an amendment offered by my colleague, Mr. FROST, during the committee's deliberations. Under the Frost amendment, as amended by Mr. SOLOMON, 2 hours of general debate is provided, and the time cap on amendments is increased from the original 6-hour limit to 7 hours. The rule also makes in order the Judiciary Committee amendment in the nature of a substitute as an original bill for the purposes of amendment.

Mr. Speaker, even though this rule was reported out of the Committee on Rules by a voice vote, I want to point out that the bill itself, H.R. 988, did elicit substantial discussion among members of the Rules Committee. This bill makes major changes to the current Federal civil justice system and should be thoroughly debated. While many of us would have preferred a totally open rule, I am glad members of the committee increased the general debate time, as well as time for amendments, on a bill of this significance.

Mr. Speaker, I am troubled by some of the provisions of the Attorney Accountability Act. I do believe we have a problem in our country with frivolous lawsuits. We all have heard or read about cases which seem absurd, and result in increased costs to consumers and small businesses. However, before supporting this bill, I want to make sure we are actually getting at the reform intended.

The bill includes provisions which result in a loser pay system. Under these provisions, the nonprevailing party must pay the prevailing party's attorney's fees in Federal civil diversity litigation where a settlement offer has been made. While this could be a step toward reducing frivolous cases, I would like to see some assurances that this is not a tactic to scare away legitimate cases from middle-income people.

There was concern expressed in the Rules Committee that, under these provisions, defendants could make intentionally low settlement offers and inflate costs as a strategy. In trying to reform the judicial system, we should be sensitive to the fact that not all Americans, and small businesses, can afford high-priced attorneys—and many of them do have legitimate claims which have a right to be heard.

This rule does provide adequate time to explore this complicated and important subject, and therefore I will support the rule. I ask my colleagues to join me in supporting it.

Mr. Speaker, I include the following for the RECORD:

FLOOR PROCEDURE IN THE 104TH CONGRESS

Bill No.	Title	Resolution	Process used for floor consideration	Amendments in order
H.R. 1	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 2	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 7	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 729	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on suspension calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; waives all points of order; Contains self-executing provision.	1D.
H.R. 830	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. Time Cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment; Waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.
H.R. 1058	Securities Litigation Reform Act	H. Res. 103	Restrictive; 8 hr. Time Cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germaneness against it.	1D.
H.R. 988	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive; 7 hr. Time Cap on amendments; Pre-printing gets preference	N/A.

Note: 74% restrictive; 26% open. These figures use Republican scoring methods from the 103rd Congress. Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

Mr. HALL of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GOSS. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON UNIFIED NATIONAL PROGRAM FOR FLOODPLAIN MANAGEMENT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore [Mr. KNOLLENBERG] laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking and Financial Services and ordered to be printed:

To the Congress of the United States:

It is with great pleasure that I transmit *A Unified National Program for Floodplain Management* to the Congress. The Unified National Program responds to section 1302(c) of the National Flood Insurance Act of 1968 (Public Law 90–448), which calls upon the President to report to the Congress on a Unified National Program. The report sets forth a conceptual framework for managing the Nation's floodplains to achieve the dual goals of reducing the loss of life and property caused by floods and protecting and restoring the natural resources of floodplains. This document was prepared by the Federal Interagency Floodplain Management Task Force, which is chaired by FEMA.

This report differs from the 1986 and 1979 versions in that it recommends four national goals with supporting objectives for improving the implementation of floodplain management at all levels of government. It also urges the formulation of a more comprehensive, coordinated approach to protecting and managing human and natural systems to ensure sustainable development relative to long-term economic and ecological health. This report was prepared independent of *Sharing the Challenge: Floodplain Management Into the 21st Century* developed by the Floodplain Management Review Committee, which was established following the Great Midwest Flood of 1993. However, these two reports complement and reinforce each other by the commonality of their findings and recommendations. For example, both reports recognize the importance of continuing to improve our efforts to reduce the loss of life and property caused by floods and to preserve and restore the natural resources and functions of floodplains in an economically and environmentally sound manner. This is significant in that the natural resources and functions of our riverine and coastal floodplains help to maintain the viability of natural systems and provide multiple benefits for people.

Effective implementation of the Unified National Program for Floodplain Management will mitigate the tragic loss of life and property, and disruption of families and communities, that are caused by floods every year in the United States. It will also mitigate the unacceptable losses of natural resources and result in a reduction in the financial burdens placed upon governments to compensate for flood damages caused by unwise land use decisions made by individuals, as well as governments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

ANNUAL REPORT OF NATIONAL ENDOWMENT FOR DEMOCRACY FOR FISCAL YEAR 1994—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Pursuant to the provisions of section 504(h) of Public Law 98–164, as amended (22 U.S.C. 4413(i)), I transmit herewith the 11th Annual Report of the National Endowment for Democracy, which covers fiscal year 1994.

Promoting democracy abroad is one of the central pillars of the United States' security strategy. The National Endowment for Democracy has proved to be a unique and remarkable instrument for spreading and strengthening the rule of democracy. By continuing our support, we will advance America's interests in the world.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

ATTORNEY ACCOUNTABILITY ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 104 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 988.

The Chair designates the gentleman from Ohio [Mr. HOBSON] Chairman of the Committee of the Whole, and requests the gentleman from Florida [Mr. GOSS] to assume the chair temporarily.

□ 1438

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 988, to reform the Federal civil justice system, with Mr. GOSS, Chairman pro tempore, in the chair.

The Clerk read the title of this bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California [Mr. MOORHEAD] will be recognized for 1 hour, and the gentleman from Michigan [Mr. CONYERS] will be recognized for 1 hour.

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

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

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

Mr. MOORHEAD. Mr. Chairman, I rise in support of H.R. 988, the Attorney Accountability Act of 1995.

It is widely believed that the American legal system no longer serves to expedite justice and ensure fair results. It has become burdened with excessive costs and long delays. For many people, especially middle and lower income litigants, justice is often delayed and as a result is often denied. For instance, in 1985, the percent of civil cases over 3 years old in Federal district courts was 6.6 percent. Five years later that figure grew to 10.4 percent.

In addition to excessive costs and long delays, the American legal system has been hurt by an overreliance on litigation. According to Judge Stanley Marcus, chairman of the Judicial Conference Committee on Federal-State Jurisdiction,

> If present trends continue, the federal courts' civil caseload will double every fourteen years, and in the twenty-eight years between 1992 and 2020 the compounded effect of that doubling and redoubling will raise the annual number of civil cases commenced from roughly 226,000 per year to nearly 840,000 per year.

Judge Marcus went on to observe that

> Under current workload standards this volume of litigation would require an enormous increase in the number of district judges and circuit judges, transforming the existing nature of the federal judicial system virtually beyond recognition.

The overuse of litigation imposes tremendous costs upon American taxpayers, businesses, and consumers. H.R. 988 will begin the process of restoring accountability, efficiency, and fairness to our Federal justice system.

H.R. 988 addresses these concerns in three ways. First, it sets up a settlement-oriented loser-pays-attorney's-fee mechanism that rewards reasonable parties who negotiate to settle claims prior to trial. If either side rejects a settlement offer and goes on to win something less at trial, that side would be liable for attorney's fees and court costs. However, it is important to note that the awarding of attorney's fees under this section is not automatic. If the judgment is anywhere in between the last offer and counteroffer of settlement existing 10 days or more before trial, the traditional American rule applies and each side bears its own costs and fees. There are also two exceptions to the mandatory requirement that a court award costs and attorney's fees under this section. The first exception would allow the court to exempt certain cases based upon express findings that the case presents novel and important questions of law or fact and that it substantially affects nonparties. The second instance where a court would not be required to award costs and attorney's fees, would be when it finds

that it would be manifestly unjust to do so. This provision was drafted by my colleague from Virginia, a member of the Courts and Intellectual Property Subcommittee, Mr. GOODLATTE. I would like to commend him for his hard work and leadership on this important issue.

Second, the bill would limit the admissibility of scientific testimony of expert witness. It would make a scientific opinion inadmissible unless it: First, Is scientifically valid and reliable; second, has a valid scientific connection to the fact it is offered to prove; and third, is sufficiently reliable so that the probative value of such evidence outweighs the dangers specified in rule 403.

The dangers specified in rule 403 are ''unfair prejudice, confusion of the issues, or misleading the jury.'' What we intend to do here is to codify a relatively recent Supreme Court case of Daubert versus Merrell Dow Pharmaceuticals (1993). That case overruled the 70-year-old common law test enunciated in Frye versus United States (1923) that expert scientific opinion was admissible only if it were based on techniques that were ''generally accepted'' by the scientific community. The Daubert court held that the common law rule of ''generally accepted'' by a scientific community had been superseded by the new rule 702 and ''generally accepted'' was just one of several standards that should be used when a judge considers the admissibility of scientific testimony.

The value of the Daubert decision is that the court spoke extensively about how rule 702 should be applied. What we are trying to do here is to cut back on the possibility of distorted scientific evidence from being introduced into a Federal trial of civil litigation. We do this by shifting the burden of proof, whereas under present law the presumption is in favor of admitting expert scientific testimony, however, under H.R. 988 such testimony is presumed to be inadmissible unless certain standards are met.

Third, H.R. 988 would amend rule 11(c) of the Federal Rules of Civil Procedure relating to the sanctions a Federal judge may impose against lawyers who file frivolous lawsuits or engage in abusive litigation tactics.

Although Federal courts have always had the authority to sanction frivolous pleadings and papers, the early judicial, statutory, and procedural guidelines were very vague, and sanctions were extremely rare. Speaking before the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, then-Chief Justice Burger noted with alarm the

> Widespread feeling that the legal profession and judges are overly tolerant to lawyers who exploit the inherently contentious aspects of the adversary system to their own private advantage at public expense.

In 1990, the Judicial Conference's Advisory Committee on Civil Rules undertook a review of the Rule and asked the Federal Judicial Center [FJC] to conduct an empirical study of its operation and impact. The study found that a strong majority of federal judges believe that: First, The old rule 11 did not impede development of the law—95 percent; second, the benefits of the rule outweighed any additional requirement of judicial time—71.9 percent; third, the old rule 11 had a positive effect on litigation in the Federal courts—80.9 percent; and fourth, the rule should be retained in its then-current form—(80.4 percent).

Despite this clear judicial support for a strong rule 11, in 1991, the Civil Rules Advisory Committee included provisions to weaken the 1993 rule in a broader package of proposed amendments to the Federal rules. The proposed changes were then sent to the Supreme Court for approval or modification.

Exercising what it viewed to be a limited oversight role, the Supreme Court approved the proposed changes without substantive comment in April 1993. In a strongly worded dissent on rule 11, Justice Scalia correctly anticipated that the proposed revision would eliminate a ''significant and necessary deterrent'' to frivolous litigation:

> [T]he overwhelming approval of the Rule by the federal district judges who daily grappled with the problem of litigation is enough to persuade me that it should not be gutted.

H.R. 988 makes several important changes to rule 11. First, it reestablishes a system of mandatory, as opposed to discretionary, sanctions. That is if a judge finds that a lawyer has filed a frivolous lawsuit or otherwise abused the system and if it's warranted the judge shall award attorney's fees to the abused party. Second, it mandates the use of attorney's fees as part of the sanction. Third, it puts a bigger emphasis on the rule's compensatory function by clarifying that sanctions should be sufficient to deter repetition and to compensate the parties that were injured.

All of these changes make good, common sense. Mandatory sanctions send a clear message that abusive litigation practices will not be tolerated by our judicial system or the judges who form its core. Appropriate monetary sanctions, including the award of attorney's fees, also help in deterring abuse and provide some recompense for parties that are harmed by sanctionable misconduct.

Fourth, H.R. 988 would eliminate the so-called safe harbor provision of the current rule, which permits a lawyer or litigant to withdraw a challenged pleading, without penalty, prior to the actual award of sanctions. As Justice Scalia noted in his dissent to the Court's transmission of the new rule 11 to the Congress,

> Those who file frivolous suits and pleadings should have no ''safe harbor.'' The Rules should be solicitous of the abused and not of the abuser. Under the revised rule, parties will be able to file thoughtless, reckless, and harassing pleadings, secure in the knowledge that they have nothing to lose * * *

Fifth, it would return to the pre-December 1993 practice of applying rule 11 to discovery abuses. An empirical study conducted by the American Judicature Society suggested that discovery made up over 19 percent of the motions that were filed under the old rule 11. It is important to sanction discovery abuses just as it is important to sanction abuses at any stage of the litigation process.

By so doing the public has a sense of fairness in the knowledge that abusive practices will not be tolerated by our justice system. Mandatory sanctions also prevent judges from going easy on lawyers who break the rules. Most judges do not like imposing punishment when their duty does not require it, especially on their own acquaintances and on members of their own profession. This is human nature.

Mr. Chairman, in conclusion, I believe it is important to point out that we have over 850,000 lawyers in this country. Of these very, very few ever step foot into a courtroom. And of those who do, the vast majority do not file frivolous lawsuits or otherwise abuse the system. In fairness to my profession and in fairness to the vast majority of lawyers in this country, this legislation and my comments are not directed at them. They work hard and they participate fairly and they make an important contribution to this country and to our system of justice. This legislation is intended to make an impact on those few lawyers who do take advantage and abuse and misuse the system for their own private benefit. Rule 11 sanctions are to be implemented and like other types of clear penalties in our civil and criminal justice system, are intended to send an unambiguous message that abusive conduct from lawyers will not be tolerated.

I urge a favorable vote on H.R. 988.

☐ 1445

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

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

Mr. Chairman, when the loser-pays provision was unveiled, it was part of the controversial Contract With America. Now we know that H.R. 988 is really part of the Republican majority's contract with corporate America. And reading the fine print of this provision makes clear that the average American citizen is not a party to the contract.

This bill, and all of the other bills we debate this week on civil justice reform are drafted from a single point of view: the corporate defendant's. All these bills seek to cut out the plaintiffs' right to bring cases in the first place by either eliminating who you can sue, where you can sue, or how much you can receive in compensation for harm suffered.

If this bill really strived in a neutral fashion to penalize frivolous lawsuits

or to discourage the filing of clearly unmeritorious cases, no one in this Chamber would have any trouble supporting this proposition. But when the bill is clearly drafted to deter middle-income persons from pursuing reasonable claims in court and placing them at a severe disadvantage with risk-free parties, such as large corporations whose legal fees are normally deducted as a business expense, then I have great objection to this legislation.

We are told that the motivation behind the loser-pays provision is the tremendous number of frivolous lawsuits filed every day in America. But the proponents offer no empirical data to support their claims. They did not in the committee, perhaps there will be some arriving here today.

The so-called explosion in litigations throughout the 1980's and 1990's upon examination we find was brought by corporations suing other corporations or domestic relations suits, it was not an explosion of product liability actions or medical malpractice actions, or of tort actions in general.

It is notable that the new majority of Republicans are eager to embrace the so-called English rule just as prominent voices in England are calling increasingly for the abandonment of the rule in that country itself.

In a January 14 editorial, the conservative British magazine, The Economist, called for the abandonment of the rule because ''only the very wealthy can afford the costs and risks of most litigation'' under the English rule.

I continue to quote, ''This offends one of the most basic principles of a free society: equality before the law.''

This comes from England, not from the United States. It is clear that the loser-pays provision in H.R. 988 fails to distinguish between frivolous cases and reasonable cases in which liability is closely contested, and thus will deter many, particularly middle-income citizens and small businesses, from pursuing reasonable claims for defenses.

As one scholar has noted, for a middle-income litigant facing some possibility of an adverse fee shift, defeat may wipe him out financially. The threat of having to pay the other side's fee can loom so large to be intimidating in the mind of a person without considerable disposable assets that it deters the pursuit of even a fairly promising and substantial claim for defense.

It is intimidating to have such a proposal now brought before the Congress to become part of our law.

Middle-income parties and small businesses may have to place their very solvency on the line in order to pursue a meritorious claim. And frequently in tort cases we do not know what a meritorious claim is because the evidence might determine a case becoming a big winner or a total loser. The burden of proof in a civil case is preponderance of the evidence often described as the amount of evidence that shifts the scale, if even only slightly, from the point of balance. A middle-income plaintiff confronted with a written offer to settle under section 2 of this bill must settle at that point, must settle at that point unless he or she is willing to assume the risk of payment of the other side's attorney's fees, and for a middle-income plaintiff who would be financially ruined by such an award, the calculus becomes in effect whether it is reasonable beyond doubt that they will prevail.

That is a pretty high standard, and it is notable that the States often referred to as the laboratories of democracy have not in any significant numbers perceived the English rule to be an appropriate measure for their court systems, nor do I.

The Florida experience, in which doctors first demanded the English rule and then demanded that it be abolished, should be a reminder to us that unintended consequences often overtake the intended ones, particularly when we act hastily and without thoughtful deliberation.

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

Mr. MOORHEAD. Mr. Chairman, I yield 8 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, the gentleman from California quite adequately described the provisions that are to appear for general debate and then during the 5-minute rule for amendment. The gentleman from Michigan is worried about the English rule. I think we ought to set the stage for the debate that is yet to come by at least an attempt by this Member to give a kind of a historical development of how we reached this point. I will not start with William and Mary or 1066 or the Battle of Hastings or 1215 or any of those historical dates, but I will start in this House of Representatives when long ago, I say to the gentleman from Michigan, we abandoned the English rule, even in the drafting of our loser pays provisions as they appear in this bill. So that should be noted.

But for the public, let us talk about this for a minute and for the record.

□ 1500

Loser pays is a concept that pleases the American people who are watching our court system disintegrate before their very eyes. Loser pays simply says to our people that if a claimant goes into court, has his lawyer file a suit that is totally frivolous, but does so for the purpose of trying to get a settlement from a company that is not willing to go to court but knowing that the case is not worth anything but just to get them off their backs, offers something and the plaintiff walks off with a windfall, something that they could not have earned in court but because of the system they are able to get a settlement, well, people look askance at that, and it is causing a great tremor in our justice system.

So we thought about that. Many people favor the concept of loser pays. It says that if a claimant comes into court with a frivolous claim, let us assume, just for the moment, one of these claims that has very little basis in law or fact, but is known to generate an offer from the insurance company representing the other side, just for the sake of getting that person off their back, the loser pay context says that if that case should go into court and the defendant insurance company and the others say:

> We are not going to pay you a penny of blackmail or extortion type or pressure type of damages; you take us to court. We do not care, but if you lose under the loser pays, you are going to have to pay the attorney fees and costs that it cost us to come to court and defend this lawsuit.

And vice versa, if the plaintiff makes a bona fide claim of $100,000 and the defendant insurance company says it is not worth a darn when it really is and they know that they are stiffing the plaintiff by not agreeing to negotiate for settlement and they dare to go into court, and the plaintiff does win the $100,000 or something akin to it, then the defendant should pay the attorney's fees and costs.

So that is what loser pays is all about. Should we have something like this in the current situation? Should we try to modify that? Should we try to bring loser pays into the American judicial system?

Because right now we have what is called the American system. The American system is you go to court and each pays his own attorney's fees and costs and there are some rare cases where, by reason of a statute, attorney's fees have to be paid by the losing party, et cetera. But generally that American rule allows each party to pay or forces each party to pay his or her own attorney's fees and costs, et cetera.

So now, where are we? The English rule says loser pays no matter what happens in court. The loser has to pay the attorney's fees and costs of the other party. We found some objection even among the lawyers in the Committee on the Judiciary on that.

I point this out to the gentleman from Michigan, and it is astounding that it is the gentleman from Michigan, because what I have to say touches upon his own State. When we decided that we had to have some kind of loser pays but something that makes sense, we adopted, the gentleman from Virginia [Mr. GOODLATTE], the gentleman from South Carolina [Mr. INGLIS], and I and others, reformulated, as did the gentleman from California [Mr. MOORHEAD] and his staff, reformulated rule 68. So those of you who would condemn loser pays are also condemning, if you condemn loser pays in its generic form, in its broad form, you are also condemning rule 68 as it now

applies to the rules in the rules of Federal procedure.

So those who condemn loser pays are not even satisfied with what has already been a Federal rule for a long time, rule 68, which is a modified form of loser pays.

Now, further, our modification modifies further the modification that appears in rule 68 of the Federal rules of civil procedure. So do not give us this rhetoric about you are opposing loser pays unless you also oppose rule 68 and are not satisfied with the judicial conference and its promulgation of its rules as it applies to loser pays.

We already have loser pays. We are trying to perfect it.

And you know what rule I want to see applied, I say to the gentleman from Michigan? Is the gentleman from listening to me?

I want to apply the Michigan rule which, for a long time, has had loser pays in the State and it works, and it is loser pays. Do you, in your condemnation of loser pays and the English rule, are you ready to concede that the rule 68 in Federal rules of civil procedure, and the Michigan rule which is a modification of that, are acceptable modes projecting loser pays? That is what the debate is going to be about.

We feel we have come up with a thoughtful analysis of loser pays, and to try to get these parties to negotiate to reduce the number of frivolous debates, of frivolous suits that are filed, and try to get people to come to the middle of offer of settlement so that these cases would not have to clog up the docket and the negotiations would be fostered.

Here is the idea, when the plaintiff demands $100,000 and the defendant says, ''I can only pay $50,000,'' then if the verdict comes in somewhere between the two, each one has to pay his own costs. If it comes in over $100,000 where the defendant could have settled for 100, then the defendant has to pay the costs. If it comes in under $50,000 where the defendant has to pay now more than they have conjured up that it had to pay, it should also have to pay the attorneys fees and the costs.

The plaintiff would have to do that if it is under $50,000. That is a reasonable way to do it.

And the Michigan rule, which I would like to see occur and which I will debate under the 5-minute rule, is this, I say to the gentleman from Michigan, the claimant offers to settle for $100,000. The defendant says no, $50,000 is enough. Well, that strikes immediately under my amendment the number 75,000, and if the verdict comes in at 90,000, then the defendant has to pay the costs. If it comes in under 75, the plaintiff has to pay the costs.

What we are trying to do is drive these people into a negotiating mode in which the reasonable middle area would be found for possible settlement of the case so that the loser would pay and keep the case out of court.

We have a thoughtful approach to this, and I will reject the rhetoric of you are against loser pays because you are against the present law if you are against loser pays.

Mr. CONYERS. Mr. Chairman, I yield 6 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I thank the gentleman for yielding this time to me.

I just have a couple of comments to make. First is on the sanctions. Many plaintiffs bring the cases on a contingent fee. If you lose the case, if the lawyer brings such a case and does not win, whether it is frivolous or not, if he does not win he does not get paid a fee at all. That is certainly a sanction.

If the case is, in fact, frivolous, the present law already provides significant sanctions.

There have been recent improvements in that law, and we need to let them play out to make sure they work.

There have been no complaints, or very few complaints, about the present law as it has been improved, and in terms of the loser pays, Mr. Chairman, that is a good sound bite but it is just not good sound policy. It will have the effect of denying the average citizen access to the courts.

The corporations who are suing each other, obviously their attorneys fees can be a cost of business, if they are defending or bringing cases against individuals, it can be a cost of doing business.

Our courts ought to be a place where citizens can have their rights vindicated and resolve those differences. If we have the loser pays, we are going to have a significant situation where the average citizen will not have access to the courts.

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

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

Mr. GEKAS. Mr. Chairman, on that point, I tried as strenuously as I could, and I ask the gentleman, does he reject rule 68 of the Federal rules of civil procedure which is a current law which is a type of loser pays?

Mr. SCOTT. It is my understanding if you bring a frivolous lawsuit, then you can have attorneys fees assessed against you. I agree with that if it is frivolous. I am not supporting frivolous cases. A lot of cases that are not frivolous, it is a close call. You do not know the people are going to lie about the color of the red light, and you lose your case because of that. That is not a frivolous case.

Mr. GEKAS. It still remains, under your definition, to determine whether or not it is frivolous, but you would favor loser pays in that situation?

Mr. SCOTT. I would favor loser pays as a sanction against a frivolous lawsuit, but not against a meritorious law suit.

Mr. GEKAS. Nobody does.

Mr. SCOTT. If someone in good faith, if someone brings a good-faith lawsuit, they ought not be threatened in the way this loser pays threatens them if it is a close call, and you lost a close case, you not only lose your case, lose all you are putting into the case, you lose your house, lose your kids' education for having dared to come forward with a case that was meritorious, you just did not win. I do not agree with loser pays to put people into bankruptcy for having dared to come into court to vindicate their rights in good faith.

Mr. GEKAS. Mr. Chairman, if the gentleman will yield further, if we are to demonstrate to the gentleman from Virginia that none of the thoughtful, reasonable loser pays provisions that we are projecting does anything except militate against frivolous suits——

Mr. SCOTT. Reclaiming my time, that is not what it is.

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

Mr. SCOTT. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding. First, let me say is it not that the situation a defendant is placed in right now, they have absolutely no choice about being brought into court? They are made a defendant, and even whether the case is frivolous or has a close call, they have to bear risk, they have to bear attorneys' fees, no matter what their background is. They may be poor, they may be middle class, they may be a small business, they may be a large business. They still have to bear that risk.

In a contingent fee case, you see the ads in the paper all the time now, no fee if no recovery. No risk is the message, and do you not think there should be something on that situation that the plaintiff has to look at?

Mr. SCOTT. I would say the present law provides if people have a bona fide claim they want to bring to court, they have their rights they want vindicated, if they have been ripped off by a business, if they are trying to get money they loaned to somebody and they want to get it back, there are technicalities in the law they may not be able to get it back. Whatever the reason they are in court vindicating their rights, they ought to be able to come forward without having to bet their house and kids' education on the outcome.

Mr. Chairman, I only have a short period of time, and all that I am asking, Mr. Chairman, is we not change this law, we not force people into a situation where they have to bet their house in order to get what they deserve. That is not right.

This bill ought to be defeated. The courts are not only for those that can bet tens of thousands of dollars on the outcome, it is for average citizens that can come into court to vindicate their rights.

Mr. MOORHEAD. Mr. Chairman, I yield 10 minutes to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the chairman for yielding and for his hard work on this bill, which I think is a very good bill.

I rise in strong support of it. This bill has three provisions, all of which are geared toward bringing more common sense to our legal system.

The first deals with the losing party in a lawsuit under certain circumstances paying the winning party's attorneys' fees, limited to just 10 days before trial, through the trial, limited to not exceeding the amount they paid their own attorney and limited by other discretion given to the judge; I think this is eminently reasonable and allows the award of attorneys' fees only in cases where they party who is the losing party, whether it is the defendant or the plaintiff, is unreasonable, or has a frivolous action or a nonmeritorious action.

I would say to the gentleman from Virginia that he recognizes that this, even taking his point of view, is a substantial improvement over the loser pays provision that was in the bill from his point of view. He voted for this amendment in the committee.

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

Mr. GOODLATTE. I yield to the gentleman from Virginia.

Mr. SCOTT. I will acknowledge that your amendment in committee made the bill less worse than it is.

Mr. GOODLATTE. Thank you.

Mr. SCOTT. I will also acknowledge that you have to try the meritorious good suits and the frivolous suits under the same procedure, and people coming into a lawsuit do not know whether they are going to lose in many occasions, and ought not be, when discussing whether they are going to bring the suit or not——

Mr. GOODLATTE. The gentleman's point is correct. The same thing is true of a defendant, whether that be an individual, regardless of their economic background, whether that be a small business person whose business could be lost, the bringing of the lawsuit imposes risk upon that party; it does not impose risk upon the plaintiff.

Now this changes that in this respect, it says that if the party, if a suit is filed, and the parties negotiated in good faith, then the losing party in those negotiations will be responsible for the prevailing party's attorneys' fees limited, as I described earlier, when it occurs that the losing party's recovery in the case either being a verdict against them or a verdict lower than the amount that was offered by the defendant occurs, and it just seems to me in every single case this would apply the defendant or the plaintiff if they do not prevail is shown to have had: First, a nonmeritorious case, and second, not to have prevailed in the case, to not having been reasonable in the case. For example, if the plaintiff sues the defendant for $100,000, the defendant offers the plaintiff $50,000, the plaintiff turns that down and goes into court, if they get an award greater than $50,000 but less than the $100,000 they sued for, there is going to be no award of attorneys fees; if they get something less than $50,000 and they were up at $100,000, they were unreasonable in their negotiations and they should be required to compensate the reasonable party that in good faith offered to settle the case or a defendant who feels there is no merit to the case and offers to dismiss the case because it has no merit and they insist on going into court, they ought to suffer some exposure for liability and not simply have the system we have right now where it is estimated, here is an article by George McGovern of all people just published in the news very recently.

□ 1515

This was just published in the newspapers just recently, ''America Must Curb Its Lawsuit Industry.'' He says:

> First, we must put a stop to the frivolous and fraudulent lawsuit. It has been estimated at a meeting of the American Board of Trial Advocates that a fourth of all the lawsuits filed in the United States are either frivolous or fraudulent. Another study by Harvard University on medical injury and malpractice litigation found that 80 percent of the participants in those suits suffered no real injury as a result of medical negligence. Attorney sanctions should be strengthened to keep frivolous or fraudulent cases out of court.

Mr. McGovern speaks from his own personal experience. He started a business in Connecticut. He had a small hotel there, and, after successfully defending against two slip-and-fall cases at the hotel, discovered that, while he was successful in defeating each one of these cases that did not have merit, he in each case spent large sums of money defending the case which never should have been brought in the first place.

So, Mr. Chairman, it seems to me that we are being entirely reasonable and we are doing this for the benefit of all parties involved, plaintiffs and defendants, and, more importantly, we are doing this for the benefit of consumers because, if we use this to encourage settlement of cases, to cut down on the amount of litigation, to cut down on the amount of court time, and, if we can use this to encourage or discourage the bringing of frivolous suits and fraudulent suits, the price of goods and services are going to be reduced in this country because anybody who offers a product for sale has to factor into the price that they sell that product for the insurance they pay and the other legal costs they have attendant to that, and in addition, Mr. Chairman, the cost of insurance would be reduced if these cases could be screened out.

This is an effective mechanism for screening them out, and I urge the passage of this bill.

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

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

Mr. GEKAS. Mr. Chairman, I am glad that the gentleman is taking some time in general debate because I want to debate early between ourselves the negotiations that the gentleman and I have been carrying on and what the final formulation might be if the loser pays.

I say to the gentleman, ''You and I had discussed, even before markup, the possibility of utilizing the Michigan rule, to which I referred to before. In that case let me give the hypothetical and see if you agree. I offer—as a claimant I claim $100,000, and you, the defendant, offer $50,000, just like in your example that you gave the gentleman from Virginia. But in applying the Michigan rule, which I looked upon with favor, if we stopped there and were hard set that those two figures, and it moves into trial, the figure, for the purpose of loser pays, becomes the median between the two at $75,000. So then, if the verdict comes in at $76,000 or above $75,000, then the defendant has to pay all the costs.''

Correct; under the Michigan law?

Mr. GOODLATTE. That is correct.

Mr. GEKAS. And if it comes under $75,000, at $62,000, or $73,000, or whatever, then the plaintiff would have to pay the—because the median figure was not met.

Now I know the gentleman agrees with me when I say to him and I say to the Members, ''This stimulates and urges negotiation because, when we're sitting on the other side of the table, you and I, and I'm at $100,000, and you're at $50,000, and we know that $75,000 is going to be the point at which the attorneys' fees costs are going to be relegated, then maybe I will—well, look, I'll settle for $87,500, or you move it up to $62,500, that type of thing.''

Mr. Chairman, does the gentleman agree with me that that does stimulate a negotiation?

Mr. GOODLATTE. I would agree it stimulates negotiation.

Let me say that the concern I have is that the difference between the Michigan rule that the gentleman is articulating very accurately here and the bill, as it is currently drafted, is that under the current circumstances only when the Plaintiff meets or exceeds the amount of their demand will they get attorney fees. Only when the defendant keeps the plaintiff below the amount of their settlement offer will the defendant get attorney fees, and in the area in between that $50,000 to $100,000 no one, no party, pays the other party's attorney fees as the bill is written.

I say to the gentleman, ''You would make it razor sharp by saying, if it's 75 thousand and one dollar, the plaintiff prevails, and the defendant pays his attorney fees. if it's $75,999, the defendant prevails, and the plaintiff pays his attorney fees,'' and I really don't think the merit of whether or not a case was reasonable ought to fall on one dollar. That can never happen.

Mr. GEKAS. Will the gentleman yield further?

Mr. GOODLATTE. Let me finish this. That can never happen under the circumstances we currently have in this bill because, if it got that close together, $1, or even $1,000, or $5,000, the way the bill is written they will close that up. They will not go to court over a difference of a few dollars. But in the gentleman's case they are between $50,000 and $100,000, and they will often decide that it is not fair to go to court. It will put more pressure on them to settle because of that razor sharp limitation, but in the end the decision will be made based on the difference of $1, and that is the hesitation I have with that——

Mr. GEKAS. Mr. Chairman, will the gentleman yield further?

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

Mr. GEKAS. That razor would be brought down on the neck of the $50,000 to $100,000 proposal that the gentleman and I are using as an example, and even under the main language of the bill, because if the verdict is $49,999, are we not making an arbitrary cut there as to who is——

Mr. GOODLATTE. Reclaiming my time, Mr. Chairman, the gentleman is correct, but the difference is that in my case the plaintiff is at $100,000 in the case, and the defendant is at $50,000 in their settlement offer, so if the plaintiff recovers $49,999, if the gentleman will, the plaintiff was off by $50,000 in terms of their offer, and there is that $50,000 gap between when one side has to pay attorney fees and when the other side has to pay attorney fees. In the gentleman's case there was a $1——

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

Mr. MOORHEAD. Mr. Chairman, I yield 2 additional minutes to the gentleman from Virginia.

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

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

Mr. GEKAS. Mr. Chairman, what we are really saying—I do want to predict how the argument is going to go later when the amendment process begins.

The gentleman is saying that the present language, not the Michigan rule, but the present language, is more likely to deter frivolous suits because the gap between the $49,999 and the $100,000 is so great that that proves that the plaintiff should not recover because it is more or less frivolous or——

Mr. GOODLATTE. I do not know that it is more likely to deter frivolous suits, but I do think it is more fair in the sense that one dollar should not decide the difference between who gets attorney fees and who does not, and that is the effect of that adding that additional point in there in the Michigan——

Mr. GEKAS. If the gentleman would yield further, I would be willing to talk to the gentleman from Virginia on the other side, and the gentleman from North Carolina on the other side, and the gentleman from Michigan at a sidebar following the general debate to see which of the two approaches, assuming that they are going to have to accept, or at least recognize, the possibility that loser pays is going to find its way into this law, to see which of these two approaches they would find acceptable. If they say, ''Go back to your closet,'' I will do that. But if they want to discuss it with me, that discussion that I will have with those three gentlemen will make me determine whether or not I will advance my amendment when the time comes for general—for the amendments.

But in either case, Mr. Chairman, I would offer an amendment to tighten up the second offer that is made in this bill's language after the first negotiations are ended.

Mr. GOODLATTE. Yes, that amendment would be helpful, and I think it is a good amendment.

Mr. GEKAS. All right.

Mr. CONYERS. Mr. Chairman, I yield 15 minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the minority ranking member for yielding this time to me.

Mr. Chairman, I want to spend a few minutes putting this bill in a little bit different context than the discussion that has been taking place here because I think my colleagues and the American people really need to understand that this bill is part of a larger package of bills, and they need to have a better understanding of what that package of bills, when considered together, will yield in the legal context.

This bill is called the Attorney Accountability Act of 1995. There is a Securities Litigation Reform Act which will follow this bill in sequence. And then finally there is a bill which we around this body call the Tort Reform Act, which proposes to reform product liability cases and punitive damages in a general way, and I do not think we can talk about this particular bill without putting it in the context of this whole reform package in having a better understanding of what my colleagues in this body are trying to do.

I have some serious reservations about this whole major reform effort because my experience is somewhat different than many of my colleagues in this body, and I represent to some extent a constituency that is a little different than many of my colleagues in this body. The experience that I bring to this body is one of having practiced law for a total of 2 years before being elected to Congress, and, while I am aware of general assumptions, jokes, negative comments that people make about lawyers and the representation that lawyers tend to have in this country, my experience has been one of being on the side of lawyers and clients who were fighting to secure their constitutional rights and fighting to be free of the invasion of the State into their homes and lives, and fighting to have equal rights in a system which sometimes does not assume that they ought to have those rights, and in my experience lawyers have played an important and valuable role in protecting the rights of people, and I think, if we look at the totality of these three bills that we are debating this week, there are some troubling assumptions that underlie these bills.

One of those assumptions is that most lawyers are bad or dishonest. Well, I am not going to come into this body and try to tell my colleagues or tell the American people that there are not dishonest or bad lawyers, but I would come into this body and say to my colleagues that for every one bad and dishonest lawyer, I will submit to my colleagues, that there are thousands of good and honest lawyers who take their responsibilities to represent their clients seriously and view that as a serious responsibility.

The second assumption that I think we need to be aware of, as we debate these three bills that are on the floor this week and we need to be very careful about how we approach our assumptions on this issue, is that when our courts get clogged and there are backlogs in the court system, that poor people should not have access to the courts anymore, that the court system should be the place and province only of people who are dealing with big litigation, dealing with lots of money and major business rights that may be at play.

□ 1530

That is one of the assumptions that I think is implicit in this whole loser pays system, that everybody who comes in to the court, either, well, both, really, has a case which is frivolous or that they can afford to pay the cost of the other side in the litigation. They have big bucks, so to speak.

Well, think about what we are saying when we talk about the loser pays. It says that even if you have a valid lawsuit, a good lawsuit, it is going to cost a lot of money to bring that lawsuit. And if you happen to lose that litigation, not only are you going to have to pay your own litigation expenses and legal fees, you are going to be called upon to pay the litigation expenses and legal fees of the opposing party.

Now, this bill that we are debating today started off, as my colleague, the gentleman from Virginia [Mr. SCOTT], has indicated, to be a lot worse in this regard than the bill that has come to the floor. I am the first to commend the gentleman from Virginia [Mr. GOODLATTE] for taking what was an absolutely terrible piece of legislation and revising it somewhat in committee to make it a better piece of legislation. But I would submit to my colleagues that this bill still assumes that poor people really do not have a place in the legal process and they are going to be

discouraged from bringing lawsuits to court.

I would submit to my colleagues that if this plays out, we need to be careful that we do not send the wrong message to poor people who are finding a legal process that is available to them. Because if the legal process is not available to poor people to resolve their disputes, then what process is available to poor people to resolve their disputes? Would we have more people go back to the days that they are dueling and challenging each other in the alleys and streets of America? Or would we make available to them on a fair and equitable basis the right to have their grievances addressed in a court of law?

There is a third assumption that I think is implicit in these three pieces of legislation that we need to be leery of. That assumption is that we should somehow in this body be protecting the rich and subjecting ordinary people to the whims of the rich business community to even their experimentation and their bad motivation, because I think by the time we get to the third bill and we start to see that we are putting limitations on punitive damages and we are redefining the standards that apply in products liability cases and in other tort cases, to increase the standard to a higher standard of care or a lesser standard of care for the manufacturer and a higher standard of proof for people who seek to come into court and file a claim against the manufacturer, that we are beginning to take sides in this issue.

I want to get through this not in the context of this particular bill but in the total context of these bills, all of which started out as one big legal reform package and, I would submit to my colleagues and the American public, will end up back together in one big reform package, if we follow the policy that was followed last week to split these reform measures into little pieces, pass the little pieces one at a time and then at the end of the week come back and make a motion to consolidate all of them into one package so that they can check off or, as I said earlier, punch another little hole in their Contract With America and check off another one of those little contract items, which is what, I submit to my colleagues, this is all about.

So the effort in these bills is not only to limit access to the courts. That is what loser pays, in my estimation, is all about, because any time somebody is poor and wants to go and file a lawsuit, they are going to have to think not only once, twice, or thrice, but many, many times before they will have the nerve to file a lawsuit, even if they think their claim is meritorious.

It also has the effect, these bills, of limiting the possibility of plaintiffs' recoveries, by making it more difficult to win the cases by raising the legal standards, by raising the legal fees that must be paid to the other side if you lose the case, and even by limiting the amount of attorney fees that plaintiffs can win and be awarded if they win the case to correspond with the amount that was paid by the defendant in the case to his or her counsel.

Now, is that not a pretty radical idea? The plaintiff, which comes into court and has the burden of proof in every case that is filed, all of a sudden, even if they have a meritorious case and they win the case, the maximum that they can recover in attorney's fees from the other side is the amount that was paid by the other side to the defendant in the case.

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

Mr. WATT of North Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the reason that is in there is to limit the exposure of parties that may be lower-income parties because the converse is true as well. If the defendant prevails, the plaintiff cannot pay any more than he pays himself.

Mr. WATT of North Carolina. Mr. Chairman, reclaiming my time, I did not think the gentleman was going to get defensive as quickly as he did, to be honest with my colleagues. But that should show everybody exactly the point that I am making here. This is a radical concept, and if we are going to have equity, that situation ought to be flowing both ways. It should not just be flowing one way.

Let me make one final point, and then I will be through. We will have the opportunity to debate this back and forth during the course of this whole week, I expect, that we will be on this legal reform package.

The final point I want to make to my colleagues and to the American people is that somebody in this process ought to be worried about protecting ordinary people in our society. I submit to my colleagues that neither one of these bills, neither this bill that is coming to the floor today, the securities litigation bill that will be right behind it, nor the products liability limitation and punitive damages limitation bill that will come later in the week is designed to be in the interest of ordinary American people. We have gotten to the point in this body that we are so consumed with lifting the burden off of business that the pendulum has swung completely to the other end of the spectrum.

I would submit that the American people ought to be concerned about that and my colleagues ought to be concerned about it. We ought to be opposing this bill.

Mr. MOORHEAD. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. FLANAGAN] for a colloquy.

Mr. FLANAGAN. Mr. Chairman, I thank the gentleman for yielding time to me. I appreciate the gentleman's leadership on H.R. 988 and would like to address a question to the gentleman regarding section 3, the honesty in evidence provision.

As the gentleman is aware, this section establishes some guidelines for determining the admissibility of scientific expert testimony. It is my understanding that in consideration of this bill, the committee intended that H.R. 988 serve to codify the holding in the Supreme Court case Daubert but felt that the specific criteria in Daubert were not meant to be exhaustive and, therefore, did not limit the statute facially to such criteria.

Instead, the committee anticipates further expansion of the criteria through continuing appellate review. This criteria, namely testing, peer review, and publication, are certainly criteria that should be utilized in determining scientific validity and reliability.

Mr. Chairman, is this a correct interpretation of the intention of this bill?

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

Mr. FLANAGAN. I yield to the gentleman from California.

Mr. MOORHEAD. Yes, it is a correct interpretation of the committee's intent. The value of Daubert is that the Court spoke extensively about how rule 702 should be applied. In our report we make it very clear that we intend to codify Daubert and that we expect it to be further developed through case law. As the Department of Justice pointed out in its submission to the subcommittee, the Daubert decision is complex and cannot be easily distilled into a word or two of black letter law. That is why we did not just adopt the four standards set forth in Daubert. We intended to both codify and complement the standards established in Daubert.

With the judge acting as the gatekeeper, section 3 is intended to prevent lawyers from taking advantage of the court system.

Mr. FLANAGAN. Mr. Chairman, I thank the gentleman. I was glad we could clear that up.

Mr. MOORHEAD. Mr. Chairman, I yield myself 2 minutes.

Comments have been made about this legislation helping the rich at the expense of the poor. My clients throughout the 25 years that I practiced law were basically poor people. I ran the legal aid service in Glendale for 16 years. I want to help people that cannot help themselves. But I can tell my colleagues, poor people are more apt to be the defendants than they are the plaintiffs. Rich people are more apt to be the plaintiffs than are the poor.

I think this legislation helps the poor defendant who otherwise would be bankrupt by frivolous cases that are filed against him. And by poor we do not necessarily mean people who have no money whatsoever, but people who are middle class or below, as far as their financial ability is concerned. They can be bankrupted very easily by a frivolous lawsuit that is filed against them and the little that they have taken away from them.

The portion of the bill toward the end that deals with rule XI, I tried to defeat several years ago when the law was changed after 10 years of successful existence.

That part of the bill is a reenactment of legislation that we had that was effective for 10 years and that the courts liked overwhelmingly because it helped them when lawyers were doing things that should not be done and filing frivolous cases or frivolous pleadings at the expense of people at the other side.

I think we have a good bill. I think we have a bill that is aimed to help all litigants, includes the people who do not have means, who need to be helped, but who are very badly hurt by the present system.

I think we need this change. For that reason, I am for it. I think those Members that have said that it is aimed to hurt the poor just do not understand the legislation, because that is not what it does.

□ 1545

Mr. CONYERS. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I rise to point out the problems that we are confronted with, which are multiplying rapidly. First, the gentleman from Pennsylvania has suggested that rule 68 somehow has application here. I think he challenged me or someone on this side as to whether we support rule 68 or not.

I would hope he would revisit this important Federal rule, because it has nothing to do with this bill in terms of assessing attorney fees. It has a lot to do with assessing costs of the parties, but it does not apply to the consideration of attorney's fees that are taking up our time at the moment.

Second, Mr. Chairman, there is another additional reason why loser pays is not a highly desirable proposal that we codify into law at this time. It is true, we do have a Federal rule that permits the court to assess pay to any of the parties that he considers to be frivolous, upon a motion properly brought. But this bill changes the option that the court has to mandatory consideration, that the court will assess attorney fees in these kinds of situations.

It is there that I think we need to examine this vary carefully for the prejudicial impact that it has on plaintiffs who may be working-class people, and heaven help them if they are poor. They do not have anything to put up.

That gets to another point that has been made about cases that are being accepted without cost. They are seen on television advertised all the time.

First of all, an attorney is unlikely, after hearing a person come into his office, that he would accept a case that he does not see some merit in, because it would be a cost he would be bearing, so many of those cases are washed out. In a way, those attorneys are doing the bar a great service.

On the other hand, those that advertise that they will take tort cases without pay for a plaintiff are doing the plaintiff a great service, because if a poor person does not have the means to pay for a lawsuit, he or she is then put upon to go through the entire list of dozens, sometimes hundreds, sometimes more than hundreds of lawyers to find out what office, what lawyer in which office, might entertain their case, assuming that they have merit.

Therefore, Mr. Chairman, it is very important that we understand that these kinds of cases exist; that poor people do have important tort claims; that they have no way of financing the attorney as they go along.

Mr. Chairman, let me turn to the goal of deterring frivolous lawsuits, which everyone would like to do, even without statistical information. Notice that this general debate, like the debate in the Committee on the Judiciary, has gone on without one statistic ever being cited to determine that this is the problem, none. Now the loser pays provision goes well beyond it.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. CONYERS] has expired.

(By unanimous consent, Mr. CONYERS was allowed to proceed for 2 additional minutes.)

Mr. CONYERS. Mr. Chairman, the loser pays provision now gives a wealthy party or a corporate party the power to slam the courthouse door shut in the face of a working class individual, or heaven help him if it is a poor individual, or an individual who was injured by the very claim that they are suing and seeking to get recompensed.

The proponents of the bill say that this measure will encourage the parties to settle, but our goal, however, should not be to encourage the parties to settle at any cost. The goal should be to encourage reasonable settlements with all parties on a level playing field.

This bill encourages unreasonable settlements in cases where the liability is a close question and there is great economic disparity between the parties. We are now turning the negotiating into rolls of the dice that neither party can accurately predict what will happen if the case is a close one.

Remember, we are not talking about cases with no merit, or cases that have a clear potential, we are talking about close cases, and close cases are the ones that are being forced to be settled at any cost.

Mr. Chairman, I think that is a very difficult proposition. I would like Members to know that former Senator George McGovern on television this week is now beginning to virtually recant the ads we have all been seeing. He said ''I'm not sure Federal legislation is the way to go,'' and he disavows his remarks in the ad. I would say sorry about this, fellows, I know they wanted to rely on George McGovern to build their case here; that ''frivolous lawsuits helped drive my small inn in and out of business.''

Like most of those who claim that suits, not competition or other factors, are the cause, he now says that that comment is an exaggeration, and that his biggest problem leading to bankruptcy was the economic national downturn that he and his competition with other hotels sustained.

Mr. MOORHEAD. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I rise today in support of H.R. 988.

I believe access to the courts is an intricate part of our freedom.

And so I would not want to discourage anyone with a legitimate case to seek a judgment for it.

But I do want to discourage the thousands of frivolous and senseless cases which cost taxpayers and consumers billions of dollars and bog down our courts.

And that is exactly what H.R. 988 will do.

H.R. 988 will encourage a complainant and a defendant to work out reasonable agreements and settlements before they seek court action.

From a logistical and economical perspective of the courts, it makes sense for both parties to work toward—and arrive at—a mutual agreement.

The issue here is whether or not it is our responsibility to encourage complainants and defendants to do that.

I think it is our responsibility.

If I am a complainant seeking $100,000 in a case, and the defendant in my case offers me $70,000 and I refuse it, and a jury awards me $60,000, it makes sense that I should be required to cover at least some of their legal costs.

After all, had I taken the offer, I would have eliminated much of our legal fees and given the court more time to address other cases.

This legislation will send a clear message to greedy litigants and their lawyers who milk the system.

And that message is very simply this: Our judicial system and America's consumers and taxpayers will no longer pay for the selfish and greedy behavior at their expense.

Mr. Chairman, as an attorney, I can tell you we must reform our litigation procedures.

If we do not, we have only higher product costs and insurance rates to look forward to as well as a bogged down court system.

I urge my colleagues to support H.R. 988.

Mr. CONYERS. Mr. Chairman, I am delighted to yield 3 minutes to our distinguished colleague, the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I just wanted to comment on some of the things we have heard. We have heard about this poker game people are going to have to play in order to figure out whether to settle or not to settle.

Mr. Chairman, some of these cases are very difficult to evaluate. They are

impossible to judge by $1 or $2 or $50. Sometimes you do not know exactly what to settle for. Some people just want their day in court. Whatever happened to that?

Mr. Chairman, we have heard a lot about what happens to people who are poor when they come to court. Let us talk about a middle-class person who happens to be just a regular homeowner, has a little money set aside for college education for the children, who has been ripped off in a real estate deal or been maimed in an automobile accident when they say they had the green light and the other side said they had the green light; your client knows that the light was green, but you do not know whether you can win that case or not when you discuss the case, whether to bring it with your lawyer, and he says, ''You have a 70 percent or 80 percent chance of winning, but there is a chance we might lose the case and you will have to pay tens of thousands of dollars for the other side for their attorney's fees for having brought the case that you thought that you were in the right;'' you are going to lose your house, you are going to lose the money you have set aside for the college education for your children.

You are there in a position where you do not know whether or not you can even afford to take the chance, the outside chance, that you might lose the case. That is what this loser pays does. It discourages the bona fide cases for people to have their day in court, middle class, poor, or otherwise.

It does not affect the corporations that can just put this as the cost of doing business. It affects the right of an average man or woman to have the courts mean what they say they mean, a place to vindicate your rights and to resolve disputes.

Mr. MOORHEAD. Mr. Chairman, I understand the minority has no further speakers.

Mr. CONYERS. Mr. Chairman, I would ask now much time we have remaining on both sides.

The CHAIRMAN. The gentleman from California [Mr. MOORHEAD] has 19 minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 24 minutes remaining.

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

Mr. Chairman, I am in possession now of a letter that has been sent to the Speaker of the House from the Attorney General of the United States, Janet Reno, as well as Abner Mikva, counsel to the President, which I will include in the RECORD. I would like to quote one part of it.

First, we believe that fee-shifting provisions such as that in H.R. 988 are unfair, unnecessary, and unwise. That provision would, with limited exceptions, require the court to order one party to pay attorney's fees of another if the former did not secure final judgment more favorable than offered by the latter.

While such fee-shifting may be appropriate in some contexts, a blanket fee-shifting rule would work a significant injustice, particularly against parties that have fewer resources. Such a loser pays rule is alien to the American legal system, and we know of no empirical evidence that such a rule would address the primary problems facing our civil justice system, the slow pace and high costs of justice.

I hope our colleagues will consider this as we move forward.

The letter referred to is as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, March 6, 1995.

Hon. NEWT GINGRICH,
Speaker of the House, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This week, the House of Representatives is expected to consider legislation that would significantly reform the American legal system. While we believe that our legal system can and should be improved, several provisions that the House is likely to consider are deeply problematic; therefore, we write to express our concerns and reservations about several of those provisions.

Our comments divide into three sections, but are by no means exhaustive on this subject. Instead, we focus on provisions that, based on our extensive legal experience, are simply too extreme—provisions that are unfair and tilt the legal playing field dramatically to the disadvantage of consumers and middle-class citizens.

First, we believe that fee-shifting provisions such as that in H.R. 988, are unfair, unnecessary, and unwise. That provision would, with limited exceptions, requires a court to order one party to pay the attorney's fees of another if the former did not secure a final judgment more favorable than offered by the latter. While such fee-shifting may be appropriate in some contexts, a blanket fee-shifting rule would work a significant injustice, particularly against parties that have fewer resources. Such a ''loser pays'' rule is alien to the American legal system and we know of no empirical evidence that such a rule would address the primary problems facing our civil justice system—the slow pace and high cost of justice.

Second, several of the provisions concerning product liability in H.R. 1075 are also unfair and unjustified. As a general matter, we believe that product liability reform should be enacted by the States, rather than by Congress. This area of law has traditionally been the purview of State courts and legislators; if changes are needed, those changes should generally be left to the States. In fact, product liability is one area in which States truly have served as ''laboratories of democracy''—over the last twenty years virtually every State has significantly reformed its legal system as it relates to product liability.

We find certain of the preemptive provisions under consideration particularly puzzling in light of the contemporary and ongoing debate about the extent to which the Federal Government has usurped responsibilities that appropriately belong to the States. On issue after issue, broad bipartisan groups have emphasized the advantages of devolving authority to State and local governments. As in other spheres of government, proponents of Federal restrictions on traditional State and local prerogatives bear a heavy burden of persuasion in justifying new Federal intervention. For several provisions in particular, we believe that that burden has not been met.

For example, we believe that the preemption of State law to establish differential treatment of ''economic'' and ''noneconomic'' losses is both unjustified and unsound. This provision (section 107 of H.R. 1075) would severely and unfairly prejudice, among others, elderly citizens, plaintiffs whose losses include pain and suffering, and women who suffer loss of their reproductive ability.

We are equally critical of section 201 of H.R. 1075 which establishes an arbitrary formulaic limit on punitive damages. Virtually all parties agree that, in certain rare circumstances, punitive damages are appropriate: occasionally, an award of punitive damages is the only way to bring an offender to justice, or to keep a dangerous product off the market. While every State maintains judicial controls to revise or reverse punitive-damage awards, there is not any *a priori* basis for fixing a ceiling on the award of punitive damages, measured either by a dollar amount or as a multiple of compensatory damages; instead punitive damages are and should be imposed based on the facts and circumstances of the particular claim.

Perhaps most disturbing of all is the fact that section 201 would mandate certain procedural rules in every civil action filed in Federal and State court. This provision—even more than those limited to product liability actions—represents a disturbing and unprecedented federal encroachment on two hundred years of well-established State authority and responsibility.

Third, with regard to reforms of the Federal securities laws, we share the concerns articulated by SEC Chairman Levitt. In this Federal regime, congressional activity is more appropriate, and we agree with the Chairman that the securities-litigation system can be improved. Our securities laws must encourage innovation and investment, while at the same time deter white-collar crime and ensure the integrity of the financial markets. The experience of the past decade has shown that taxpayers and honest business people can suffer greatly from fraud and improper behavior. We support reasonable reforms to this system but believe that certain provisions in H.R. 1058 are problematic, while others are manifestly unfair and could lead to inadequate deterrence against financial fraud. We hope to work closely with Congress and the SEC to address these concerns so that sound legislation can be enacted to correct the problem of frivolous suits and enhance the integrity of the securities markets.

In closing, we would emphasize that we believe that our civil justice system can and should be reformed—but reform must be fair to all parties and respectful of the important role of the States in our Federal system. We have some ideas that would be constructive. While we oppose the particular provisions mentioned above, we look forward to working with the Congress to develop thoughtful and balanced reform of the American legal system.

Sincerely,

JANET RENO,
Attorney General.
ABNER J. MIKVA,
Counsel to the President.

☐ 1600

What we are suggesting in this bill before us now in terms of whether someone should be punished for bringing a suit that may turn out to be meritorious is that we are saying here that we are going to pass a law in the Congress that says that people with no money must sit on their rights for fear that they will be totally bankrupted in the event they lose the suit. That is precisely what this bill is about that is before us today. And that if they hesitate for a lengthy enough period, the statute of limitations will kick in and

their claim will have expired because it was not timely brought.

What is a working person to do? Forget a person that has no money and cannot even put up anything or lose anything or lose their bank accounts or their home. But what about a working person gambling on pursuing a lawsuit, if he could be exposed to paying both his attorney's fees and the defendant's fees? The answer is obvious, that he is going to hesitate.

Why is it that we are going after working people, someone earning $30,000 should now be caught up in the claim that the wave of litigation must now be somehow subsided by making them pay both attorney's fees of all parties in the event that they do not succeed?

Let us look at a typical case that might be brought to an attorney's firm. What if a person sought to become a plaintiff and thought that there was a 70–30 percent chance that he would prevail. Under the current law, a person could be very justified in determining to go forward. But under H.R. 988, he would be very prudent to hesitate and perhaps decide not to go, because he is not going to win. He may not win. And why should he risk this huge loss under these circumstances?

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

Mr. CONYERS. I yield to the gentleman from California, the distinguished subcommittee chairman, and the floor manager of the bill.

Mr. MOORHEAD. First if he is as broke and poor as you say, of course, I would not want a judgment against him because it would not be worth very much. But there is a provision in the law that we are promoting that says if it would be manifestly unjust, the court does not have to order those attorney's fees.

Mr. CONYERS. You have another provision where we are changing the law from ''may'' to ''shall.''

Mr. MOORHEAD. But it still says that those class of expenses if they would be manifestly unjust, there is an exception.

Mr. CONYERS. Then I take it that the gentleman from California agrees with me that a working person bringing a suit where he thought he had a 70-percent chance of recovery would be under the gun if he had to go into court with the assumption that if he did not win, and he thinks he only has a partial chance of winning, that he would be stuck with attorney fees. Are you telling me that this bill would exonerate him from having to pay the defendant's fees?

Mr. MOORHEAD. If the judge determines that it would be manifestly unjust for him to order those fees, he can avoid them.

Mr. CONYERS. Why are you tightening the rope around the neck of a plaintiff, a working class plaintiff in the first place?

Mr. MOORHEAD. The rope is going to be around anyone that has money far more than it is going to be around the neck of the working class person. I would rather have one judgment for fees against one man that had a little money than I would 10 or 50 or 100 that had none.

Mr. CONYERS. So would I, but that is not what is in the bill unfortunately. I quite agree. But why would we make this a more difficult lawsuit for a working person who thinks he might have a 70-percent chance than he already has? I mean, if it is a frivolous lawsuit, he is going to be subject to attorney fees under the present law.

Mr. MOORHEAD. All he has to do is to make a reasonable offer.

Mr. CONYERS. You are tightening the tourniquet. You are making it tougher on people to bring lawsuits. You are making it impossible for an injured person without means or resources who may have an excellent lawsuit to bring them at all because we keep talking about, what about a person that walks into a lawyer's office having read a television advertisement saying that he will take the case without any up front payment of attorney fees on a contingency basis? What is wrong with that?

The attorney that would take a case knows that if he does not have a reasonable case, he is not going to get anywhere, and he is not even going to get paid by his own admission.

So I would urge the gentleman to consider the harm that we are bringing to working people and people bringing tort suits who may be injured with meritorious claim but may not have the $500 or $1,000 or $3,000 that an attorney might reasonably claim to start a suit.

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

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

Mr. MOORHEAD. We do not discourage people who have a just claim from filing a lawsuit, and we even give them the opportunity up to 10 days before the case would come to trial to make a reasonable offer of settlement, so that if they have a claim, they believe in their claim, they make a reasonable offer of settlement, and if it is not far above what is eventually ordered by the court, there will be no attorney's fees whatsoever.

Mr. CONYERS. I would like the rest of my colleagues that are a party to this bill to take into consideration the American Bar Association's evaluation of this measure.

They say that the ''loser pays'' bill as amended, although extensive revisions have been made to this legislation, to the legislation as introduced, and were made by the Committee on the Judiciary, ''serious problems remain with the current loser pays provisions of H.R. 988.''

''The case has not been made for jettisoning the tradition in this country of requiring each party to bear its own attorneys' fees. While some fee-shifting occurs under some State or Federal statutes and procedures, the heavy burden of persuasion must rest on proposers of such variance from the American rule. The American Bar Association is particularly troubled because of the accelerated timetable under which H.R. 988 has been considered in the House. There has been no opportunity to have this debate.

''The ABA is concerned that H.R. 988 may undermine diversity jurisdiction and will surely encourage undesirable forum shopping. In addition, it imposes a requirement that is inconsistent with the American system of justice. Among the fundamental problems inherent in the current proposal is that it places an extra burden on the poor, the middle class, and small businesses who are entitled by law to choose a Federal forum. This extra burden is unrelated to the merits of their claims. Worse yet, its weight is involuntary when it falls on the poor, the middle class, and small businesses when they are brought to the Federal forum by a litigant much better able to bear the burden of possible fee-shifting. Any such procedure could only be justified if it provided safeguards to allow reasonable access to the Federal courts for all litigants and provided safeguards against an abusive misuse of the fee-shifting procedures. Unfortunately, the exemption and the relief provided for manifest injustice do not begin to level the playing field.''

For shame, that out of the Committee on the Judiciary of the House would come a bill of such draconian magnitude that we are now asking working people, middle-class people, poor people now to bear the corporate defendant's fees if they do not win. There are too many good cases that are so close that not even the most skillful plaintiff's counsel or defense counsel can predict the outcome. There are too many variables. We see that in the history of civil litigation.

I am stunned by the punitive nature, the severity and the unfairness that is all rolled together in this one bill to say now that the historic tradition of the American system of justice should be jettisoned this week because we are tired of so many frivolous claims being brought.

I urge that the Members reject this bill and any of the feeble attempts to improve it that may ensue on the floor.

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

Mr. MOORHEAD. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I think that this bill has been totally misdescribed throughout the debate here. There are going to be far more people that have money, and have the ability to pay, that have to pay the other side's attorney's fees than will ever be able to be paid by these poor defendants that we keep talking about. I would surely much rather have an order for attorney's fees from some of the main corporations than I ever would someone that is as described in this bill.

We do not have a copy of the letter that supposedly came from the Attorney General's office, but I suspect they do not, also, understand what is in this bill, because it just is not as described in the letter that was written and I hope that we can get a copy of that letter.

Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the gentleman for yielding me the time.

The gentleman is correct. This bill has been very grossly mischaracterized by the other side. The whole purpose of this provision is to promote reasonableness in bringing lawsuits, reasonableness in settling lawsuits, and will have the ultimate effect of seeing more suits settled and fewer frivolous and nonmeritorious suits brought.

This will not have the effect of depriving anything from any plaintiff who brings a meritorious suit in court and it in fact will have, I think, a very positive effect on the cost of goods and services for people who are low income as well as the cost of insurance for people who are low income, auto insurance, homeowners' insurance, et cetera.

This bill is designed to say that you cannot come into court under the pretense that there is no risk to bringing a lawsuit. That is exactly what this does, and it counters the ads that we see time and time again in the Yellow Pages and elsewhere that say no recovery, no fee. That is, there is no risk to you to bringing a lawsuit. So come on in.

Well, there is a risk to society, there is a risk to defendants who are unfairly sued, and that is what this is designed to correct and it will correct it in a way that is fair by limiting the attorney's fees to just those 10 days before trial, through trial, and it will limit it to not more than the losing party pays their own attorney's fees so you do not have the possibility of a deep-pocket corporate party to a suit that wins the case overloading the other party with enormous attorney's fees that they cannot match. It cannot be more than they are paying their own attorney's fees, and for that reason I think this is an entirely reasonable provision that discourages suits from being brought that are nonmeritorious.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute.

I cannot help but respond to the gentleman from Virginia, a very well-known lawyer on the committee, that this is the kind of law that people, working-class people and poor people, have been looking to get a chance to help them bring their cases into court. I simply find that preposterous.

I think it goes against all of the testimony that we have heard before the committee. For him to suggest that this is just what working-class people need to get into court means that he has now thrown the bill out to the winds and this is just a free-wheeling rhetorical debate.

□ 1615

The American Bar Association, whose letter I just recited, said that the bill would work a harm to just people that the gentleman thinks it would be a benefit to, and I remind the gentleman that the American Bar Association is made up of more defendants' lawyers than even plaintiffs' lawyers.

Mr. MOORHEAD. Does the gentleman from Michigan have further requests for time?

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

Mr. MOORHEAD. Mr. Chairman, we have the right to close the debate. I have one more Member who desires time. We will reserve our time.

Mr. CONYERS. Mr. Chairman, if the gentleman is reserving his time to close debate, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN], a distinguished former member of the bar.

Mr. DURBIN. Mr. Chairman, still a member of the bar but not practicing for about 12 years. But I want to tell my colleagues this a very dangerous concept that we are pushing in this bill. In the course of this week we are going to have two or three pieces of legislation.

I think the most important question any Member of Congress can ask when these bills come before the floor is a very simple one: Who wants this bill? I can tell Members who wants a loser-pay bill: a defendant who, frankly, does not want to be in court in the first instance, and wants to make sure that he can discourage as many people as possible from going to court.

Are there frivolous lawsuits? Yes. Should they be weeded out? Of course. But there are an awful lot of people who do not have the means in their own personal savings or the wherewithal to go to court and to go there with an attorney in an attempt to try to get redress of their grievances. What we are talking about here is as fundamental as our Constitution, the basic rights of individuals, the rights of victims if you will, to come to court. I think all of us understand who practice law that over 90 percent of cases are settled now. This is not needed as an incentive to settle. Cases settle today, both sides try to reach an agreement and in the overwhelming majority of cases they do reach an agreement.

But what this is an attempt to do is to hang a blade over the head of the plaintiff in the closing days before trial and say, incidentally, if you guess wrong, if the jury does not go along with you, not only are you going to have your own expenses, you have to pay the corporation's legal expenses too from the date when they made their offer to settle. I think that is a sad thing.

I also think we ought to put in context what the Republican contract is talking for. At the same time as the Republican contract is taking away the regulatory authority of the Government to protect consumers and individuals, the contract comes through the back door and takes away the rights of those same consumers and individuals to go to court. This is the first installment.

So we are leaving America's consuming public unprotected in both instances; first, from a regulatory agency which is trying to protect them and second, from their day in court which is their ultimate recourse.

I can tell my colleagues in the practice of law I had in Springfield, IL, most of my clients were working folks who came in and they had never filed a lawsuit before. Something had occurred in their lives, usually some personal tragedy, and they came to me asking for representation. If I told them up front that they had to pay all of their attorneys' fees going in, frankly, they could not have been there. If I told them also there was a chance if we could get a trial they would have had to pay the railroad's attorneys' fees that happened to have the railroad car that ran over and killed one of their loved ones, they might have thought twice about it.

That is what this is all about, this is who wants this bill. Corporate America wants this bill; they want to discourage individuals from bringing actions against big corporations, from beginning to even bring actions against those who have deep pockets, and let me tell my colleagues quite honestly if we go along with this and go back to the British system of loser pay, which they are having second thoughts about at the same time, is a very big mistake, a very serious mistake for the future of this country.

Mr. CONYERS. Mr. Chairman, how much time remains on my side?

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 8 minutes remaining.

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

Mr. Chairman, one of the complaints that has been lodged against this bill is the unreasonable haste with which it has been brought out of the Committee on the Judiciary, which has five or six of the items of the contract of America which are now being given precedence in the House. And unfortunately the original bill provided that the losers to any claim pay the attorney's fee of the winner. It applied to all of the fees in the case, at least as to that claim and was not tied to any offer whatsoever.

Then we had the modest improvement by the gentleman from Virginia, the famous Goodlatte amendment, which made the bill less worse. It adopted a rule 68 type settlement offer. The loser pays the winners' fees after the date of an offer, and the losing means not doing better than the offer. The award is limited as in the original bill to the plaintiff's own attorney fees, and we are in a real roll of the dice in terms of whether a person can make an

offer based upon their outcome. All of which presumes that plaintiffs' lawyers and defendants' lawyers know how these cases are going to come out, which in many instances, particularly if the case is not an open and shut one, is the last thing that any of the parties knows. It is an improvement over the original bill.

Now I am told by the gentleman from Pennsylvania [Mr. GEKAS] to look to my own State for the Michigan-type awards where they split it down the middle and do not get into the crap shooting deal of who made the right offer at the right time so that they would have less attorney's fees to pay.

What we have is an unlevel playing field where the party with more wealth can engage in pursuing a contest against the party with less wealth, no matter how meritorious their claim might be to bring this matter forward and it puts plaintiffs at peril, it puts plaintiffs at peril. It jeopardizes the civil adversarial process that we have honored for so long.

This is yet another provision within the contract with corporate America that we are so anxious to have raised at this time.

I will tell Members one other thing. This is going to jeopardize civil rights lawsuits, and there has been very little said about that at this point, but it is very, very, important that we understand that rule XI is going to impact upon the 1983 Federal rule.

I just want my colleagues to know that the critics are claiming that the infamous 1983 amendment to the Federal Rules of Civil Procedure has turned into a tool for judges and defendants to punish those who pursue unpopular causes of action. Two recent cases show how this can happen, and a lawyer may be litigating at his or her own peril when they are suing the government inside the Federal court, according to some of the lawyers that have been bringing civil rights cases for a lot of time. It is inhibiting civil rights cases which ought to be a new cause for concern to many of us in this Chamber who remember with what difficulty and what great sacrifice we were able to bring civil rights suits to litigation in the first place.

Actions under civil rights based on gender, race or religious freedom could be made infinitely more complex to bring and could further inhibit attorneys representing plaintiffs in this very, very important area of Federal law.

I urge my colleague to please examine this fairly. This is not a matter of being a Republican or Democrat, this is a matter of how the judicial system will work for ordinary people in America. I say the time has finally come in this contract for us to do something for the working people, for the people who will be put in peril in having to bring these suits under the strictures that would now require them to mortgage their home, spend their children's college fees or to make outrageous loans in pursuit of what they consider to be a fair claim.

Please let us examine and turn back the bill and the premises underlying H.R. 988.

Mr. Chairman, I yield back the balance of my time.

Mr. MOORHEAD. Mr. Chairman, I yield the balance of my time to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. Mr. Chairman, I thank the distinguished subcommittee chairman for yielding me this time.

Mr. Chairman, I rise today in strong support of this Attorney Accountability Act. This is truly a historic day in the life of this body; for the first time in 40 years we have a comprehensive tort reform bill before the House. I commend the chairman of the subcommittee, the chairman of the full committee, the gentleman from Illinois [Mr. HYDE], the gentleman from Virginia [Mr. GOODLATTE], and others who worked to produce this bill.

With all due respect to the distinguished ranking member who brings the letter from the American Bar Association, the defenders of the status quo here, and says that we are operating with unreasonable haste by bringing this bill to the floor, Mr. Chairman, this debate has been raging in America for 40 years. Real people in the real word are finally getting heard in the People's House. They are saying enough is enough with an out-of-control legal system. Last year alone 20 million new lawsuits were filed in America. That is one lawsuit for every 10 Americans, 20 million suits in 1 year.

We have been conducting this debate for 40 years. The difference is with the new Republican majority we are finally getting a bill heard and getting it to the floor, and hopefully with bipartisan support as with the other bills in the Contract With America, this bill will pass this body.

The loser pays rule, more appropriately called the fairness rule, is central to the bill before us today, the Attorney Accountability Act. We are trying to restore accountability and fairness to our civil system. We must, must, discourage the filing of frivolous lawsuits and promote the settlement of a strong case.

The distinguished ranking member talks about those people who are indigent, without resources, not having their day in court, and brings the letter from the American Bar Association singing the same tune.

Well, Mr. Chairman, it is right in the bill, right in the bill; if the court finds that requiring the payments of such costs and expenses would be manifestly unjust, then they are waived. Then there is no requirement that the loser pays, if there is a manifestly unjust result. So that, Mr. Chairman, is a red herring.

Let us get down to the nitty-gritty of this debate. Why should prevailing plaintiffs have to give up a substantial proportion of their damage awards to pay their own attorneys? Such deserving parties, people who are truly deserving of awards, are never, never fully or adequately compensated for their injuries under the present system and thus just basically wrong.

Seventy years ago, Mr. Chairman, the Massachusetts Judicial Council criticized this inequity and they asked on what principal of justice can a plaintiff, wrongfully run down on a public highway, recover his doctors' bills but not his lawyers' bills, and why should defendants who are dragged into court for unwarranted claims also have to pay substantial legal fees? These defendants, Mr. Chairman, lose, even when they win, and that is wrong. For many defendants, we all know the game that is being played out there under the rule. It makes more economic sense to settle these frivolous cases than to defend themselves in a prolonged lawsuit despite full confidence in their legal position. This practice hurts all of us because it motivates the filing of more frivolous claims and we pay.

That is why, Mr. Chairman, I was so pleased that the Committee on the Judiciary modified and improved the fairness rule that was contained in the original H.R. 10.

I also want to thank all of those who participated in drafting this common sense legal reforms act.

□ 1630

Mr. Chairman, I chaired the task force which drafted this bill, and so many people on our side of the aisle contributed to this effort, and I want to thank all of them for crafting this important legislation, particularly the gentleman from Virginia [Mr. GOODLATTE], who crafted the modification of the loser pays or the fairness rule.

I think the most important change in the modification is the definition of who is the winner and who is the loser of a case that goes to trial. That has been clearly articulated here today.

I think it is also important to emphasize, Mr. Chairman, that under this bill before us today, H.R. 988, only a party that acts irresponsibly by rejecting reasonable settlement offers will have to pay the attorney's fees of the other party and, of course, H.R. 988 does more than just adopt the fairness rule.

Most of the discussion here today and, in fact, in the ensuing months since H.R. 10 was drafted has centered on the loser-pays rule, but there is much more to the bill before us today.

The second major provision, the honesty-in-evidence provision, will ensure that we keep junk science out of the courtroom, too many so-called experts peddling their biased testimony for contingency fees.

Mr. Chairman, all we are doing with this provision, this honesty-in-evidence provision, is codifying the Daubert

case, which requires that expert testimony rest on a reliable foundation and that it be relevant to the task at hand.

This bill, Mr. Chairman, prevents experts from being paid a contingency fee so as to remove incentives for their biased testimony. If we want losing parties to accept verdicts that go against them, we must make sure that trials are fair. The honesty-in-evidence provisions will ensure just that, fairness.

The bill before us, H.R. 988, the Attorney Accountability Act, restores the pre-1993 version of rule 11 as has been mentioned here today of the civil procedure rules.

Mr. Chairman, this rule can be one of the most effective means of curbing lawyer misconduct if we give it back its teeth.

Now, I am still amazed as a lawyer formerly in practice myself that the rule was weakened in 1993 when the rule had the support of a strong majority of Federal judges who were surveyed by the Federal Judicial Center. In fact, Mr. Chairman, at that time, with respect to rule 11, 95 percent of the judges said the old rule did not impede development of law. Seventy-two percent of the judges said the benefits of rule 11 far outweighed the expenditure of their time. Eighty-one percent of the Federal judges said that the overall effect of rule 11 had a very positive impact on litigation in the Federal courts. And most telling, over 80 percent of the judges said we should retain the original rule 11. That is what we are trying to do here today is to restore that form of rule 11.

H.R. 988, the bill before us today, will reestablish the system of mandatory as opposed to discretionary sanctions which is very, very important in restoring accountability on the part of lawyers in our system.

Also, Mr. Chairman, the bill mandates the use of attorney's fees as part of this sanction.

Third, it puts a larger emphasis on the rule's compensatory function by clarifying the sanctions should be sufficient to deter repetition and to compensate the parties that were injured.

Finally, it eliminates a safe-harbor provision of the current rule 11(c) which permits a lawyer to withdraw a challenged pleading without penalty prior to an award of sanctions. Clearly, clearly the rule should be solicitous of the abused, not of the abuser.

Mr. Chairman, I am also pleased that this bill would return to the pre-1993 practice of having rule 11 apply to discovery.

Mr. Chairman, in conclusion, when you look at the various elements of the Attorney Accountability Act, I predict we are going to again have a large bipartisan vote in favor of this important reform legislation. Why? Because this legislation finally, finally gives us real tort reform, finally brings us concrete steps to restore accountability, efficiency, and fairness to our Federal civil justice system.

Mr. Chairman, in closing, I urge strong support of the Attorney Accountability Act of 1995. Let us have this real tort reform which is so long overdue.

Ms. HARMAN. Mr. Chairman, I rise today in support of the Goodlatte amendment. While I had intended to offer an amendment to H.R. 988, Mr. GOODLATTE's amendment has alleviated many of my concerns about the timing of settlement offers and the process of calculating attorneys' fee awards under the bill. I therefore do not plan to offer my amendment.

As reported, H.R. 988 carries with it the potential for abuse. Under the bill, defendants may respond to lawsuits by immediately making low-ball offers, even as low as $1.00, simply to set in motion the time clock on which attorney fees are calculated. My amendment would have addressed this problem by requiring only reasonable, good faith offers to trigger the bill's fee-shifting provisions.

The Goodlatte amendment also addresses this problem by tolling the calculation of attorneys' fees until after the date of the last offer by a party. Since parties would not be able to use low-ball offers to set the attorneys' fees' clock in motion, I am confident that the Goodlatte amendment will spur good-faith bargaining rather than procedural gamesmanship.

More good-faith settlements will cause more lawsuits to be voluntarily dismissed and will help restore some efficiency to our Federal legal system.

Mr. HYDE. Mr. Chairman, I rise in support of H.R. 988, the Attorney Accountability Act of 1995. I would like to congratulate the gentleman from California [Mr. MOORHEAD], chairman of the Subcommittee on Courts and Intellectual Property, for his outstanding efforts in connection with this legislation. H.R. 988 effectively tackles one of the fundamental problems in our legal system today: frivolous litigation.

Mr. Chairman, the American legal system does not resolve claims as expeditiously as it should. Why? Because some who participate in the litigation process do not act responsibly. Parties are too quick to bring suit because they have nothing to lose for bringing even meritless claims. Attorneys, hoping for settlement amounts based on nuisance value, assist in encouraging possible litigants. One need only turn on the television late at night or turn to the lawyer section of the yellow pages to see incentives employed by such attorneys which, without measures to ensure accountability, serve to feed the lawsuit frenzy which plagues our Nation.

Our system of justice has also lost some of its integrity by allowing the consideration of invalid and unreliable scientific evidence from so-called experts which may unfairly influence juries and other triers of fact in their crucial roles of deciding the outcome of a case.

The legislation before us today will accomplish three goals. First, it will lessen the incentive to litigate claims which have little or no merit through the implementation of a loser-pays rule. Second, it will assure the reliability and validity of scientific evidence in cases involving such evidence. Third, it will prevent attorneys from filing frivolous lawsuits by appropriately imposing mandatory sanctions on those attorneys.

This legislation will infuse greater fairness into the civil justice system—because parties and attorneys will be held accountable for their actions and are encouraged to be reasonable within the litigation process. It will also provide for prompt, easier, quicker access to our court system by decreasing docket congestion and encouraging the speedy resolution of valid claims. The result will be greater affordability and justice for all Americans with real and viable grievances.

The loser-pays rule in section 2 reflects an amendment adopted by the Judiciary Committee, sponsored by the gentleman from Virginia [Mr. GOODLATTE], who should be commended for his hard work. It fully achieves the goals we promised in the Contract With America—greater accountability, practical penalties for unreasonableness, and a settlement-based mechanism which will serve to eliminate many suits before they reach trial. Under H.R. 988, parties are allowed to discover the merits of their claims, but will be required to pay the opposing party's attorney's fees if they fail to act reasonably in settling a lawsuit or if they continue to pursue a frivolous claim. A litigant with a strong defense can rely on the protection of the loser-pays rule by placing a fair offer on the table. The more reasonable the offer, the more likely the adverse party to a claim will have to pay the attorney's fees. A plaintiff who unreasonably maintains a meritless claim or refuses to settle a claim who fares worse at trial or after judgment than the offer of settlement, will incur the defendant's fees. Likewise, an unreasonable defendant who refuses to settle or meet the claim of a plaintiff will have to pay the plaintiff's fees if after trial or judgment he fares worse than an offer made by the plaintiff. This mechanism has, built within it, incentives which encourage reasonable negotiation toward resolution along with a safety net for cases in which it would be grossly inequitable to apply the rule. Further, if both parties are unreasonable, the status quo is maintained and neither side receives the benefit of the rule. It is a fair, just, and workable loser-pays rule that is drafted to accomplish accountability while taking into account the unique history of negotiation which has long been a staple of American jurisprudence.

The honesty in evidence contained in section 3 of H.R. 988 will mark a significant change in product liability and other civil cases where scientific evidence is frequently used. As we all know, it can be very difficult for juries to fully gauge and evaluate the quality and validity of the scientific evidence presented. And while we all agree that America's jury system is by far the best method of evaluating tort claims, it is imperative that where difficult technical and scientific proof is to be considered, juries know such proof will be reliable, valid and relevant. Otherwise, the risk of prejudice is too great.

Plaintiffs' attorneys have had it too easy, Mr. Chairman. The same attorney who may implore the consensus of the scientific community for one case will employ a so-called expert in another who, on the basis of new or fringe scientific methods, ups the ante in a case to the detriment of a defendant. The market for so-called expert witnesses in this country is vast and growing, a market created by parties and attorneys who may employ any method to reap large financial awards at a huge cost to the American consumer. While no one wishes to deny a plaintiff with a valid claim from proving his case, accountability demands that cases by proven properly.

Section 3 of H.R. 988 will disallow the admission of scientific evidence by a judge unless such evidence is shown to be valid, reliable, and scientifically connected to the fact it is offered to prove in a case. This standard was established by the Supreme Court in Daubert versus Merrill Dow Pharmaceuticals in 1993, and should serve to weed out prejudicial evidence which could otherwise be used unfairly to persuade triers of fact. Further, under the bill, expert witnesses will be barred from testifying if they have any stake in the outcome of a case. Providing for integrity in expert witnesses is another important part of restoring accountability to litigation in American courts.

Section 4 of H.R. 988 will impose mandatory sanctions on attorneys who knowingly bring frivolous cases, reestablishing a significant and necessary deterrent on attorneys who encourage the filing of such cases in hopes of achieving financial gain on settlement value alone. The bill will amend rule 11 of the Federal Rules of Civil Procedure to bring back vital protections against the filing of thoughtless, reckless and harassing pleadings which have contributed to the demise of our civil justice system and which cause unfairness to those who are dragged into courtrooms without proper cause. Under the new rule, abusers who file lawsuits must be appropriately sanctioned by judges if found to be in violation and are provided no safe harbor to withdraw such filings. In effect, lawyers will be held accountable to do some research in advance, to evaluate cases before adding to limitless congestion of the courts and will face sure penalties for their misconduct.

Mr. Chairman, it is high time that Congress make clear to a nation fed up with inflated legal costs, long delays for viable claims and abusive tactics by lawyers, witnesses and opportunistic litigants, that we are ready and willing to take action to ensure that our legal system will operate fairly and expeditiously. Judges likewise need to be required to impose sanctions against abuse. We should no longer tolerate frivolous filings. H.R. 988 contains fair, responsible measure which will encourage accountability and, when necessary, sanction misconduct. I am proud to be an original cosponsor of this measure which will restore confidence in our civil justice system and serve as a model to the states. It will provide to the American people what we promised when we signed the Contract With America, real and significant legal reform. I urge support of H.R. 988.

Mrs. COLLINS of Illinois. Mr. Chairman, this week in my GOP colleagues' mad, frenzied dash to the 100-day finish line of the so-called Contract With America, this body is being presented with a series of bills that will effectively strip away the rights of average, hard-working citizens to obtain access to our Nation's courts for the resolution of their legitimate disputes. Today we start with H.R. 988, the misnamed Attorney Accountability Act, which would be better titled the ''No Money, No Status, No Justice Act of 1995.''

H.R. 988 is an absolute perversion of the ideals upon which our civil justice system in the United States was established, Mr.Chairman. Filled with gimmicky, feel-good phrases such as ''loser pays'' and ''honesty in evidence,'' this legislation is just another public relations ploy thought up by the Republican leadership's spinmeisters—as with the rest of the contract—that has little substantive, factual evidence to support its propositions.

My friends on the opposite side of the aisle would like to have the American people believe that H.R. 988 is absolutely necessary to stem the tide of frivolous litigation that they purport is incapacitating our civil justice system. They advocate this overreaching legislation despite the fact that there are already tried and true penalties and sanctions in place which work quite well in weeding out the relatively few nonmeritorious lawsuits that do have occasion to find their way into our courts.

Unfortunately the only thing the bill before us today is meant to do and will do is further stifle the voices of America's middle and lower income aggrieved citizens in favor of the GOP's large corporate contributors and backroom-buddies. This is one more in a continuing pattern of shameful assaults on the underserved and underrepresented in our society by the majority party in the U.S. Congress, Mr. Chairman, and the American people have a right to know the facts.

Under H.R. 988, average citizens and small business owners seeking to bring suit against corporate wrongdoers would have to think twice about filing a claim, no matter how much they have been harmed because of provisions in this bill which would require, as I stated before, losing parties to pay the legal fees of the winners in many instances. As a result, as scholar Thomas Rowe has noted, ''the threat of having to pay the other side's fee can loom so large in the mind of a person without considerable disposable assets that it deters the pursuit of even a fairly promising and substantial claim or defense.''

This is hardly what our system of justice is all about Mr. Chairman.

It is interesting that earlier this year the prominent conservative magazine, the Economist, called for abandonment of Britain's loser-pays rules, because in that country only the very wealthy can afford the costs and risks of most litigation which offends one of the most basic principles of a free society: equality before the law. Apparently the majority sees nothing wrong with this. Well I, along with my constituents, sure as heck do.

But wait, Mr. Chairman, that is not all. Other provisions of H.R. 988 would subvert the Supreme Court's recent carefully construed framework for the judicial evaluation of scientific evidence, designed to curb abuses in the use of expert testimony. Again, these changes would be instituted for change's sake rather than because of any body of evidence indicating the need for such revisions. This House should not legislate just because we can Mr. Chairman, but because there is a need to do so. The GOP has yet to show any credible need for this legislation.

The American people do want accountability in all branches of our Federal Government—executive, legislative, and judicial. They do want commonsense, targeted reforms to many of our major societal institutions such as the civil and criminal justice systems. What they do not want and do not accept, however, is for so-called accountability and reform to come at the expense of their basic rights as citizens. H.R. 988, unfortunately, would do just that. Therefore, I appeal to my colleagues on both sides of the aisle to vote ''no'' on this legislation.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 988

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Attorney Accountability Act of 1995''.

SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION AFTER AN OFFER OF SETTLEMENT.

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

''(e)(1) In any action over which the court has jurisdiction under this section, any party may, at any time not less than 10 days before trial, serve upon any adverse party a written offer to settle a claim or claims for money or property or to the effect specified in the offer, including a motion to dismiss all claims, and to enter into a stipulation dismissing the claim or claims or allowing judgment to be entered according to the terms of the offer. Any such offer, together with proof of service thereof, shall be filed with the clerk of the court.

''(2) If the party receiving an offer under paragraph (1) serves written notice on the offeror that the offer is accepted, either party may then file with the clerk of the court the notice of acceptance, together with proof of service thereof.

''(3) The fact that an offer under paragraph (1) is made but not accepted does not preclude a subsequent offer under paragraph (1). Evidence of an offer is not admissible for any purpose except in proceedings to enforce a settlement, or to determine costs and expenses under this subsection.

''(4) At any time before judgment is entered, the court, upon its own motion or upon the motion of any party, may exempt from this subsection any claim that the court finds presents a question of law or fact that is novel and important and that substantially affects nonparties. If a claim is exempted from this subsection, all offers may by any party under paragraph (1) with respect to that claim shall be void and have no effect.

''(5) If all offers made by a party under paragraph (1) with respect to a claim or claims, including any motion to dismiss all claims, are not accepted and the judgment, verdict, or order finally issued (exclusive of costs, expenses, and attorney's fees incurred after judgment or trial) in the action under this section is not more favorable to the offeree with respect to the claim or claims than the last such offer, the offeror may file with the court, within 10 days after the final judgment, verdict, or order is issued, a petition for payment of costs and expenses, including attorney's fees, incurred with respect to the claim or claims from the date the last such offer was made.

''(6) If the court finds, pursuant to a petition filed under paragraph (5) with respect to a claim or claims, that the judgment, verdict, or order finally obtained is not more favorable to the offeree with respect to the claim or claims than the last offer, the court shall order the offeree to pay the offeror's costs and expenses, including attorneys' fees, incurred with respect to the claim or claims from the date the last offer was made, unless

the court finds that requiring the payment of such costs and expenses would be manifestly unjust.

''(7) Attorney's fees under paragraph (6) shall be a reasonable attorney's fee attributable to the claim or claims involved, calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the attorney's fees under paragraph (6) may not exceed—

''(A) the actual cost incurred by the offeree for an attorney's fee payable to an attorney for services in connection with the claim or claims; or

''(B) if no such cost was incurred by the offeree due to a contingency fee agreement, a reasonable cost that would have been incurred by the offeree for an attorney's noncontingent fee payable to an attorney for services in connection with the claim or claims.

''(8) This subsection does not apply to any claim seeking an equitable remedy.''.

SEC. 3. HONESTY IN EVIDENCE.

Rule 702 of the Federal Rules of Evidence (28 U.S.C. App.) is amended—

(1) by inserting ''(a) In general.—'' before ''If'', and

(2) by adding at the end the following:

''(b) Adequate basis for opinion.—Testimony in the form of an opinion by a witness that is based on scientific knowledge shall be inadmissible in evidence unless the court determines that such opinion—

''(1) is scientifically valid and reliable;

''(2) has a valid scientific connection to the fact it is offered to prove; and

''(3) is sufficiently reliable so that the probative value of such evidence outweighs the dangers specified in rule 403.

''(c) Disqualification.—Testimony by a witness who is qualified as described in subdivision (a) is inadmissible in evidence if the witness is entitled to receive any compensation contingent on the legal disposition of any claim with respect to which the testimony is offered.

''(d) Scope.—Subdivision (b) does not apply to criminal proceedings.''.

SEC. 4. ATTORNEY ACCOUNTABILITY.

(a) SANCTIONS.—Rule 11(c) of the Federal Rules of Civil Procedure (28 U.S.C. App.) is amended—

(1) in the matter preceding paragraph (1) by striking ''may'' and inserting ''shall'';

(2) in paragraph (1)(A)—

(A) in the second sentence by striking '', but shall'' and all that follows through ''corrected''; and

(B) in the third sentence by striking ''may'' and inserting ''shall''; and

(3) in paragraph (2) by striking ''A sanction imposed'' and all that follows through ''violation.'' and inserting the following: ''A sanction imposed for a violation of this rule shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of an order to pay to the other party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee.''.

(b) APPLICABILITY TO DISCOVERY.—Rule 11 of the Federal Rules of Civil Procedure is amended by striking subdivision (d).

SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Subject to subsection (b), this Act and the amendments made by this Act shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) The amendment made by section 2 shall apply only with respect to civil actions commenced after the effective date of this Act.

(2) The amendments made by section 3 shall apply only with respect to cases in which a trial begins after the effective date of this Act.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 7 hours.

During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition to a Member offering an amendment that has been printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as having been read.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. GOODLATTE

Mr. GOODLATTE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GOODLATTE: Page 3, line 20, insert before the period the following: ''or, if the offeree made an offer under this subsection, from the date the last such offer by the offeree was made''.

Page 4, line 3, insert after ''offer was made'' the following: ''or, if the offeree made an offer under this subsection, from the date the last such offer by the offeree was made''.

Mr. GOODLATTE (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 Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Chairman, the purpose of this amendment is to enhance provisions of the bill that deal with making offers of settlement.

The way the bill currently reads, the parties can limit their exposure to attorneys' fees by making offers of settlement. However, it is the party that makes their own offer that can cut off the exposure of attorneys' fees for the other side, and we want to reverse that so that each party will have an incentive to make offers of settlement, because the more they offer to settle, the more likely it is they will be able to recover attorneys' fees.

So by making this contingent upon the last offer by the nonprevailing party in a case rather than the last offer by the prevailing party, we will have the effect of allowing each party to make offers of settlement in order to cut off their exposure for attorneys' fees.

Now, this exposure for attorneys' fees can be limited to less than 10 days before trial through the trial itself, and, therefore there is a limitation on how long you can make these offers which cut off at 10 days before trial for the purpose of making sure that there are some risks attached to bringing a lawsuit which turns out to not have merit.

So I would encourage all of us who want to promote settlement of lawsuits and want to promote reasonableness to adopt this amendment. The effect of not changing this will be essentially to have parties having a disincentive to make additional offers of settlement, because if they can control when their opposing parties' attorneys' fee is cut off, they will have to add that additional calculation as to the worth of those attorneys' fees in determining whether or not to offer a settlement, an increased settlement offer.

So, for example, if there is the likelihood of recovering $10,000 of attorneys' fees in a case and a party feels they have a 75 percent chance of winning, they may feel that they are not only making an additional offer of settlement but they are also giving up the value, whatever they may place on it, of those attorneys' fees. We want to turn that around. We want the parties to have an incentive to make settlement offers so if we allow them to cut off their own exposure for attorneys' fees through the date of that settlement, by making a settlement offer, we will accomplish our goal of encouraging more settlement in these cases.

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

Mr. Chairman, we began the debate and the amendment process by first of all amending the least worst part of this bill that loser pays all. Remember, we had an original bill. The original bill in committee provided for the loser as to any claim to pay the attorney fees of the winner. It applied to all fees in the case that applied to that particular claim, was not tied to any offer.

Wonderfully, providentially, the consciences of the new majority overcame them, and they accepted the Goodlatte amendment. The Goodlatte amendment, as it was debated in the committee, said that the loser pays the winner's fees after the date of the offer if they come up the short side, and here is where the poker playing began. The person with the greatest resources usually can win in a poker game, especially when you are down to the last couple of chips.

Here we have the loser pays the winner's fees after the date of the offer, and the losing means not doing better than the offer; the award is limited to the plaintiff's own attorney fees or reasonable fee based on the hours spent by the plaintiff's attorney.

This did make a mean spirited bill less mean-spirited. The problem was that the unlevel playing field, if one party has more wealth than the other, still obtains. I makes it highly risky to pursue a case where liability is in question, and that is what we continue here.

Now, fortunately, and I say that seriously, the gentleman from Virginia has found another error in this hastily

tacked together provision, because now he is suggesting that if the offeree made an offer under this subsection from the date the last such offer by the offeree was made, if the offeree made an offer under this subsection from the date that last such by the offeree was made, then he would be moving, advancing his cause, which changes considerably the plight of the offeree before this language was inserted. I am sorry that we did not find this out before now, but the problem is that these poker-game-like provisions in terms of negotiating offers being made by both parties are contingent upon the fact that one or both of the parties have some idea as to what the actual outcome is going to be.

I suggest to you that in personal injury and tort cases the outcome might vary widely from forum to forum. The outcome could vary very widely depending on whether there is a jury, or whether the judge is trying the facts and the law in the case, and now we are finding that there were other errors made.

To me, this improvement which is necessary to the logic that was intended by the gentleman from Virginia originally, does not cure the basic problem to the bill. We still have a bill that is going to be subjected to even more amendments to try to humanize it, to try to live down the reputation that it has so wholesomely earned as being an antiplaintiff's bill, an antiworking people's bill, an antipoor person's attempt to get into court, that it is a way of shutting the door down.

The whole provision is confusing. It is a trap for the unwary. I suggest to you attorneys are going to tear their hair out trying to figure out how they can game the system with this new Las Vegas type offer that can and now must be made if you are to protect yourself against being assessed the fees of the opposing party.

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

I rise in support of the Goodlatte amendment and in support of the provisions on attorney's fees and costs which have been included in H.R. 988 and to commend my colleague, the gentleman from Virginia [Mr. GOODLATTE], for his hard work on this very fair legislation.

During consideration of H.R. 988 by the Committee on the Judiciary an amendment was adopted by a vote of 27 to 7. The amendment substantially modified the language governing awards of costs and attorneys' fees in Federal civil diversity litigation from a strict and onerous loser pays formula to a fairer, yet much needed, version. The Goodlatte amendment is designed to encourage settlement of legal disputes, to reduce the burden of frivolous claims on the Federal courts, and to provide full recovery to the prevailing party. It will not impose a barrier to filing of meritorious lawsuits, but will simply require plaintiffs to engage in thoughtful and deliberate consideration of the substance of their claims before proceeding with costly, time-consuming litigation.

□ 1645

As a former judge, I saw my fair share of frivolous lawsuits, and I also saw my fair share of the collection of a good number of nuisance claims, and I know from years of impartial observation in courtrooms that this provision is evenhanded, fair, and will do the job.

I am pleased that the language has been included to provide the courts with latitude in determining awards of attorneys' fees and cost. Specifically, the bill stipulates that the court may decline to grant an award where the payment of such costs and expenses would be ''manifestly unjust.'' In addition, the court is not required to make an award in cases involving a claim for equitable relief or in cases where the court finds that the claim presents a novel and important question of law or fact that substantially effects nonparties.

Mr. Chairman, H.R. 988 will encourage settlement of disputed claims, allows cases with merit to proceed more rapidly through the judicial process, and assures that plaintiffs' concerns are addressed appropriately.

Therefore, I urge my colleagues to support passage of this important legislation. In it are properties that will go far in addressing abuses we all know exist and that I have seen firsthand, yet it stops short of denying access to fair-minded litigants.

I urge adoption.

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

You know, in the course of a debate on any bill, we strive to make the legislation as good as we possibly can. Every bill is amended along the way. This bill has changed somewhat in its form as members of the subcommittee and the full committee and now the people on the floor find ways that they may want to improve the legislation.

That does not mean that mistakes have been made; far from it, it means that a very good idea has been presented to the Congress that can be changed by many of the people that are present here.

Mr. GOODLATTE has a fine amendment here. His amendment improves the quality of the overall bill, and I certainly support it.

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

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, this is indeed a part of the process of refining these bills and making them of such a nature that they try to be as fair as possible to all parties. But the real purpose here is to encourage settlement of lawsuits and discourage the bringing of lawsuits that do not have merit.

The CHAIRMAN. The gentleman from California [Mr. MOORHEAD] has the time, and he must remain upon his feet.

(On request of Mr. GOODLATTE and by unanimous consent, Mr. MOORHEAD was allowed to proceed for 5 additional minutes.)

Mr. GOODLATTE. Mr. Chairman, will the gentleman continue to yield?

Mr. MOORHEAD. I yield to the gentleman.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, this is, I believe, a very good model for handling the problem we have in this country with frivolous lawsuits, fraudulent lawsuits, and the fact that so many people are forced in the courts to defend cases that do not have merit and have to expend a great deal of money to do so.

The effect here will be to set a model that the State legislatures can look at to apply in the State courts. This only applies in diversity cases in the U.S. district courts. Earlier there was mention by one of the parties on the other side regarding the effect on civil right cases. This does not apply in Federal question cases, only on diversity cases in Federal court. Diversity cases make up about 20 percent of the Federal docket, and the Federal docket amounts to about 5 percent of all the lawsuits brought in the country.

So this will be a good test of whether the Congress has come up with a way to provide incentives for parties to be reasonable when they bring lawsuits. We do not want anybody in this country who has a meritorious claim not to bring that claim in a State or Federal court as they deem appropriate. But we want them to do so after they have fully evaluated the merits of a case. We do not want them to do so if their purpose is fraud; we do not want them to do so if the purpose is to be frivolous.

This will have the effect of making them think about that before they bring the action, and it encourages reality in these cases by requiring that the parties understand that they have an obligation to negotiate settlement resolution of these cases in good faith; that they not tie up our Federal court system with a case that really should be settled.

By having this mechanism whereby if a party makes an offer to settle the case, as this amendment provides, they can have the ability to reduce their exposure for attorneys fees by doing that up until 10 days before trial. We will promote that settlement opportunity.

So, again, I urge my colleagues to support this amendment and to support the underlying bill.

Mr. MOORHEAD. Mr. Chairman, as we come to the end of the debate on this very important amendment, I cannot help but look at the clock and see that we still have 10 minutes more to use before the 5 o'clock period when we can have votes on the floor. So, it

would be helpful if I can yield some additional time to the gentleman from Virginia.

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

In terms of looking at this provision in this bill from the standpoint of the effect that it will have on the plaintiff in a case, I think that it has a great deal of merit for the plaintiff as well, because the effect will be to say that if you indeed do have merit to your case, if you know that the defendant in this case is liable for a harm that has been caused to you, you know there is going to be increased pressure on that defendant to settle the case because that defendant will then be put in the position of knowing that they will have to pay the plantiffs' attorney's fee if the plaintiff prevails.

So, this is not something that is in favor of defendants as opposed to plaintiffs or in favor of corporate defendants as opposed to individual plaintiffs or individual defendants.

This will have the effect of making everybody who looks at a case, looks at it carefully, makes a study of the case and understands that when the defendant takes a case into court they will have to always bear the cost of their attorneys' fees. No longer will we have a situation where we will read in the telephone books of the country, no recovery. If there is no fee, there is no recovery. In other words, there is no risk for bringing a lawsuit.

There should be a risk for every party in the case. There also should be a reward for everybody in the case if they are reasonable in their approach. When a plaintiff has a good case and a deep-pocket defendant is refusing to settle the case because they are a deep pocket, this plaintiff who knows that he has the case will be able to force that defendant to act because the defendant will know that they will ultimately face attorneys' fees for their failure to act.

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

Mr. GOODLATTE. I yield to the gentleman from Illinois.

Mr. DURBIN. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman from Virginia his experience. Mine, In Illinois, was that 90 to 95 percent of all the civil cases filed settled before they went to trial. That suggests to me that if the goal is to find settlements, the system is currently doing that in most cases.

Is the gentleman's experience different?

Mr. GOODLATTE. Well, I would say to the gentleman, the comments of a member of his own party, George McGovern, who in 1972 was a presidential candidate, he says in an article out this weekend calling for a reform of our judicial system, that one out of four suits brought in court are either frivolous or fraudulent. If that is indeed the case, then we have a serious problem with cases that are being brought that are not meritorious.

Mr. DURBIN. If the gentleman will further yield, I do not question that some percentage of lawsuits are frivolous; 25 percent, if that is accurate, is a very high percentage. I think he may overstate it, but perhaps he has reason to believe that is the case. But that is part of the system that we have, an open system. We really do not screen candidates for public office. There are frivolous candidates for public office who run too. They are put on the ballot, they are given their day in court of the electorate, and they may be rejected. The same is true for many of these lawsuits.

The question is whether you want to close down the democratic nature of this process and keep the people out who really should be part of it. This is a voice for many——

Mr. GOODLATTE. I do not think it has that effect at all because, as I said earlier, if the plaintiff's case has merit, that is going to put greater pressure on the defendant to settle case because they know that if they lose the case, they are going to pay attorney's fees.

Furthermore, because of the settlement mechanism that has been added into this bill, the effect is going to be to encourage a greater number of settlements.

I would hope we would settle—if it is 90 percent now, I hope we get to 99 percent. There is always a reasonable position somewhere in the middle of these cases, and we want to have these parties to have every pressure possible to find that reasonable ground and keep them from tying up our courts with cases that do not need to be there if the parties would act rationally and settle them.

Mr. DURBIN. The gentleman responded relating to frivolous lawsuits. But back to my original question: What is the gentleman's experience on the percentage of cases presently filed, civil cases that are settled before they go to trial? What has been the gentleman's experience?

Mr. GOODLATTE. I do not have a figure. I would say it is a high percentage.

Mr. DURBIN. Ninety and ninety-five percent?

Mr. GOODLATTE. It is a high percentage. The question is what percentage of cases we have in Federal courts now that can be removed from the court system if there is a penalty for bringing a frivolous or fraudulent case? If that indeed is 25 percent, that is a substantial reduction. I think it would be greater than that.

Not only will frivolous and fraudulent cases be settled, but in some cases where there is merit in the case that the parties have not been able to get together, they will get together because of the increased risk involved in the case and nonmeritorious cases will be settled or dismissed before somebody takes the risk of bringing an action all the way through the cost of the judge, the jury, and everybody else that has to be involved, and all the time involved in the case. We can reduce those by encouraging settlement. I think this is a very good vehicle to do it.

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

Mr. GOODLATTE. I yield to the gentleman from West Virginia.

Mr. WISE. I thank the gentleman for yielding.

Mr. Chairman, the gentleman quoted Senator George McGovern. Does the gentleman agree with George McGovern on just about anything else?

Mr. GOODLATTE. Yes. As a matter of fact, I do. This case comes from an article that George McGovern wrote about his experiences with a business that he started in Connecticut, a hotel. George McGovern, a couple of years ago, was quoted as saying, ''You know, I never realized until I was a small business owner, but regulations in this country are beating small businesses to death and we got to do something about it.''

Now he comes along and says not only do we have to reform the regulatory process in this country but we also need to reform the judicial process to discourage the lawsuit industry, as he calls it.

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

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

Mr. SOLOMON. I appreciate the gentleman yielding.

Mr. Chairman, I could also answer my friend's question because I never thought I would ever agree with George McGovern, who was the father of the philosophy that said big brother government knows best. I had the opportunity to sit next to him at a dinner the other night in which he went on to lament his former attitude about big government and how they could solve all the problems.

The gentleman mentioned that when he became a small businessman, all of a sudden he realized what all of these burdens do. And by tying up all of these entrepreneurial midsize businesses in court, it means that much less money that they can use for capital to expand businesses.

Remember, midsize and small businesses create 75 percent of every new job in America every single year for high school kids coming out of high school, for college grads. The gentleman is right on line, and we certainly hope his position prevails tonight.

Mr. GOODLATTE. I thank the gentleman for his comments.

Mr. WISE. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. I thank the gentleman for yielding.

Mr. Chairman, I think we are finally getting to the bottom of this matter.

We have had the gentleman from Virginia [Mr. GOODLATTE] really make it clear what he is after. First of all, he does not want any plaintiff to ever bring a lawsuit that he does not get charged for it, no matter what his economic circumstances. He said that.

That is, the responsibility of going into court; namely, you got to afford to be able to go into court and if you cannot, you have no business bringing the lawsuit. How meritorious it might be? It does not matter. How important is it that the injury complained of in the lawsuit is the reason that the person is impecunious and not working? Irrelevant. How important is a case that has obvious redeeming merit to it? Beside the point.

If the plaintiff cannot afford to pay his attorneys' fees, quote from the gentleman from Virginia, ''He should not be in court because he is not a responsible party.'' That is why I am against this whole bill.

The argument of the gentleman from Virginia, his most recent remarks in attempting to repair the repair that he did to the original bill in committee, the Committee on the Judiciary, make it clear that this bill is an attack on the contingency fee, which you have a right to dislike or hate as you may feel.

□ 1700

I happen to think that it happens to be an important way for people to get a case brought that may have merit. The contingency fee is a primary avenue for ordinary people, for poor people, to seek a remedy in court when they have been harmed and do not have any money, do not have a bank account, do not have stocks or bonds, do not have a house that they can put up as collateral to secure an attorney to prosecute their cause of action. This bill effectively destroys the contingency fee system because it says that the poor person or the middle class person will have to put their savings, their home, at risk to get to court, and if they do not get to court, they have got to involve themselves in this great new poker game in which their attorneys will now have to bid, negotiate, bid appropriately, as if they all know what the outcome of a case is going to be, which in my experience has been just the opposite has been true.

So I think that even the attempts of the gentleman from Virginia at this late date to perfect the amendment lead me to oppose it, as I oppose the entire bill, and I hope that the Members of this House will reject this amendment.

Mr. WISE. Mr. Chairman, I thank the gentleman. I would like to continue.

As I do, Mr. Chairman, I would like to preface my remarks by saying that, yes, I did practice law before coming to the Congress. I think it should be noted that personal injury suits of any kind were not a part of my practice. In fact, I spent years trying to figure out what was my practice, and I know this was not part of it, and so I do not necessarily have a stake in this in any way except to say that it is my observation that the only way some people are going to get to court is on the present basis.

As the New York Times noted in an editorial several days ago, what this bill seeks to do is to overturn 200 years of United States common law, common law that, yes, is different from the mother country, Great Britain, where the loser does pay, but we made a decision in this country years ago, centuries ago, to divert from that because we felt that there ought to be access to the courts for all.

I say to my colleagues, ''There is a very plain reality that, if you're a middle income person, you're going to have to think twice before you bring even a meritorious suit because your attorney, if he or she is doing their job, is going to have to caution you and say, ''I think you have a good case; it's a case I feel comfortable bringing,'' remembering that that attorney is not paid for the most part, that attorney is not paid, unless there is a victory. But if you should lose, if the jury by narrow margin should decide you lose, even though the merits were almost equally balanced, you can end up paying, and, yes, you can end up paying, you can end up paying the large insurance company, the large corporation, whomever, whose lawyers are running up a tab happily at hundreds of dollars an hour. That is an incredible risk.

I ask, ''Do you risk your children's education? Do you risk your home? Do you risk your car? Do you risk your job?''

Mr. Chairman, I think people misunderstand if they think that——

The CHAIRMAN. The time of the gentleman from West Virginia [Mr. WISE] has expired.

(By unanimous consent, Mr. WISE was allowed to proceed for 3 additional minutes.)

Mr. WISE. So that is a considerable risk.

The other myth, I think, is that people enter into these suits lightly, thinking, well, I do not have to pay anything, and, therefore, I can just go down, retain a lawyer, and sort of like the lottery will buy a ticket, and see if we hit. That is not the way it works. There is a considerable amount of time, investment in effort, made, all from the person who is having to put forward their own expenses for medical examinations, that type of thing.

I would just urge there are some useful provisions to this legislation. I appreciate, for instance, in later pieces what they are trying to do to separate out in some cases of joint and several liability, or, in some cases, dealing with whether or not accountants should be made as liable in securities actions, but what I really just disapprove of here is making it so much more difficult for people to get to court in the first place.

The reality is that middle income people, poor people, are not going to be able to go to court as they once did, and I would urge, as much as the gentleman is trying to perfect this amendment, I urge rejection of the amendment, and certainly the bill.

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

Mr. WISE. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, the gentleman prefaced his remarks by noting that he had practiced law before coming to Congress. I want to preface my remarks by saying I did not do that. I am not a lawyer——

Mr. WISE. The gentleman is the best of all to speak.

Mr. WILLIAMS. I preface it because I want to say that my profession was that of an educator, and, as a teacher, I have watched with growing alarm at the drum beat of attacks, some of it very personal, that has gone on, particularly this past decade and a half, against lawyers.

Attorney are, in the American system, the arbiters of our justice. It is attorneys that develop the information which proves the guilty guilty and proves the innocent innocent, and I want to just take a minute of the gentleman's time to say that I believe the attack on attorneys, particularly trial lawyers of the past decade and some, is what drives the legislation here today, and I want to say further that my examination of this bill shows that it is toll road justice, it is deep pocket justice, it is means testing justice in America. It says, ''If you're not rich, don't play.''

Mr. Chairman, that is a terrible, terrible thing for this country to bend to, and I thank the gentleman for having yielded to me.

Mr. WISE. If I could add to that, ''If you're not rich, don't play,'' that, ''If you're very poor, you'll have to pay.''

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in opposition to the Goodlatte amendment and urge a strong ''no'' vote from my colleagues.

This ill-conceived amendment effectively denies average, hard-working citizens the right to access our Nation's courts for the resolution of their disputes. Oppressive as this is, it does fall nicely in line with the rest of the punitive Contract With America.

Under this amendment, average citizens and small business owners seeking to bring suit against corporate wrongdoers would have to think twice about filing a claim, no matter how much they're been harmed because of its provisions which would require losing parties to pay the legal fees of the winners in many instances. Ironically, under the language of this amendment, the category ''loser'' would include even those parties who won their cases, but were compensated for their losses by the court at a level that is less than what they were offered for a settlement.

As scholar Thomas Rowe has noted, ''the threat of having to pay the other side's fee can loom so large in the mind of a person without considerable disposable assets that it deters

the pursuit of even a fairly promising and substantial claim or defense.''

This is hardly what our system of justice is all about, Mr. Chairman.

It is interesting that earlier this year the prominent conservative magazine, the Economist, called for abandonment of Britain's ''loser pays'' rules, because in that country ''only the very wealthy can afford the costs and risks of most litigation'' which ''offends one of the most basic principles of a free society: equality before the law.'' Apparently the majority sees nothing wrong with this. Well, I along with my constituents, sure as heck do.

Our Nation's system of justice is based on the proposition that all Americans, regardless of income, should have access to this system. The Goodlatte amendment turns this proposition on its head and makes a mockery of our civil courts.

For these reasons, I urge rejection of the amendment.

The CHAIRMAN. The time of the gentleman from West Virginia [Mr. WISE] has expired.

The question is on the amendment offered by the gentleman from Virginia [Mr. GOODLATTE].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 317, noes 89, not voting 28, as follows:

[Roll No. 200]

AYES—317

Archer	Christensen	Foley
Armey	Chrysler	Forbes
Bachus	Clayton	Fowler
Baker (CA)	Clement	Fox
Baker (LA)	Clinger	Frank (MA)
Baldacci	Coble	Franks (CT)
Ballenger	Coburn	Franks (NJ)
Barcia	Collins (GA)	Frelinghuysen
Barr	Combest	Frisa
Barrett (NE)	Cooley	Funderburk
Barrett (WI)	Cox	Furse
Bartlett	Cramer	Gallegly
Bass	Crane	Ganske
Bateman	Crapo	Gejdenson
Beilenson	Cremeans	Gekas
Bentsen	Cubin	Geren
Bereuter	Cunningham	Gibbons
Berman	Danner	Gilchrest
Bevill	Davis	Gilman
Bilbray	de la Garza	Goodlatte
Bilirakis	Deal	Goodling
Bishop	DeFazio	Gordon
Bliley	DeLay	Goss
Blute	Diaz-Balart	Graham
Boehlert	Dickey	Green
Boehner	Dicks	Greenwood
Bonilla	Dixon	Gunderson
Bono	Doggett	Gutknecht
Boucher	Doolittle	Hall (OH)
Brewster	Dornan	Hall (TX)
Browder	Doyle	Hamilton
Brownback	Dreier	Hancock
Bryant (TN)	Duncan	Hansen
Bunn	Dunn	Harman
Burr	Edwards	Hastert
Burton	Ehlers	Hastings (WA)
Buyer	Ehrlich	Hayes
Callahan	Emerson	Hayworth
Calvert	Engel	Heineman
Camp	English	Herger
Canady	Ensign	Hilleary
Cardin	Eshoo	Hobson
Castle	Everett	Hoekstra
Chabot	Ewing	Hoke
Chambliss	Fawell	Holden
Chapman	Fields (TX)	Horn
Chenoweth	Flanagan	Hostettler
Houghton	Menendez	Shays
Hoyer	Metcalf	Shuster
Hunter	Meyers	Sisisky
Hutchinson	Mica	Skaggs
Hyde	Miller (FL)	Skeen
Inglis	Minge	Smith (MI)
Istook	Molinari	Smith (NJ)
Jackson-Lee	Mollohan	Smith (TX)
Johnson (CT)	Montgomery	Smith (WA)
Johnson, Sam	Moorhead	Solomon
Jones	Moran	Souder
Kaptur	Morella	Spence
Kasich	Myers	Spratt
Kelly	Myrick	Stearns
Kennedy (MA)	Nadler	Stenholm
Kennedy (RI)	Neal	Stockman
Kennelly	Nethercutt	Stump
Kim	Neumann	Stupak
King	Ney	Talent
Kingston	Norwood	Tanner
Kleczka	Nussle	Tate
Klink	Obey	Tauzin
Klug	Olver	Taylor (MS)
Knollenberg	Ortiz	Taylor (NC)
Kolbe	Orton	Tejeda
LaFalce	Oxley	Thomas
LaHood	Packard	Thornberry
Lantos	Pallone	Thurman
Largent	Parker	Tiahrt
Latham	Paxon	Torkildsen
LaTourette	Payne (VA)	Torres
Laughlin	Peterson (FL)	Torricelli
Lazio	Peterson (MN)	Traficant
Leach	Pombo	Upton
Levin	Pomeroy	Vento
Lewis (CA)	Porter	Volkmer
Lewis (KY)	Pryce	Vucanovich
Lightfoot	Quillen	Waldholtz
Lincoln	Quinn	Walker
Linder	Rahall	Walsh
Livingston	Ramstad	Wamp
LoBiondo	Reed	Ward
Lofgren	Regula	Watts (OK)
Longley	Riggs	Waxman
Lucas	Roberts	Weldon (FL)
Luther	Roemer	Weldon (PA)
Manzullo	Rohrabacher	Weller
Martinez	Ros-Lehtinen	White
Martini	Royce	Whitfield
Mascara	Salmon	Wicker
McCarthy	Sanford	Wilson
McCollum	Sawyer	Wolf
McCrery	Saxton	Woolsey
McHale	Scarborough	Wyden
McHugh	Schroeder	Young (AK)
McInnis	Schumer	Young (FL)
McKeon	Seastrand	Zeliff
McNulty	Sensenbrenner	Zimmer
Meehan	Shaw	

NOES—89

Abercrombie	Gutierrez	Reynolds
Ackerman	Hastings (FL)	Richardson
Allard	Hefley	Rivers
Andrews	Hilliard	Rose
Baesler	Hinchey	Roybal-Allard
Bonior	Jacobs	Rush
Borski	Jefferson	Sabo
Clay	Johnson (SD)	Sanders
Clyburn	Johnson, E. B.	Schaefer
Coleman	Kanjorski	Scott
Collins (IL)	Kildee	Serrano
Collins (MI)	Lewis (GA)	Shadegg
Conyers	Lipinski	Skelton
Costello	Lowey	Slaughter
Coyne	Manton	Stark
DeLauro	Markey	Stokes
Dellums	Matsui	Studds
Deutsch	McDermott	Thompson
Dingell	McKinney	Thornton
Durbin	Mineta	Towns
Evans	Mink	Tucker
Farr	Moakley	Velazquez
Fattah	Murtha	Visclosky
Fazio	Oberstar	Waters
Filner	Owens	Watt (NC)
Flake	Pastor	Williams
Foglietta	Payne (NJ)	Wise
Frost	Petri	Wynn
Gephardt	Pickett	Yates
Gonzalez	Poshard	

NOT VOTING—28

Barton	Bunning	Hefner
Becerra	Condit	Johnston
Brown (CA)	Dooley	Maloney
Brown (FL)	Fields (LA)	McDade
Brown (OH)	Ford	McIntosh
Bryant (TX)	Gillmor	Meek
Mfume	Radanovich	Roukema
Miller (CA)	Rangel	Schiff
Pelosi	Rogers	
Portman	Roth	

☐ 1731

The Clerk announced the following pairs:

On this vote:

Mr. Radanovich for, with Ms. Brown of Florida against.

Mr. Schiff for, Mr. Rangel against.

Messrs. BAESLER, MATSUI, and SHADEGG changed their vote from ''aye'' to ''no.''

Ms. ESHOO, Messrs. GILCHREST, VENTO, LEVIN, GEJDENSON, MARTINEZ, MOLLOHAN, ROEMER, FRANK of Massachusetts, MASCARA, RAHALL, BERMAN, WAXMAN, DIXON, BEILENSON, OLVER, TANNER, MEEHAN, and TORRES changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. PORTMAN. Mr. Chairman, because of a scheduling conflict, I was unable to arrive in time for the vote on the Goodlatte amendment. Had I been in attendance, I would have voted ''yea'' on rollcall vote No. 200.

PERSONAL EXPLANATION

Mr. MFUME. Mr. Chairman, I was, unfortunately, detained in my congressional district in Baltimore earlier today and thus forced to miss a record vote. Specifically, I was not present to record my vote on rollcall vote No. 200, the amendment offered by Mr. GOODLATTE of Virginia.

Had I been here I would have voted ''nay.''

PERSONAL EXPLANATION

Mr. FIELDS of Louisiana. Mr. Chairman, I was delayed in my district today and was not able to make rollcall vote 200 because I was doing a briefing on school nutrition with school children and cafeteria workers.

Had I been present, I would have voted ''no.''

☐ 1730

The CHAIRMAN. Are there further amendments to the bill, H.R. 988?

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

Mr. Chairman, I would like to use my time, if I could, to ask a few questions of either the gentleman from California, the gentleman from Virginia, if I might.

As I understand the principle of this bill, initially, was to follow the English rule. It has been modified somewhat. As I understand it now, that if offers and counteroffers keep going on between the plaintiff and defendant, the time for legal fees to be assessed against the losing party starts conceivably as little as 10 days before the trial and covers the duration of that trial; is that correct?

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

Mr. BERMAN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. The gentleman is correct.

Mr. BERMAN. But as I understand the English rule, the English rule does not apply to those civil cases brought by an indigent plaintiff, a plaintiff represented by the legal aid society in Great Britain. Is there any provision in this bill that keeps an indigent plaintiff or a plaintiff who could in no way have the assets to pay the fee of the defendent in a contingency case, let us say, for example, from being assessed the fees that might ultimately be assessed if the final settlement comes in, the final judgment comes in higher than or less than the defendant had offered?

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, in section 6, the Court cannot award attorney's fees or other costs and expenses if they find that doing so would be manifestly unjust.

Mr. BERMAN. Section 6. My bill only has five sections.

Mr. GOODLATTE. In section 2, I guess it would be subsection (e)(6).

Mr. BERMAN. Section 2, (e)(6).

Let me just read that, ''if the court finds, pursuant to a petition filed under paragraph (5),'' that is a petition to shift costs, as I understand it.

Mr. GOODLATTE. That is correct.

Mr. BERMAN. ''With respect to a claim or claims, that the judgment, verdict or order finally obtained is not more favorable to the offeree with respect to the claim or claims than the last offer, the court shall order the offeree,'' that is, in most cases but not all cases, the plaintiff, ''to pay the offeror's,'' that is the defendant in most cases, ''costs and expenses, including attorney's fees, incurred with respect to the claim or claims from the date the last offer was made, unless the court finds that requiring that payment of such costs and expenses would be manifestly unjust.''

Is that a fair reading of the words?

Mr. GOODLATTE. I think the gentleman read it correctly.

Mr. BERMAN. Is it the gentleman's contention that ability to pay is one of the criteria that the court should look to in determining whether shifting costs would make it manifestly unjust?

Mr. GOODLATTE. I would leave that entirely to the discretion of the court. I think that in some circumstances, it might be appropriate to award attorney's fees regardless of those circumstances. In others, I feel that it might not. It is not my intention to define that in that fashion.

Mr. BERMAN. Mr. Chairman, reclaiming my time, I yield to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, to begin with, if the defendant was indigent, it would be totally uncollectable anyway. So it would be of no value to anybody to get it. I would imagine the plaintiffs would be willing to go along with, unless, unless it happened to be an insurance company that was behind it.

Mr. BERMAN. Reclaiming my time, let us say the defendant had a car. Let us say the defendant made—the plaintiff, talking about here—the plaintiff made $20,000.

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, it could be the defendant.

Mr. BERMAN. Let us talk about it in the context of a plaintiff who has a legitimate case. It is not frivolous. He decides not to accept the offer. He could have his, by virtue of this fee shifting provision, he could have his wages garnished, his automobile attached, other assets foreclosed on because he was not in the, he was not able to pay the court-ordered shifted fee costs of the defendant who could be a multimillion dollar corporation. Is that not a fair statement of possibilities?

Mr. MOORHEAD. I do not think it is, because he would already have obviously at that point, have a huge judgment against him to begin with.

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

(By unanimous consent, Mr. BERMAN was allowed to proceed for 5 additional minutes.)

Mr. MOORHEAD. Mr. Chairman, if the gentleman will continue to yield, if he were indigent, as the gentleman said, and the plaintiff got a huge judgment against him, or if it was the other way around, the plaintiff were indigent, as the gentleman says, the judge, I am sure, would consider the terms here that it would be totally unfair to tie those fees to it.

Mr. BERMAN. Let us create a hypothetical here. Let us understand what we are talking about.

A suit is brought in Federal court under the diversity statute by a plaintiff who is making $20,000 a year, based on the negligence of an out-of-state corporation and offers go back and forth. He decides the last offer is not acceptable. They go to a month-long trial. And the jury awards an amount to the plaintiff that is less than the defendant's last offer.

In that situation, it is possible, under this statute, for the court to decide that the cost of that entire month-long trial and all the other costs of the 10 days prior to that trial would be shifted to the plaintiff and that that would be an enforceable judgment, that the defendant could than go and seek to execute through garnishment of wages, through attaching the car and executing on it, through doing all of the traditional devices that can be utilized to collect a sum owed. Is that not a fair statement?

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, that is possible just as it is possible for a poor defendant in a case to suffer those same consequences under the American rule, the current law that exists right now. We are equalizing the risk.

Mr. BERMAN. Well, if I may reclaim my time, that is not correct. There are only a few specified statutes, for instance, civil rights cases, where you automatically provide prevailing costs for the plaintiff.

Mr. GOODLATTE. What I am saying is, if a defendant is brought into court in a nonmeritorious, frivolous or fraudulent lawsuit and has to defend that case, unless there are provisions that provide attorney's fees and that defendant, win or lose, that defendant has to bear the cost. So what I am saying is that the plaintiff right now, if they are on a contingent fee basis, has no risk. You look in the phone book. You will see all the people that will tell them there is no risk in the case. The defendant always has risk.

Mr. BERMAN. I would like to reclaim my time to make a few points.

The proponents of this bill, if you keep talking about it as a way to deal with the frivolous, nonmeritorious case or in a way that would protect, because of this subsection 6, the indigent or almost indigent plaintiff, then all I would ask you to do is amend your bill to put those tests in. Do not say, this will only apply to deter the frivolous case and provide fee shifting in the nonmeritious case when your bill makes no effort to limit it to that.

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

Mr. BERMAN. I yield to the gentleman from Texas.

Mr. DOGGETT. If I understood that last answer, about frivolous or fraudulent suits, you would get the impression that this only applies to frivolous or fraudulent suits. Is it not correct that there is no requirement to prove frivolity or to prove fraud in order to impose these burdens and lead to the garnishment of somebody's wages.

Mr. BERMAN. The gentleman from Texas is absolutely right. Ironically, in the one hearing we had in front of the subcommittee that is chaired by my friend from California, the witness, the law professor testifying in favor of the concept of loser pays, said there should be guidelines to limit this to the frivolous and nonmeritorious cases. This is what the proponent said, not the opposition.

Mr. DOGGETT. So they could have limited this bill to frivolous and fraudulent cases but instead, as a way of discouraging even legitimate suits that sometimes, of course, in a court in front of a judge and a jury could go either way, if someone takes a chance thinking they have got a good suit but they lose, it is not a frivolous suit, it is not a fraudulent suit, but when the jury weighs the evidence, they conclude that it does not have merit, that they are going to have imposed upon them the cost of some large concern in defending that suit and they could actually have the wages garnished, perhaps a car taken away, all kinds of things.

Mr. BERMAN. It gets even more complicated and in a sense unfair than

that. The gentleman could have a meritorious case where he wins a jury award.

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

(By unanimous consent, Mr. BERMAN was allowed to proceed for 5 additional minutes.)

Mr. BERMAN. Let me respond to the gentleman. Just in response to the gentleman from Texas, he could win, he could have a meritorious case but perhaps against that particular defendant the award was somewhat less than the very final offer.

□ 1745

This would bring into play the fee shifting without regard to how meritorious it was, or without regard to the ability of the plaintiff to pay. The thing that galls me is it keeps being argued, the proponents keep talking about the frivolous case, the nonmeritorious case, but they will not put into the bill limitations that would restrict this to the frivolous or nonmeritorious case.

This would be a very simple issue to deal with. You can set up a standard, you can set up a guideline in here that would give the judge the guidelines and the congressional intent to only have this apply in the case of frivolous actions, nonmeritorious actions, refusals to accept reasonable offers, but there is no effort to amend the bill to do that. That gives me the problem.

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

Mr. BERMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentleman from California for bringing this point into even sharper focus than it has been brought before. However, just in case we think that there may be a bit of generosity in allowing the waiver of the requirement to pay fees and costs, in the report of the majority the Republicans say ''It is the intent of the committee that this standard,'' which is to pay costs, ''be interpreted to be an exceptionally high one, extending well beyond the relative wealth of the parties.''

In other words, do not give them an inch, boys. We are going to turn this rule on its head, and it does not matter if one is wealthy and one is poor; we were looking for a lot of other things to help you keep this standard exceptionally high. I think it is an indication of intent.

Mr. BERMAN. The gentleman's point is so well taken. Remember, this was all patterned after an English rule, an English rule which, by the way, the bastion of British conservatism, the Economist Magazine, has said led to many unfair results, but that English rule exempts anyone who is represented by the Legal Aid Society, anyone who needs assistance with legal services.

Mr. DOGGETT. This is more a draconian rule.

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

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

Mr. GEKAS. Mr. Chairman, when the gentleman from Texas questioned the gentleman about the situation where the jury finds no merit in the claim, is it not the case that the jury there found no merit in the case, which begs the question? That is what we are saying. The only test of whether it is a nonmeritorious claim, that is, frivolous, is when the jury brings in a verdict of zero for the plaintiff. Then, at that point, is triggered the loser pays situation.

Mr. BERMAN. If I may reclaim my time, the gentleman from Pennsylvania does not understand the new basic structure.

Mr. GEKAS. The gentleman does not have to tell me what I understand. I understand.

Mr. BERMAN. The gentleman from Pennsylvania does not understand the basic framework of this bill. This is not limited to whether you lose the case. This bill, as it is now written, deals with you sue perhaps a number of defendants under diversity jurisdiction. As to one defendant who makes an offer, you come in let us say $50,000 less than that offer, but with hundreds of thousands of dollars of jury award as to you, because we have eliminated joint and several liability now under this bill.

Mr. GEKAS. Mr. Chairman, if the gentleman will continue to yield, the question the gentleman from Texas posed is different. That is what I am saying.

Mr. BERMAN. If the gentleman will allow me to use my time, it has nothing to do with winning or losing. If the jury award comes in $1,000 under what that particular defendant offered, then fees are shifted, unless the court somehow, under guidelines which are incredibly onerous and draconian, finds that it was manifestly unjust to shift the fees.

Mr. DOGGETT. If the gentleman will continue to yield, does the gentleman mean that instead of being a loser pay rule, this is really a winner pay rule? Somebody could go in, they could win, the jury could decide they were perfectly justified with reference to their claim, and they would still end up having this draconian rules applied to them?

Mr. BERMAN. Actually what I think, to reclaim my time, what I think is this bill is a warning to plaintiffs throughout the United States: Do not bring your case under the diversity statute, because the risks of any award against you are so great for the shifting of attorney's fees, whether you win or whether you lose, that you have lost.

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

(By unanimous consent, Mr. BERMAN was allowed to proceed for 2 additional minutes.)

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

Mr. BERMAN. I yield to the gentleman from Texas.

Mr. DOGGETT. A further question, Mr. Chairman. The gentleman mentioned diversity jurisdiction. Does this also apply with reference to removal? In other words, if someone filed their action under State law in a State court that did not have a draconian, regressive, reactionary rule like that that is being urged tonight for adoption, could they be removed, if they were against an out-of-State party, to Federal court and suddenly find themselves as a winner pay, facing all of the hardships that you have suggested will emanate from this piece of legislation?

Mr. BERMAN. To reclaim my time, the gentleman shows that, even as a State justice, he is quite familiar with Federal law. I actually was too generous in my comment. We not only have limited the diversity jurisdiction for plaintiffs by this provision, and wiped it out, but what we have done is said ''Defendants, you have the choice. You can stay in State court or you can take advantage of this draconian rule and remove to Federal court.'' This is such an unjust consequence.

Mr. GOODLATTE. Will the gentleman yield on that point, Mr. Chairman?

Mr. BERMAN. I am happy to yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

If the gentleman from Texas would also call attention to this, what the gentleman from Texas just described as the so-called winner pays rule is exactly what is included under Federal law right now, because rule 68 of the Federal Rules of Civil Procedure allows a defendant in a case to make an offer of judgment which, if the plaintiff does not accept it and goes into court and receives a judgment, a verdict in his favor for an amount that is less than that offer in judgment, the plaintiff can be required by the court to pay the attorney's fees of the defendant, just like this in this case.

Mr. BERMAN. Reclaiming my time, that is not correct. The only thing you can recover are court costs. That is a small, small percentage of the potential liability that comes when you add attorney's fees.

Mr. GOODLATTE. The cost can be very substantial in some cases.

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

Mr. Chairman, in response to the colloquy that just took place on the other side, let me point out that this is a case of any kind of nonmeritorious claim being exposed to a risk for attorney's fees for the plaintiff or the defendant, so a plaintiff who is viewing their case as having merit is not going

to give up their Federal diversity jurisdiction. They are going to take that diversity jurisdiction, with the intent to force the other side to pay attorney's fees, unless they reasonably offer settlement offers. That is what this mechanism does.

With regard to the contention that this changes the English rule, and the gentleman from California [Mr. BERMAN] is somehow abhorrent of that, I would point our that the gentleman from California voted for this change in the Committee on the Judiciary. Therefore if he really does not like that, I think he has contradicted himself.

The fact of the matter is that this is simply modeled after rule 68, but it expands it. It makes it better, not worse, because under rule 68, only a defendant who is liable can avail themselves of the mechanism of the so-called winner pays described by the gentleman from Texas.

Under this plan, a defendant who is not liable, who says ''I didn't do anything wrong, I should not have been dragged into court,'' they also can avail themselves of those privileges, and the plaintiff can avail themselves of that by making reasonable settlement offers.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, does the gentleman not agree there is a great difference between costs and court costs plus attorney's fees? It could be hundreds of thousands of dollars. To call one winner pays when it does not include attorney's fees is not quite the same.

Mr. GOODLATTE. Reclaiming my time, Mr. Chairman, the principle is the same, and the amount of those court costs can vary dramatically from case to case, as can the amount of the attorney's fees, but the same principle applies either way, and the fact of the matter is that the rule 68 is in the Federal Rules of Civil Procedure to encourage settlement of cases, and this will take that one step further, make that process not only available to defendants, but also available to plaintiffs and also available to defendants who are not liable.

This is only available to the defendant who is at fault. Why not also make it available to the defendant who is not at fault, and says ''I have been dragged into court, I had no choice in this matter, I won the lawsuit, and now I have to pay substantial attorney's fees,'' whereas the plaintiff in a particular case may have taken no economic risk in proceeding to court, and their case is very different than that of the defendant, who always has to pay, win or lose.

Mrs. SCHROEDER. If the gentleman will yield again, I think we just have to keep reminding people, there is a tremendous difference between court costs and attorney's costs. When you are adding the two together, the magnitude is great.

Mr. GOODLATTE. We have limited those attorney's fees so they can not exceed the amount the plaintiff is paying, or the defendant, if the defendant is the loser, cannot exceed the amount you are paying your own lawyer, so you cannot have a deep pocket come in and overload the costs by bringing in four lawyers to try the case.

Also, we have limited it to just 10 days before trial through the trial, so a party cannot overload the other party with discovery, whether it is necessary or unnecessary, and then collect attorney's fees for all that discovery that was done.

This is a very reasonable way to impose some risk on the parties in cases, to encourage settlement and reduce the number of frivolous, fraudulent, and I would say to the gentleman from California [Mr. BERMAN], nonmeritorious cases.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield again?

Mr. GOODLATTE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Earlier the gentleman from Pennsylvania [Mr. GEKAS] said, I think the way I heard him, and I hope we get a clarification, but he defined as frivolous a case that the plaintiff lost; that if the plaintiff lost, by definition, it would be frivolous.

Mr. GOODLATTE. I do not believe that is the gentleman's definition.

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

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania for a clarification.

Mr. GEKAS. Mr. Chairman, what we are saying is that the final verdict of the jury is, in effect, if it finds against the plaintiff, if it finds zero, that is prima facie evidence for the late determination as to whether or not attorney's fees and so forth should be paid, that it was nonmeritorious. It had no merit or else it would not have resulted in a zero judgment.

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will continue to yield, does the gentleman mean nonmeritorious meaning frivolous? Because he is saying anyone who loses therefore was frivolous.

My concern is what do you do about the very close calls. That is why I was so disturbed by the gentleman's comment.

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

Mr. GOODLATTE. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding. I just wanted to join in the correction of my friend, the gentleman from Pennsylvania, because a zero recovery from the plaintiff raises no question whatsoever about frivolity, because the test is of the evidence, which you could lose by a very small amount. It has nothing to do with frivolity.

Mr. GEKAS. So what?

AMENDMENT OFFERED BY MR. MCHALE

Mr. MCHALE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MCHALE: After section 4, insert the following:

SEC. 5. FRIVOLOUS ACTIONS.

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term ''groundless'' means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

(1) the striking of the complaint;

(2) the dismissal of the party; and

(3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 1, strike ''SEC. 5.'' and insert ''SEC. 6.''.

Page 7, line 7, strike ''The'' and insert ''Section 5 and the''.

Mr. MCHALE (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 Pennsylvania?

There was no objection.

Mr. MCHALE. Mr. Chairman, I first of all want to thank the leadership on both sides of the aisle for their cooperation in allowing me to bring this amendment to the floor. I particularly want to thank my colleague, the gentleman from California [Mr. BERMAN] who spoke a few minutes ago, and who inadvertently described exactly the contents of my amendment.

The gentleman from California, when he was at the microphone, said we should have an amendment that is strictly limited to frivolous lawsuits, we should have an amendment that is based on clear standards, we should have an amendment where the determination is made by the judge in the case as to whether or not there is a frivolous suit, whether or not those standards have been met, and whether or not appropriate sanctions should be imposed.

Mr. Chairman, that is precisely what is contained in my amendment. Let me summarize briefly the contents of what I propose. First of all, the amendment now at the desk supplements but does not replace the language contained in the Goodlatte settlement amendment.

The language of my colleague, the gentleman from Virginia [Mr. GOODLATTE], inserted in the bill remains intact.

Second, my amendment covers statutory as well as diversity cases. Third, it directly addresses the issue of frivolous suites, as requested by my colleague, the gentleman from California [Mr. BERMAN]. It allows for the early dismissal potentially within the first 90 days of a case of those privileges claims which have been brought before the court. This allows for dismissal before extensive discovery costs and legal fees have been incurred.

My amendment is fully compatible with the analogous language in H.R. 956, the products liability bill that we will take up later this week. In summary, Mr. Chairman, what my amendment requires is this: After a judicial finding that the suit is indeed frivolous, this amendment requires that the court enter an order compelling the losing plaintiff or his attorney to pay those expenses unnecessarily incurred by the winning defendant, including court costs, attorney's fees, and discovery expenses.

Mr. Chairman, as someone who opposes the English rule, and ironically, this proposal was originally drafted in opposition to the English rule, a matter no longer before us, and who is concerned that the settlement procedures in the bill itself may be somewhat complicated, I offer this amendment as a clear and straightforward solution to the real, if rare, problems of frivolous suits.

Mr. Chairman, it was ironic, as I sat here a few moments ago I listened to the gentleman from California [Mr. BERMAN] raise very legitimate concerns. What he said into this very microphone was that we need to limit the applicability of sanctions to truly frivolous suits, those motions need to be based on clear standards, and we should allow the judge under those circumstances to make a determination.

I turned to Mr. BERMAN a moment ago and said ''I have the amendment and I now offer it to the House.''

□ 1800

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. MCHALE. I yield to the gentlewoman form Colorado.

Mrs. SCHROEDER. I thank the gentleman from Pennsylvania for yielding.

Let me ask a few questions about your amendment, because I really think this amendment goes much further than the bill, if I am reading it correctly. The way I read the sanctions section on page 2 is that you oppose the sanction on the verifier of the complaint and the attorney of record, and it says ''shall.'' So my understanding is you are putting them both in the loop for a frivolous lawsuit; is that correct?

Mr. MCHALE. The gentlewoman is correct, and I think that is entirely fair and appropriate. Remember, the sanction is not to be imposed unless the judge has previously determined that this is truly a frivolous suit. This then empowers the judge to enter an appropriate sanction order where, if necessary, costs can be imposed, where appropriate, on both the litigant and the litigant's attorney.

When a frivolous case has been filed and has been knowingly filed by an attorney, I believe that is a relatively rare circumstance, but when that happens, I do trust to the trial judge to enter an appropriate order of sanctions potentially on the party and the party's attorney.

Mrs. SCHROEDER. If the gentleman will yield further, I must say I am a little concerned about this amendment because it does that, because it is bringing in a whole other level. When we look at the core bill that this amendment is being offered to, we are not saying if the loser cannot pay, the loser's attorney must pay, or the loser and the loser's attorney must both pay. So you are adding another whole standard. Furthermore, what about frivolous defenses?

Mr. MCHALE. Reclaiming my time, that is current law. Under current law when an attorney acts improperly under Federal rule 11 or when a truly frivolous claim has been filed, a judge, usually at a much later stage in the proceedings, may enter an appropriate sanction order.

All we are saying here is that when a truly frivolous suit has been filed, and we define that very carefully in the amendment, under circumstances where I think we would have consensus——

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. MCHALE] has expired.

(By unanimous consent, Mr. MCHALE was allowed to proceed for 2 additional minutes.)

Mr. MCHALE. Mr. Chairman, where we have the matter brought before a judge and the judge who is hearing the case concludes that the matter is truly frivolous, it seems to me that under that circumstance, it is entirely correct and appropriate that the judge in the case be allowed to sanction both the party and the party's attorney, the purpose being to deter frivolous actions.

Mrs. SCHROEDER. If the gentleman would yield further, your amendment is not in lieu of the Goodlatte language.

Mr. MCHALE. It is not.

Mrs. SCHROEDER. So the issue that was going around that the gentleman from California [Mr. BERMAN] was talking about, about frivolous lawsuits, this is on top of the Goodlatte amendment, is that correct?

Mr. MCHALE. This is in addition to it. Frankly, and I mean to be absolutely candid here, I do have some concerns about the unpredictability of the settlement procedures now in the bill, but I do not touch those procedures. My amendment offers a much earlier, much more expedited and efficient means by which we can screen from the judicial system those truly egregious cases where within the first 90 days the judge can conclude that the case is totally without merit, that it has been brought frivolously and that a sanction order is appropriate both for the party and the party's attorney who should never have dragged the defendant into court.

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

Mr. MCHALE. I yield to the gentleman from California.

Mr. BERMAN. I think the gentlewoman from Colorado makes a good point. My initial excitement and positive interest in your amendment——

Mr. MCHALE. Do not lose it now.

Mr. BERMAN. Is waning because it does not replace section 2, it is in addition to section 2. So all of the problems of meritorious cases brought by relative poor plaintiffs in situations where maybe they even win——

Mr. MCHALE. Reclaiming my time if I may, that determination of what is frivolous is based on the standard in the amendment where the judge has to conclude before sanctioning anyone that the case was brought in bad faith, for purposes of harassment or for other improper purposes. And when that is the prior judicial determination, sanctions would seem to be appropriate.

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

Mr. Chairman, I have been listening carefully to the gentleman from Pennsylvania's proposed amendment. What he is doing is creating an entire new rule out of whole cloth without ever going to the Rules Enabling Act, the procedure through which we devise new rules.

He is saying that after complaint is filed, the defendant has 30 days to answer, there is discovery proceedings, and before a summary judgment, there would be this frivolous motion that would be permitted to be entertained.

This moves right out of nowhere and has the Congress intrude upon a 50-year procedure that has been working relatively well.

I would urge great caution in the Congress now moving directly to the rules-making capacity as opposed to going through a system that has been carefully provided over the years in terms of how these rules come into being.

This is a motion that would come to pass before there has been an examination of the facts. The summary judgment would occur after a frivolous motion which would make no sense at all in a procedural way to move a Federal case along. It would be a travesty to have this motion weigh in before there have been the facts brought before the curt to even issue a summary judgment.

I would hope that the gentleman would carefully consider what he has in mind in that regard.

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

Mr. Chairman, I am very concerned about this, because I think we are creating a whole new motion here, and I think when you create new motions in the court, you are causing all sorts of problems.

I must also say to Members, the DSG reports this amendment as being in lieu of, and so what I understand from the gentleman from Pennsylvania is not in lieu of, it is alongside of. Therefore, the Democratic study group is wrong.

Mr. MCHALE. Mr. Chairman, will the gentlewoman yield on that point?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. The gentlewoman does accurately quote from the DSG report and for whatever reason, and it may emanate from my office, the DSG report is inaccurate. The language of my amendment is an alternative but not in replacement of the language offered by the gentleman from Virginia [Mr. GOODLATTE]. Mr. GOODLATTE's language would normally apply up to within 10 days of trial. My language which does not touch his would come into play at a much earlier stage in the process where the purpose really is to screen the most egregious cases before extensive legal fees and discovery costs are incurred.

Mrs. SCHROEDER. Reclaiming my time, I must say I am very concerned about the amendment, then, because it leaves the core of the loser pay things which I am concerned about, then it adds this other whole motion to this process, and I think there are a lot of questions that bubble around in my head.

I realize you cannot make this motion until 90 days after it has been filed, but what if discovery is not done? Can you keep filing this motion?

Then also I think it is also one way. The defendants do not have a way to fight back if the plaintiffs start throwing out frivolous countercomplaints, or whatever, that they could possibly be doing or frivolous defenses that are raised.

So I think you are giving the hammer to only one side, you are throwing attorneys into it. I do not know how many times you could be making this motion after the 90 days, and I can also see attorneys saying if you have made the motion in the first 90 days and the judge did not rule it was frivolous, then they might say you could not apply loser pays later on. I just think there are a whole lot of real confusing things here that I do not understand.

Mr. BRYANT of Texas. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I would first like to thank you for pointing out that the DSG report inaccurately reported this. Second, I would like to raise a question. Why would the effect which the gentleman from Pennsylvania [Mr. MCHALE] is after not be obtained today with simply filing a motion to dismiss and asking for rule 11 sanctions?

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

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. It is entirely possible by cobbling together the existing rules of civil procedure, you could end up with a kind of process that we spell out explicitly in the contents of my amendment.

This amendment simply says that if a truly frivolous case comes through the courthouse door and if it is recognized as such by the judge, then upon the dismissal of the case at that early stage within the first 90 days, sanctions may be imposed.

The gentleman from Texas [Mr. BRYANT] is correct. If a judge wanted to reach into the rules of civil procedure and cobble together several different rules, the same result could be achieved. This is a much more straightforward process.

Mr. BRYANT of Texas. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I would just like to make a point. I would strongly oppose the gentleman's amendment now that I learn that it is in addition to rather than in place of, for the simple reason that as you have constructed it now, first the plaintiff who has no resources and is obviously frightened by the situation in the beginning files a lawsuit, then they first have got to get past the potential of having a judge force them to pay attorneys fees based upon your provision, and if they get past that, then they are faced with at the end of the case having to pay attorneys fees based upon what the Republicans have come up with.

It is doubly bad, rather than an improvement, and I would strongly urge Members to vote against this amendment.

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

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. I would just like to refer our friend from Pennsylvania to the Federal Rules of Civil Procedure, rule 11–1, by motion, a motion for sanctions under this rule can be made separately from other motions.

The remedy that the gentleman seeks is already well ensconced in the rules.

Mrs. SCHROEDER. I think that the gentleman from Michigan is making an excellent point. We have rule 11, we are not sure what we are devising here with a whole new motion and what is going on around it, and I understand what the gentleman is trying to do, I think there are very good intentions, but they are missing the core of what everybody was complaining about.

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

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. I thank the gentlewoman for yielding. If what we are talking about here is a redundant situation, and I do not think it is, why is there such vehement opposition?

What we are talking about here is a situation where there are no clear procedures for the removal, the dismissal and the imposition of sanctions where a case is truly frivolous.

Please, let's start with the premise of this argument. The judge must conclude that there is bad faith, that this is brought for purposes of harassment, and only thereafter may sanctions be considered.

The CHAIRMAN. The time of the gentleman from Colorado [Mrs. SCHROEDER] has expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. Let me just answer what the gentleman said. Reclaiming my time, I think it is very important to point out that it sounds so simple, but we are creating a whole new motion. There is rule 11, there is a process that is already there. We are adding something all new and that is also holding the attorney accountable, and there is a lot of discretion in there

as to what a judge might hold frivolous, and we do not know how many times this motion can be made after 90 days. It could become a harassment motion. Plus you do not have anything on the plaintiff's side that is equal. So you just keep giving more and more hammers to one side and I do not think it levels the playing field at all.

Mr. Chairman, I would urge Members to please vote against this amendment, because I really think the way it is written now, it is going to just cause more problems.

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

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. It just occurred to me as the gentleman asked what is the sweat if it is just redundant. We cannot make the rules for Federal court procedure in the United States redundant when we are now going outside of the Rules Enabling Act which has a process set up for making rules.

The gentleman rushes to the floor with an idea that the DSG report got wrong, we are trying to help straighten it out, we point out to him that there is adequate coverage of this, but think of the problem with frivolous lawsuits. Frequently they are not discovered in the first weeks or months of the suit. It sometimes is determined in the course of the case as witnesses and evidence are produced that this is not a well-founded lawsuit. So having this motion intervene before summary judgment within 90 days is yet another reason for us to, as unexcitedly as we can, point out we do not need this amendment.

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

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. I thank the gentlewoman for yielding, and I apologize, I would not have requested the time had I known that.

I thank my colleagues for their contributions to the debate, but let us not allow a smokescreen to be raised here. This matter is very straightforward. The fact is when the suit cannot be shown to be frivolous in the first 90 days, the motion will not be granted. Where this motion will be granted and should be granted is when it can be established within the first 90 days that the case has been brought for purposes of harassment or bad faith.

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When it can be shown in the first 90 days that it is truly frivolous because of bad faith or harassment, why do we want to incur the expenses of discovery? Why not allow the trial court to dismiss the case and impose appropriate sanctions?

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

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. For us to suggest we do not have a remedy for frivolity that is discovered within the first 90 days is to misread seriously the Federal Rules of Civil Procedure. We have such a rule. What I am saying to the gentleman is we do not need to worry about the first 90 days because most frivolously brought suits are discovered later than that. It is very hard to determine whether it would emerge.

Mr. MCHALE. Mr. Chairman, will the gentlewoman yield on that very point?

Mr. CONYERS. What the gentleman is doing is ignoring that we have a way for modifications to be worked out between the court and the Congress. It is called the Rules Enabling Act, and this is a very extraordinary provision that the gentleman is making. Very few Members get on the floor and move to directly amend the Federal Rules of Civil Procedure without so much as a hearing, discussion, witnesses or anything, explain to us DSG did not get it right, and we keep trying to point out to the gentleman that this problem that he is addressing is already covered.

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

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. MCHALE and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. Mr. Chairman, this debate has taken a turn I did not anticipate and without in any way challenging the sincerity of the arguments, we have heard every smokescreen in the world within the last few minutes.

This amendment simply says in conformity with the existing bill where you have a bad suit, one that is clearly frivolous and brought in bad faith, we are empowering with this procedure a Federal judge to recognize that the suit is frivolous and impose appropriate sanctions. That is a power that could conceivably be cobbled together under existing law but it is nowhere spelled out nearly as clearly or appropriately as it is in this amendment.

Why are we so frightened that frivolous suits will be dismissed from court in an expeditious manner and appropriate court costs flowing from bad faith be imposed on litigants and lawyers who in that rare case file such frivolous suits?

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

Mr. Chairman, I think it is extremely important that we focus on the fact that the McHale amendment is not an amendment to this bill that would make the bill deal with frivolous suits. It is an amendment to the bill which adds another step in this process.

Were it an amendment which converted this bill into one that would screen out frivolous suits I would wholeheartedly support it and I think nearly all of us would. What it does is add to this draconian and unprecedented in 200 years notion of loser pays, a provision that says that little person who does not have very many resources and is not going to be able to get a lawyer to work for them to bring a case against a big person or institution, whether that be the government or a major company of some kind faces an additional hurdle, and that is that a local judge perhaps friendly and philosophically inclined in the way of a defendant might slap him with a dismissal under the McHale amendment and make him pay attorney's fees, but if he can get past that and then he has the outcome that is foreseen in the Republican bill, he then faces once again the possibility of having to pay attorney's fees, costs, and be flatly bankrupt for simply trying to pursue what might have been a meritorious case.

I would urge Members to look carefully at this. If we can take the McHale language and convert it into the main purpose of bill, that is to say we made the McHale language as it is the DSG report made us think he was going to do, I would vote for that. I understand there is going to be an amendment offered in just a moment to do that, and I urge Members to move strongly in the direction of converting the McHale amendment into that and do not support the McHale amendment as a simple addition of another dangerous step for a middle-class person who has a meritorious case and cannot get a lawyer to handle it for the fear he may be hit not once but perhaps even twice.

AMENDMENT OFFERED BY MR. BERMAN TO THE AMENDMENT OFFERED BY MR. MCHALE

Mr. BERMAN. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. BERMAN to the amendment offered by Mr. MCHALE: Strike section 2 and insert the following:

SEC. 2. FRIVOLOUS ACTIONS.

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term ''groundless'' means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

(1) the striking of the complaint;

(2) the dismissal of the party; and

(3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 7, strike ''The amendment made by section'' and insert ''Section''.

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

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

Mr. MOORHEAD. Mr. Chairman, reserving the right to object, we do not have a copy of the amendment yet.

Mr. BERMAN. Mr. Chairman, will the gentleman yield on his reservation?

Mr. MOORHEAD. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, all this amendment does is take the amendment offered by the gentleman from Pennsylvania and replace section 2 with his amendment. In other words, makes his amendment into the base, the core of the bill. In other words, going from the offer, the counteroffer, loser pays notion to the frivolous action notion.

Mr. MOORHEAD. 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.

Mr. BERMAN. Mr. Chairman, the debate which preceded the introduction of the amendment by the gentleman from Pennsylvania [Mr. MCHALE] discussed the unwillingness of the proponents to have their language meet their rhetoric, to deal with the nonmeritorious frivolous claims.

The gentleman from Pennsylvania [Mr. MCHALE] has come up with an amendment which seeks to do that. White I have some concerns about the entire structure of the amendment and to what extent it moves in place of the Federal Rules of Civil Procedure or might have other provisions which are inconsistent with rule XI, the fact is the amendment of the gentleman from Pennsylvania [Mr. MCHALE] does deal with the rhetorical arguments in favor of the sponsors, that the sponsors of this bill have been using.

Therefore, I thought the appropriate thing to do in this case was offer an amendment which simply makes the McHale amendment to deal with actions in the case of frivolous lawsuits the core of this bill. Let us, if we want to address the issue of frivolous cases, an explosion of frivolous cases, the cases which have no merit and the ability of the court to deal with that effectively, let us not punish the poor plaintiff, let us not punish the plaintiff who has a decent case and believes in good faith that he or she can win that case. Let us not punish the plaintiff who receives a judgment that is $1,000 less than the last offer happens to be against that particular defendant by making massive shifts of legal fees from the defendant to the plaintiff without regard to the plaintiff's ability to pay.

That is, let us take the McHale amendment and let us move that ahead as the core part of this bill.

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

Mr. BERMAN. I am happy to yield to the gentleman from California.

Mr. MOORHEAD. Mr. Chairman, does this strike Goodlatte? Does it strike section 2?

Mr. BERMAN. I will say to the gentleman, yes, it does.

Mr. MOORHEAD. So it strikes Goodlatte.

Mr. BERMAN. It substitutes the McHale language for the Goodlatte language; yes.

Mr. MOORHEAD. And does it attempt to restrict it only to the diversity cases.

Mr. BERMAN. This amendment, as I understand it, is not restricted to diversity cases; and what is the logic of restricting it to diversity cases if a case is frivolous?

Mr. MOORHEAD. I am trying to find out what it does.

Mr. BERMAN. It does not restrict to diversity cases. It is the exact terms, word for word, of the McHale amendment, only in section 2 instead of as an addition to the what I view as very unfortunate loser pays concept that is in the base bill.

I urge an aye vote on this amendment.

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

Mr. Chairman, I appreciate where the gentleman is coming from in his argument. As a matter of fact, the position he is now taking is one I had originally considered taking myself in the drafting of my amendment. I had originally considered it as a substitute for the Goodlatte language and then both logically and practically I decided against it. Let me tell Members why I changed my position with regard to the logic of the Berman substitute amendment.

The proposal of the gentleman from Virginia [Mr. GOODLATTE] has to do with settlement language, settlement negotiations that may occur at the end of the pipeline, up to within 10 days of the time of trial. He makes a good faith effort in his language to encourage settlement at that point in order to preclude unnecessary jury determinations, the costs, the expense and the delay of the actual trial.

My amendment logically moves to the opposite end of the pipeline, and frankly I would respectfully suggest it is the end of the pipeline where the American people are demanding reform. It says early on in the process, before discovery costs have been incurred, before legal fees have been run through the ceiling early on in the process when it is clear to the trial judge that there has been bad faith, that the suit is being brought for the purposes of harassment or some other improper purpose, within those first 90 days before judicial resources have been unnecessarily consumed, the case may be dismissed. It may be determined to have been brought frivolously, and sanctions can be imposed.

Now, whether or not Members support the Goodlatte language regarding settlement negotiations, perhaps 3 years into the litigation, my amendment clearly improves the bill by allowing a release of those cases from the judicial process when at the front end of litigations it is clear to the trial judge the suit is being frivolously brought for improper purposes.

Second, in the event that the Berman amendment were to carry, even if it were to be substituted for the Goodlatte language, that would in fact kill the bill. And I think that is perhaps the purpose of some who might argue for that position.

My amendment is a logical, reasonable alternative that cuts to the heart of this issue, the prompt, efficient dismissal of frivolous claims when that fact is clear during the first the 90 days of litigations. At a later point in time it may be determined, in this body or the other body, that the Goodlatte language should be amended or perhaps deleted. But at this point there is absolutely no inconsistency in arguing for

reform both at the beginning of the pipeline and at the end.

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

Mr. MCHALE. I certainly will yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, the gentleman's amendment is focused on the frivolous, nonmeritorious case and trying to deal early on in the process to avoid massive expenses that come when a frivolous case is brought.

Mr. MCHALE. The gentleman is correct.

Mr. BERMAN. Mr. Chairman, it is the rhetoric and the arguments of the proponents of the basic bill, all fit into the context of frivolous actions, desire to deter frivolous actions. The gentleman's amendment strikes at that; their amendment does not. Let me give an example.

Mr. MCHALE. If the gentleman will yield, the gentleman's analysis is absolutely correct. I would therefore suggest to him that he vote for my amendment and if that does not sufficiently improve the bill, vote against the bill.

Mr. BERMAN. Mr. Chairman, I appreciate the gentleman's suggestion. If he will continue to yield, I think I can improve the bill by taking the gentleman's effort to address the issue of frivolous litigations, which I keep hearing from the sponsors of the bill and the proponents of the contract was the purpose of their amendment, and in the belief that the gentleman's amendment comes closer to achieving that goal than their amendment, without the negative impacts on the meritorious case brought by the plaintiff who might not have the resources to cover attorneys' fees, and who has every good intention in bringing that action, I think the gentleman's amendment meets the objectives much more clearly than the bill does with the present system, and so I want to see the gentleman's amendment become the basic heart of the bill.

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And that is the purpose, if I may just use your time to illustrate the problem, under the Goodlatte amendment, it you accept that the next bill coming down the pike, the product liability bill, eliminates joint and several liability, you get into a situation where a plaintiff brings a case against, say, three defendant corporations, and one of the defendant corporations he is suing, let us say, for $1 million, and one of the defendant corporations says, ''I will give you $200,000.''

Mr. MCHALE. Reclaiming my time, the gentleman and I may be in total agreement as to some of the potential deficiencies in the current language in the bill. My amendment is before the House subjected to your amendment as a substitute which deals totally with the other end of the pipeline. Whatever reservations the gentleman might have regarding the Goodlatte language, surely we can come together with a consensus opinion that a frivolous case ought to be dismissed within the first 90 days.

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

Mr. Chairman, I rise in strong opposition to the Berman amendment to the McHale amendment.

This would have the effect of eliminating all of the effort that has been made in putting into this case incentives for parties to settle the case, incentives the gentleman from California himself voted for in the committee on this bill.

And if we were to adopt this in the manner that the gentleman from California [Mr. BERMAN] suggests, that is all we will accomplish. We will go back to having a situation where we have rule 11 and only rule 11 with a mechanism added by the gentleman from Pennsylvania who is acting, I think, in very good faith to provide an additional mechanism to act within 90 days of a suit being brought, but you will still have the situation where it will always be in the hands of the judge to decide what a frivolous case is, what a nonmeritorious case is, what a fraudulent case is, and only in those cases will there be any recompense to the prevailing party.

The result of that will be the same that we have right now with rule 11 of the Federal rules of civil procedure. It is seldom imposed on any of the parties in the cases.

We are attempting here to say that when somebody brings an action in Federal court under the diversity law that they will understand that it is not a risk-free proposition. They should make sure that they have confidence in their case and understand that if they do not offer to settle the case in good faith that the case will result in their being forced to pay attorneys' fees to the party that was forced to defend the case, or in the case of a defendant who is defending the case in bad faith, they will be forced to pay attorneys' fees to the plaintiff who brought a good case that should have been settled before it ever got to trial.

If the gentleman from California is successful in his motion, we will not have any provisions in the bill which say that the loser of the lawsuit based upon the merits of the case and the loser not having any merits, because the jury found his claim to be nonmeritorious, or he did not negotiate reasonably in the case and, therefore, an award was granted below what the defendant last offered in the case and, therefore, the plaintiff should have taken that award, under those circumstances, we will not have any of those incentives for settling the case if this amendment were adopted.

Now, the gentleman from Pennsylvania has, I think, a good proposal to expedite bringing to the attention of the court frivolous cases, but he does not have any way of defining what a frivolous case is or defining what a nonmeritorious case is or defining what a fraudulent case is, and the mechanism that we have in the bill now does define what a nonmeritorious or lesser, if you want to accept the gentleman's contention that there are cases that are not frivolous but are close calls, the jury finds them nonmeritorious, as the other gentleman from Texas described them earlier. Under those circumstances, there is a risk of paying attorneys' fees.

That will be gone if the amendment offered by the gentleman from California to the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE] is adopted.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentleman for yielding.

I want to point out that you have acknowledged that we have a mechanism in place now to get rid of frivolous lawsuits.

Mr. GOODLATTE. Absolutely. I acknowledge it is there. I would hope the gentleman from Texas would acknowledge that it is used very, very seldom.

Mr. BRYANT of Texas. I would like to ask the gentleman to express his opinion about why it is used very, very seldom, if that is the case.

Mr. GOODLATTE. In my opinion it is used very, very seldom because judges are former attorneys and they say, ''There but for the grace of God go I.'' They do not want to put an attorney under rule 11 sanctions in an embarrassing situation with their client.

The fact of the matter is there are far more frivolous and fraudulent cases. George McGovern says there are one out of four cases that are frivolous and fraudulent. Surely rule 11 does not apply in one out of four cases.

Mr. BRYANT of Texas. I am interested to hear the gentleman express his faith in George McGovern's judgment.

Mr. GOODLATTE. I was hoping you would place some faith in George McGovern's judgment.

Mr. BRYANT of Texas. Neither he or Kemp are high on my list, but I would say to the gentleman that the people in court are former lawyers, the judges are former lawyers. Yes, the judge is most likely a former defense lawyer. They are the ones that come here and say, ''Oh, all of these frivolous lawsuits are being filed.'' Why do not these defense lawyer judges dismiss them under rule 11? Now, the point I am making is this, we have a mechanism for getting rid of frivolous cases.

The gentleman from Pennsylvania [Mr. MCHALE] proposed an amendment to make it more explicit. We thought that was going to be a substitute for your bill. If it was, it would be a good idea.

Vote for the Berman amendment and it will be.

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

Mr. Chairman, it is with some trepidation that I join the gentleman from California [Mr. BERMAN], and the reason that I join him now, even though I was not originally for McHale, is that it is what he is doing to the whole bill is what makes this important. We are finally debating what is, I think, at the center of the issue, what to do about frivolous, malicious, or fraudulent lawsuits, and this is the core of the issue, not whether the loser should pay through a wonderful gaming device that stacks it up against the leveraged defense.

This is a much more salutary way for us to proceed, and if there is any problem, it is not the good faith of the plaintiffs bringing suit which, under the current bill, will be intimated through the gambling creed behind the current H.R. 988.

What I want to see is a little person able to bring a suit in good faith that may not have the ability to pay, who may not have the ability to even pay his lawyer's fees at the end of the case, win or lose.

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

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

Mr. MCHALE. In the interests of full disclosure, let me say to the gentleman and to the House, I used to be a plaintiff's lawyer. I represented many of those persons of modest financial resources.

The language in my amendment would not harm those persons in any way, and I have to smile and say to the gentleman that it is heartening to see that the wisdom of my amendment has now become apparent in light of the fact that it is being offered as a substitute for the earlier Republican language.

Mr. CONYERS. Exactly. That is the redeeming part of the whole thing, as far as I am concerned, but, you know, we are in a situation of relative improvement.

What we are trying to do now is a lot different from cutting out some of your clients in earlier years who would not have been able to bring a suit unless you were going to have contingent fees or you took the case, or someone took the case, on the basis that it had merit. You could not look in the crystal ball and predict you would win or lose the suit. You could not tell what the jury was going to do.

You did not know what the judge is going to do. You did not know if you were going to get shot into a different forum, all of which has a tremendous impact on the outcome of a case. And what we are doing now, what we are doing now is saying let us look at whether it is malicious, frivolous, or fraudulent, and with that, I can agree.

Mr. MCHALE. If the gentleman will yield further, the gentleman and I agree, which is why I oppose the English rule. Ironically, my proposal was drafted originally not as a substitute for Goodlatte but as a substitute for the English rule on which he gentleman from Michigan and I are in full agreement.

Mr. CONYERS. The base underlying the bill is worse than that English rule, because at least the English rule let people who had lawyers appointed be free of being assessed costs. This rule does not take that into consideration.

I urge the Berman amendment be agreed to.

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

Mr. Chairman, I would just like to say very briefly if you vote for the Berman amendment what you will get is what the DSG reported the McHale amendment was to amend. We now learned it was inaccurate. The report was inaccurate. If the Berman amendment is adopted, we will be voting for a system that gets rid of frivolous lawsuits early in the case but not one that makes it so frightening for a middle-class or lower middle-class person to bring a lawsuit that they just flat cannot afford to come forward and bring one.

The point is we are told the problem that exists is frivolous lawsuits that cost defendants money unfairly, even though we cannot find any data to support this, we cannot get any studies brought forward that this is going on, we cannot get any kind of an economic study. We do not have any evidence of it at all. We are told the problem is frivolous cases.

We respond to that by saying there is rule 11 right now that gets rid of frivolous cases early in the case. The other side comes back and says, ''Yes, but the judges do not use it enough.''

Well, the fact of the matter is what they are most really deeply concerned about is they do not want middle-class and lower middle-class people to be able to file a lawsuit against defendants with whom they sympathize. That is simply what it boils down to.

Now, the Berman amendment, if adopted, will mean we will have the first 90 days of the case in the system for getting rid of what they say they are concerned about, frivolous lawsuits, but we would not have a system that said that an average person who brought a case and happened to lose. and everybody knows you can lose a case serendipitously from time to time, would not lose all of their life's savings, lose all of their personal assets and, therefore, be afraid to bring the case in the first place.

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

Mr. BRYANT of Texas. I yield to the gentleman from California.

Mr. BERMAN. It is not simply the losing of the case. You can lose by winning under the Goodlatte scenario. That is why I prefer the McHale approach instead of the Goodlatte scenario, and let me explain why.

A situation, a diversity case, four or five corporate defendants, a plaintiff brings an action, he seeks, based on medical injuries and loss of wages and pain and suffering, to collect a million dollars. Defendant three of the five defendants offers $80,000. He has no other offers. He thinks $80,000 will not even cover reimbursement for one-third of his medical bills. He refuses that offer. The case goes to trial. He gets a judgment; he gets a judgment for $1 million, exactly what he sought in his initial pleadings.

However, under the elimination of join liability, that is coming in the very next bill, the judge apportions, and the jury apportions, liability where the one defendant who made an $80,000 offer is found only to be 7.5 percent liable and, therefore, only obligated to pay $75,000. Now, a huge amount of that particular defendant's attorneys' fees are shifted to the plaintiff even though he got exactly what he wanted, because it was not until the time of trial that he had a sense of how the different negligent defendants would be apportioned. You lose when you win under the Goodlatte scenario. It is not even about frivolous cases, not about nonmeritorious cases. It is about meritorious cases where the apportionment of damages is slightly different as it almost always will be than the plaintiff originally thought.

Mr. BRYANT of Texas. That is an example.

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

Mr. BRYANT of Texas. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

This does not just deal with frivolous cases. This is intended to encourage settlement in all cases by imposing risk on all parties. We talk all the time here about somebody risking loss, but nobody talks about the fact that if you are the defendant in a lawsuit and you are an individual or you are a small businessperson and you have to spend a fortune in attorneys' fees, that happens to you whether you win the case or lose the case under our current law.

All we are doing is saying we are making the risk equal between the plaintiffs and defendants.

Mr. BRYANT of Texas. The same thing happens to the plaintiff.

Mr. GOODLATTE. Not if it is a contingent case.

Mr. BRYANT of Texas. Somebody is paying those costs.

Mr. GOODLATTE. Not the plaintiff.

Mr. BRYANT of Texas. You have got the same drag on the plaintiff as there is on the defendants, because the lawyer has to carry the burden. He is not going to do it unless he thinks he has a good chance of winning. That is the whole point of this.

I would simply conclude by pointing out the argument, at bottom, on your side of the aisle is we do not have any faith in the judges, most of whom were appointed by Republican Presidents, and we do not have any faith in the American people when you take them 12 at a time and put them in the jury

box and show them facts, so we are going to try to write the rules in a way to make sure nobody ever files a case unless it is an absolute slam dunk winner. I do not think that is fair to the middle class.

I think you should vote for the Berman amendment.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

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

Mr. BRYANT of Texas. Mr. Chairman, I would like to say in conclusion if you vote for the Berman amendment, what you get is a system which the gentleman from Pennsylvania [Mr. MCHALE] had planned to add on to the Goodlatte amendment that would instead be the bill that would say we are going to get rid of these frivolous cases in the first 90 days, but you would not leave us in the situation if you voted for the Berman amendment, you would not have the situation of going through the 90-day process and then facing losing your life's savings because you brought a meritorious case but for some reason or other you happened to lose that.

Mr. MCHALE. If the gentleman will yield, Mr. Chairman, I appreciate the kind, if belated, comments my amendment is now receiving, and in the event that in the vote on the Berman amendment, the Berman amendment is unsuccessful, I hope those kind words of praise are remembered when the McHale amendment on its merits is brought to a vote.

□ 1845

Mr. BRYANT of Texas. Let me make the point that the kind words for the gentleman from Pennsylvania [Mr. MCHALE], as reported to us, in the DSG report, indicated it was an amendment to replace the Goodlatte language. But if it is an add-on, it makes the bill twice as bad rather than good.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

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

Mr. BRYANT of Texas I yield to the gentleman from California.

Mr. BERMAN. I thank the gentleman from Texas for yielding to me.

First of all, the gentleman from Virginia [Mr. GOODLATTE] says what we are trying to do is encourage settlements, avoid going to jury trials and the expense of that. So we are trying to put some risk on both parties. But nowhere in this bill is there any effort on to equate the risks. The middle-class plaintiff or middle-class defendant or small business man is treated exactly the same as the multibillion-dollar corporation.

Shifting fees, shifting fees from General Motors to a plaintiff is not a massive deterrent to General Motors aggressively litigating and seeking to throw whatever smoke it can up to defeat a legitimate claim. Shifting fees from the average plaintiff to General Motors means that case will never be brought, that is what this is about.

This means no case will be brought under the Federal diversity jurisdiction, and so the problem with the McHale amendment, in addition to the Goodlatte amendment, is, as long as the Goodlatte language stays in this bill, plaintiffs are not going to utilize their rights under the Federal diversity statute.

It would have been better to repeal it because this way you are saying plaintiffs cannot utilize it but if a defendant thinks he can gain from it, he can remove it. You do not even have the fairness in your language to eliminate the ability to remove if it is not in the Federal court. It is all defendant-oriented. It does not deal with the frivolous case. The McHale amendment at least focuses on that. That is why I think that should be in place instead of the Goodlatte amendment.

Mr. MOORHEAD. Mr. Chairman, I rise to oppose the Berman amendment to the McHale amendment and to oppose the McHale amendment.

Mr. Chairman, the Berman amendment really destroys all the loser-pays provisions, and particularly the Goodlatte amendment, which we have been working on for several days, in fact for a couple of weeks. The original amendment, Mr. McHale's amendment, is much broader than the bill itself, and we have not had an opportunity in committee or in hearings or anything else to go over this broad an amendment.

I think that it destroys the possibility of the bill passing. I think it weakens the bill. In that respect I would, as chairman of the subcommittee, be willing to have hearings on the subject later on.

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

Mr. MOORHEAD. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding to me.

Does not the gentleman concede that this moves the measure out of the draconian nature of punishing people for bringing lawsuits to dealing with lawsuits that may in fact be frivolous, malicious, or fraudulent? Is that not a good thing?

Mr. MOORHEAD. One thing in this argument today, we have come up with the idea that plaintiffs are always poor and defendants are always rich. That is far from the truth. A plaintiff can pick a forum, he can file in the Federal court if there is diversity, he can bring the defendant where the defendant never wants to go.

There are lots of defendants who are worth modest sums of money who could be totally destroyed by the action itself being filed against him. Then to say that he does not have a right in frivolous cases or under circumstances where there is no good cause to get his attorneys' fees back, he is left penniless anyway.

Mr. CONYERS. Let me ask the gentleman one thing. When was the last time the gentleman heard a corporation look on television and see an ad for a plaintiff's law firm saying, ''No payment if we don't win''? Has the gentleman ever heard of a corporation going to a lawyer like that? I don't think so. Has the gentleman ever heard, before the time that we could use television—and he may have been a plaintiff's lawyer once—did you not normally get people who could not afford a lawsuit?

Mr. MOORHEAD. A lot of lawsuits.

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

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, what is being overlooked here is we are talking about a mechanism that encourages reasonable settlements of lawsuits by imposing risks on all the parties in the case. And we limit that risk for those who talk about the deep pockets. Nobody has to pay the other side's attorneys' fees whether the other side is the very poor person or the other side is General Motors or whoever. No one has to pay them any more than they pay their own attorney.

What we are doing here is creating incentives for parties to settle cases that should be settled by letting them know that there is a risk to not settling it and creating reasonable behavior on the part of parties.

If we accept the Berman amendment, we will have lost all that effort to discourage lawsuits from going to trial in cases and adding to the cost of litigation in this country.

I urge opposition to this amendment.

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

Mr. MOORHEAD. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman once again.

Mr. Chairman, I always like to hear the gentleman from Virginia [Mr. GOODLATTE] tell us what he is trying to do because it is totally unvarnished and it is straight on the table. He is trying to end lawsuits for people who may not be able to afford them regardless of whether they have merit or not. Thankfully, he said it repeatedly during the course of this debate, and that is precisely my objection to this whole bill.

A person can be injured and not have any money and have a totally meritorious lawsuit, and he should not be held accountable to pay for the attorneys' fees whether he wins or loses. The test is the preponderance of the evidence. That is 51 percent to 49 percent.

The plaintiff is not a lawyer or a judge, he does not know what is happening.

So I am saying that is the unfairness that the gentleman from Virginia [Mr. GOODLATTE] keeps putting on the table that underscores more and more peoples' objections to this bill.

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

(By unanimous consent, Mr. MOORHEAD was allowed to proceed for 2 additional minutes.)

Mr. MOORHEAD. I yield further to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, yes, I will freely confess that I want to encourage settlement of lawsuits. The fewer of them brought into court the better. Every lawsuit has a solution to it. We want the parties to find that solution before they get into court. And the best way to do that is to give the parties incentives to find those solutions on their own before they get into court.

The defendant always faces that incentive because a defendant always has to pay their attorneys on a hourly basis. That does not happen in contingent fee cases for plaintiffs, where, as I have said before, you look in the phone book and you will find ad after ad or watch television, ''No fee if no recovery.'' That is what is driving litigation.

I am in favor of contingent fees because it helps a lower-income person get into court. But the problem is that we should never ever say there is no risk attached to bringing the case in court. That is what this does.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentleman for yielding to me.

Mr. Chairman, I point out to the gentleman: that there is no risk attached? That is absolutely preposterous. Anyone who has ever been close to the courthouse knows that. A lawyer who starts the case and has to finance it, he is not going to prosecute a case he cannot win.

Mr. GOODLATTE. We are not talking about the plaintiff——

Mr. BRYANT of Texas. He is not going to go through months and years of work; that is preposterous to assume that that is going on. It is not going on. That is why you have the rule of sanctions that the gentleman and I discussed. It has not been used very much. There are not very many cases in which it ought to be used.

I think it is very interesting how the gentleman shifted the discussion from stopping frivolous cases to some kind of an incentive to settle. What you have here is a prohibition on an average person getting into a courthouse.

Mr. MOORHEAD. Reclaiming my time, the gentleman is probably right, there are cases that are filed that they intend to get something out of. But in many, many of these personal injury cases or others, they file a suit, hopeful to make a settlement.

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

Mr. Chairman, I hope we can bring some sanity to all this. I am opposed to this, I am opposed to this bill. If you think about it, I cannot imagine why some of my friends on this side are for this.

We have been looking at working on this for several days, and in fact the past several weeks. We are getting rid of several centuries of people fighting against the king to be able to sue.

You cannot say that something is groundless or frivolous. If a man or woman says this is in their interest and they can find a lawyer to take it, they should be able to do it. Let us get to the bottom line here. I have done that. I have been on that side. I was libeled once, and I went to a lawyer and, thank God, I was able to find an attorney who took my case when I did not have any money. I was a student in college. He took that case and it helped set law in the State of Hawaii because we drove the State of Hawaii back. They had all their attorneys working against me. Anybody who is tuning in across this country, this bill is against you.

There are three things that define a free people: the right to have a jury trial; the right to vote; and the right to sue. The commoner can sue the king. The king in this country, the executive in this country, the big people, corporations, whoever it is, they have to stand in court against a small person. That is what this is all about.

I saw the Speaker today. He says he is somewhat of a historian. Well, he is a little loose with the facts. He got on television today and said, ''Look through your rolodex and see who you have not sued today.'' What a sorry spectacle that is and what a sorry spectacle this is today.

I went down to take the law boards, and I walked out before I left—I took a look at the people in the room and decided I did not want to be with them. Walked out before it was over.

This is not a conservative position. I do not understand this position that is being taken by our Republican friends and, sad to say, some of my Democratic friends.

We should be defending the individual's right to sue the king. That is what this is all about. You can have all of the discussion back and forth when most of the country could not even understand what you were talking about. There is a bottom line to be drawn on all of this: Can the average American take someone else into court and see who is right? You have no business telling me that my views and my desires are groundless, that they are brought in bad faith, that they are brought for the purpose of harassment.

I was the one who was harassed in the case. I had a State senator who libeled me, who knew that he libeled me. It was during the Vietnam war situation, and if you do not think that can reoccur here, you are making a sad mistake. He libeled me, and he knew it.

What they ended up doing it in order not to have to pay my lawyer, thank God I was able to find somebody who was willing to take my case, and he absorbed all the costs. I did not have any money. He took it on. I was glad to have him. That is what this is all about. Think about it.

This bill, H.R. 988, I do not care what you do—I day to the gentleman from Pennsylvania [Mr. MCHALE]—it is nothing against him individually, I say to the gentleman from California [Mr. BERMAN] it is not against him.

I realize they are trying to go against the tide. Do you know what this is? This is trying to dull the guillotine as it comes down to chop off your neck. We are trying to see if we cannot make the car break down on the way to your execution so you have to arrive on 4 rims instead of 4 wheels.

Think about this. There is not a lot of people on the floor, but if I get the chance on another amendment, I am going to come up further. The whole history of freedom is what is at stake with this. You do not have a contract to uproot the Constitution and the history of the Constitution and what brought us to this stage in America. The average person, the every-day man and woman, has a right to do down and say to somebody who is an attorney, willing to take their case, ''Will you help me? I have nothing. I don't know if I have got a case that you can win, but I feel I have been injured, I feel I have been done harm. Will you take my case, will you step up to the plate for me?''

That attorney has to think long and hard, Mr. Chairman, because that attorney does not know whether he or she can afford to do that, does not know that they can take them on.

And as for settling cases, let me tell you I have been a member of a city council, and I have been a member who had to decide when we were the deep pocket with only 1 percent, and I voted every time that we were at fault to do that because that is what protected the system so the individual man and woman in this country knows that they are going to get a recourse of action that will result in justice for them.

□ 1900

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take 5 minutes. I just want to say ''Amen'' to my friend, the gentleman from Hawaii [Mr. ABERCROMBIE], and rise immediately after him so that everybody will quit thinking that I am the least mild-mannered fellow in this body. It is always nice to speak after the gentleman from Hawaii because then I do not sound like I am the ranting, raving guy in the body. But what he says is absolutely correct, and it goes back to what we discussed in the general debate, and

that is that we have a problem in our judicial system that ought to be attacked as if it were a gnat, and we are using a sledgehammer to attack it, and we have come in with a solution that swings the pendulum all the way to the other extreme and, in the process, does an injustice to a system of justice and a system of addressing grievances in this country that has been in place for centuries and centuries.

Mr. Chairman, we started by saying that our objective is to deal with lawsuits that have no merit, that are frivolous lawsuits. I say to my colleagues, ''The problem is you can't deal with those lawsuits with this bill without throwing out the baby with the bath water, and so you come in with a piece of legislation that is designed to revamp and reshape the entire system of justice in civil cases just so we can deal with one, or two, or even a handful of, or a thousand frivolous lawsuits or abuses of the process, and that is not the way we ought to be proceeding.''

The amendment that has been offered by the gentleman from California [Mr. BERMAN] would limit this bill to frivolous lawsuits, which we were told was the primary motivating factor for coming forward with this bill in the first place, and, as we get further and further into it, now we find that we are not dealing just with frivolous lawsuits, but we are putting in place a whole a new system that encourages, demands, forces people to resolve litigation whether they want to do it or not, and in the process disadvantaging people who need access to the justice system and makes it impossible for them to come into the court without substantial fear of risking all of their assets.

I think we ought to step back from this, as the gentleman from California [Mr. BERMAN] has encouraged us to do, and put this system into place, limit it to frivolous lawsuits, which is the primary motivating factor and the factor that it should be applicable to and bring some sanity back to this process.

I say to my colleagues, ''Don't throw out our whole system of judicial works just to get a few bad apples out of the system.''

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

Mr. WATT of North Carolina. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I say to the gentleman, ''We ought to point out, if we don't adopt the Berman-McHale amendment, it not only will apply to frivolous lawsuits, it will also apply to meritorious lawsuits, those that are not—but not as meritorious as you thought they were. You can win your suit. You can win, essentially prevail, but if you come in essentially just under the offer, then you will be beset with these draconian provisions. That is not right.''

Mr. WATT of North Carolina. That is correct, and I think the best analysis we heard of it is, ''You win and lose cases in the real world. The burden of proof is on one side or the other, but you win a case with a 51 percent versus a 49 percent.''

Every case that gets filed, most cases that get filed, 90 percent, 95 percent of the cases that get filed, are close questions. They are not slam dunks, as we say in basketball lingo, and that is what this bill is designed to discourage——

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

Mr. INGLIS of South Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for two reasons: First, to correct something that I said in the Committee on the Judiciary and, second, to engage the gentleman from Virginia [Mr. GOODLATTE] in a colloquy, but first as to the correction:

In committee I was very concerned about the amendment of the gentleman from Virginia [Mr. GOODLATTE]. Now I am much more convinced of the rectitude of the amendment in that it does improve the bill, and so I apologize to the gentleman for misunderstanding it at the Committee on the Judiciary and feel that he did make a significant improvement to the bill. That is my first observation.

The second:

My reason for engaging the gentleman in a colloquy just briefly, Mr. Chairman, is to ask whether at some point—I am, along with the gentleman from Pennsylvania [Mr. GEKAS], a little bit interested in the Michigan rule that would possibly sharpen up loser pays. We are not going to offer that at this juncture, but I guess I am asking the gentleman from Virginia if possibly somewhere down the road we might look at that if this does not work as well as we think it is going to work. I am concerned about that middle ground and hoping that we can push the parties even closer towards settlement and sharpen it up a little bit, but maybe the gentleman would have some thoughts about——

Mr. GOODLATTE. Mr. Chairman will the gentleman yield?

Mr. INGLIS of South Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I am also interested in finding ways to encourage more reasonableness in litigation and to encourage more settlement of cases. I think that is the intent of the amendment of the gentleman from Pennsylvania [Mr. GEKAS], but quite frankly—and also let me say that we will find out, if this passes and becomes law, and despite all the apocalyptic statements of many on the other side, this applies to about 1 or 2 percent of all the civil litigation in this country, so we are going to find out, without endangering all those rights, whether or not this does work. But if it does, then I think we answer one of the objections they have by not taking the Gekas procedure and splitting the difference between the two parties, wherever they end up, and saying that, for example, the plaintiff last offered $100,000, and the defendant last offered $50,000, putting it at $75,000, so that if the plaintiff gets $75,001, the plaintiff wins and pays—the defendant pays attorney fees. If the plaintiff gets $74,999, the plaintiff wins but pays the defendant's attorney fees. Their objection to that is that that is not fair that the winner pays.

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

Mr. GOODLATTE. Let me finish that point.

They are correct that there are circumstances where a plaintiff in a case could get a judgment under these circumstances and wind up paying attorney fees for the defendant, but under the current bill, as it is formulated, that only occurs if they are way off in their settlement negotiations.

So, for example, if that plaintiff is at $100,000 in the case, and the defendant is offering $50,000, and they do not get any further, under the current rule in this bill only if the plaintiff recovers more than $100,000 will the defendant pay the plaintiff's attorney fees; only if the plaintiff gets less than $50,000, or $50,000 less than the plaintiff's last offer, would the plaintiff pay the defendant's attorney fees because the plaintiff was not reasonable in negotiations. The proof of the reasonableness is in the jury's final award, and that is the basis of this mechanism. It will push parties together to settle cases.

I think that the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS] is well intentioned, but I think it may be too razor sharp for the comfort of some on the other side.

Mr. INGLIS of South Carolina. Reclaiming my time, I point out to the gentleman from Virginia I think that he has well stated that he is in a middle position here, between the position I might take and the position the gentleman from Michigan might take and, therefore, shows the reasonableness of the gentleman from Virginia's point of view.

I think that in the future I hope that we can come back and revisit to figure out whether we need to tighten it up a little bit and move it toward this direction.

Mr. GOODLATTE. Mr. Chairman, would the gentleman yield further?

Mr. INGLIS of South Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, what I am neglecting to say here is that the American rule that is championed by some on the other side applies in that example that I just gave where the jury comes back with an award between $100,000 and $50,000. Neither party pays the other party's attorney fees because neither of them has a claim that they made an offer better than what the other party finally achieved in the case.

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

Mr. INGLIS of South Carolina. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I would hope we all support the American rule rather than one side, but let me point out to my colleagues that the whole notion that there is some superior method enforcing settlement of cases as opposed to having them tried is one that I find undermines the whole basis of loser pays.

The fact of the matter is that of course everybody would love to settlement. But where the weight and the power is more on one side that on the other, settlement becomes a very unfair tool, and that is why we go to trial.

The judges are trying to get the parties to settle, the parties themselves frequently want to settle, and now here comes the Congress, ''You will settle these cases or you will be penalized,'' and that is the underlying part of it that I cannot agree with.

Mr. INGLIS of South Carolina. Reclaiming my time, Mr. Chairman, I say to the gentleman from Michigan the problem is that I think he is overlooking the fact that in many of these cases the plaintiff would not have much risk. Talking about contingency fee arrangement. The defendant is the one at risk, who is hanging out to dry as a small business person. They are hanging out to dry while the plaintiff has very little risk.

The Chairman. The time of the gentleman from South Carolina [Mr. INGLIS] has expired.

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

Mr. Chairman, I would like to have a hypothetical story, and then I would like to ask a question of the gentleman from Virginia [Mr. GOODLATTE].

Fellow is driving across the Ohio State-Indiana border, and interstate trucking company has a trucker who loses control of the vehicle through his own negligence, and he hits this car, and he puts this fellow in the hospital, and the fellow has a major shoulder injury, and he goes through several surgeries, and after several surgeries it is evident that he is going to be physically impaired probably for the rest of his life. So he goes to the trucker, trucking company, or to his insurer, and he says, ''Look, I'm going to be impaired the rest of my life. I'd like, to have a $500,000 damage settlement,'' his attorney does.

And they say, ''Well, I tell you what. We've looked at your case, and we think we'll give you $50,000.''

And so they come back, and they go through the preliminaries, and the plaintiff says, ''OK, I'll go to $400,000,'' and the defendant says, ''We'll go up to $100,000,'' and there they hit the loggerhead, and they go to a trial, and the trial goes on for—this process drags out for about 2 or 3 months, and during the trial the jury does not like the way the defendant—or the plaintiff looks, or they do not like some of the things that his attorney says, and they decide to give him $75,000 instead of the $100,000, which is lower than the last best offer, and, because they settle on $75,000, he is liable for all of the defense's legal fees, as I understand it.

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

Mr. BURTON of Indiana. I yield to the gentleman from Virginia.

Mr. GOODLATTE. He is only liable with the defense's legal fees to the extent that they do not exceed his own legal fees. He cannot pay any more than he pays his own lawyer.

Mr. BURTON of Indiana. So his lawyer, if he was on a 40-percent contingency basis, and he got a——

Mr. GOODLATTE. The bill provides a mechanism for calculating a reasonable value for those attorney fees if the case was brought on——

Mr. BURTON of Indiana. OK; well, let us say it is a 40-percent contingency basis; OK? So 40 percent of $75,000 is what, $30,000?

Mr. GOODLATTE. The bill does not work based on percentage. It bases on a reasonable value and the hourly rate of——

Mr. BURTON of Indiana. Let us say that it is a reasonable value and that it comes out to $25,000.

Mr. GOODLATTE. Right.

Mr. BURTON of Indiana. OK; so he has to pay $25,000 of the defense's legal fees?

Mr. GOODLATTE. That is correct.

Mr. BURTON of Indiana. So that would be a total of $50,000 that he would be out as far as legal obligations.

□ 1915

For his shoulder injury, that is a permanent impairment, he now is going to get a $25,000 settlement in reality.

Mr. GOODLATTE. The fact of the matter is he turned down a $100,000 settlement offer. His $300,000 last offer was four times what the jury finally gave him.

Mr. BURTON of Indiana. Reclaiming my time, the man has a permanent disability. Because of the jury's decision, he is going to end up with $25,000, and he has a lifetime of pain and suffering. It just seems to me there ought to be some balance in this. For the plaintiff to pay 100 percent of the legal fees of the defendant is exorbitant. I think there ought to be some compromise. There ought to be a penalty, but I do not think the penalty should be 100 percent. It seems to me that something like 25 percent would be a more realistic figure. There is a penalty involved, he knows he is going to have to pay, but 100 percent loser-pays makes absolutely no sense to me.

Mr. GOODLATTE. If the gentleman will yield further, the gentleman makes a good point that the further away from the settlement and the further away from the defendant's last offer the plaintiff is perhaps the less reasonable he is and that the percentage might vary.

If the gentleman has some kind of a sliding scale for that type of case, I would be happy to work with the gentleman to do that. I am not sure that a flat percentage would be applicable in every case, because what about the case where he asks for $100,000, the defendant offers $50,000, and the jury awards him $2,000 because there is some minor aspect of the case he is right about. But he should not have brought the whole case into court, and left $50,000 on the table to get $2,000.

Mr. BURTON of Indiana. Reclaiming my time, I do not know how you would work out a sliding scale. It would be very difficult. I do believe there ought to be a penalty for a lawsuit where they are way out of kilter, but 100 percent just does not seem fair to me. So I will be proposing an amendment, and, in the interim, if we could talk and maybe figure out some kind of a compromise that would be fine. I will propose an amendment that says loser pays 25 percent of the defendant's legal fees, and not 100 percent.

Mr. GOODLATTE. If the gentleman will yield further, I would like to point out to the gentleman that attorneys fees are limited not only in respect to not paying more than you pay your own attorney's fee or the value of what you would have paid based on an hourly rate, it is also limited to not more than 10 days before trial through the trial. So all the earlier discovery in the case and that sort of thing, you are not exposed to paying for that either, so long as you are making a good faith settlement offer, which essentially can be any settlement offer up to 10 days before the trial.

Mr. BURTON of Indiana. Everything before 10 days before the trial is not included?

Mr. GOODLATTE. That is correct. You can limit your exposure substantially the way we designed this bill now, compared to the original loser-pays provision in the original bill.

The CHAIRMAN. The time of the gentleman from Indiana [Mr. BURTON] has expired.

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

Mr. BURTON of Indiana. Mr. Chairman, 10 days before the trial, this is a very contentious case, the defense has two attorneys working on it at 10 hours a day, 20 hours a day at $100 an hour, that is $2,000 a day, but I think that is a low fee for some of these attorneys. Say it is $2,000 a day plus clerical and everything else. In 10 days you are looking at $25,000 or $30,000 in legal fees.

Mr. GOODLATTE. That could arise.

Mr. BURTON of Indiana. Or more, if you have a really involved case.

Mr. GOODLATTE. If the gentleman will yield, that is limited by the amount that the plaintiff is paying their own attorney's fees in this case. Do not forget this is also applying to a defendant and also applies not just to tort cases. In fact, the vast majority of the cases, diversity cases, are going to be contract actions between people suing each other for debt, and there

will be plenty of times when the plaintiff will want to recover attorney fees from the defendant.

Mr. BURTON of Indiana. I really believe we should take a hard look at having a lower percentage than 100 percent. I think 25 percent sounds reasonable.

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

I would like to engage in a colloquy with the gentleman from Virginia [Mr. GOODLATTE].

Am I to understand that the objective is to encourage settlement of cases in Federal court?

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

Mr. HASTINGS of Florida. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, there are two objectives of this provision in the bill. One is to discourage the bringing of frivolous, fraudulent, and nonmeritorious claims. The other is to encourage settlement of cases. That is correct.

Mr. HASTINGS of Florida. Is the gentleman aware that for the last decade, 92 percent of all cases that were filed as civil cases were ultimately settled in Federal Court?

Mr. GOODLATTE. I am aware of that fact.

Mr. HASTINGS of Florida. It is the 8 percent you are worried about?

Mr. GOODLATTE. It is the overload in the courts and the fact that a lot of those cases that were settled were settled for nominal sums of money where one party or the other feels the other party was not acting reasonably. This gives a defendant in a case the opportunity to say I am not liable, I am not going to offer settlement, and if I go to court, I am entitled to bring something from somebody who brought a suit against me, made me go to great expense, and they are not having to pay anything because they may or may not have the case on a contingent fee basis.

Mr. HASTINGS of Florida. How do you arrive at that objectively? I heard you say a moment ago it was based on what the jury ultimately decides as to whether or not there was ultimate merit. Do you not contemplate excellent litigants being on the defense side or plaintiff's side being more persuasive or jurors that are quirky or judges who are stupid, or do you not contemplate any of those things?

Mr. GOODLATTE. All of those things play a role in the case, and all of those things need to be taken into account, as they are taken into account right now when you look at determining whether or not you make a settlement offer in a case. The same thing is true right now. If you know that the judge generally tends to favor the plaintiff or the judge generally tends to favor the defendant, you are going to structure your settlement offer differently as a result of that. If you think you have a good jury in a case, you are going to make a good settlement offer than otherwise.

All of those factors are true right now. What we are saying is right now there should not be the atmosphere that says there are some litigants in court who are approaching it from the standpoint that it is risk free, either because they are claiming fraud or have a frivolous suit.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, do you not think that rule XI with the sanctions enforcement has been utilized such that lawyers are mindful of the existence of that rule and have avoided bringing frivolous litigation to court, and are you not also mindful that judges pick up real quickly on frivolous litigation and that normally it is dismissed? You are talking, I believe, about the exception to the rule.

Mr. GOODLATTE. Rule XI is on average applied in each district court system in this country, the Western District of Virginia, for example, where I practiced, very, very rarely, maybe once or twice or three times on average in a year out of all the cases that are filed.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, that is not true for every district. I presided in the Southern District and used it more than four times in a year as a presiding judge, as did countless other judges. Maybe we had the kinds of litigants that would come forward and we had to sanction them.

Mr. GOODLATTE. If the gentleman would yield further on that interesting point, the testimony we heard during the hearing was that before rule XI was amended and weakened a couple of years ago, during the 10-year time frame before that, there were a total of 3,000 cases. That is 300 each year for 10 years, divided into 100 different district court systems in the Federal District Court system in the country. So on average, it is not being used very often.

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

Mr. HASTINGS of Florida. I yield to the gentleman from California.

Mr. BERMAN. Just noting in the hope that the debate on this amendment and the amendment to the amendment are winding down, I would just like to use the gentleman's time if I might to restate the purpose of the Berman amendment.

The base bill and the Goodlatte amendment do not take into account the merits of the case or the ability of either party. It does not seek to spread the risks equally. It essentially punishes the person who has less resources vis-a-vis the person or corporation who has greater resources.

The McHale substitute has the benefit of actually getting at what the proponents of this bill have been talking about, which is weeding out the frivolous case.

So because the McHale substitute seeks to get at the frivolous lawsuit, even though it is cast in a fashion that is different than I would have drafted it, I think it makes a better proposal than the Goodlatte proposal. So the Berman amendment simply says McHale in place of Goodlatte, not McHale in addition to Goodlatte.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. BERMAN] to the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE].

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

RECORDED VOTE

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

A recorded vote was ordered.

The CHAIRMAN. Pursuant to clause 2(c) of rule XXIII, the Chair may reduce to 5 minutes the minimum time for electronic voting on the underlying McHale amendment, if ordered, without intervening business or debate.

The vote was taken by electronic device, and there were—ayes 186, noes 235, not voting 13, as follows:

[Roll No 201]

AYES—186

Ackerman	Frost	Moran
Andrews	Furse	Morella
Baesler	Gejdenson	Murtha
Baldacci	Gephardt	Nadler
Barcia	Gilman	Neal
Barrett (WI)	Gonzalez	Oberstar
Bateman	Gordon	Obey
Beilenson	Green	Olver
Bentsen	Gutierrez	Orton
Berman	Hall (OH)	Owens
Bevill	Hamilton	Pallone
Bishop	Harman	Pastor
Bonior	Hastings (FL)	Payne (NJ)
Borski	Hayes	Peterson (FL)
Boucher	Hilliard	Peterson (MN)
Browder	Hinchey	Pomeroy
Brown (CA)	Holden	Poshard
Brown (FL)	Hoyer	Rahall
Brown (OH)	Jackson-Lee	Reed
Bryant (TX)	Jacobs	Reynolds
Cardin	Jefferson	Richardson
Clay	Johnson (SD)	Rivers
Clayton	Johnson, E. B.	Roemer
Clement	Johnston	Rose
Clyburn	Kanjorski	Roybal-Allard
Collins (IL)	Kaptur	Rush
Collins (MI)	Kennedy (MA)	Sabo
Conyers	Kennedy (RI)	Sanders
Costello	Kennelly	Sawyer
Coyne	Kildee	Schroeder
Cramer	Kleczka	Schumer
DeFazio	Klink	Scott
DeLauro	LaFalce	Serrano
Dellums	Lantos	Sisisky
Deutsch	Laughlin	Skaggs
Diaz-Balart	Levin	Skelton
Dicks	Lewis (GA)	Slaughter
Dingell	Lincoln	Spratt
Dixon	Lipinski	Stark
Doggett	Lofgren	Stokes
Dooley	Longley	Studds
Doyle	Lowey	Stupak
Duncan	Luther	Tanner
Durbin	Maloney	Thompson
Edwards	Manton	Thornton
Ehrlich	Markey	Thurman
Engel	Martinez	Torres
English	Mascara	Torricelli
Eshoo	Matsui	Towns
Evans	McCarthy	Tucker
Farr	McDermott	Velazquez
Fattah	McKinney	Vento
Fazio	Meehan	Visclosky
Fields (LA)	Meek	Volkmer
Filner	Menendez	Ward
Flake	Mfume	Waters
Foglietta	Minge	Watt (NC)
Ford	Mink	Waxman
Fox	Moakley	Weldon (PA)
Frank (MA)	Mollohan	Williams

Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—235

Abercrombie
Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Dickey
Doolittle
Dornan
Dreier
Dunn
Ehlers
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Lucas
Manzullo
Martini
McCollum
McCrery
McHale
McHugh
McInnis
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Mineta
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paxon
Payne (VA)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—13

Becerra
Bunning
Coburn
Coleman
Condit
Gibbons
Hefner
McDade
McIntosh
Miller (CA)
Pelosi
Rangel
Roth

□ 1943

Mrs. KENNELLY and Mr. TORRICELLI changed their vote from ''no'' to ''aye.''

Mrs. JOHNSON of Connecticut and Mr. MINETA changed their vote from ''aye'' to ''no.''

So the amendment to the amendment was rejected.

The result of vote was announced as above recorded.

□ 1945

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE].

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

RECORDED VOTE

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

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 115, noes 306, not voting 13, as follows:

[Roll No 202]

AYES—115

Andrews
Baker (CA)
Barrett (WI)
Bateman
Beilenson
Bentsen
Bevill
Bilbray
Bishop
Blute
Boucher
Brown (OH)
Chenoweth
Combest
Coyne
Cramer
Crapo
Davis
DeLay
Deutsch
Diaz-Balart
Dingell
Dooley
Doolittle
Doyle
Duncan
Engel
English
Ensign
Fazio
Foglietta
Forbes
Fowler
Fox
Frank (MA)
Franks (NJ)
Gejdenson
Gephardt
Gilchrest
Gilman
Gonzalez
Goodlatte
Gordon
Goss
Green
Greenwood
Gutknecht
Hall (OH)
Harman
Herger
Hoke
Holden
Horn
Inglis
Jefferson
Johnston
Kanjorski
Kaptur
Kelly
Klink
Kolbe
Latham
Lazio
Levin
Lincoln
Luther
Manton
Mascara
McCollum
McHale
McKinney
Meek
Meyers
Mineta
Mollohan
Montgomery
Moran
Murtha
Obey
Orton
Pallone
Parker
Peterson (FL)
Petri
Pomeroy
Porter
Rahall
Ros-Lehtinen
Rush
Sanford
Sawyer
Scarborough
Schumer
Shadegg
Sisisky
Smith (MI)
Souder
Spence
Stark
Stenholm
Studds
Taylor (MS)
Torkildsen
Torricelli
Traficant
Tucker
Upton
Visclosky
Vucanovich
Waldholtz
Weldon (FL)
Weldon (PA)
Wicker
Wise
Zimmer

NOES—306

Abercrombie
Ackerman
Allard
Archer
Armey
Bachus
Baesler
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Berman
Bilirakis
Bliley
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Brewster
Browder
Brown (CA)
Brown (FL)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Collins (GA)
Collins (IL)
Collins (MI)
Conyers
Cooley
Costello
Cox
Crane
Cremeans
Cubin
Cunningham
Danner
de la Garza
Deal
DeFazio
DeLauro
Dellums
Dickey
Dicks
Dixon
Doggett
Dornan
Dreier
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foley
Ford
Franks (CT)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodling
Graham
Gunderson
Gutierrez
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Istook
Jackson-Lee
Jacobs
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Jones
Kasich
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klug
Knollenberg
LaFalce
LaHood
Lantos
Largent
LaTourette
Laughlin
Leach
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Maloney
Manzullo
Markey
Martinez
Martini
Matsui
McCarthy
McCrery
McDermott
McHugh
McInnis
McKeon
McNulty
Meehan
Menendez
Metcalf
Mfume
Mica
Miller (FL)
Minge
Mink
Moakley
Molinari
Moorhead
Morella
Myers
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Olver
Ortiz
Owens
Oxley
Packard
Pastor
Paxon
Payne (NJ)
Payne (VA)
Peterson (MN)
Pickett
Pombo
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Rose
Roukema
Roybal-Allard
Royce
Sabo
Salmon
Sanders
Saxton
Schaefer
Schiff
Schroeder
Scott
Seastrand
Sensenbrenner
Serrano
Shaw
Shays
Shuster
Skaggs
Skeen
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Spratt
Stearns
Stockman
Stokes
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torres
Towns
Velazquez
Vento
Volkmer
Walker
Walsh
Wamp
Ward
Waters
Watt (NC)
Watts (OK)
Waxman
Weller
White
Whitfield
Williams
Wilson
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff

NOT VOTING—13

Becerra
Bunning
Coburn
Coleman
Condit
Gibbons
Hefner
McDade
McIntosh
Miller (CA)
Pelosi
Rangel
Roth

□ 1954

The CHAIRMAN and Ms. EDDIE BERNICE JOHNSON of Texas changed their vote from ''aye'' to ''no.''

Messrs. FAZIO, SHADEGG, GUTKNECHT, FOX of Pennsylvania, and HERGER changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

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

Mr. Chairman, I wonder whether the subcommittee chairman would respond to a colloquy.

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

Mr. CARDIN. I yield to the gentleman from California.

Mr. MOORHEAD. I will be glad to engage in a colloquy with the gentleman, Mr. Chairman.

Mr. CARDIN. Mr. Chairman, I am concerned that attorneys representing the Federal Government or any of its entities or instrumentalities in Federal courts not be held to a different standard under rule XI(c) than other attorneys.

Is it the intention of the subcommittee chairman that the sanctions in rule XI(c) for filing frivolous claims be applied with equal force?

Mr. MOORHEAD. Mr. Chairman, if the gentleman will continue to yield, I share the concern of the gentleman from Maryland. It is our intention that rule XI(c) be applied equally to all litigants, and that the Federal judges exercise no special restraint when dealing with the Federal Government.

Mr. CARDIN. I thank the subcommittee chairman, Mr. Chairman.

AMENDMENT OFFERED BY MR. HOKE

Mr. HOKE. Mr. Chairman, I offer an amendment.

The Chairman. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HOKE: Page 6, after line 24 (after section 4) insert the following:

SEC. 5. CONTINGENT FEES OF ATTORNEYS.

(a) IN GENERAL.—Part III of title 28, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 80—CONTINGENT FEES OF ATTORNEYS

''1051. Limitations on contingent fees.
''1052. Definition of qualifying settlement offer.

"§ 1051. Limitations on contingent fees

''(a) EFFECT OF QUALIFYING SETTLEMENT OFFER.—In any Federal civil action (except an action for the protection of civil rights, including the right to vote) in which a monetary recovery is sought, the compensation to the attorney representing a plaintiff—

''(1) shall, if a qualifying settlement offer is made to and accepted by that plaintiff not exceed the lesser of—

''(A) the sum of—

''(i) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed; and

''(ii) actual expenses of the attorney in the action; or

''(B) 10 percent of the amount of the accepted qualifying settlement offer; and

''(2) shall, if no qualifying settlement offer is accepted by that plaintiff, not exceed the sum of—

''(A) that portion not greater than 33 percent, agreed upon by the attorney and the plaintiff before trial, of the amount by which the final recovery in the action exceeds the amount of the final qualifying settlement offer;

''(B) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed before the final qualifying settlement offer is made; and

''(C) actual expenses of the attorney in the action.

"§ 1052. Definition of qualifying settlement offer

''For the purposes of this chapter a qualifying settlement offer is an offer by all defendants—

''(1) to settle all claims against the defendants in the pending action; and

''(2) made not later than 60 days after the date of initial contact in writing between the attorneys for the parties notifying the defendant of the claim against the defendant.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 28, United States Code, is amended by adding at the end the following new item:

"80. Contingent Fees of Attorneys ..... 1051''.

Redesignate succeeding sections accordingly.

Mr. CONYERS. Mr. Chairman, I reserve a point of order on the amendment.

Mr. HOKE. Mr. Chairman, what this piece of legislation does with this amendment to H.R. 988 is essentially to codify in Federal law what is already the legal code of just about every State bar association in all of the United States.

Here is the problem. What it does essentially is it says there will not be a contingent fee allowed when there is no contingency. Over the last several decades it has become increasingly easier to successfully prosecute a tort claim; that is, to seek and receive compensation for injury or damages to one's property.

During that same period the risks of an attorney representing a client under a contingent fee agreement have likewise decreased, and the attorney's compensation has increased dramatically. The purpose of this legislation is to ensure that contingent fees are earned only when there is a real contingency; that there be the potential of a large reward only when there is a proportionate risk.

A number of other good results will flow from this legislation. First, where there is no question of liability, which, as I have said, is in most of the cases where you have personal injury lawsuits, the injured consumer will end up with substantially more of the compensation, not the attorney. It is very pro-consumer.

□ 2000

Second, because this amendment strongly encourages realistic early offers from defendants, injured parties would be compensated much quicker.

Third, defendants also will save, again because this proposal cuts down substantial and protracted lengthy disputes.

Finally, the proposal reduces frivolous lawsuits because it modifies some of the hit-the-lottery type temptations that exist for plaintiff's lawyers today, and it does all of this without in any way restricting access to the courts for anyone.

Here is how it works. A plaintiff seeking damages in a tort case would notify each defendant of the claim. The defendant would then have up to 60 days to make a settlement offer. If this early offer is accepted, the plaintiff's lawyer, having done whatever work was involved, would be limited to his or her hourly fees. If on the other hand the early offer was rejected, the plaintiff's lawyer could collect a percentage contingent fee but only to the extent that any eventual recovery exceeds the rejected offer.

The basic idea is to induce defendants to make realistic early settlement offers with the assurance that the plaintiff knows he will get most of the money in all of those cases where the defendant eventually expects to be held responsible and go give plaintiffs and their lawyers incentives to accept these early offers unless they are convinced they can win substantially higher amounts through litigation.

The net result is to increase plaintiffs' net recoveries while slashing both sides' legal fees.

The contingent fee agreement has a long and somewhat tortured place in American legal history. Many lawyers and legal scholars have been troubled by it. Their discomfort mainly centers around the tension that exists between the clear benefit of contingent fees which allows greater access to the courts for low- and middle-income individuals on the one hand and the obvious potential for exploitation and abuse of unsophisticated clients in cases where there is no question of liability.

Bar associations and the courts have struggled to ensure fairness in contingent fee systems by either setting caps or sliding scales as has been done in States such as Florida, Illinois, New Jersey, California, and New York, or by purporting to flatly bar the use of contingent fees in certain classes of cases where the risks of client nonrecovery are negligible.

For example, the Virginia State Bar Association in a 1992 ethics opinion barred contingent fees in claims against Virginia's form of nonfault or no-fault automobile insurance contracts, saying one purpose of a contingent fee arrangement is to encourage a lawyer to accept a case which carries inherent risks of nonpayment of legal fees. Conversely, matters which carry no such risk to the lawyer are not usually matters in which a contingent fee arrangement is appropriate.

Or as was stated in a typical State court decision, where the risk of uncertainty of recovery is low, it would be the rare case where the attorney could properly resort to a contingent fee.

Unfortunately, these ethical pronouncements notwithstanding, the fact is that contingent fee arrangements are practically the exclusive method of

compensating lawyers in personal injury cases, which is why this amendment is such an attractive solution. It is based on a proposal coauthored by Michael Horowitz of the Hudson Institute; Lester Brickman, a law professor at Cardozo School of Law; and Jeffrey O'Connell, professor of law at the University of Virginia. It has the enthusiastic support of an extraordinary and exceptional group of lawyers and legal scholars, including Derek Bok, former dean of Harvard Law School; Norman Dorsen, the former president of the American Civil Liberties Union; former Federal judge Robert Bork; Bob Pitofsky, soon-to-be Chairman of the Federal Trade Commission; and former Attorney General under President Bush, William Barr.

The fact is that there is a massive gap between legal ethical rules and legal ethical reality. What this amendment does is find a way to begin to close that gap.

AMENDMENT OFFERED BY MR. CONYERS TO THE AMENDMENT OFFERED BY MR. HOKE.

Mr. CONYERS. Mr. Chairman, I offer a perfecting amendment to the amendment.

The CHAIRMAN. Does the gentleman insist upon his point of order?

Mr. CONYERS. No, I do not. I withdraw the point of order; Mr. Chairman.

The CHAIRMAN. The gentleman withdraws his point of order. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS to the amendment offered by Mr. HOKE:

Page 1, line 8, strike ''plaintiff'' and insert ''party''.

Page 1, line 10, strike ''that'' and insert ''a''.

Page 2, lines 3, 13, and 17, strike ''plaintiff'' and insert ''party''.

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

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

There was no objection.

Mr. CONYERS. Mr. Chairman, the gentleman from Ohio's amendment presents a number of important and potentially troubling issues. Most significant, it avoids even the semblance of evenhandedness by only limiting the fees plaintiff's attorneys could receive. What about the defendant counsel's fees? What about making this apply to plaintiff's attorneys as well as defense attorneys?

The amendment creates a new set of controls on lawyers. It discards our Nation's long-cherished notion of freedom of contract, and instead imposes a set of Government-controlled fee schedules. I think this is 100 percent at odds with the free market beliefs of many of my friends on the other side of the aisle.

The gentleman from Ohio's amendment would also create a potentially significant conflict of interest before the attorney and his client. It would also discourage settlements, because attorneys could not receive the fee that he or she had bargained for if the case settles.

Perhaps the most serious problem is that the Hoke amendment would limit a plaintiff's right to pay his attorney while imposing no similar limitation on the defendant's right to pay his attorney. As a result, this perfecting amendment would specify that defense counsel are subject to the same limitations as are imposed on plaintiff's counsel. My perfecting amendment would specify that defense counsel are subject to the same limitations as are the plaintiff's counsel.

Would the gentleman consider accepting the amendment?

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

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

Mr. HOKE. Basically what you are saying is that it would apply when a defense counsel is contracting with his or her client pursuant to a contingent fee arrangement; is that correct?

Mr. CONYERS. Well, there are contingent fees, but there are other ways that a defense counsel can be reimbursed as the gentleman knows. For example, when a case settles, there can be a bonus or some kind of contractual stipulation for increased remuneration.

Mr. HOKE. My amendment specifically deals with cases of early offers of settlement in contingent fee cases. To the extent that defense counsels have entered into contingent fee arrangements with their clients, I cannot see that it would be a problem. But I think that the number of cases where that would apply would be extraordinarily rare. Perhaps you are contemplating something else.

Mr. CONYERS. May I respond to my colleague on the Committee on the Judiciary by saying that there are relatively rare instances where a defense counsel is paid on a contingency basis except that the way that they are paid is contingent upon an outcome as well. So in the larger sense, I want to just make sure that we have everybody wearing the same restriction, to the extent that that is possible.

By the way, I want to commend the gentleman, I understand that civil rights litigation is excluded from this provision. I think that is a very thoughtful provision. I would hope that the gentleman would accept this perfecting amendment.

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

Mr. CONYERS. I yield to the gentleman from New Jersey.

Mr. ZIMMER. This amendment assumes that the plaintiff gets the recovery and the plaintiff's attorney gets a piece of the action. Your amendment to the amendment would anticipate a situation where the defendant in fact would have a recovery? Or are you going to measure the defendant's lawyer's fee in terms of the recovery received by the plaintiff?

Mr. CONYERS. No, I did not mean to complicate the relationship of the defendant with his client. His recovery would be in a sense, even if it is hourly, which is frequently the case for defense counsel, it would be contingent on the number of hours that he worked. It would be contingent on what part of the trial the case was settled in.

All I was doing was just letting what fits the goose fit the gander as well.

Mr. HOKE. If the gentleman would yield, I am assuming that this also will perfect the amendment in such a way that you will be wanting to give it your unqualified support and in that spirit, I certainly accept the gentleman's perfecting amendment.

Mr. CONYERS. Yes, I would be delighted to support this amendment. I thank the gentleman for accepting it.

The CHAIRMAN. Is there further discussion on the amendment offered by the gentleman from Michigan [Mr. CONYERS]?

PARLIAMENTARY INQUIRY

Mr. BRYANT of Texas. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. BRYANT of Texas. Mr. Chairman, is it the case that the Conyers amendment to the Hoke amendment has already been accepted, or is that not the case?

The CHAIRMAN. No, it still has to be voted upon.

Is there further discussion on the Conyers amendment?

Mr. MOORHEAD. Mr. Chairman, I rise in opposition to the Conyers amendment.

I believe that the amendment that is being offered is making a bad amendment worse. I do not see how you can possibly limit the amount of money that can be paid to a defendant's attorney in a case. We are getting into price controls for counsel. H.R. 988 does not deal with the capping of lawyer's fees, it deals with who pays attorney's fees, it deals with the quality of scientific testimony that can be introduced during a trial, and it deals with a lawyer's misconduct in the filing of frivolous claims.

Section 3 of H.R. 988 would make expert testimony inadmissible if the witness is entitled to receive any compensation contingent on the outcome of the case. The reason for this is that an expert witness who received a contingency fee is thus less likely to furnish reliable testimony than one who receives a flat or hourly fee since he or she has a vested interest in the outcome of the litigation.

All of this was in the Contract With America. A cap on lawyer fees was not a part of that contract. The Contract as we have heard from the debate so far is having a difficult time at least on the other side of the aisle traveling through Congress as it is, and to add this very controversial baggage would

make it almost impossible to get to final passage.

Much more work needs to be done on the original amendment before this committee recommends it to the House. Certainly I do not recommend the perfecting amendment that has been offered by the gentleman from Michigan [Mr. CONYERS].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS] to the amendment offered by the gentleman from Ohio [Mr. HOKE].

The amendment to the amendment was rejected.

Mr. BRYANT of Texas. Mr. Chairman, I rise in opposition to the Hoke amendment.

Mr. Chairman, the Hoke amendment to some extent places really in, I think, very stark relief what we are doing with this bill and with the bills that are to follow.

First, we are in the process of rewriting the rules in such a way that no no plaintiff can afford to bring a case because under the bill pending before the House at the present time, the result would be that they would lose their life savings, they would lose everything they had ever had, ever saved, ever earned for them or their children if somebody on the jury did not like the color of their skin or the way they parted their hair.

□ 2015

So they are making it impossible for anyone to bring the case.

The subsequent bills that are going to come up behind this one are going to rewrite the rules so even if you bring it, you have no hope of winning the case because these bills are going to rewrite all of the rules in such a way that the middle-class person who comes forward with it cannot have any chance whatsoever of winning the case, because all of the standards are going to be rewritten.

But the Hoke amendment now goes one step further. It says you no longer can even really hire a lawyer because now you are going to be saddled with a new, untested, untried and unstudied system of compensating a lawyer. Now when a middle-class person has to hire a lawyer for a case and he has no money, he cannot contract to pay a huge hourly fee, he has to sign a contingency fee contract, and the harder the case is to win, the more likely the victory, obviously the higher the contingency fee will be. That is all that he has to bargain with.

The gentleman from Ohio [Mr. HOKE] removes the ability of the plaintiff to be flexible in negotiating with his lawyer to try to induce the lawyer to take his case. I submit that the last thing we need to do is either under the Contract With America or under our tried and true principles of capitalism and free marketing rights in this country or under our hoped for priority of letting average people get into the courthouse represented by a fine lawyer, that we should not be voting for the Hoke amendment today. I urge Members to vote no and to turn away an effort to interfere with the right of people to contract a person they would like to have come to work for them to pursue a case.

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

Mr. Chairman, I rise in support of the Hoke contingency fee reform amendment to H.R. 988, the Attorney Accountability Act.

This amendment goes a long way toward getting to the root of our litigation crisis. Thirty-one percent of all Americans regard lawyers as less honest than the average citizen. Among those who have actually used a lawyer, less than half believe they were charged a reasonable fee.

Much of this sentiment is attributable to the contingency fee arrangement. Plaintiffs' lawyers working on contingent fees often receive a large amount of money for very little work when the defendant offers to settle immediately for an ample sum.

While contingency fee arrangements were originally designed for cases where there was not a clear indication of fault, they are now practically the exclusive method of compensating attorneys in personal injury cases: As witness the attorneys' ads on your late night television shows.

Let me give one example of this. In 1989, a delivery truck smashed into a school bus in my own State of Texas 21 children. There was never any question of liability. The only question was how much the families of the victims would receive. After a few months of negotiations, the families settled for about $122 million. For a few hours' work, a handful of lawyers carved up a $40 million-plus fee, about a $25,000 hourly rate.

Mr. Chairman, that is why the Hoke amendment is so important. It means that in those cases in which a defendant expects to be held liable and to pay, the plaintiff, not the plaintiff's lawyer, will receive much more of the award.

This amendment merely puts into Federal law that which is already into the ethical rules, but universally ignored by all of the States.

I strongly urge my colleagues to support this amendment.

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

Mr. ARMEY. I yield to the gentleman from New Jersey.

Mr. ZIMMER. Mr. Chairman, I thank the gentleman for yielding and for creating this A to Z statement.

Mr. Chairman, I rise in support of the Hoke contingency fee reform amendment to H.R. 988. I believe that whether or not Members agree with the concept of loser pays, or whether or not they agree with a monetary cap on damages, this is an elegant way to deal with an important problem in the law. It encourages both plaintiffs and defendants to settle disputes quickly, and it eliminates the awarding of outrageously inflated fees where they are not earned, that is, when there is no dispute about liability.

But it does so in a way that places no restrictions on access to the courts. Indigent, low-income and middle-income individuals will still have unlimited access to the courts through a contingency fee arrangement, and they will only pay their lawyer's hourly rate when the case settles quickly. Thus there is plenty of incentive to settle early for both plaintiffs and defendants.

Under this amendment, everyone wins, except maybe the lawyers, and frankly the lawyers win too because this amendment goes a long way to restoring fairness to the way the contingencies are handled, and that will go a long way to restoring the public's confidence in lawyers and the courts, the lack of which my colleague from Texas has referred to.

That is probably why so many highly regarded lawyers and judges and law professors and legal scholars have lined up behind this reform. From Derek Bok, former president of Harvard University and dean of Harvard Law School to Judge Robert Bork one of our country's most distinguished legal scholars; from William Barr, Attorney General in the Bush administration, to Robert Pitofsky, soon to be chairman of the Federal Trade Commission under the Clinton administration. They all know that confidence in our legal system, and ultimately that means confidence in lawyers, is essential to our form of government. And they have all written in support of the idea that lawyers have an ethical obligation to solicit early offers and not charge contingent fees against such offers.

In fact, what the Hoke amendment really does is put into Federal law that which is already in the ethical rules of all of the States but is universally ignored.

I strongly urge support of this amendment.

Mr. ARMEY. I thank the gentleman.

Mr. Chairman, I would like to make a final observation before I surrender my time.

Mr. Chairman, I am not a lawyer, but I profoundly believe that the practice of law is an honorable profession and that the vast majority of the people who practice law in America are honorable people.

However, it is the excesses so publicly displayed, so crassly displayed of the contingency fee plaintiff lawyers that has given the law profession such a terrible reputation. And I support this amendment on behalf of the plaintiffs and the legal profession.

The CHAIRMAN. The time of the gentleman from Texas [Mr. ARMEY] has expired.

Mr. BRYANT of Texas. Mr. Chairman, I ask unanimous consent that the gentleman from Texas [Mr. ARMEY] have 2 more minutes.

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

Mr. ARMEY. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

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

Mr. Chairman, this is the final insult upon those who may depend on attorneys with contingency fees, who may not be able to afford an attorney, and we are now saying that somehow we have got to regulate the relationship between a plaintiff and his or her attorney. We are now into wage and price controls. What we are trying to do now is unilaterally tell plaintiffs that we are now going to have not through the rules of procedure that control the conference, the judicial conference, the Supreme Court where these kind of rules normally travel and then come to the Congress for disposition, we are now ruling on the floor how we are going to deal with these kinds of questions. And I think that this is a very, very discouraging circumstance for plaintiffs' attorneys to now be prescribed what they will get regardless of what the contract between the plaintiff and his attorney may be.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

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

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding. I regret very much that the majority leader came down here and read a statement and then walked off. I got him more time so that he could yield to me so that I could examine the anecdote but he said he would not take the time, and he walked off the floor. What he did was a tried and true method that has been used by the proponents of this amendment. They stand up here, and they talk about an anecdote, and before you can ask them any questions about the anecdote they disappear.

The fact of the matter is the gentleman was talking about a very well known, highly publicized lawsuit in Texas in which many children lost their lives, and fortunately, because they were poor children, had very poor parents, using the contingency system they were able to hire the best lawyers in the State of Texas, and they got a big settlement, which is what was supposed to happen.

The gentleman talked about how they only worked for a few hours, and he has no idea how many hours, the attorneys did work or how much work they did for the fee, although he could find it out if he would to to the records, and if he really wanted to he could go to the case file, or have one of his assistants go to the case file, or have the tort reform group or somebody go to the case file and find out how many hours were really worked in this case and find out what was really done. We will never know what the truth of that is in that anecdote, nor do we ever seem to ever get to the bottom of any of the other anecdotes.

The fact of the matter is that the contingency fee has been studied and studied and studied, and the advocates of this had an adequate opportunity to ask for hearings on this question. We had no hearings on the question of contingency fees. And they had an adequate opportunity to bring forth studies that will tell us something about the effect of contingency fees, but they come up here at the last minute and say not only are we not going to let you file a case, not only are we not going to let you win a case, we are not even going to let you hire a lawyer. That is the bottom line of the Hoke amendment, and I strongly urge Members to vote against the Hoke amendment.

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

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

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

Mr. Chairman, I just would point out, listening to the debate one would think that there was a requirement of plaintiffs to hire lawyers only with a contingency fee. You can hire lawyers on an hourly fee if you want to pay it. The plaintiff makes that choice.

The plaintiffs are not complaining about their right to use a contingency fee or an hourly rate. Innocent defendants are not complaining because a contingency fee means those lawyers are not going to get paid at all. The only ones who are complaining are the defendants who are guilty of what they are charged.

Ms. JACKSON-LEE. Mr. Chairman, will the gentleman yield?

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

Ms. JACKSON-LEE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, let me provide just another spin or another look-see at this particular amendment, because I think certainly the gentleman from Ohio [Mr. HOKE], has good intentions. But allow me to raise an issue, if you would.

My city of Houston, and I come with deep experience serving as a council member dealing with litigation against the city, we retained an attorney on a contingency fee basis, saving firsthand taxes to the citizens of Houston, and that contingency fee relationship resulted in a multimillion-dollar settlement or result for the city of Houston and the citizens of Houston.

I think when we label contingency fees as negative across the board, we fail to realize the value of such resources for a myriad of litigants, including a local government.

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

Mr. Chairman, I would like to ask the sponsor a question if he would be willing to respond.

Mr. Chairman, if there is no settlement in the first 2 months, what occurs?

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

Mr. WYNN. I yield to the gentleman from Ohio.

Mr. HOKE. Mr. Chairman, the contingency fee then occurs. I wanted to say something in regard to that.

Mr. WYNN. That is fine, Mr. Chairman. Reclaiming my time, that is the point I wanted to make, that in one instance, according to the answer provided by the sponsor, nothing would occur because if the offer is rejected the attorney would simply proceed on a contingency fee basis as is current practice.

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

Mr. WYNN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding. It is actually worse than he described, because what happens is the contingent fee is limited to only the additional amount that is added to the case when a final verdict comes in.

Mr. WYNN. Reclaiming my time, that is bad. But what he just said may be even worse if he is in fact correct, because the attorney would just reject a settleman offer, therefore putting into effect a contingency fee.

I want to make a couple of other quick points. Mr. Chairman, the point is this, the contingency fees are being portrayed as the villain of the legal system. That is emphatically not true. The contingency fees are a mechanism by which the average America, the person that the Republicans love to cite, gets access to the judicial system. Without contingency fees the fact is a lot of cases would not be brought.

I want to tell my colleagues something else. Without contingency fees, we do not have a control on frivolous lawsuits, because contingency fees are in fact the initial screening mechanism, and as an attorney I can tell you that if a case comes in that is frivolous, I am not going to take it on a contingency basis because in all probability I will lose. So a lot of cases that would otherwise be brought are in fact not brought because the initial attorney says this case is a bad case.

Let me point out in the second instance this bill does not stop contingency fees. As the gentleman from Virginia [Mr. GOODLATTE], I believe, indicated, after the 10 percent you are still able to collect a contingency fee. So let us suggest that you are offered in a $100,000 case a $10,000 settlement. You reject the settlement offer. You then win $100,000. You collect a contingency of $30,000.

□ 2030

I think contingency fees are good. If my colleagues think it is bad, certainly this amendment will not prohibit it.

I suggest that we reject the amendment offered by the gentleman from Ohio [Mr. HOKE].

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

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

Mr. HYDE. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Ohio [Mr. HOKE].

Mr. Chairman, this is the week to bash lawyers, and next week it is the week to bash politicians, and frankly, as one of each, I feel beleaguered.

I want to say a kind word for contingency fees.

I say to my colleagues, They are the way poor people get access to darn good lawyers, and you don't just walk into a lawyer's office, and he says, ''Sign the contract.'' There may be investigations. In fact, if the lawyer is worth his salt, he'll have to hire and send out investigators to get statements from witnesses, pictures of intersections, hospital records, the police report. There is a lot of work, there is a lot of expense, involved, and the lawyer does that on the if come. Maybe he'll collect it, and maybe he won't, but he has every incentive to work hard to maximize the settlement because his contingency fee depends on that. But people who cannot afford an hourly rate, people who have cases where the injury is bad but the liability is thin, all sorts of situations arise, but you get access to good lawyers in the contingency arrangement.

Now we get excited about how many hours were spent on this case. They tell a great story about the bank that opened up one morning, and they could not get the vault door open, and they called the locksmith. It took him about 6 minutes, and he sent them a bill for about $2,000, and the bank president said, You only spent 6 minutes.

He said, Yeah, but I went to school for 6 years to learn what to do.

Many times a lawyer spends very little time, but because this lawyer has a great reputation in this field, the insurance company gets sensitized to the fact that it is cheaper to settle at a fair figure than to horse around and get clobbered later on.

So I just suggest I know the gentleman from Ohio [Mr. HOKE], who is one of the most useful members of our committee, he has an idea here that has some merit to it because contingency fees can be abused, clients can be abused, judges can be abusive, all kinds of wrong things can happen, but in the grand scheme of things a poor person can retain a very good lawyer on a contingency fee basis, and the client will make a good settlement; the lawyer, it is worth his while, and justice is served.

So, Mr. Chairman, with deep regret I must oppose the amendment offered by the gentleman from Ohio [Mr. HOKE] and say a kind word for those good lawyers that I have encountered in my lifetime.

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

Mr. Chairman, I think we can all agree that there are meritorious arguments on both sides of this debate. But it is interesting to note, having weighed the arguments on both sides, who agrees that the gentleman from Ohio [Mr. HOKE] is offering a sound amendment, that Mr. HOKE has a good idea.

I confess that I am myself a recovering lawyer. I practiced for about 10 years before I came to the Congress, and I was trained in Harvard Law School. The president of Harvard, Derrick Bok, is in favor of this amendment. Harvard is not a conservative place as far as I know. I had a teacher there whose name is Petovsky. He is about to be nominated and confirmed by the Senate to be Bill Clinton's head of the FTC, and Professor Petovsky thinks this is a good idea.

The head of the ACLU, last time I checked a left wing organization, thinks this is a good idea. ACLU president Norman Dorsen has endorsed the idea behind the amendment offered by the gentleman from Ohio [Mr. HOKE].

Now, whenever the head of ACLU and Judge Bork agree, Mr. Chairman, I think we ought to take a look and find out why it is that they think this is a good idea, and it turns out that this is not at all an attack on contingency fees, which just about everybody that I just named thinks ought to remain as part of our legal system. Rather it is an attack, and I will be delighted to yield in just a moment, as soon as I make my few points—rather this is an attack on the use of the contingency fee arrangement when there is not any real contingency. It is thought to be in, I believe, all 50 States under the bar rules a matter of ethics that you should not try and seek to obtain a contingency fee when they, the lawyer, know that there is really no authentic risk, and the Hoke amendment gets to that very point in a very useful way. He says, if somebody, 60 days after the start of the dispute, offers to settle the case for a particular amount of money, that that amount of money is no longer a contingency because they get that if they settle.

Now it was said, If you reject that settlement and go on and only get a contingency fee on the amount in excess of the settlement, that that is somehow unfair, and I agree that is unfair, but the amendment, as offered by the gentleman from Ohio [Mr. HOKE] does not limit the lawyer to a contingency on what is really at risk. It also gives him, on top of that, 100 percent of his reasonable hourly rate, which is agreed upon objectively. In that circumstance I think we should all agree that it is consumers who are being protected.

I say to my colleagues, ''When you go to the garage, and you ask the mechanic if there is something wrong with your transmission, you depend rather heavily on that garage mechanic to tell you the truth.'' That is why, in fact, we regulate that industry for the benefit of the consumers, so that consumers do not get ripped off because they, frankly, do not know what is going on in the drive train under the hood nine times out of ten. They are experts at some other part of life.

Likewise, Mr. Chairman, the lawyer is in a unique position to assess the contingency, and the client is taking the lawyer's word for it. If it turns out there is nothing at risk, which is clearly the case if the other side in 60 days offered to pay that full amount of money, is it not unfair to collect a contingency fee against it? The contingency fee runs 30 to 40 percent, sometimes higher, if it is not limited, of the settlement amount or of the eventual verdict. That is taking away from the consumer the amount that the court or the jury has just awarded to him. It is grossly unfair.

Ultimately two things are at stake here, ethics and consumer protection. it is consumers that we are supposed to be protecting here, and it is the ethics of the profession, in my view, in need of some ethical regulation that this amendment would get after.

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

Mr. COX of California. I yield to the gentleman from Michigan.

Mr. CONYERS. I say to the gentleman, ''Mr. COX, this issue didn't come up before our Committee on the Judiciary, and if there are as many good arguments as you suggest there are, couldn't we take this back? Chairman HYDE would be, I'm sure, willing to hold hearings on it. But here we are regulating an incredibly important matter, normally one that's left to the Judicial Conference, and the Supreme Court, and then to the Congress, and here tonight late, rather late in hour, we're going to just decide to alter this subject matter.''

Mr. Chairman, I would hope that we can send it, if we reject the amendment, we can send it back to——

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

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

Mr. Chairman, I rise in opposition to this amendment. I do so with some reluctance because I appreciate the gentleman's efforts, but I think that this is pure and simple price controls, and the problem with price controls is this:

''Whenever you have them, there are all kinds of unintended consequences that emanate from those price controls. For example, what happens to the defendant in a case where because the insurance company representing the defendant, let's say it's a doctor accused of medical malpractice wants to go ahead and settle the case in the 60-

day time period to take advantage of this early offer mechanism, and the doctor said, 'I don't want any offer made at all because I didn't commit malpractice. I wanted to have my day in court.'''

Mr. Chairman, I would ask the gentleman from Ohio what does that doctor do when that insurance company sends him a letter advising him that he is not negotiating in good faith and that, if he does not accept the offer, he will be responsible for any additional amounts that are recovered?

The same thing happens on the plaintiff's side. What happens when the plaintiff turns down the settlement offer, and he wants to go on to court, but his attorney said, ''Well, the original contingency fee will justify the cost, but now the case is only worth an additional $25,000 above the $50,000 offered. I don't think he should go ahead.''

He says, ''I don't care. I want to go ahead with the case.''

The attorney does not want to go ahead.

What happens in the case of fraud where you have an incentive now for people to go out and create an accident by running in front of a vehicle, getting it in, making that early—making the demand upon the defendant, and the insurance company has 60 days to rush in and make a settlement.

This is going to encourage all kinds of behavior that does not make sense. It will encourage fraud. It will encourage poor representation of clients. It will drive a wedge between plaintiffs and their attorneys. It will drive a wedge between defendants and their insurance companies.

I believe that there is also a problem here in that the matter does not require that the defendant admit liability when they make this offer so that when the defendant makes the offer and the plaintiff turns it down because he low-balls it, the result of the thing is that then the plaintiff's attorney will have a limited contingent fees only on the amount they improve the case, but the plaintiff's attorney still has to not just improve the value of the case and the damages and get a contingency fee on that, but also has to prove liability, and that is where the contingency is founded. It is founded on the principle that you take a risk. Some cases you prove liability. Some cases you won't. Just because the defendant makes a settlement offer and does not concede liability does not mean there is not a risk of proving liability in the case.

Finally, the provisions of this amendment are flawed in this respect. It says 60 days after the date of the initial contact by the plaintiff. Well, at that point most cases have not been filed in court. The initial demand is made before suit is filed, and we do not know whether this was in State court or Federal court as to whether or not this provision would even apply.

Mr. BARRETT of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Wisconsin.

Mr. BARRETT of Wisconsin. I would like to follow up very quickly on what the gentleman is saying. By the language of this amendment, Mr. Chairman, the 60 days begins to run on the first contact between the plaintiff's attorney and the insurance company, but the bill itself, the amendment itself, does not kick in until there is a Federal diversity suit. There is not going to be a Federal diversity suit until an action is filed, so we are going to have the unusual effect of the plaintiff's attorney making the demand, waiting 60 days. There is no lawsuit. It does not kick in.

By its own terms, Mr. Chairman, this amendment does not work, it does not fit together, because it will not kick in until after the plaintiff's attorney waits the 60 days.

Mr. GOODLATTE. The gentleman is correct.

While the idea underlying this has a good purpose of attempting to encourage settlement, it is an unfair situation to impose upon the parties to lawsuits because of the fact that it has many unintended consequences and, finally, because of the fact that, when an attorney has somebody walk in the door, they do not know whether it is a good case or not. They have to conduct a lot of investigation in these cases, and, when they do that, they never get compensated for the cases that do not have any merit. They are taking a risk in practicing that type of law, and I think that we want the people to take risks. This is counter to the purpose of the loser pays amendment in that respect, but it is separate and apart.

I would not say it does anything to loser pays. It creates a separate mechanism, but one that, I think, is fraught with a lot of unintended consequences, and I would urge my colleagues to vote against it.

□ 2045

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

Mr. Chairman, I stand here in support of the amendment.

Mr. Chairman, I yield to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I appreciate the words of my friend from Virginia, but I have to say three things and then ask for a vote.

No. 1, this does not eliminate contingent fees. It does not restrict access to the courts. In fact, it maintains or increases it. And it does not in any way restrict attorneys compensation for the time that they put in. What it does do is it merely says that lawyers will be paid their hourly rate where there is no question of liability, where there is an early offer on settlement between the two parties.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HOKE].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 71, noes 347, not voting 16, as follows:

[Roll No 203]

AYES—71

Allard	Flanagan	Paxon
Armey	Gunderson	Petri
Baker (CA)	Gutknecht	Pombo
Ballenger	Hancock	Riggs
Barton	Hayworth	Rohrabacher
Bereuter	Hefley	Royce
Bilbray	Herger	Salmon
Boehner	Hoke	Saxton
Bonilla	Horn	Scarborough
Bono	Inglis	Schaefer
Brownback	Jacobs	Shadegg
Bryant (TN)	Kelly	Shays
Burr	Kolbe	Smith (WA)
Christensen	Lewis (KY)	Solomon
Chrysler	Lightfoot	Stenholm
Coburn	Martinez	Stockman
Collins (GA)	McHugh	Stump
Combest	McInnis	Tate
Cox	McIntosh	Taylor (NC)
Cremeans	Metcalf	Thornberry
Cubin	Mica	Walker
DeLay	Myrick	Zeliff
Dornan	Norwood	Zimmer
Dunn	Parker	

NOES—347

Abercrombie	Cramer	Ganske
Ackerman	Crane	Gejdenson
Andrews	Crapo	Gekas
Archer	Cunningham	Gephardt
Bachus	Danner	Geren
Baesler	Davis	Gilchrest
Baker (LA)	de la Garza	Gillmor
Baldacci	Deal	Gilman
Barcia	DeFazio	Gonzalez
Barr	DeLauro	Goodlatte
Barrett (NE)	Dellums	Goodling
Barrett (WI)	Deutsch	Gordon
Bartlett	Diaz-Balart	Goss
Bass	Dickey	Graham
Bateman	Dingell	Green
Beilenson	Dixon	Greenwood
Bentsen	Doggett	Gutierrez
Berman	Dooley	Hall (OH)
Bevill	Doolittle	Hall (TX)
Bilirakis	Doyle	Hamilton
Bishop	Dreier	Harman
Bliley	Duncan	Hastert
Blute	Durbin	Hastings (FL)
Boehlert	Edwards	Hastings (WA)
Bonior	Ehlers	Hayes
Borski	Ehrlich	Heineman
Boucher	Emerson	Hilleary
Brewster	Engel	Hilliard
Browder	English	Hinchey
Brown (CA)	Ensign	Hobson
Brown (FL)	Eshoo	Hoekstra
Brown (OH)	Evans	Holden
Bryant (TX)	Everett	Hostettler
Bunn	Ewing	Houghton
Burton	Farr	Hoyer
Buyer	Fattah	Hunter
Callahan	Fawell	Hutchinson
Calvert	Fazio	Hyde
Camp	Fields (LA)	Istook
Canady	Fields (TX)	Jackson-Lee
Cardin	Filner	Jefferson
Castle	Flake	Johnson (CT)
Chabot	Foglietta	Johnson (SD)
Chambliss	Foley	Johnson, E. B.
Chenoweth	Forbes	Johnson, Sam
Clay	Ford	Johnston
Clayton	Fowler	Jones
Clement	Fox	Kanjorski
Clinger	Frank (MA)	Kaptur
Clyburn	Franks (CT)	Kasich
Coble	Franks (NJ)	Kennedy (MA)
Collins (IL)	Frelinghuysen	Kennedy (RI)
Collins (MI)	Frisa	Kennelly
Conyers	Frost	Kildee
Cooley	Funderburk	Kim
Costello	Furse	King
Coyne	Gallegly	Kingston

Kleczka	Nadler	Skeen
Klink	Neal	Skelton
Klug	Nethercutt	Slaughter
Knollenberg	Neumann	Smith (MI)
LaFalce	Ney	Smith (NJ)
LaHood	Nussle	Smith (TX)
Lantos	Oberstar	Souder
Largent	Obey	Spence
Latham	Olver	Spratt
LaTourette	Ortiz	Stearns
Laughlin	Orton	Stokes
Lazio	Owens	Studds
Leach	Oxley	Stupak
Levin	Packard	Talent
Lewis (CA)	Pallone	Tanner
Lewis (GA)	Pastor	Tauzin
Lincoln	Payne (NJ)	Taylor (MS)
Linder	Payne (VA)	Tejeda
Lipinski	Peterson (FL)	Thomas
Livingston	Peterson (MN)	Thompson
LoBiondo	Pickett	Thornton
Lofgren	Pomeroy	Thurman
Longley	Porter	Tiahrt
Lowey	Portman	Torkildsen
Lucas	Poshard	Torres
Luther	Pryce	Torricelli
Maloney	Quillen	Towns
Manton	Quinn	Traficant
Manzullo	Radanovich	Tucker
Markey	Rahall	Upton
Martini	Ramstad	Velazquez
Mascara	Reed	Vento
Matsui	Regula	Visclosky
McCarthy	Reynolds	Volkmer
McCollum	Richardson	Vucanovich
McCrery	Rivers	Waldholtz
McDermott	Roberts	Walsh
McHale	Roemer	Wamp
McKeon	Rogers	Ward
McKinney	Ros-Lehtinen	Waters
McNulty	Rose	Watts (OK)
Meehan	Roukema	Waxman
Meek	Roybal-Allard	Weldon (FL)
Menendez	Rush	Weldon (PA)
Meyers	Sabo	Weller
Mfume	Sanders	White
Miller (FL)	Sanford	Whitfield
Mineta	Sawyer	Wicker
Minge	Schiff	Williams
Mink	Schroeder	Wilson
Moakley	Schumer	Wise
Molinari	Scott	Wolf
Mollohan	Seastrand	Woolsey
Montgomery	Sensenbrenner	Wyden
Moorhead	Serrano	Wynn
Moran	Shaw	Yates
Morella	Shuster	Young (AK)
Murtha	Sisisky	Young (FL)
Myers	Skaggs	

NOT VOTING—16

Becerra	Gibbons	Rangel
Bunning	Hansen	Roth
Chapman	Hefner	Stark
Coleman	McDade	Watt (NC)
Condit	Miller (CA)	
Dicks	Pelosi	

□ 2104

Messrs. MFUME, KASICH, and BACHUS changed their vote from ''aye'' to ''no.''

Messrs. HERGER, HORN, ROHRABACHER, and PAXON changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. MOORHEAD. Mr. Chairman, I move that the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from California [Mr. MOORHEAD].

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. KINGSTON) having assumed the chair, Mr. HOBSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 988) to reform the Federal civil justice system had come to no resolution thereon.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104–68) on the resolution (H. Res. 105) providing for the consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR CERTAIN COMMITTEES AND SUBCOMMITTEES TO SIT TOMORROW, TUESDAY, MARCH 7, 1995, DURING FIVE-MINUTE RULE

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the five-minute rule: The Committee on Agriculture, the Committee on Banking and Financial Services, the Committee on Economic and Educational Opportunity, the Committee on Government Reform and Oversight, the Committee on National Security, the Committee on Resources, the Committee on Transportation and Infrastructure, the Committee on Veterans' Affairs, and the Select Committee on Intelligence.

Mr. Speaker, it is my understanding that the minority has been consulted and there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. WISE. Mr. Speaker, reserving the right to object, the distinguished gentleman from New York [Mr. SOLOMON], Chairman of the Committee on Rules, is correct, the Democratic leadership has been consulted on each of these and there is no objection.

Mr. Speaker, I withdraw my reservation of objection.

Mr. SOLOMON. Mr. Speaker, we thank the gentleman for his being so reasonable.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mrs. MYRICK. Mr. Speaker, I ask unanimous consent that my name be deleted as a cosponsor of that joint resolution, House Joint Resolution 2.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mr. BROWNBACK. Mr. Speaker, I ask unanimous consent that my name be deleted as a cosponsor of the joint resolution, House Joint Resolution 2.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. KAPTUR] is recognized for 5 minutes.

[Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. WYNN] is recognized for 5 minutes.

[Mr. WYNN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

NOTIFYING MEMBERS OF HISTORIC MEETING ON THURSDAY, MARCH 9, 1995, REGARDING AMERICA'S RENEWED WAR ON DRUGS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from New Hampshire [Mr. ZELIFF] is recognized for 30 minutes as the designee of the majority leader.

Mr. ZELIFF. Mr. Speaker, it is my pleasure to offer this special order tonight on a subject which is of major importance to all of us.

Remember the drug war? Remember when casual use was condemned, not discussed in the same breath as legalization? When the Nation's commitment to interdicting drugs wasn't shrinking? When Presidents and First Ladies spoke out, especially to children, about the dangers of drug use?

Well, I do, and so do many of my friends and colleagues in this Chamber.

That is why, as chairman of the House Oversight Subcommittee on National Security, International Affairs and Criminal Justice, I will be joined by Democrats and Republicans in holding historic hearings on March 9. Our

singular and united purpose: To reawaken the Nation. To refocus our great Nation on the renewed need for engaged, outspoken national leadership. From the very, very top.

Sadly, there is a growing consensus that our current approach is failing. In 1993 and 1994, respected annual surveys of 51,000 high school students and 8th graders told a depressing story: Gains made are slipping away.

We are in the midst of a major reveral—both in youth use and attitudes.

After a steep drop in monthly cocaine use between 1988 and 1991, from 2.9 to 1.3 million users, and a similar drop in overall drug use between 1991 and 1992 from 14.5 million users to 11.4 million users.

The latest numbers reveal drug use up for all surveyed grades for crack, cocaine, heroin, stimulants, LSD, non-LSD hallucinogens, inhalants, and marijuana.

For example, in 1994, according to the respected Michigan University study, twice the number of 8th graders were experimenting with marijuana as did in 1991, and daily use of marijuana by seniors was up by half just from 1993.

If that were not enough to show our current failure, the nationally-recognized Drug Abuse Warning Network has just reported that drug-related emergency room visits in 1994 were up 8 percent over 1993, now standing at their highest point ever.

Does this matter? You better believe it does. The Columbia University Center on Addiction and Substance Abuse [CASA], headed by a former Carter Cabinet Secretary, expressed it this way.

If historical trends continue, the jump in marijuana use among America's children from 1992 to 1994 signals that 820,000 more of these children will try cocaine in their lifetime. Of that number, about 58,000 will become regular cocaine addicts and users.

These numbers only scratch the surface. Drugs kills kids. They steal opportunity, crush dreams and ruin lives.

This has not changed, even as their acceptability has crept back. What we need in 1995 is leadership—real leadership—something that has been sadly absent.

Let me be clear. Leadership is needed from both sides of the aisle, and from both ends of Pennsylvania Avenue.

The Nation must again talk about this scourge, educate kids, go after the drug traffickers who have enjoyed freer reign with reduced interdiction. Less money was spent on interdiction in 1994 than in 1993, and less in 1993 than in 1992. We must collectively revive the Nation, restore the momentum, and recognize that this is a war won every day—one child at a time.

That's what Thursday's hearing is for. And we are calling in the leaders in this fight. Our first speaker will be someone who has been working privately on this issue for a decade.

She is flying from her husband's side to deliver what we understand will be her most significant address on this issue since she addressed the United Nations in 1988.

We will listen intently, because she is a uniquely dedicated leader to drug prevention and the creator of a national foundation to halt drug abuse. We will also listen because she is a former First Lady, Nancy Reagan.

She will be followed by a former Head of the Drug Enforcement Administration under both Presidents Clinton and Bush, Judge Robert Bonner.

☐ 2115

At Bonner's side will sit a former Drug Czar, Dr. William Bennett, who promises new thinking and a crisp critique. Both men drive one point home: Presidential leadership is essential, especially in re-finding a commitment to international interdiction. With Bonner and Bennett, John Walters, and other veterans of the drug war, I would also point out the solidarity of purpose represented by the recent article from Joseph Califano, ''It's Drugs, Stupid.''

We need bi-partisan effort and a bipartisan call to national leadership. Califano's ideas are not the only ones on point.

We will be joined by a former Coast Guard Commandant, Paul Yost, predecessor to President Clinton's national coordinator for drug interdiction.

We will also hear from President Clinton's Drug Czar, Dr. Lee Brown. Just how has the Nation gotten so far off track? Why has there been so little presidential leadership on drugs?

And from both sides of the aisle: How will President Clinton's 1995 Annual Drug Control Strategy address the 1993 and 1994 slippage? Prevention must not be left out. Teaching and interdicting are both important; they lean upon each other, two sides of a dam restraining the in-flow of illegal drugs.

Major national leaders on prevention will also speak, including the widely-heralded Partnership for a Drug Free America, BEST Foundation, Community Anti-Drug Coalitions of America, and Texans' War on Drugs.

There is only one point: Drugs destroy lives, and our Nation must now remember what President and Nancy Reagan so plainly taught.

You cannot stop drugs without effective drug interdiction. You cannot prevent drug use if you don't talk about it. From the President on down, it's time to seriously look at drugs again. The Nation needs it, and our kids deserve it: We now need renewed national leadership.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

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

Mr. GILMAN. I want to commend the gentleman for his efforts in the drug war, something we have been fighting for many years. Too often our Nation forgets crucial aspects of how drugs have affected our society, killing our young people, placing many of our people in a nonproductive situation. We cannot say enough about this problem, we cannot do enough about the problem. I want to commend the gentleman for his efforts.

Mr. ZELIFF. I thank the gentleman from New York and the highly respected chairman of the Committee on International Relations. I know from your vantage point, maybe you can just tell us from your vantage point, from a worldwide global effort what this is doing to our national defense and security.

Mr. GILMAN. It has affected every aspect of our society, not only security which has been hurt by the many drug abusers who are out there, but also industry itself, loss of productivity, absenteeism, the amount of accidents that occur. But most important, how it has impacted upon our young people, the overdose, the deaths, causing many of our young people to leave school and to go out on the street and become drug traffickers rather than to be productive members of our society.

It has been estimated that drug abuse in our country costs over $500 billion in lost productivity, absenteeism, and all sorts of problems that it causes. We cannot say enough to convince our Nation to get behind our drug war to make certain that our communities are going to be drug-free and that our schools will be drug-free. I hope my colleagues will take a look at the proposal to cut funding for the drug-free school proposal. I think that is an extremely important measure. Prevention is so important.

Those of us who have been fighting the battle recognize there are five major battlefields in the drug war to reduce supply and demand simultaneously, to go to the source countries and eradicate, to interdict when the product comes out of those countries and heads toward our shores, and then to beef up our enforcement when it reaches our shoreline.

Then on the demand side, to provide the kind of education that will discourage abuse by our own youngsters, to teach them that drug abuse is not recreational but is deadly, and then in the final analysis to treat and to rehabilitate the victims of drug abuse. Again I thank the gentleman for focusing his attention on this very important aspect of the drug war.

Mr. ZELIFF. I thank the gentleman from New York.

Mr. EHRLICH. If the gentleman would further yield, I first want to thank the gentleman in a very public way for making me a Vice Chair of the committee. I am very excited. I also congratulate the gentleman with respect to your enthusiasm to tackle this issue head-on, because it occurred to me in the course of the crime debate, and I would like the gentleman to comment on this if he would. We discussed on this floor truth-in-sentencing and the importance of building prisons and mandatory minimum sentences and gun violence and all the very important crime-related bills that have

passed through this floor, but we were criticized because we did not address at that time in my view what is really the threshold issue here, which is the proliferation of drug abuse in this country over the last 20 years, because I know the gentleman agrees with me, name the issue, AIDS, child abuse, truth-in-sentencing, building of prisons, whatever it is, whether it is a fiscal issue or a social issue, most of the issues we deal with on this floor are in some way related to the proliferation of drug abuse in this country today.

I would direct a question to the Chair of the subcommittee and ask you to comment on this observation.

When Mrs. Reagan came out with the ''Just Say No'' Program, she was criticized, as the gentleman will recall. It just was not cool to just say no. There had to be something more sophisticated, a more complex message that we needed to give to the children of this country.

But the fact is, and I think this goes back to the whole idea really behind the Contract With America and why many of us ran for public office, getting back to this idea of personal responsibility in our individual lives and stressing the fact that our kids make millions of decisions during the course of a day, and the message they need to hear coming from their parents, from their elders, from the floor of this House is, ''It's OK to say no, it's cool to say no,'' because they will pay the price potentially if they make the wrong decision.

I would like the gentleman to comment on the leadership the Reagans, the former First Lady showed in coming out in such a way that she knew she would be in for it. She knew that the Hollywood types and the commentators from Washington would deem her comments almost irrelevant and she would become the focus of actually being made fun of, which she was, but she stuck to her guns and she is going to revisit our subcommittee, I know you are very honored to have her come to our subcommittee and restress, reiterate how important this message is today for our kids in 1995.

Mr. ZELIFF. First I am very proud to have the gentleman as my Vice Chair. I think Thursday's meetings are going to be right on point, and I am hoping that with the people we have assembled there, we can draw enough attention to get back on track.

I agree, Nancy Reagan did step out at a time when it was not easy to do that, to take a leadership role, but that is what leadership is all about. She certainly was supported by the President at that point, and people from around the country stepping out. This is what we have to do now. We need to now step back out.

We hope that we can encourage the President to start with his office, the bully pulpit, and start showing the kind of leadership that needs to be shown here, that maybe that will then start both sides of the aisle here, both sides of Pennsylvania Avenue, we start then speaking out as well.

I think that is what it is going to take. It is going to have to be a national, a top priority, and the priority starts right at the very, very top, with the President. If he shows the kind of leadership that he is capable of showing, then we will all be able to do the same in our individual areas.

But we cannot let this go on. If we accept casual use of drugs, then we are going to accept things, the former Surgeon General was starting to talk about legalization, and we are going downhill from there. I think we have just go to reverse where we have been and start back up where we were back in the days of Nancy Reagan.

Mr. EHRLICH. I really appreciate the gentleman's comments. This is certainly not a partisan issue in any respect, but you were focused on the casual use of drugs, which I think is an element in this whole debate that has been missing in recent times. I would like the gentleman to comment on this number.

Columbia University Center on Addiction And Substance Abuse recently warned, if historical trends continue, the jump in marijuana use among America's children, defined as ages 12 through 18, from 1992 to 1994, signals that 820,000 more of these children will try cocaine in their lifetime. Of that number, about 58,000 kids will become regular cocaine addicts and users.

It seems to me that the White House misses the fact that no one goes from being a nondrug user to a gross abuser. There is a middle ground there. The casual user really needs to be the focal point of our efforts here on the floor of this House. Here again, that is where the former First Lady really deserves credit, because she focused her energies on those casual users, and God knows, if we ignore the casual users, we have major problems down the road.

Mr. ZELIFF. Absolutely. We have got to get to kids early on and stay with them all the way through.

Mr. MICA. Will the gentleman yield?

Mr. ZELIFF. Yes, sir, I yield to the gentleman from Florida, a very valued member of our committee as well.

Mr. MICA. First I want to take just a moment and thank you as chairman of our subcommittee, I have the honor of serving with you.

I know the hour is late, I know that my colleagues are late, the staff is tired, and we have been working very diligently the past weeks to bring issues before the Congress and the American people of utmost importance, but I really cannot think of any subject that is more important to this Congress or to American society than the question of drug and substance abuse.

I want to compliment you, too, taking over as chairman of this subcommittee and immediately dealing with the issue and bringing this issue to the forefront not only of our subcommittee but of the Congress and this administration and the American people.

If I might just comment a few minutes. As a Member, a new Member of Congress during the 103d session, I had over 130 members of both sides of the aisle, Republican and Democrat, sign a letter asking the former chairman of the House Committee on Government Operations to hold a hearing, a full hearing on the administration's drug policy. Do you know that we never held a true full hearing on the administration's drug policy? The worse the situation got, the more that this was ignored. In fact, it was totally ignored. Again over 130 Members, both sides, Republicans and Democrats, asked for a hearing and never got a hearing. On the very last day, a hearing was held in one of the subcommittees and it was a sham of a hearing.

So I salute you on taking charge of this subcommittee, on bringing this subject forward. Let me say that this is a real, real problem that this country has, and that is drug and substance abuse and that our subcommittee and this Congress must address some of these fundamental issues.

For too long, the other side sent mixed messages. They sent messages as far as the Congress was concerned in the way that drug abuse would be tolerated in this country. We had a Surgeon General of this Nation who did not give the proper emphasis to the problems with casual abuse and drug use that we have heard mentioned here today. It has not been a priority of this administration. I again commend you on making it a priority.

When this Congress can send thousands of American troops into Haiti and we can help solve the problems in Somalia and around the world and when just a few miles from here, Washington, DC, we have in the alleys, in the backyards, in the streets almost every weekend and every night people, their lives being destroyed, young people being destroyed. You know, I have been coming to our Nation's capital for almost 15 years now and every Monday I pick up the paper and it practically brings tears to my eyes and sadness to my heart to read about the young black American, Afro-American males that are being wiped out in our Nation's capital, again just a few blocks from here.

Each year since I have been coming here, it has been between 350 and 450 people whose lives are snuffed out in this fashion.

☐ 2130

And somewhere this has to be a priority. Somewhere there has to be a time for this Congress and this Nation to wake up and see that the real problem facing this country, that the biggest social and crime problem is drugs and drug abuse and drug use.

If you come to Florida in my district and you talk to the sheriffs and talk to the enforcement people and you ask them how many people in your prison

or in your jail are here and have been involved in drug abuse or substance abuse, they will tell you 60 percent, 70 percent of the people in prison have been victimized or involved in drug use and abuse.

We have ignored this problem, and we must bring this problem and this administration and this Congress' approach, a new approach, a sound approach.

This administration ignored helping our Andean nations with information, with exchange radar information. I will say that two of the chairs and former ranking member of the Committee on Foreign Relations sat in hearings and saw the mess that was created with our Andean nations, and now we accuse Columbia of not paying attention to drug abuse and interdiction and assistance and enforcement. Yet this Nation has not made it a priority. So we have got to get our house and our policy and our agenda and our priorities in order, and we have got to make drugs and substance abuse enforcement, interdiction, telling our young people this is not an acceptable behavior, telling our young people how it will destroy their lives and make enforcement a real tool rather than an imaginary or illusory tool as has been done under this administration.

So I do want to commend again the gentleman in the well, the chairman for holding these hearings and for coming out late tonight and for giving us an opportunity to tell the Congress and the American people that this is high on our priority agenda. We do not have a Contract With America for the next 100 days, but this is part of the Contract With America now and for this new majority in Congress, and it will be for the days remaining in our tenure in this Congress and now the 104th Congress.

Mr. EHRLICH. If the gentleman will yield, I really appreciate listening to his remarks. As the subcommittee chairman knows, I was not here in the 103d Congress. But in reading through the administration's antidrug strategy, I read a provision that really disturbed me. The Clinton drug strategy now seems to deemphasize prevention, saying ''Antidrug drug messages have lost their potency.''

My question to the gentleman from Florida and to the chairman of the subcommittee is was that a central theme of the hearings that did occur in the 103d Congress? Have we given up?

Mr. MICA. If I may respond to the gentleman, there never was a central theme. There were hit and miss embarrassments, and the only one that I recall that there was any change or attempted change in policy was relating to the Andean policy and the exchange of information.

I remember when the President came to the Summit of the Americas in Miami and we spent about an hour together, almost every Member of Congress who joined our delegation stood up and said, ''Mr. President, what is your policy relating to narcotics control? Mr. President, what is the situation relating to enforcement?'' Each time we got different answers from the President and from his advisers, and finally they have begun to respond, only because there is a new majority in the Congress.

Mr. ZELIFF. If the gentleman will yield for just a second, the interesting thing is there has been very little mention about a drug policy at all for the last 2 years. I think this is the crime of the whole thing, we are just now talking about it. We are tolerating it, and that is what we hope these hearings will start to bring out.

Mr. MICA. Under the previous administration, the drug czar, Mr. Martinez from Florida, and Mr. William Bennett, there were no less than two dozen subcommittee hearings and at least two full committee hearings on the policies, and these drug leaders from the administration were hauled before the Congress and asked to comment on specifies of the policy. We have not had that opportunity, but we will have that opportunity. We will find out what the policy is, what the direction of this administration is going to be, and if necessary I will work with the gentleman and with both sides of the aisle to craft a policy that makes some sense so that we bring enforcement, so that we bring real education forward, and that we list this as a national priority, that our children and young people are dying on our streets, that it is the number one cause behind crime in this country, and it has been swept under the table and now something needs to be done about it.

So this is your priority and it is my priority, and it will be the priority of other Members in this 104th Congress.

Mr. ZELIFF. I thank the gentleman for those very wise comments.

I yield to the gentleman from Indiana [Mr. SOUDER], another valued member of our subcommittee, and I look forward to his testimony on Thursday.

Mr. SOUDER. I thank the gentleman for yielding. I imaging that there are a lot of people in a state of shock on hearing about this hearing, because I want to commend the gentleman because of the way this body works and the other body, and I was a legislative director for Senator COATS in 1982 through 1992, and in 1985 to 1993, the top three issues were drugs, drugs and drugs, and anything that looked like a drug bill we shoveled money toward that drug bill, and we tried to address the issue. But much of the way Congress works is once we pass a bill, then we assume that supposedly that the problem has disappeared. We end welfare as we know it, and we fix this, and because Congress focused on it 4 or 5 years ago, the problem was supposed to go away. It does not matter that statistics show that it has grown up. But now the political focus is off, people want to ignore it and put it under the table and focus on something a little more topical and get more attention, even though the problem is still existing and is increasing.

In the first year in office President Clinton slashed the czar's office from 146 to 25. He put enforcement efforts on the back burner and shifted the emphasis from our borders he says to neighborhoods and streets, yet they have cut back on a lot of those types of efforts. This administration has spent, as we heard earlier, much too much time focusing on the problems in Somalia, or in Haiti, or on micromanaging the rest of the world and they have not paid adequate attention to our crisis here at home.

In Fort Wayne, IN, in my hometown, instead of having 30 or 40 buildings that are used for crack, we now have 150 to 250 that are occasionally used for crack. Our gang problem has increased further. For murders, we see in Fort Wayne that most murders are drug-related, they are kids battling on the streets over control of the drug trade, often coming out of Detroit or out of Chicago. It has not gone down at all.

I think as we look at that we need a clear message from our national leadership that we are going to do whatever we can. We need to use the moral authority of the bully pulpit, of the President. We need clear direction coming out of there. We already heard Joycelyn Elders and her position which was actually, ''Don't smoke, but if you have to smoke, don't smoke tobacco.'' It was a really very mixed message, and we have seen an increase in the T-shirts and in the rock music, and in every store with rock music that you go into you have that marijuana sign, the marijuana drug, an acceptance in the culture, and we need to focus on changing the moral authority and the director of this country. We are clearly seeing a rise in the use of marijuana, the major drug of preference in usage, as well as other types of drugs in this country. The plain truth is that leadership matters. We can put money into education and D.A.R.E., into the school problems which reaches a few people. We can try to put the balloons up in the air. We can try the INS, we can try the faster cigarette boats to try to track people down in the water. We can look through the banana shipment to see if drugs are coming in. We can use different aircraft and try all the different methods for interdiction and we need to, but that alone will not eliminate it. We need to have local task forces to do it. We need to have a focus there. We need to have treatment programs, many of which fail, but we still need to have treatment efforts and make the effort on all of those fronts.

But a lot of this ultimately is going to come down to we just have to say no. That is why it is so important to have Mrs. Reagan coming to give that moral message again, that we have to have the moral authority to change the commitment in the individual lives and in society to say that that is wrong. We cannot tolerate this. We

need to pass that message to our children and to our families to supplement that. Our responsibility as government leaders is to try to use the force of government, but much of this is in the hearts of people, and we have to use our bully pulpit, the President, the Congress, committee hearings like the gentleman is having to put the toughness back in it.

I think the record of this administration is clear, and if they think that they have improved it, they need to exhale.

Mr. ZELIFF. I thank all of my colleagues for joining us tonight. We are having this hearing on Thursday, and it is going to be the most important single issue that I think our country faces. It is one we need to focus great attention on from both sides of the aisle and both ends of Pennsylvania Avenue, and we look forward to these hearings.

WHO REALLY CARES ABOUT THE KIDS?

The SPEAKER pro tempore (Mr. KINGSTON). Under the Speaker's announced policy of January 4, 1995, the gentleman from Pennsylvania [Mr. FOX] is recognized for 30 minutes as the majority leader's designee.

Mr. FOX of Pennsylvania. Mr. Speaker, I rise on the issue of nutrition for children.

Mr. Speaker, when Republicans stood on the steps of the Capitol on September 27 last year, we made a contract with the American people. We said that if the people made us the majority party in the House of Representatives we would bring to the floor of the house within 100 days 10 major bills to get America back on track. Our contract will be honored; our word will be kept.

Soon we will consider a bill that will make an end to a welfare state that has failed. The welfare state failed because for too many years Congress equated solutions with one-size-fits-all bureaucratic remedies. And it failed because Congress was afraid to make the tough decisions that must be made if we are going to truly help the beneficiaries of the current welfare system as well as the taxpayers without whom no system of help could be made possible.

However, in our attempts to provide needy children with nutrition programs through block grants we have been suscepted to the disingenuous attacks by the White House and its congressional allies. Listening to the other side, one would have thought the worst: The end of the school lunch program.

The American people deserve better than these scare tactics. We are seeking compassionate solutions to help needy children. We are committed to creating a system that ensures the safety and health of our Nation's children.

The facts are clear and, as usual, the facts tell quite a different story than some congressional Democrats have presented. Spending for school meal programs will actually increase by at least 4.5 percent next year under the Republican proposal and each year thereafter.

Our bill creates a separate school-based nutrition block grant that focuses on school-based nutrition programs such as school lunch and school breakfast. In addition, it creates a separate family nutrition block grant to meet the needs of low-income children and pregnant mothers, provides meals and supplements to children in child care, and allows for the operation of a summer food program to meet the needs of children when they are not in school.

Block grants eliminate the Federal middle-man and allow the governors to design a program that serves their State's families in the most efficient manner, and even saves money on administration. By eliminating the Federal bureaucracy and the 15-percent administrative costs that go with it, they can use these funds to provide more meals for more students.

As we turn power over to the States, much has been said about the strings attached issue. Some governors have asked for block grants from the Federal Government that come with no strings. However, we want to make sure that the programs will be in fact implemented correctly and in the way that we know will serve our children best.

Let me emphasize that nutrition block grants will go directly to fund nutrition programs and nutrition programs only. In turn, States will be responsible for reporting to the Federal Government mathematical statistics every year to ensure their commitment to serving those needs. It is imperative that the nutritional goals are met.

Changing a system as large and as important as welfare will inevitably lead to some disagreements. Nevertheless, when our bill is passed, we believe life in America will be changed for the better. We also believe children will be served better by eliminating the Federal middle-man and the bureaucracy and getting more funds in fact to help our children.

Mr. Speaker, I yield to the gentleman from Oklahoma [Mr. J.C. WATTS].

Mr. WATTS of Oklahoma. Mr. Speaker, I want to spend a few minutes and go down memory lane. I was one of those kids in school who loved school lunches. Back at Jefferson Davis Elementary School in Eufala, OK, they made some of the best school lunches. I used to love the hot dogs, sauerkraut, and mashed potatoes, and those cinnamon rolls were pretty doggone good too. In fact, all of us kids were made to eat lunches and were thankful to have them.

Let me fast forward to 1994. As far as my public service, before I was elected from the Fourth District of Oklahoma, I served as youth minister at the Baptist Church in Dale City, and on occasion I would go to different junior highs and high schools in the community and eat with the kids in my youth group. Now, for round numbers, let us say 100 kids were supposed to eat in the school lunch room. Only about 50 to 60 of those kids would eat lunch, and most were eating from the fast food outlets in the cafeteria that actually made money for the schools. Now that is a different story. The rest of that food went to waste. A lot of food went to waste.

I do not like waste. I do not know about your house, but in my house growing up J.C. Buddy Watts, Sr. and my mother Helen Watts would never approve of wasting food.

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Now I do not know about your house, but in my house growing up J.C. Buddy Watt, Sr., and Helen Watt would never approve of wasting food. Wasting money was even worse.

That is what this school nutrition program is all about, not wasting food and not wasting money.

As my colleagues know, the opening day reforms of this House suggested that government would have to live under the same rules as everyone else. We need to stop the misinformation campaign and scare tactics of those opposed to us and get out the real truth about the school nutrition program. The school nutrition program is saving money and is passing along these savings to the school lunch program.

And here is a real twist. With the Republican nutrition block grants we are actually serving kids the best kinds of lunches, lunches that have budgets cooked up in their own State, lunch budgets that will actually increase 4.5 percent each year for the next 5 years. Let me repeat that, budget increases of 4.5 percent each year for the next 5 years, and lunches that will be healthy and nutritious, maybe even taste as good as what Mrs. Guider and Mrs. Woods would make at my elementary school.

The point is Mrs. Guider and Mrs. Woods, our cafeteria manager, and Mrs. O'Reilly, the principal, and now Governor Keating and his staff in Oklahoma know more about serving their children than bureaucrats in Washington.

This plan sends the school lunch program back to the States where they can administer it best. It creates block grants that eliminate the Federal middleman and reduces paperwork, meaning more lunches can be served with the savings.

As Michigan Governor Engler says, the States can do it better. To quote him:

> To suggest that any Governor in any State is ready to abandon children, let them be hungry, throw them out on the street, is absurd.

Anyone who thinks that Uncle Sam knows best how to feed the kids in

Duncan, Lawton, Altus, Frederick or Norman, OK, is literally out to lunch.

Mr. Speaker, this whole debate is not true. The savings alone will allow us to continue to serve those in need and increase the number of children and families receiving services.

We have all heard that there is no such things as a free lunch. The current program serves up about $200 million just for administration to provide the $1.77 worth of free lunch and at least 30 cents in subsidies for all students who pay. If we cut out the middleman, we all gain from the savings.

We need to put the Federal bureaucracy on a diet. The only starvation in this bill is to the fat-laden layers of Federal bureaucracy.

Now let me repeat something. This bill only cuts out the fat of the middleman, the Federal bureaucrat, not school lunches. This bill saves money by sending the money back home to prepare home cooked meals in our own home schools.

The best news yet is we pass along the savings to our kids.

Here are a few more morsels:

There are actually more funds in fiscal year 1996 under the block grant proposals than under the current system. Eighty percent of the funds must be used for meals for low income children, and no more than 2 percent may be used for administrative purposes.

Add up all these tidbits, and I think you find the opposition's dissent is distasteful. We have a full plate when it comes to budgeting in this Congress. The school nutrition block grant programs make sure that our students also have a full plate when it comes to lunchtime.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the comments of my colleague, the gentleman from Oklahoma [Mr. WATTS]. I think he well points out the fact that under our GOP proposed spending on the school lunch program you will notice in the red column the increase every year goes all the way up to 1995, the year 2000. So obviously there is a dedication here to take a program, and improve it and to make sure that we work hard with it.

At this time, with permission, Mr. Speaker, I yield to the gentleman from North Carolina [Mrs. MYRICK].

Mrs. MYRICK. Mr. Speaker, funding for the nutrition programs under the GOP plan is greater in each of the next 5 years than under the current system, a 4.5 percent increase each year or $19 billion 795 million, which is $588 million more than would be provided under the current system.

Mr. Speaker, our needy children will not be left behind. All program dollars in family nutrition block grants are required to go to individuals below 185 percent of the poverty level. With increased funding, less bureaucracy and less paperwork, Mr. Speaker, States can provide more services to more people.

Eighty percent of the family block grant must be used to provide food assistance to pregnant, postpartum and breast-feeding women, and infants and children who are found to be a nutritional risk. This program helps children because it meets the needs of low-income children, pregnant mothers, provides meals and supplements to children, and child care, and allows for the operation of a summer food program to meet the needs of children when they are not in school, but in day care centers, Head Start, summer camp and homeless shelters.

Mr. Speaker, these changes will benefit our children positively over the next few years.

Mr. FOX of Pennsylvania. Mr. Speaker, I yield to the gentleman from Ohio [Mr. NEY] to speak on his perspective not only with regard to nutrition and the importance of our program, but his experience in the State of Ohio in programs dealing with human needs.

Mr. NEY. Mr. Speaker, I thank my distinguished colleague from Pennsylvania [Mr. FOX] for yielding his time.

As my colleagues know, I think the sad part to this whole scenario is the amount of demagoguery that has been cast forth in the media, and I note, as I went around my district this weekend, as I talked to people involved with the school nutrition program, and you start to tell them what the reality is versus the myth, as you well know, they start to see the real intent that is before us with this proposal in Congress.

As my colleagues know, I would like to point out that of course the issue is, as I spoke with my constituents involved with the school food programs, the issue is that we are increasing it, and the issue is that we are sending this to the States by cutting out the middle bureaucracy with more money through the process, and the issue, also the fact of the situation, is that not only are we going to be increasing, but we are going to be guaranteeing that the school lunches are going to be there.

And there is another guarantee. For those of you out there that have worried that this would be somehow sabotaged, somehow set somewhere else when it comes into the States, I think it is clear, if you look at the track record, whether it is money for the seniors that have come down to the States, Mr. Speaker, or whether it is monies that have come down for other essential programs, I think you will find that the States carry out the mission, and if they do not, there is plenty, as we know, out in the system of Federal ability to step in and make it clear of what our intent was.

But beyond that, Mr. Speaker, I want to just address the issue of what we are doing and why we are doing it. and it is because we do care about children, and I guess what disturbs me the most is the fact of picking up the newspapers and seeing a direct attack upon those of us who want to give more money, who want to take care of children, and it is being put forth, and I know you have seen this. It is being put forth all over the media and told by people that, you know, we are mean-spirited with children, and that is not the reality of it.

Not only are we trying to pass laws to toughen the laws that go after those who try to harm children, but by this proposal we are really cutting out the Federal bureaucracy that is taking more money away, and the 5 percent administrative cap, I think, is a very good thing, but you know we are caring Members who have children. We are Members that come from districts that have needs.

I serve an Appalachian district, very poor school district, and there is no way that we would promote anything that is not going to help our schools.

So, Mr. Speaker and my colleagues, the gentleman from Pennsylvania [Mr. FOX], you know I just feel that it is very unfair, and history is going to prove us right as we proceed down a path to give an increase, to give more money and to guarantee our children good hot lunches. History is going to show that we are correct in what we did, and history is going to show we were not mean-spirited. We simply want to give more money.

How this has been televised and turned around, Mr. Speaker, I think is causing such unfair confusion throughout this country with the people, so I am very proud of what we are going to do. None of us want to hurt children. We all want to help our poor school districts and the children that cannot get lunches, and so I feel confident. I know the past history of our States, and the pressure is going to be there, and this is going to be watched, and the people are going to make sure, and this Congress is going to make sure, that our wishes are carried out.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the comments of the gentleman from Ohio [Mr. NEY]. I think he has seen in the State of Ohio just how well the programs work in a State that have come back from the Federal Government with the safeguards you put on as finance chairman.

Mr. NEY. And, Mr. Speaker, my colleague, Mr. FOX from Pennsylvania, I can tell you in the 1980s, when the block grants were coming back and the cry was, as this comes from Washington, DC, we are going to lose our money; what do we do? We put in administrative caps. What did we say they are to be used for? Community development purposes, these block grants. What has the track record been from 1981 forward? It has been a track record of success. The bureaucracy was cut loose from here and fed right back into those economic development programs, and the gentleman knows from his State, I am sure, we have a track record of success.

So this is not embarking on nothing new in the sense of doing this in past situations from Congress back to the States. But I believe that it is an issue

where people knew they could demagogue, knew they could twist it, knew they could turn it and try to paint a paint brush of people that just really do not want to help the children. That is so far from the truth.

I know our State has got a track record.

Mr. FOX of Pennsylvania. We do in Pennsylvania as well, so we look forward to working with you on this issue and make sure we bring light to it. The fact is we want to protect the programs for children, and we will work together for that purpose.

Mr. NEY. I applaud you and thank you.

Mr. FOX of Pennsylvania. Mr. Speaker, at this time I yield to the gentleman from Washington [Mr. NETHERCUTT] for comments in support of this proposal to make sure we increase the school lunch programs and protect our children.

Congressman NETHERCUTT.

Mr. NETHERCUTT. Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. FOX] for yielding to me, for this opportunity to speak about the family nutrition block grant.

Mr. Speaker, the reason my colleagues and I are here on the floor tonight is to make the case for the hard choices that we are compelled to make in order to bring the Federal budget in balance, and this is why we continue to supply essential services to our constitutes in need. As my friend just said here on the floor, it is a little disconcerting when those who oppose any reform in the existing programs label those programs, the plan for reform by the Republican Congress, as hurting children, or hurting women who are pregnant, or hurting older Americans. It is simply not true, and it is unfair to them, and it is unfair to this body.

Why are we delving into such a sensitive area? The reason is simple. We have a national debt of over $4.7 trillion. The interest on the debt alone exceeds the defense budget for this year, which is by September we will have to raise possibly the debt ceiling again most likely in excess of the $5 trillion mark. In a place where we use the term ''crisis'' quite freely, our gargantuan debt represents the greatest crisis that we face as a Nation, not only us as adults, but our children in future generations. My colleagues across the aisle have been enormously critical of our efforts to combine programs into block grants and to get rid of the cost of the Federal bureaucracy that administers them. They raise the specter of increased malnutrition among the Nation's poor. Nothing could be further from the truth.

What we are doing by creating a family nutrition block grant is to simply combine funding for the WIC program, the child and adult care food program, the summer food program and the homeless children nutrition program. We are cutting out the middlemen, in this case Federal bureaucrats, and getting more money to those families and children in need. Let us call this the stop feeding the bureaucrats measure. In other words, we will save money by being more efficient in the distribution of Federal funds by moving it closer to those people whom the programs serve. In fact, based on the CBO projections, Congressional Budget Office projections for funding for the current programs, the programs grouped in the family nutrition block grant will increase, and listen to this, by an average of 3 percent a year for the next 5 years. Where is the money going? We have mandated that all of the funding available in the block grant go to low income families, and 80 percent of that money must go to women and children currently served by the WIC program. Women, infants and children will be fine under this program by the Republican majority.

Furthermore, no more than 5 percent can be spent by the States on administrative costs, so I say, Mr. Speaker, let us not be fooled by the rhetoric that comes forth on a daily basis. It is a public relations effort to resist sensible reform.

□ 2200

This will work. It is going to be good for women. It is going to be good for children. We will all be better off in the years ahead. I thank the gentleman.

Mr. FOX of Pennsylvania. I want to thank the speakers that have joined me tonight for this special order on the Republican proposed program to increase WIC and the school lunch programs.

With me today has been the gentleman from Oklahoma, Congressman J.C. WATTS, the gentlewoman from North Carolina, Congresswoman SUE MYRICK, the gentleman from Ohio, Congressman ROBERT NEY, and the gentleman from Washington, Congressman GEORGE NETHERCUTT. I think the case can be made and I hope the American people realize that we Republicans are dedicated to increasing the school lunch programs, approximately 4.5 percent per year from here to the year 2000 and beyond.

We will be working with colleagues on both sides of the aisle to make sure we protect our children in every way possible and to make sure we move forward in good sensible legislation that will help our children and help our families.

I thank the Speaker for this time tonight to be able to express our views on this and, hopefully, illuminate this issue for every one.

AFFIRMATIVE ACTION

The SPEAKER pro tempore (Mr. KINGSTON). Under the Speaker's announced policy of January 4, 1995, the gentleman from South Carolina [Mr. CLYBURN] is recognized for 60 minutes as the designee of the minority leader.

Mr. CLYBURN. Mr. Speaker, tonight we are going to continue our discourse here on the subject of affirmative action. As you know, Mr. Speaker, that has become a subject that a lot of Americans are concerned about these days. So tonight, once again, I am pleased to join with three colleagues who will take a few moments to try and get the public and our fellow Members in this body to understand a little better what this whole issue of affirmative action is all about.

Tonight, Mr. Speaker, I am pleased to be joined by the gentleman from Mississippi [Mr. BENNIE THOMPSON], my friend, the gentlewoman from Texas, Congresswoman EDDIE BERNICE JOHNSON, and my friend, the gentleman from Alabama, Congressman EARL HILLIARD.

To begin with, Mr. Speaker, as I have noted before, for 18 years prior to my coming to the Congress, I served my State of South Carolina as State human affairs commissioner.

In that job, it was my responsibility to look after the employment practices, the fair housing practices, all of these issues we had under one umbrella, and one of those things had to do with affirmative action.

So every year, while I was there, we issued a report on the subject of affirmative action. I want to use a little from that report to hopefully shed some more light on this subject.

Now, in South Carolina, I am very proud of the fact that affirmative action was the order of the day under four different Governors. I served four Governors, two Democrats, two Republicans. All four of those Governors supported this concept. I want to show you exactly why.

Today on my way back to Washington I was reading through some news clippings, and one of the clippings I read was written by, I think, a Mr. William Rushing from one of the think tanks in the country. He asked the question, just what is affirmative action?

I want to take a few moments and answer that question for him, because he attempted to answer it and got it wrong, like so many of our friends do.

A lot of people get it wrong because they really do not understand it. Other people get it wrong because they intentionally try to misrepresent it and try to inflame people with such notions as quotas and preferences, those kinds of words that they know will inflame people.

So let us look at this chart here. You will see, Mr. Speaker, exactly what affirmative action is.

If this can be seen, affirmative action is a written document, outlining the steps an agency would undertake to reach fair representation of all race and sex groupings in its jurisdiction.

In order to do a good affirmative action plan, you go through a lot of things, a policy statement. You look at the responsibilities for implementation. You look at disseminating the policy. But the most important thing about affirmative action is to utilize what we call availability, utilization

and availability and analysis, looking at the work force, looking at the job groups and looking at the availability of various people in that work force.

Now, let us look at exactly what we try to do when we analyze a work force. First of all, the work force analysis that we do happened to deal with things like just who all worked in this particular environment, looking at exactly what the groupings are. Then when you look at the groupings of people who are working there, then you look at the job group analysis; that is, to look at all of the groupings of jobs by their categories, whether you are talking about professionals, executives and all of that sort of thing. And then we look at the availability.

Now, that is something that is very important, because this is where people get it wrong. This has absolutely nothing to do with population. For instance, it may be that in a particular jurisdiction the population may be 30 percent black, but when you look at the kind of jobs involved in this work force and look for the number of people with the requisite skills for doing that job, what you may find is that the black people with the requisite skills may only constitute 20 percent. So then you will not be asking anybody to use 30 percent as a goal because of the population. You will then look at the goal being 20 percent, because that is what the availability is, that is what the number of people with the requisite skills may be.

Once you find that, that is when you then get to the issue of goals and timetables.

Now, I want to spend just a couple of minutes before yielding to Ms. EDDIE BERNICE JOHNSON of Texas on this whole notion of goals, because that is where this term ''quota'' seems to creep in time and time again. I have heard people say, goals mean quotas and that is that. Nothing could be further from the truth, and I want, and hopefully you can see what we call a goals form, because this is very, very interesting, for those people who really want to know what this issue is.

A goals form has to do with looking at the current work force, looking at what the current work force is in a particular agency or a particular State. And look at this goals form. Let us look first at this line that says that ''executives.'' When we look at the current work force and we see that here you have got 21 white male executives, one black male executive, over here the goal, that means you have a total of 23 with one white female.

Now, what you have got here is a work force that shows that 91 percent of all the people who make up that work force happen to be white males. But the interesting thing is, when you go over and you look at the availability of people, you see that 8 percent of the people who are available in the work force happen to be black males. Almost 30 percent, 29.8 percent happen to be white females, and 9 percent happen to be black females.

When you look at that, what you will see, if you have got 8 percent that is available and you only got one, which is 4 percent, that means that you are under utilizing those people by, of black males, by 3.7 percent. You are under utilizing white females by 25.5 percent, and black females by 9 percent.

Now, what you do then is look at establishing annual goals based upon people's availability in the work force. And so you then look and say, well, if the availability is 8 percent, then that is how you set your goals, which is the floor. We are saying that at least 8 percent of the people in that work force ought to be black males.

The interesting thing is, if the total is 23, 8 percent of 23 happens to be two. And so that is all you are talking about. If you have 23 people at that level and only 8 percent of the people at that level qualified to do the job happen to be black, then the goal would only be 8 percent of the total number of hirees.

Now, that is what goals setting is all about.

Finally, if you look at the second category here, you will find in ''professionals'' the numbers run a little bit different. But there is something here about the professional I want to show you, because it talks about how you really find out whether or not you need to set a goal.

If you look at the professionals, you will see under professionals, there are 26 white males, only 3 black males, 7 white females, 3 black females for a total of 39. But now when you look at availability, you find that black males constitute 5 percent of availability. And you look here, you find out that that means simply that there is no under utilization, because they have 5 percent of availability, yet they end up in the work force at that job category 7 percent, so in actuality, they are 2.7 percent over represented. So do you need to do affirmative action there? The answer is no. That is why we see a big ''no'' sitting in this category of under utilization.

So, Mr. Speaker, I thought I would point this out tonight before we get started in this discussion so that those people looking in tonight can actually see what a goal is and, hopefully, it will in some way put them in a better frame of mind to listen to exactly what we have to say here tonight, because I think that if we can get a good, solid discussion going on this subject, then we all can join with our President, as he reviews this issue. I think it needs to be reviewed, because people misunderstand it.

There are a lot of people in this Congress, there are a lot of people in the White House who really need to understand what they are talking about when they talk about affirmative action, because most of them have talked about an issue based upon their own personal beliefs rather than studying this issue as many of us have as professionals for more than 18 years.

So I am pleased now, to go further in this discussion, to yield to my good friend, the gentlewoman from Texas [Ms. EDDIE BERNICE JOHNSON].

Ms. EDDIE BERNICE JOHNSON of Texas. Thank you, Mr. CLYBURN. I appreciate your efforts and leadership.

Affirmative action is a phrase that has caused a great deal of noise and potential separation in this country. And yet, it was brought about for a remedy. The only reason why the phrase was ever devised is to address inequities in this country.

Frequently we have said that this nation has come as far as it has with less than half of its brain power. One of the reasons why we say that is because women and minorities have been virtually ignored.

Affirmative action actually started under President Richard Nixon, who recognized the inequities that existed and recognized the loss to this country.

First of all, if there are no opportunities for minorities to have decent jobs and have an opportunity to move up, then they are not going to pay the taxes that they ought to be paying because every one ought to share that.

☐ 2215

However, you cannot pay if you do not make it. I think that some think that the only persons that have been helped have been black Americans. That is so far from the truth.

First, I think it is well-known that persons who have gained most by affirmative action have been white females. However, beyond that, especially in my State of Texas, short men, short white men, have gained an opportunity to be members of the Texas Rangers, who had a ceiling, a base on how tall one must be to be a Texas Ranger.

I do not know if that meant that they had to be tall enough for someone to look in their faces upward when they stopped their cars on the Texas highways, or what, but it was discriminatory. It had eliminated virtually all Mexican-Americans in Texas from becoming Texas Rangers. Blacks were, perhaps, eliminated for other reasons. Also, white males that were short had been eliminated from being hired.

To remove this kind of discriminatory measure that really had no force, had no reason to be there, offered first opportunities to white males quicker than anyone else, because that is always the case. 100 percent of the persons who have been President of this country have been white males; 90 percent of the ones who make up this body where we serve are white males. I do not know that any affirmative action program has served to hurt white males.

It helped white males to get jobs on Southwest Airlines, when men brought a suit because they were eliminated from being hired as airline attendants,

when they were called stewardesses. Then other airlines, too, have now started to hire. Most of the diversity went to white males when the change came.

I started out as a young professional, before I was old enough to vote, at the Veterans' Administration Hospital in Dallas as a registered professional nurse. The majority of the patients were male. That is because the majority of the veterans were male. The majority of the nurses were female, because traditionally, nursing had been thought of as a female profession in this country. Therefore, most of the nursing assistants had to be male, because of lifting, privacy.

However, that has changed, now. Why did it change? Because of sensitivity. Affirmative action has brought about more sensitivity than any other measure, and recognizing that perhaps whole groups of people have been left out of professions that have something to offer if they felt there were opportunities within those professions.

Mr. Speaker, this affirmative action is not just for black Americans, though most battles to do with civil rights have been fought by black Americans, but we are the last ones that receive most of the benefit from many of the battles that we fight. However, that is OK, because what is good for us is good for America. Fairness and opportunity are good for all Americans.

Now we talk about being a global society, and a leader in the global world. We cannot be global leaders, eliminating and ignoring and not including diversity.

Mr. Speaker, we say we are a nation of nations, and if we are, and we are, we have to be diverse. Every American must feel that there is an opportunity. The Constitution guarantees that, and it is recognized that we did not get covered by the Constitution until later in its history, because, you know, just 50 years ago, in 1944, were blacks able to vote in the primary in Texas, just 50 years ago. Laws had to be passed, lawsuits, lots of time in court, just to get the right to cast a vote.

We have done a lot for this country. We have fought very, very vigorously in every war. We have brought about the opportunities for diversity in this country. We have brought the attention to the need for diversity in this country. I think if we do nothing else, we need to continue to educate the people of this Nation that affirmative action is for all people.

There have been opportunities for non-blacks to work for Members of this Congress that are black. I think that is important. I think it is important to have those kinds of relationships and those opportunities, but without that sensitivity, without the idea of affirmative action, I am not a quota supporter, because it implies just putting someone in the place, whether they are qualified or not. I do not support that. It is not necessary. There are numerous people that, given the opportunity, could do a good job, and perhaps even a better job.

Mr. Speaker, a large number of the athletes professionally in this country are black Americans. How many black Americans own clubs and organizations? I think they are 100 percent owned by white males, or at least 95 percent. There might be one or two white females that open them.

So who needs affirmative action? The sensitivity needs to go to the minds of white Americans, that is who needs it, to remind them to be fair, to remind them that this is supposed to be a color-blind society. However, when it goes blind, it does not see color at all.

That is all we are attempting to do, is sensitize. I hope to live to see the day that we will have a color-blind society. We seem to fade into obscurity without some rules, without some reminders that this country has offered fairness as one of its core foundation rules. It just so happens that unless reminded, a large group of people get left out.

Our intent, Mr. Speaker, is to sensitize, to educate, and we are not going away. We are here for the long haul. We want to see affirmative action live. We want to see it live in behavior. We want to work, we want to earn, we want to be responsible, but we cannot do it without an effort to give us an opportunity.

Mr. Speaker, I believe it is a battle worth fighting, and I really hate to see the exploitation that is being promised now to the American people to use race as dividing and bringing about lots of expression of hate in this country by running for President to get rid of affirmative action. I think that is a very, very slimy way to attempt to fool the American people and exploit the emotions of people who feel that they have been mistreated.

I think we need to study the issue, I think we need to see if it is working, where it is working, and who it is working for, and we need some more sensitivity training, perhaps, but it is not going away. We will not allow it to go away. This is America, a nation of nations .

Mr. CLYBURN. Mr. Speaker, I thank the gentlewoman very much for her comments.

I wanted to point out just one thing that she talked about. It is kind of interesting, but she mentioned that affirmative action, especially the goals and timetables part of it, got started under a Republican administration, under Richard Nixon.

At the time, the very first group that he brought under the goals and timetables happened to be the construction group. The interesting thing is, Mr. Speaker, that at the time of affirmative action, the goals and timetables, the time was established, and 85 percent of all the supervisors in the construction trades had to be white males.

If we look at this little chart here now, that figure still holds true today. After 20 years, 84.9 percent, 85 percent, are still white males. I thank the gentlewoman so much.

I yield to the gentleman from Mississippi, BENNIE THOMPSON, who I think wants to talk a little bit about what affirmative action means to the business community.

Mr. THOMPSON. First of all, Mr. Speaker, I would say to the gentleman from South Carolina, I thank him for convening this special order, but also I would like to associate myself with the comments made by my colleague, the gentlewoman from Texas. Clearly, affirmative action is on the minds of everyone in this country. We cannot let it fall victim to a certain radical element in this country that would like to turn back the progress that has been made.

Clearly, Mr. Speaker, as we talk about affirmative action, let us be very clear that it was created because a void was in this country as it related to employment, as it related to business, and as it related to minority participation in the broadest spectrum of life.

As the gentleman indicated, all of the Presidents since the early sixties have affirmed through Executive order that affirmative action should be the law of the land. This is the greatest country in the world. We cannot fall victim to that radical element that would like to move us back, away from affirmative action.

The lack of minorities in the workplace is well documented. If we talk to anyone, as they discuss affirmative action, we all agree that affirmative action has not made the dent that we would like for it to make, but we cannot argue that black people are better off without affirmative action, because they are not.

However, more importantly than the statistics, affirmative action for the first time has allowed minorities in the board rooms, employment in Fortune 500 companies, and basically, to become involved in the entire fabric of America, so we really cannot allow ourselves to deny minorities, women, or whomever, an opportunity to participate in the entire melting pot of America.

Also, Mr. Speaker, what we have to do is understand that the notion of affirmative action at no point signifies less than acceptable standards for participation. None of us here would ever, ever argue that if a job is available, that we should give it to a less qualified individual. If a contract is available, we should not give that contract to anybody other than some who can perform it, not to a less qualified contractor.

Basically, business is better off. As business participates in affirmative action, business increases. You and I know businesses, Coca-Cola, IBM, a lot of major corporations who have recognized the need for diversity in the workplace. They have diversified their work force, but they also have increased their business by diversifying,

because affirmative action is a very positive step.

Mr. Speaker, business, believe it or not, in this country is better off with affirmative action. However, the notion of quotas is really a misnomer in this definition, because we are not talking about quotas, but the opposition to affirmative action tries to bring the cue word into the debate.

However, if we look at quotas in business, all businesses operate on quotas. They talk about you have to perform certain businesses functions, you have to have certain targets. A number of issues relating to quotas for businesses are very positive.

□ 2230

Sometimes people try to say businesses are against quotas. But in order for businesses to be successful, they have to have certain quotas that their employees have to meet in terms of productivity.

It is a positive. So as we look at the term ''quota,'' we look at it as goalsetting, as targeting, and not something negative. Businesses understand that quotas are important.

A part of that, Mr. Chairman, bringing affirmative action to the business place has also diversified employment. It is important that corporate America reflect this country. If corporate America is insensitive to all of us here, then we are not doing what is in the best interests of this country.

Last, let me put forth the notion that this country supposedly by trying to shoot down affirmative action is responding to last November's election. Supposedly the angry white males in this country feel that they have been given a raw deal, or made to be somehow second class. That is not the notion of affirmative action. We ascribe and do so in concert as a group here tonight that affirmative action is a very positive step for this country.

So those individuals who might see it as a negative, we hope that you will not continue to do that, that affirmative action is positive, it is healthy, and there are no statistics that I have been able to see nor have we been able to garner even from the opposition that affirmative action is not a good tool for alleviating discrimination and bringing about diversity in the workplace.

I yield back to the gentleman from South Carolina [Mr. CLYBURN] so that we can begin the dialog that is so desperately needed to bring some reason to the debate rather than the hysteria that we hear so often from the people on the radical right.

Mr. CLYBURN. I thank the gentleman from Mississippi [Mr. THOMPSON].

Let me look at this chart here to reinforce a point that you have just made. I think all of us will agree that there is in fact a phenomenon out here that can be called the angry white male. The question is, why are they angry? I say it is because of the same reason that black males are angry. We are angry because of what has happened to family income in recent years.

If you look at this chart here, you will see that between 1950 and 1978, all the people in our society were growing together. I think it was President Kennedy who said that a rising tide lifts all boats. All the boats were going up together.

In the first quintile here, you will see, in the bottom 20 percent, the growth in that timeframe, in that 28-year period, the growth of 138 percent. And in the top 20 percent, there was a 99 percent. Everybody went up, 98, 106 percent, 111 percent, 99 percent. But what has happened to the growth in family income since?

What we see here between 1979 and 1993, that growth has been negative for the people. It has dropped by 58 percent for people in the low 20 percent, 7 percent in the next 20 percent and 3 percent in the middle here. Yet in the upper 20 percent, their growth has gone up by 18 percent.

So, yes, people are angry because they are frustrated. They are working harder and they are making less money. So that is where the anger is. And those merchants of ill will are using this anger and this frustration trying to turn it into hate and, therefore, they are targeting the weakest elements of our society for these people to vent their anger on.

So you are absolutely correct. I thought I would just use this chart to reinforce that, so nobody is denying that there is anger out there but that anger is not just among white people, it is among black people as well, because they, too, fall in these percentiles here.

Let us now go to our good friend, the gentleman from Alabama [Mr. HILLIARD], the lawyer in this group, who is going to talk a little bit about the public policy.

Mr. HILLIARD. I thank the gentleman from South Carolina [Mr. CLYBURN].

This country has an obligation, this Government has an obligation to set the tone for the direction in which this country should go. And oftentimes we do that through laws. In many instances we leave it up to the States and in those situations where the States in this country set policies or make laws that are congruent, that keep the people happy, keep people satisfied, and obtain their objectives, the Federal Government as a rule does not invade their turf or does not invade their territory.

But sometimes, because of the fact that we have 50 different States, the Federal Government has to step in in order to standardize, or set a public policy, that will be uniform, especially when it affects how the Federal Government itself does business or how an agency of the Federal Government operates.

I say that to say that sometimes in America the Congress has looked and has not been satisfied with what it has see, and in order to correct even a President, to correct certain things, they set certain rules.

Let me give an idea of what I am talking about. After World War II, our country became very much aware of the world, and America started trading, and not only trading with other countries on a very large scale but many of our larger corporations started moving their plants into other countries, started producing whatever they produced in other countries.

In the 1960's and the 1970's, the Congress decided that it wanted to make sure that a large number of jobs remained in America. So it came up with the Buy American Act.

Now, the Buy American Act was not a mandate but it was simply a situation where Congress gave tax breaks and gave points and they gave set-asides to achieve its public policy objective, making the business environment so conducive that companies would want to remain in this country, would want to produce in this country.

Oftentimes in America, we see where certain things happen to achieve a certain result, such as with veterans. After World War II, we found that a large number of veterans had served several years in the service, some on the battlefield, others in other areas, but contributing to the war efforts.

Congress wanted to reward those who had supported this country because, some of them, some males did not go, some females did not go, they stayed home, they went to college, and they were able to get all the good jobs because they were well educated.

So when the veterans came back, they did not have the experience, did not have the education that the others had, so Congress wanted to try to rectify to a limited degree or to a certain extent some of the problems that the veterans had incurred by going out defending this country.

So they set up a point system where it gave so many points on any examination for a Federal job to a veteran, and if he had been injured, it gave him additional points.

If someone took a test to work in the post office and he just happened to be a veteran, because of his service to the country, we gave him an extra 5 percent or an extra 10 percent. This is because we wanted to set a public policy. We wanted to encourage the Federal agencies to hire veterans. And we also wanted to help the veterans who had served their country.

So we see in these two different situations, the Buy American Act and the veterans act, where Congress has decided to invade the turf of agencies and the Federal Government itself by making things more compatible for veterans.

The States have done the same thing. They gave points to veterans. Many of them passed the Buy Americans Act so

that they wanted to encourage people to do certain things.

Affirmative action is also a public policy that has been established. It has been established by the national government, in this case, in many instances by executive orders of various Presidents, and also be certain laws that have been included in their agencies' rules and regulations. These laws do not mandate but just call for certain situations to take place. In other words, it creates incentives.

It does not mandate, it does not demand, it does not make, but it just creates a favorable situation. It may be a tax break to those persons selling to a minority, in the case of a radio or TV station, because Congress wants the airwaves to be diversified. It does not just want all conservatives occupying and owning all the radio and TV stations that almost happens to be the case now. So incentives are given.

But if you look at who benefits from those incentives, you will find that all Americans benefit. In the case of a radio station being purchased by a minority and certain tax preferences are given to the majority person who sold it, you find that that person benefits who is a majority. The minority benefits because he has the station.

So, you see, it works for America. Just like the Buy American Act, just as the preference that has been given to veterans in terms of their examinations, their additional points, it served the veterans, it serves our country. Affirmative action also serves our country.

But let me go beyond just public policy as it relates to the Federal Government. Corporate America has been swinging in the wind. Every time a law is made, every time an Executive order is made, every time an agency of the government makes a rule and a regulation, it has to change, because it has to obey the laws, the rules, and the regulations.

We have a situation, for about the last 25 years, we have been, not demanding but we have been encouraging corporate America to perform certain acts. Many of them have very good affirmative action policies that they have built up over the past 20 something years. They do not want to dismantle them. They are very satisfied. It creates a situation where corporate America has been able to diversity its work force, diversity its boards of directors in many instances, and it has opened up America so that all those different groups that make up America happen to be included in the decision-making process, in the work force, and not just as consumers.

It makes a very healthy situation. The healthy situation is what Congress has sought to create, not just with the government, not just with its agencies, but with corporate America. And corporate America is moving right along.

Any interruption would cause additional problems, additional changes, and it would actually be a setback.

We do not want that. Corporate America does not want that. And this government does not want that.

Now, who wants it?

□ 2245

Those who seek to divide America, and those who seek to divide America only for their own selfish reasons or purposes. And who would seek to divide America? If things are moving along, if we have a situation where everyone has been included in our work force, everyone is being included in a diversified manner on all of our boards making decisions, who would object?

Who would be angry because there is a policy that Latinos, women and blacks should be included in the work force or should be included in the decision-making process or decision-making boards, on decision-making boards, who would be angry? I cannot think of any real American that would be angry, regardless of his gender, regardless of her situation. It would be un-American to be angry.

Mr. CLYBURN. I thank the gentleman so much. Let me point out it is kind of interesting you talked about the interruption, it is kind of interesting in the 1960's when we first started discussing what needed to be done in order to improve the status of black Americans, there was an interesting figure that I think we ought to all look at. When you compared black mayors' salaries to white mayors you would find in the 1960's, black mayors made 67 cents to every dollar that was made by white males.

We put in the program of affirmative action in the 1960's and it is kind of interesting that by 1979 that figure had gone to 81 cents to every dollar. But along came the 1980's and we had an interruption in affirmative action where there was no longer any force, the Reagan administration attempted to undo it, calling in studies, studies which did not prove that affirmative action did what they said it was going to do, but during that period, by the time we got to 1990, that figure had dropped again back to 76 cents to every dollar.

So, my point is in the 1960's when we started this, it was 67 cents, it got up to 81 cent in the 1970's and now we are retrogressing and so that is what has happened.

Another little thing here is kind of interesting, the unemployment rate has started to do the same thing. The average unemployment in the 1950's was 4.5 percent, that creeped up. In the 1980's the average unemployment went up to 7.3 percent. In the 1990's we started down again. When this administration came into office it was 7.7 percent, it went as low as 5.6 percent, is now up around 5.7 percent, so we average so far 6.4 percent.

So I say we are going in the right direction with our economy, and there is no reason for any white males or white females to be angry with black people because affirmative action did not do this.

So, let me look. I think we have about 10 minutes remaining. Let me give each one of us 3 minutes here to kind of summarize, and I will go now to Congresswoman JOHNSON.

Mrs. EDDIE BERNICE JOHNSON of Texas. I thank the gentleman. I let me just share very quickly that my father told me that the reason why he did not want to go to college is because he did not want to teach or preach, he wanted to be a businessman. The opportunities did not exist. So, therefore, there was no encouragement to go on for education. He made a very good living and was a very good father to all of us.

Times have changed, and we do not want to go back. We want our young people to understand that if they choose a non-traditional profession, if they choose to be a scientist, if they choose to be a physician, the opportunities will be there and those opportunities have not always been there.

I remember when Texas paid black students to leave the State to go to medical school. We do not have to do that anymore, but we do not want to go back. We do not want to go back where we were. When young people see that their parents have an opportunity because they stayed in school, they do not have to continue to struggle because they cannot get a contract because they prepared themselves well, then young people will be encouraged to do the right thing and to be well qualified for jobs and professions that they would like to contribute.

But if we go back, we will say to the world, as a global leader that in this country we do not treat all people the same, all people do not have an opportunity, and so take to the streets, break the law. Those are the opportunities you have. We do not want to go back. We would plead with the people, let us go forward. This is America where all people are supposed to have a right to the dream, and the only way that we have had a real little glimpse at that dream is through opportunity.

I thank the gentleman very much for having this session tonight.

Mr. CLYBURN. I go now to my good friend the gentleman from Mississippi [Mr. THOMPSON].

Mr. THOMPSON. I thank the gentleman. Being one of the five Members from the State of Mississippi here in Congress, I was very happy to see the Mississippi State legislature finally get around to taking the slavery law off the books.

My point here is there are so many things in America we have to correct so that even by taking slavery off the books, that is the first step. But if you look at my State again we have more black elected officials than any other State, and you would assume, rightfully so, that that is something to be proud of and we are. But the fact is that had to go to court to give African-Americans in Mississippi the opportunity to elect the candidates of their

choice. Our State government did not want that and I am tying this into affirmative action and civil rights.

We have to have laws that encourage people to do the right thing. Affirmative action encourages individuals to do the right thing.

But the broader issue is leadership. The cop-out is to say we do not need affirmative action, we are in a colorblind society, there should be no preferences given. But that is not leadership. Leadership recognizes the fact that there is a history in this country that a lot of us are not proud of, but we are men and women composing a Congress who are willing to bite the bullet and correct the past evils.

Leadership dictates making the difficult decisions, not running from them.

Mr. CLYBURN. I thank the gentleman so much.

I yield to my good friend from Alabama [Mr. HILLIARD].

Mr. HILLIARD. I thank the gentleman very much.

In our society, especially in America, there are certain words that we do not like to use such as discrimination, segregation, set-aside, preferences, goals, and I do not know why people want to always avoid using those words.

To me if the chair over there is brown, it is brown. And you say that, and you do not have to try to go around corners giving a description of it. In America, anything that might be negative in any sense, that might be bad, I find that there are so many Americans afraid to approach the subject, afraid to discuss the subject, and they whisper about it and they try to get around it by making everything seem to be what it happens not to be. And that is just America.

But we have to change that. We still have discrimination in America, and if you do not know I want to tell you, we still have discrimination in America.

Now once you understand that, you will understand that, sure, we have gotten rid of discrimination de jure which is by law, but we still have discrimination de facto. In fact you can look at any corporation in America, you can look at any agency of any State government and you will find that it does not fairly represent the number of minorities, whatever minority it is in that area. If it is in Arizona, I can tell you now that it does not fairly represent our Mexican-Americans; if it is in North Dakota or South Dakota it does not fairly represent Indians; in Birmingham, AL, it will not fairly represent African-Americans. In Miami it will not fairly represent Cubans.

What I am saying is we do not have complete diversity. We need goals, we need incentives, we need affirmative action to create diversity in our country.

Mr. CLYBURN. I thank the gentleman very much.

Mr. Speaker, let me close this hour by first of all thanking my friends for joining me this evening. Hopefully to our fellow Members in the House and to the public-at-large looking in tonight, we have shed some light on this subject.

We hear a lot of talk today about the time for affirmative action has passed. Let me say in closing just a little something to you about time.

My friends in this body who talk about the need to do away with affirmative action are always quoting Martin Luther King, Jr., in his ''I have a dream'' speech where he talked about judging people by the content of their character rather than the color of their skin. But you know, Martin Luther King said something about time when he wrote that letter from the Birmingham City Jail in 1963, just a few months before he made the ''I have a dream'' speech. He said time is neutral; time is never right and it is never wrong, time is only what we make it. And he went on to tell us in that letter that we are going to be made to repent in this generation not just for the vitriolic words and deeds of bad people, but for the appalling silence of good people.

And then King said this, and I close. King said, ''I am beginning to believe that the people of ill will in our society make a much better use of time than the people of good will.'' And so I call for the people of good will in our society to start making a much better use of time and to remember that we, the people of good will, ought to make more use of our time, at least better use of our time than the people of ill will.

With that I thank my colleagues and good night.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ROGERS (at the request of Mr. ARMEY) for today until 7:15 p.m., on account of personal reasons.

Mr. BUNNING of Kentucky (at the request of Mr. ARMEY) for today, on account of illness.

Mr. RANGEL (at the request of Mr. GEPHARDT) for today and the balance of the week, on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WISE) to revise and extend their remarks and include extraneous material:)

Ms. KAPTUR, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

Mr. WYNN, for 5 minutes, today.

(The following Members (at the request of Mr. EHRLICH) to revise and extend their remarks and include extraneous material:)

Mr. DORNAN, for 5 minutes, on March 7.

Mr. RIGGS, for 5 minutes, each day, on March 7, 8, 9, and 10.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. WISE) and to include extraneous matter:)

Ms. HARMAN.

Mr. RANGEL.

Mr. MCDERMOTT.

Mr. PALLONE.

Mr. ANDREWS.

Mr. STOKES.

Mr. DURBIN.

Mr. STARK in two instances.

Mr. TOWNS in six instances.

Mr. HAYES.

Ms. WOOLSEY.

(The following Members (at the request of Mr. EHRLICH) and to include extraneous matter:)

Mr. BEREUTER.

Mr. CRANE.

Mr. GILMAN in two instances.

Mr. PORTMAN.

(The following Members (at the request of Mr. CLYBURN) and to include extraneous matter:)

Mr. LUTHER.

Mr. PACKARD.

ADJOURNMENT

Mr. CLYBURN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 59 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, March 7, 1995, at 9:30 a.m.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports concerning the foreign currencies and U.S. dollars utilized by various individuals and groups of the House of Representatives during the fourth quarter of 1994 in connection with Speaker-authorized official foreign travel, pursuant to Public Law 95–384, are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO INDIA AND ENGLAND, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 10 AND NOV. 20, 1994

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Barbara-Rose Collins	11/10	11/19	India	31.23	1,418.00						1,418.00
	11/19	11/20	England		233.00				([3])		233.00
Meredith Cooper	11/10	11/19	India	31.23	1,418.00						1,418.00
	11/19	11/20	England		233.00				([3])		233.00
Total					3,302.00						3,302.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollars equivalent; if U.S. currency is used, enter amount expended.
[3] On Nov. 19, 1994, no flight available to United States; overnight stay in London.

BARBARA-ROSE COLLINS.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO THAILAND, INDONESIA, AND INDIA, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 11 AND NOV. 22, 1994

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Jim McDermott	11/10	11/11	Thailand		216.07		5,946.95				6,163.02
	11/11	11/13	Indonesia		464.00						464.00
	11/13	11/22	India		1,647.00						1,647.00
Charles Williams	11/10	11/11	Thailand		216.06		5,358.95				5,575.01
	11/11	11/13	Indonesia		464.00						464.00
	11/13	11/22			1,647.00						1,647.00
Total					4,654.13		11,305.90				15,960.03

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JIM McDERMOTT,
Dec. 31, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MS. HANNELORE HEYEN, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 14 AND NOV. 19, 1994

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hannelore G. Heyen	11/14	11/15	Taiwan		$234.00						234.00
	11/15	11/17	Vietnam		652.00						652.00
	11/17	11/19	Philippines		380.00						380.00
Commercial airfare							$3,769.95				3,769.95
Total					1,266.00		3,769.95				5,035.95

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HANNELORE G. HEYEN,
Dec. 30, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, HONORABLE JAMES D. FORD, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 11 AND NOV. 21, 1994

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
James D. Ford	11/11	11/12	Germany								
	11/12	11/14	Ivory Coast								
	11/14	11/15	Ghana								
	11/15	11/16	Benin								
	11/16	11/17	Niger								
	11/17	11/20	Nigeria								
	11/20	11/21	France								
	11/21		United States								
Total					2,100.00		624.00				2,724.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JAMES D. FORD,
Dec. 5, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. MIGUEL MARQUEZ, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 30 AND DEC. 4, 1994

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Miguel Marquez	11/30	12/2	Mexico								
	12/2	12/4	Guatemala		150.00						150.00
Commercial airfare							772.45				772.45
Total					150.00		772.45				922.45

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

MIGUEL MARQUEZ,
Feb. 20, 1995.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

474. A letter from the Deputy Secretary of Defense, transmitting a report on C–17 milestones and exit criteria; to the Committee on National Security.

475. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment and services sold commercially to Greece (Transmittal No. DTC–3–95), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

476. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment and services sold commercially to Sweden (Transmittal No. DTC–1–95), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

477. A letter from the Chairman, Board of Governors of the Federal Reserve System, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

478. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

479. A letter from the Administrator, General Services Administration, transmitting an informational copy of the fiscal year 1996 GSA's Public Buildings Service Capital Investment and Leasing Program, pursuant to 40 U.S.C. 606(a); to the Committee on Transportation and Infrastructure.

480. A letter from the Secretary of Energy, transmitting the Department's 15th annual report on the Automotive Technology Development Program, fiscal year 1993, pursuant to 42 U.S.C. 5914; to the Committee on Science.

481. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to increase, effective as of December 1, 1995, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans, and for other purposes; to the Committee on Veterans' Affairs.

482. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to provide for cost savings in the housing loan program for veterans, to limit cost-of-living increases for Montgomery GI Bill benefits, and for other purposes; jointly, to the Committees on Veterans' Affairs and National Security.

483. A letter from the Director, Office of Management and Budget, transmitting a draft of proposed legislation to revise and streamline the acquisition laws of the Federal Government, and for other purposes; jointly, to the Committees on Government Reform and Oversight, National Security, the Judiciary, International Relations, Small Business, Science, and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. CANADY: Committee on the Judiciary. House Joint Resolution 2. Resolution proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives; with an amendment (Rept. 104–67). Referred to the House Calendar.

Mr. DREIER; Committee on Rules. House Resolution 105. Resolution providing for consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes (Rept. 104–68). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. THOMAS:

H.R. 1134. A bill to amend title XVIII of the Social Security Act to extend certain savings provisions under the Medicare Program, as incorporated in the budget submitted by the President for fiscal year 1996; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ROBERTS:

H.R. 1135. A bill to improve the Commodity Distribution Programs of the Department of Agriculture, to reform and simplify the Food Stamp Program, and for other purposes; to the Committee on Agriculture.

By Mr. GILMAN (for himself, Mr. FILNER, Mr. EVANS, Mr. TORRICELLI, Mr. UNDERWOOD, Mr. CUNNINGHAM, Mrs. MINK of Hawaii, Mr. LANTOS, Ms. PELOSI, Mr. YATES, Mr. FROST, Mr. MINETA, Mr. FALEOMAVAEGA, Mr. ABERCROMBIE, Mr. STARK, Ms. LOFGREN, Mr. BILBRAY, and Mr. SERRANO):

H.R. 1136. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. LAHOOD (for himself and Mr. INGLIS of South Carolina):

H.R. 1137. A bill to amend title 39, United States Code, to prevent certain types of mail matter from being sent by a Member of the House of Representatives as part of a mass mailing; to the Committee on House Oversight, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MCDERMOTT:

H.R. 1138. A bill to amend the Internal Revenue Code of 1986 to reduce the harbor maintenance tax if the Harbor Maintenance Trust Fund is overfunded; to the Committee on Ways and Means.

By Mr. SAXTON (for himself and Mr. STUDDS):

H.R. 1139. A bill to amend the Atlantic Striped Bass Conservation Act, and for other purposes; to the Committee on Resources.

By Mr. SCHUMER:

H.R. 1140. A bill to amend the Public Health Service Act to provide for the prevention, control, and elimination of tuberculosis; to the Committee on Commerce.

By Mr. YOUNG of Alaska (for himself, Mr. SAXTON, and Mr. STUDDS):

H.R. 1141. A bill to amend the act popularly known as the ''Sikes Act'' to enhance fish and wildlife conservation and natural resources management programs; to the Committee on Resources.

By Ms. ESHOO:

H.J. Res. 75. Joint resolution proposing an amendment to the Constitution of the United States to provide for 4-year terms for Members of the House of Representatives and to provide that Members may not serve more than three terms; to the Committee on the Judiciary.

By Mr. LANTOS (for himself, Mr. SOLOMON, and Mr. TORRICELLI):

H. Con. Res. 33. Concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States; to the Committee on International Relations.

By Mr. POMBO (for himself, Mr. YOUNG of Alaska, Mr. LUCAS, Mr. TALENT, Mr. CRANE, Mr. SHADEGG, Mr. CUNNINGHAM, Mr. BILBRAY, Mr. DOOLITTLE, Mr. SCHAEFER, Mr. TAUZIN, Mr. STUMP, Mrs. CHENOWETH, Mrs. CUBIN, Mr. BAKER of California, Mr. RIGGS, Mr. HUNTER, Mr. COOLEY, Mr. GRAHAM, and Mr. WAMP):

H. Res. 106. Resolution requiring that certain introduced measures be accompanied by statements of the constitutional authority for enacting them; to the Committee on Rules.

By Mr. THOMAS:

H. Res. 107. Resolution providing amounts for the expenses of certain committees of the House of Representatives in the 104th Congress; to the Committee on House Oversight.

MEMORIALS

Under clause 4 of rule XXII,

23. The SPEAKER presented a memorial of the General Assembly of the Commonwealth of Virginia, relative to a balanced budget requirement and Presidential line-item veto; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. SMITH of Michigan.

H.R. 42: Mr. ACKERMAN, Mr. SERRANO, Mr. BECERRA, and Ms. VELAZQUEZ.

H.R. 70: Mr. STENHOLM.

H.R. 104: Ms. FURSE.

H.R. 151: Mr. MCHUGH.

H.R. 157: Mr. BURR.

H.R. 218: Mr. HASTINGS of Washington.

H.R. 246: Mr. ZIMMER.

H.R. 253: Mr. FILNER, Mr. GALLEGLY, Mr. MARTINEZ, and Ms. PELOSI.

H.R. 312: Mr. INGLIS of South Carolina and Mr. WELLER.

H.R. 345: Mr. BREWSTER and Mr. STOCKMAN.

H.R. 354: Mr. SKEEN.

H.R. 371: Mr. SOLOMON and Mr. WILLIAMS.

H.R. 372: Mr. ROHRABACHER.

H.R. 373: Mr. EWING and Mr. PARKER.

H.R. 408: Mr. FRANKS of Connecticut.

H.R. 426: Mrs. CHENOWETH, Mr. LIPINSKI, and Mr. CALVERT.

H.R. 427: Mrs. SEASTRAND, Mr. ROYCE, Mr. BREWSTER, Mr. HOSTETTLER, and Mr. CRAPO.
H.R. 438: Mr. BILBRAY, Mr. FOLEY, and Mr. NORWOOD.
H.R. 485: Mr. PARKER.
H.R. 556: Mr. TEJEDA, Mr. ORTIZ, and Mr. BENTSEN.
H.R. 557: Mr. TEJEDA, Mr. ORTIZ, and Mr. BENTSEN.
H.R. 569: Mr. BERMAN.
H.R. 570: Mr. LIPINSKI, Mr. FAZIO of California, Mr. PETRI, Mr. FROST, and Mr. SAXTON.
H.R. 580: Mr. TATE.
H.R. 733: Mr. UPTON, Ms. RIVERS, and Mr. HINCHEY.
H.R. 734: Mr. UPTON, Ms. RIVERS, and Mr. HINCHEY.
H.R. 752: Mr. WHITE and Mr. CHRISTENSEN.
H.R. 759: Mr. GUTKNECHT.
H.R. 783: Mr. STUPAK and Mr. POMEROY.
H.R. 789: Mr. EWING, Mr. THORNBERRY, Mr. SOUDER, and Mr. TORRICELLI.
H.R. 849: Mr. BROWN of Ohio and Mr. DURBIN.
H.R. 873: Mr. GILLMOR, Mr. ZELIFF, Mr. POSHARD, and Mr. SANFORD.
H.R. 910: Mr. THOMPSON, Mr. UNDERWOOD, Mr. MINGE, Mr. HINCHEY, and Mr. FATTAH.
H.R. 928: Mr. LIPINSKI, Mr. GORDON, and Mr. MCHUGH.
H.R. 959: Mr. BEILENSON.
H.R. 963: Mr. MILLER of Florida, Mr. PETERSON of Florida, Mr. STEARNS, Mr. BENTSEN, Mr. BARRETT of Wisconsin, and Mr. MCHUGH.
H.R. 1005: Mr. WELDON of Florida, Mr. JONES, Mr. WELLER, Mr. BLUTE, Mrs. CHENOWETH, and Mr. CALVERT.
H.R. 1021: Mr. LIPINSKI.
H.R. 1023: Mr. OLVER.
H.R. 1024: Mr. MCKEON.
H.R. 1058: Mr. KLUG and Mr. FRISA.
H.R. 1093: Mr. MINGE and Mr. BAESLER.
H.R. 1114: Mr. WYDEN.
H.R. 1118: Mr. EMERSON, Mr. DORNAN, Mr. CHRISTENSEN, and Mrs. CHENOWETH.
H.J. Res. 56: Mr. LIPINSKI.
H.J. Res. 61: Mr. EMERSON, Mr. MCINTOSH, and Mr. TIAHRT.
H. Con. Res. 12: Mr. LAUGHLIN, Ms. BROWN of Florida, and Mr. DIAZ-BALART.
H. Con. Res. 31: Mr. FRANKS of Connecticut, Mr. MANTON, Mr. DIAZ-BALART, Mr. DELLUMS, Ms. LOFGREN, and Ms. FURSE.
H. Res. 24: Mr. FORBES, Mr. LAHOOD, Mr. CUNNINGHAM, Mr. WICKER, Mr. SAXTON, Mr. ROHRABACHER, Mr. ENGLISH of Pennsylvania, and Mr. BAKER of Louisiana.
H. Res. 30: Mr. TATE, Mr. CLYBURN, Mr. STUDDS, Mr. HINCHEY, and Mr. PARKER.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.J. Res. 2: Mr. BROWNBACK and Mrs. MYRICK.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1058

OFFERED BY: MR. BRYANT

AMENDMENT NO. 2: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. INAPPLICABILITY TO DERIVATIVES.

This Act and the amendments made by this Act shall not apply to any action based on an allegation of fraud in connection with the purchase or sale of a derivative instrument. For purposes of this section, the term ''derivative instrument'' means any financial contract or other instrument that derives its value from the value or performance of any security, currency exchange rate, or interest rate (or group or index thereof), but does not include—

(1) any security that is traded on a national securities exchange or on an automated interdealer quotation system sponsored by a securities association registered under section 15A of this title;

(2) any forward contract which has a maturity at the time of issuance not exceeding 270 days;

(3) any contract of sale of a commodity for future delivery, or any option on such a contract, traded or executed on a designated contract market and subject to regulation under the Commodity Exchange Act; or

(4) any deposit held by a financial institution.

H.R. 1058

OFFERED BY: MR. BRYANT

AMENDMENT NO. 3: Page 18, beginning on line 6, strike subsections (b) and (c) and insert the following (and redesignate the succeeding subsections accordingly):

''(b) PLEADING REQUIREMENT.—In any action arising under this title in which the plaintiff may recover money damages only if it proves that the defendant acted with scienter, the plaintiff must allege in its complaint facts suggesting that the defendant acted with that state of mind.

H.R. 1058

OFFERED BY: MR. COX

AMENDMENT NO. 4: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting '', except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves conduct actionable as fraud in the purchase or sale of securities'' before the period.

H.R. 1058

OFFERED BY: MR. DINGELL

AMENDMENT NO. 5: Page 18, beginning on line 2, strike ''For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless.''.

H.R. 1058

OFFERED BY: MS. ESHOO

AMENDMENT NO. 6: Page 17, beginning on line 18, strike paragraph (4) and insert the following:

''(4) RECKLESSNESS.—For purposes of paragraph (1), a defendant makes a fraudulent statement recklessly if, in making such statement, the defendant engaged in conduct (i) that was highly unreasonable, involving not merely simple or even inexcusable negligence, but an extreme departure from standards of ordinary care, and (ii) that presented a danger of misleading investors that was either known to the defendant or so obvious that the defendant must have been aware of it.

H.R. 1058

OFFERED BY: MR. KENNEDY OF MASSACHUSETTS

AMENDMENT NO. 7: Page 24, line 13, strike ''No defendant'' and all that follows through line 16, and after line 21, insert the following new paragraph (and redesignate the succeeding paragraph accordingly):

''(4) UNCOLLECTIBLE SHARES.—If, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the damages is uncollectible, the remaining defendants shall be jointly and severally liable for the uncollectible share. A share of damages is uncollectible if the court finds that—

''(A) the defendant is, or is in imminent danger of becoming, bankrupt or insolvent;

''(B) the defendant is, or is likely to be, subject to either State or Federal criminal proceedings that raise a reasonable doubt about the defendant's ability to proceed as a going concern; or

''(C) the defendant is, or the principals thereof, pose a risk of fleeing the country to avoid prosecution, or are attempting to transfer the defendant's assets outside the United States to avoid satisfying a judgment reached under this title.

H.R. 1058

OFFERED BY: MR. MANTON

AMENDMENT NO. 8. Page 7, beginning on line 19, strike subsection (c) through page 11, line 8, and insert the following:

''(c) AWARDS OF FEES AND EXPENSES.—

''(1) AUTHORITY TO AWARD FEES AND EXPENSES.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a default, a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether—

''(A) The complaint or motion is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

''(B) the claims, defenses, and other legal contentions in the complaint or motion, taken as a whole, are unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

''(C) the allegations and other factual contentions in the complaint or motion, taken as a whole, lack any evidentiary support or would be likely to lack any evidentiary support after a reasonable opportunity for further investigation or discovery; or

''(D) the denials of factual contentions are unwarranted on the evidence or are not reasonably based on a lack of information or belief.

''(2) AWARD TO PREVAILING PARTY.—If the court determines that the losing party has violated any subparagraph of paragraph (1), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the losing party violated any such subparagraph shall be made on the basis of the record in the civil action for which fees and other expenses are sought.

''(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

''(4) SANCTIONS AGAINST ATTORNEY.—The court—

''(A) shall award the fees and expenses against the attorney for the losing party unless the court determines that the losing party was principally responsible for the actions described in subparagraph (A), (B), (C), or (D) of paragraph (1); and

''(B) may, in its discretion, reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

''(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

''(6) DEFINITIONS.—For purposes of this subsection, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnished.

H.R. 1058

OFFERED BY: MR. MARKEY

AMENDMENT NO. 9: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. AUTHORITY OF SEC TO PROSECUTE AIDING AND ABETTING.

Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by striking the heading of such section and inserting the following:

''LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID OR ABET VIOLATIONS''; and

(2) by adding at the end the following new subsection:

''(e) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of actions by the Commission pursuant to subsections (d)(1) and (d)(3) of section 21, any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation thereunder, shall be deemed to violate such provision and shall be liable to the same as the person to whom such assistance is provided.''.

H.R. 1058

OFFERED BY: MR. MINETA

AMENDMENT NO. 10: Page 26, beginning on line 1, strike section 37 through page 28, line 2, and insert the following:

''SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD–LOOKING STATEMENTS.

''(A) SAFE HARBOR IN GENERAL.—In any private action arising under this title based on a fraudulent statement (as defined in section 10A), a person shall not be liable with respect to any forward-looking statement if and to the extent that the statement—

''(1) contains a projection, estimate, or description of future events; and

''(2) refers clearly (or is understood by the recipient to refer) to—

''(A) such projections, estimates, or descriptions as forward-looking statements; and

''(B) the risk that such projections, estimates, or descriptions may not be realized.

The safe harbor for forward-looking statements established under this subsection shall be in addition to any safe harbor the Commission may establish by rule or regulation.

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For the purpose of this section, the term 'forward-looking statement' shall include (but not be limited to) projections, estimates, and descriptions of future events, whether made orally or in writing, voluntarily or otherwise.

''(c) NO DUTY TO MAKE CONTINUING PROJECTIONS.—In any private action arising under this title, no person shall be deemed to have any obligation to update a forward-looking statement made by such person unless such person has expressly and substantially contemporaneously undertaken to update such statement.

''(d) AUTOMATIC PROCEDURE FOR STAYING DISCOVERY; EXPEDITED PROCEDURE FOR CONSIDERATION OF MOTION ON APPLICABILITY OF SAFE HARBOR.—

''(1) STAY PENDING DECISION ON MOTION.—Upon motion by a defendant to dismiss on the ground that the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section and that the safe harbor provisions of this section preclude a claim for relief, the court shall stay discovery until such motion is decided.

''(2) PROTECTIVE ORDERS.—If the court denies a motion to dismiss to which paragraph (1) is applicable, or if no such motion is made and a party makes a motion for a protective order, at any time beginning after the filing of the complaint and ending 10 days after the filing of such party's answer to the complaint, asserting that the safe harbor provisions of this section apply to the action, a protective order shall issue forthwith to stay all discovery as to any party to whom the safe harbor provisions of this section may apply, except that which is directed to the specific issue of the applicability of the safe harbor. A hearing on the applicability of the safe harbor shall be conducted within 45 days of the issuance of the protective order. At the conclusion of the hearing, the court shall either dismiss the portion of the action based upon the use of the forward-looking information or determine that the safe harbor is unavailable in the circumstances.

''(e) REGULATORY AUTHORITY.—The Commission shall exercise its authority to describe conduct with respect to the making of forward-looking statements that will be deemed not to provide a basis for liability in private actions under this title. Such rules and regulations shall—

''(1) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

''(2) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

''(3) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 of this title will be deemed not to be in violation of this title.

Nothing in this section shall be deemed to limit, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under other statutes under which the Commission exercises rulemaking authority.''.

H.R. 1058

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 11. Page 8, line 20, strike the word ''shall'' and substitute ''may''.

H.R. 1058

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 12: Page 16, line 23, after the semicolon, add ''and''.

Page 16, strike lines 24 and 25 in the entirety and redesignate the subsequent subsection accordingly.

H.R. 1058

OFFERED BY: MR. WYDEN

AMENDMENT NO. 13: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. FINANCIAL FRAUD DETECTION AND DISCLOSURE.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by inserting after section 13 (15 U.S.C. 78m) the following new section:

''SEC. 13A. FRAUD DETECTION AND DISCLOSURE.

''(a) AUDIT REQUIREMENTS.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission, the following:

''(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

''(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

''(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern over the ensuing fiscal year.

''(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

''(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting any audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(A)(i) determine whether it is likely that an illegal act has occurred, and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the is suer, including any contingent monetary effects, such as fines, penalties, and damages; and

''(B) as soon as practicable inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

''(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

''(A) any such illegal act has a material effect on the financial statements of the issuer,

''(B) senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to such illegal act, and

''(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement,

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

''(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board

of directors has received a report pursuant to paragraph (2) shall inform the Commission by notice within one business day of receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished the Commission. If the independent public accountant making such report shall fail to receive a copy of such notice within the required one-business-day period, the independent public accountant shall—

''(A) resign from the engagement; or

''(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) within the next business day following such failure to receive notice.

''(4) REPORT AFTER RESIGNATION.—An independent public accountant electing resignation shall, within the one business day following a failure by an issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

''(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

''(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C of this title, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b) of this section, then the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination whether to impose a civil penalty, and the amount of any such penalty, shall be governed by the standards set forth in section 21B of this title.

''(e) PRESERVATION OF EXISTING AUTHORITY.—Except for subsection (d), nothing in this section limits or otherwise affects the authority of the Commission under this title.

''(f) DEFINITIONS.—As used in this section, the term 'illegal act' means any action or omission to act that violates any law, or any rule or regulation having the force of law.''.

''(b) EFFECTIVE DATES.—As to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S–K (17 CFR 229.302(a)) of the Securities and Exchange Commission, the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1996. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1997.

H.R. 988

OFFERED BY: MR. BURTON OF INDIANA

AMENDMENT NO. 8: In section 2, page 4, line 1, insert at the beginning of the line: ''25 percent of''.

And on line 5, strike the period, insert a coma and add the following new language '', or the Court may increase the percentage above the 25% if in the opinion of the Court the offeror was not reasonable in accepting the last offer.''

H.R. 988

OFFERED BY: MS. HARMAN

AMENDMENT NO. 9: Strike section 2 of the bill, and insert the following:

SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION.

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

''(e) AWARDS OF FEES AND EXPENSES.—

''(1) AUTHORITY TO AWARD FEES AND EXPENSES.—In any action over which the court has jurisdiction under this section, if the court enters a final judgment against a party litigant on the basis of a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether (A) the position of the losing party was not substantially justified, (B) imposing fees and expenses on the losing party or the losing party's attorney would be just, and (C) the cost of such fees and expenses to the prevailing party is substantially burdensome or unjust. If the court makes the determinations described in clauses (A), (B), and (C), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the position of the losing party was substantially justified shall be made on the basis of the record in the action for which fees and other expenses are sought, but the burden of persuasion shall be on the prevailing party.

''(2) SECURITY FOR PAYMENT OF COSTS IN CLASS ACTIONS.—In any private action arising under this section that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of the fees and expenses that may be awarded under paragraph (1).

''(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

''(4) ALLOCATION AND SIZE OF AWARD.—The court, in its discretion, may—

''(A) determine whether the amount to be awarded pursuant to this subsection shall be awarded against the losing party, its attorney, or both; and

''(B) reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the action.

''(5) AWARDS IN DISCOVERY PROCEEDINGS.—In adjudicating any motion for an order compelling discovery or any motion for a protective order made in any action over which the court has jurisdiction under this section, the court shall award the prevailing party reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorneys' fees, unless the court finds that special circumstances make an award unjust.

''(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

''(7) PROTECTION AGAINST ABUSE OF PROCESS.—In any action to which this subsection applies, a court shall not permit a plaintiff to withdraw from or voluntarily dismiss such action if the court determines that such withdrawal or dismissal is taken for purposes of evasion of the requirements of this subsection.

''(8) DEFINITIONS.—For purposes of this subsection—

''(A) The term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees and expenses. The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of services furnished.

''(B) The term 'substantially justified' shall have the same meaning as in section 2412(d)(1) of title 28, United States Code.''.

H.R. 988

OFFERED BY: MR. MCHALE

AMENDMENT NO. 10: After section 4, insert the following:

SEC. 5. FRIVOLOUS ACTIONS.

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term ''groundless'' means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

(1) the striking of the complaint;

(2) the dismissal of the party; and

(3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except

that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 1, strike ''SEC. 5.'' and insert ''SEC. 6.''.

Page 7, line 7, strike ''The'' and insert ''Section 5 and the''.

H.J. RES. 2

OFFERED BY: MRS. FOWLER

AMENDMENT NO. 1: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

''ARTICLE —

''No person may serve more than four consecutive terms as Representative or two consecutive terms as Senator, not counting any term that began before the adoption of this article of amendment.''.

United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *104th* CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, MONDAY, MARCH 6, 1995 *No. 41*

Senate

The Senate met at 1 p.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. We have a guest Chaplain today, Dr. Neal T. Jones, pastor of Columbia Baptist Church, Falls Church, VA. I had the pleasure of attending that church a number of years when my family was up here years ago. He is a wonderful pastor. We are honored to have him.

PRAYER

The guest Chaplain, the Reverend Dr. Neal T. Jones, pastor, Columbia Baptist Church, Falls Church, VA, offered the following prayer:

Let us pray:

Heavenly Father, we pray for our families. The higher we climb the rungs of national prominence, the more we lower our resistance to the diseases of family. The more our name appears in the paper, the more pressure and embarrassment follows for our children and spouse. The more time we spend helping our Nation, the less time we have to enjoy pimento cheese sandwiches or a picnic with our children. We are weary because the more who think we are important, the more we become too important to spend time with family.

Help us, then, in our homes. Let our mates be our best friends. Let our children be our closest companions. Help us talk to them about trials, pray with them each day, and play with them regularly. Let us construct our nest with great care lest we build our castles in vain.

We commit ourselves to You, Heavenly Father, because You know how to make us family.

In Jesus' name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. CRAIG. Mr. President, today the time for the two leaders has been reserved, and there will be a period for the transaction of morning business until the hour of 2 p.m., with Senators permitted to speak for up to 10 minutes each. At 2 p.m. today, the Senate will begin consideration of S. 244, the Paperwork Reduction Act.

For the information of all of my colleagues, there will be no rollcall votes during today's session.

MEASURE PLACED ON CALENDAR—SENATE JOINT RESOLUTION 28

The PRESIDING OFFICER (Mr. BENNETT). The clerk will read Senate Joint Resolution 28 for the second time.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 28) to grant consent of Congress to the Northeast Interstate Dairy Compact.

Mr. CRAIG. Mr. President, I object to further proceedings at this time.

The PRESIDING OFFICER. Under rule XIV, the measure will be placed on the calendar.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

BALANCED BUDGET AMENDMENT

Mr. CRAIG. Mr. President, over the last several days, the Senate has been engaged in a debate over the balanced budget amendment. It was during that period of time that those opposed to it chose to use the argument of Social Security, as somehow the amendment would throw in jeopardy that system of funding supplemental retirement for the elderly and the old age of our country, and the other benefits that go along with the system. They argued loudly that changes should be made, but most assuredly that the amendment ought to take Social Security out of the current budget process.

There were several of us who at that time argued that the Social Security receipts were now a part of the unified Federal budget. They had been since 1969. They were part of what we budget today, and every Senator on this floor, at least more than once, had voted to include those by action of voting for the passage of a budget of our Federal Government.

While it was argued loudly—and loudly ignored by the opposition—that that was part of what we do today and it was clear that that is what we do, it was part of that effort to try to bring Members of the other side aboard in support of that amendment that an offer of good faith was made as a phasing out of the use of those funds as we moved toward a balanced budget beyond the year 2002. That offer was rejected.

What I thought was interesting over the weekend and why I bring this issue once again before the Senate is that as many of our leaders are on talk shows during the weekends, I thought one that is worth mentioning appeared in an article in the Washington Times this morning which came from the White House itself. Let me read from that article. It said:

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Meanwhile, the White House conceded yesterday that Social Security trust fund surpluses currently mask the size of the deficit, undermining the argument Senate Democrats had used to defend their opposition to the balanced budget amendment. White House Chief of Staff Leon Panetta said the 1996 deficit is actually $50 billion higher than reported because the administration uses Social Security trust fund surpluses to reduce the deficit. Previous administrations used the same accounting technique.

And, of course, that is exactly what we referred to on the floor on the Senate time after time over the debate of the last several weeks when we talked about the unified budget and the need to correct that and the ability to correct that through the authorizing legislation and the implementing legislation that would occur following the passage of a balanced budget amendment.

The article went on to say:

Six Senate Democrats who voted for the amendment in 1994 reversed themselves last week saying they feared Republicans would use the trust fund to balance the budget.

Many of us argued at that time that that argument was false and that, of course, those Democrats knew that they were now using the trust funds, like every other person serving in the U.S. Congress, to deal with the current budget because it was part of the unified budget.

Mr. Panetta said on the ABC-TV show ''This Week'' that funds for the Social Security trust fund are indistinguishable from other revenues because funds flow into the same general Government account.

''When you look at the Federal budget, and even when you look at Social security, the reality is that those are funds that flow into a central trust for Social Security,'' Mr. Panetta said. ''Government basically operates that program, even though it flows into that trust. So it really ought to be considered part and parcel of the overall as we consider the budget.''

That is what Mr. Panetta said. That is what many of us have attempted to argue, and yet last week, for some reason, those who chose to be in opposition to the balanced budget amendment grabbed onto this very thin thread and, in my opinion, the thread broke when the White House agreed with us that current unified budgets use Social Security trust funds, and it was Republicans who had offered in good faith an alternative that would move us away from that process as we moved toward a balanced budget, and it was that offer that was rejected.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

TWO WRONGS DO NOT MAKE A RIGHT

Mr. REID. Mr. President, when I came to the floor this morning, the last thing I wanted to talk about was balanced budgets and Social Security. But my friend from Idaho, in effect, made the argument that I made 4 weeks ago when I offered the amendment on Social Security, and that argument is—I guess it could be summed up best as my mother told me on numerous occasions: Two wrongs do not make a right.

It is not right that we have, contrary to law, since 1990 raided the Social Security trust fund. It is against the law to do that. We have gone ahead and done it anyway and, as my friend from Idaho stated, we are still doing it. We should stop doing it, and that is the whole point of the debate on Social Security.

Social Security has not contributed 1 cent to the deficit, not a penny. What right do we then have to take 6.2 percent out of the check of any of the personnel around here, any of the people in the audience, 6.2 percent of their paycheck, of their money and then the employer matches it 6.2 percent. So 12.4 percent of every person's paycheck is put into a trust fund. For what? For retirement so that when they retire, they will have Social Security benefits. That is a program we have had for 60 years.

That money, contrary to what my friend from Idaho said, is not to be used for foreign aid. It is not a tax to pay for the peacekeeping mission in Haiti. It is not money to pay for farm subsidies. It is not taxes paying for B–2 bombers. It is money that is set aside not for a welfare program but a retirement program.

I hope this budget that will be reported out by the Budget Committee, by my friend from New Mexico and my friend from Nebraska, both renowned deficit hawks, people who believe in having a frugal, fiscally responsible budget, deletes Social Security, that no longer masks the deficit.

I think we should be honest about it. I hope they will do that. Otherwise, Mr. President, we are going to get into another debate on the budget resolution, because the time has come to start following the law. We do not need to phase it out. This is the first admission we had they wanted to use Social Security moneys. Remember, all the statements in the past from the House and Senate were that we are going to protect Social Security.

Some way to protect it, just take the money and spend it. We should not do that.

So, Mr. President, the debate on the balanced budget amendment was a good debate. It proved to me that we have a problem with the deficit; it proved to me that we must do something about that deficit; and, third, it proved to me we should do it without Social Security.

I am willing to stand up on this floor and walk down in the well, or from my chair, whatever we are directed to do, and cast votes to do just that.

Now, Mr. President, I came here today not to speak about this. I came to speak about another issue.

Mr. DORGAN. Mr. President, I wonder if the Senator from Nevada will yield for a question.

Mr. REID. I will be happy to yield.

MISUSE OF SOCIAL SECURITY TRUST FUNDS

Mr. DORGAN. Mr. President, I was listening to the discussion in the Chamber and heard once again an attempt to create a misimpression about the debate last week on the constitutional amendment to balance the budget. The argument has been made, ''Gee, the trust funds in the Social Security system are being misused now, so I do not know what anybody was concerned about, and the notion of the trust funds being in jeopardy was all a lot of nonsense.''

We heard a lot of that last week, but I also want to correct the record here, and the record is this. No matter how often someone stands and makes this argument, it is not true. If they say the balanced budget amendment has nothing to do with the Social Security trust funds, in my judgment, they are simply overlooking the facts.

The fact is that as the constitutional amendment to balance the budget was written, the Social Security trust funds would have been used to reduce the Federal budget deficit. The fact is while people were saying in public ''We have no intention of using the Social Security trust funds,'' in private they were in effect saying, ''Look, fellows, let us be honest. We cannot balance the budget without using the Social Security trust funds.'' They were saying one thing in public, another thing in private.

Now, I helped write the 1983 bill called the Social Security Reform Act. When we wrote it, we decided to impose payroll taxes in a way to raise more money than was necessary on a yearly basis to be put into the Social Security system to save for the future.

In 1983, in the markup, I raised the question about whether, in fact, the money would be saved and, of course, since that time it has been historically used by Republicans to offset the budget deficit balance in this country.

The proposal last week would have made that misuse of the trust funds constitutional. It would have redefined receipts and expenditures in the constitutional amendment in a manner that guarantees you will use all of those so-called forced savings in the Social Security system to offset the Federal budget deficit, the operating budget deficit of the United States.

Frankly, that is not an honest thing to do. Either we are not going to balance the Federal budget or we are going to save Social Security trust funds and balance the Federal budget. But last week, the proposal was to let us use the Social Security trust funds to balance the Federal budget.

That is bad public policy no matter how you slice it or how you describe it. It does not matter what is said in the coming days; it does not alter the facts. The facts are we are talking about $1.3 trillion in the next 12 years of dedicated taxes to be paid into a trust fund that will not be there under

the circumstances of that constitutional amendment to balance the budget. Some things are worth standing and fighting for—$1.3 trillion and the future of the Social Security system, it seems to me, is worth standing and fighting for.

Mr. REID. If I could direct—the Senator from North Dakota now has the floor—a question to the Senator from North Dakota.

Mr. DORGAN. The Senator from Nevada has the floor.

Mr. REID. I would say, one of the misunderstandings also has been that we, those of us who supported the exemption of Social Security from the balanced budget amendment, there is a misapprehension that we did not want Social Security ever touched again. I ask my friend from North Dakota, was it not our intention clearly—we made statements in the Chamber and to the press—that Social Security should rise or fall on its own merits; if we had to tinker with it on the edges to make sure that it was actuarially sound, we could do this, did we not?

Mr. DORGAN. Absolutely. And the fact is there will be adjustments made in the Social Security system. To the extent they are made, they ought to be made to make that system actuarially sound.

Mr. REID. As it has been in the past.

Mr. DORGAN. I do not support misusing the trust funds to balance the Federal operating budget. That is a dishonest way of budgeting, in my judgment.

Mr. REID. We should not be using those moneys, I say to my friend, those tax moneys, 12.4 percent of a person's check, for foreign aid, is that not true?

Mr. DORGAN. Absolutely.

Mr. REID. For the military or highway construction? It should be used for retirement, is that not right?

Mr. DORGAN. Exactly. They are dedicated taxes to be put only in a trust fund to be used only for that purpose.

Mr. CONRAD. Will the Senator yield?

Mr. REID. I will be happy to yield.

Mr. CONRAD. I thank the Senator from Nevada.

RAIDING OF THE SOCIAL SECURITY TRUST FUNDS

Mr. CONRAD. I heard, as I was having lunch downstairs, the distinguished Senator from Idaho attempt to, what I can only say is rewrite history with respect to the debate last week.

Let me say, as one who was involved in those negotiations, I think the record is abundantly clear. Those who were proponents of the amendment clearly intended to raid Social Security trust funds in order to pay for other Government expenses to reduce the budget deficit. That is precisely what was going on last week. Any attempt to say that is not the case is to rewrite history.

Now, as one who was involved in that negotiation, let us review what occurred. Some have said we are raiding the trust funds now. Well, that is absolutely correct. We are raiding the trust funds now. It does not make it right. And to suggest we ought to enshrine that principle and that policy in the Constitution of the United States is dead wrong. To constitutionalize a raiding of trust funds to pay for other Government expenses I believe is a wrong principle.

Let me just say that when I was tax commissioner of the State of North Dakota, I opposed raiding trust funds to pay for Government expenses. I think it is a wrong principle. We should not be doing it at this level either.

Mr. President, the hard reality is the trust fund surpluses that we are running now are about to explode. They are about to become much bigger surpluses, and the reason for that is to get ready for the day the baby boom generation retires, when the number of people eligible is going to double in this country. But what they are going to find is the cupboard is bare. There is no money in the trust funds. There is not a nickel in the trust funds. All the money has been spent.

Mr. President, I want to go back to what occurred last week. I laid out on the 28th, on the morning of the 28th the criteria that were necessary to secure my vote. I was thought then to be a key swing vote. I laid out very clearly in the CONGRESSIONAL RECORD what the criteria were that I would apply in order to get my vote.

During those negotiations, Republican leaders came to me, and they said we understand your concern about taking Social Security trust fund money and using it for Government expenses. We will agree to stop using Social Security trust fund surpluses by the year 2012.

Let me repeat that. After saying for weeks that they had no intention of taking Social Security trust fund money, last week on Tuesday, the 28th, Republican leaders told me they would agree to stop using the trust fund surpluses by the year 2012. That is about $2 trillion of Social Security trust fund surpluses that they were saying they were going to use.

When I said, no, that certainly was not something I could agree to, they came back to me and said we will stop using Social Security trust fund surpluses by the year 2008. Again, this is after saying for weeks they had no intention of using any of those moneys. But they came to me and said we will stop using the Social Security trust fund surpluses by the year 2008.

What could be more clear as to what their intention was? What could be more clear? They said to me they intended to be using the money, first until 2012 and then until 2008. It was only then, after I had objected to that, that they talked about a phasing out and we discussed a formula for phasing out of the Social Security trust fund money. But even that proposal, even that suggestion was flawed because when they put in writing what they had in mind, it was a statute. I told them on that night: I am not a lawyer. I am not a constitutional expert. But if you tell me that this will protect the funds over time, I will go to legal experts and ask them for their opinions.

The next day, they sent to me a draft of a formula that we had discussed the night before. But again it was in statute form, which had never been my idea. That was their idea.

Mr. REID. Will my friend from North Dakota yield?

Mr. CONRAD. If I can just complete the thought?

Then I got the document the next morning. I got the document the next morning. It was their draft of how they said they could protect Social Security funds. I met with legal experts from the Budget Committee, from the Congressional Research Service, and they said this is not going to protect anything because a constitutional amendment supersedes any statute.

So when we hear the other side here today say they had a plan to phase out using Social Security trust funds, it was not an effective plan. It was not a plan that had legal force and effect —at least according to the constitutional experts that I talked to. They told me very clearly that what they were offering was eyewash. It made it look like they were going to do something or were willing to do something, but it would not have legal force and effect.

That is, I believe, the review of what happened last week. For the other side to now say they had no intention of using Social Security funds—please, that is just not the case. It is clearly not the case. They had every intention of using $1.3 trillion of Social Security trust fund surpluses by the year 2008. It would have been about $2 trillion if we had taken their first offer to stop using the funds by 2012. And to say their final offer was to phase out the use of the funds overlooks the point that they were suggesting that a statute would provide that protection when the legal experts I consulted said in fact that would have no legal force and effect.

I want to thank my colleague. I just felt the need to set the record straight here, at least with respect to my belief of what happened last week.

THE BALANCED BUDGET AMENDMENT

Mr. REID. Mr. President, I wanted to say to my friend, he was present, is it not true, one day last week prior to the vote when we were in an office in the Dirksen Building and we called in a constitutional law expert to go over once again the fact that section 7 of the underlying constitutional amendment said that all revenues must be included? The report language and everything else pointed to the fact that that includes Social Security revenues. Then we asked him, going over the argument again, would a speech, a letter, or a statute in effect do away with section 7 of the constitutional amendment?

It is true, is it not, that the scholar said it would not? Once a constitutional amendment passed, Social Security would be there, it would be used

for balancing the budget, unless you again amended the Constitution? Is that not true?

Mr. CONRAD. The Senator is exactly right. We met with a legal expert, a constitutional law expert from the Congressional Research Service, who told us that the statute that had been proposed by the other side to protect Social Security over time, phasing out the using of Social Security surplus funds by the year 2012, would not work.

I had been advised earlier in the day by a budget expert from the Budget Committee itself, a constitutional law expert from the Budget Committee itself, that it would not work. We were advised later on that day that, in fact, that was the case.

THE BALANCED BUDGET AMENDMENT

Mr. HOLLINGS. Mr. President, if the Senator will yield for a couple of minutes, I thank the Senator from Nevada for his leadership and particularly both Senators from North Dakota for their leadership on this issue.

We are talking about truth in budgeting. I know the distinguished Presiding Officer believes in the truth. And the truth is, that when Republicans point fingers and talk in terms of a flip-flop, they should examine their own records and realize that many on there side who previously voted to protect Social Security have now flip-flopped to voting against it.

The Record will show that the Senator from South Carolina voted for practically the same language in voting for the constitutional amendment in 1993. As I stated long before the vote, at that particular time I had not carefully focused on the details of the Simon amendment. I was told: FRITZ, this is the same balanced budget amendment to the Constitution. It is not going anywhere. They talked about protecting Social Security, and I thought, frankly, it did.

When I saw the House of Representatives pass this legislation for the first time this year, I began to study in detail whether or not the language complied with the 1990 Hollings-Heinz law, section 13301 of the Budget Enforcement Act, that we struggled to put on the books.

Why the struggle? Because I have been down this road before. I remember Arthur Burns, who was then Director of the Federal Reserve back in the 1970's, talked the need for a unified budget. I went along with the unified budget in 1983 because there were not any surpluses. That was the problem, the dilemma that the distinguished Senator from North Dakota is pointing out. We were trying to make up, with a tax on payrolls, not only the short-term deficit in Social Security, but also to protect the fiscal soundness of Social Security into the middle of the next century.

But then, during the late 1980's, a funny thing happened on the way to the forum—the Federal deficit exploded. The Social Security surpluses were growing as a result of the increased payroll tax. But to hide our fiscal profligacy Congress, Republican and Democrat, used those funds to mask the true size of the problem. Rather than changing course and taking steps to reduce our spending habits, we were content to move the deficit from the Federal Government over to the Social Security trust.

That bothered Senator Heinz, the late Senator from Pennsylvania, and this Senator. Senator Heinz was not on the Budget Committee, but I was. So I brought it up and on July 10, 1990, we had, by a vote of 20 to 1—where the distinguished Senator from Texas [Mr. GRAMM] was the lone vote against. Thereafter, by a vote of 98 to 2 on the floor of this body, we passed my amendment and saw it signed into law by President Bush on November 5, 1990.

So comes this particular amendment. I checked closely, and I read and reread it. As I said, we went to better constitutional experts than myself, but everybody knows that you cannot amend the Constitution by statute. As President Washington said in his Farewell Address:

> If, in the opinion of the people, the distribution or modification under the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way in which the constitution designates—But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

So I knew it. I had been into this court before. I said, ''Wait a minute. When it says that all receipts and all outlays will be included in this deficit, that means that all Social Security receipts and all Social Security outlays will be included in calculating the deficit, thereby repealing section 13301.''

Now that got my attention. If I am flipping and flopping, at least, as Adlai Stevenson said years ago, it is not a question of whether I am conservative or I am liberal. The question is whether I am headed in the right direction. I am headed in the direction of complying with the law. I will yield, because I did not intend to speak until I had my lunch, but I was disturbed by this nonsense that I heard a little while ago.

I will ask our distinguished friends, at least in The Washington Post, to report that five Democratic Senators are ready, willing, and able to vote for a constitutional amendment to balance the budget if they protect Social Security. The majority leader said they are going to protect it. I heard him yesterday on ''Face the Nation''. He said, ''We are going to protect Social Security.'' All I am saying is that they need to put it in black and white. They need to put it in writing for the American people.

We wrote a formal letter so there would be no misunderstanding. We said that you can pass a constitutional amendment with 70 votes if you only protect Social Security.

I honor the representations made by the distinguished Senator from Nevada and the distinguished Senator from North Dakota today on the floor about the need for truth in budgeting. The five votes were there that could have easily passed the amendment. They acted like the offer was never made. It was formally made.

I am still prepared, and make the same offer, as one of the particular five. You could get one vote and pass it right now. It is 1:30 now. You could do it at 1:35 p.m., in the next 5 minutes; anytime. But that is not the position they take. The Record is clear. If they wanted to pass it, they could have passed it in a flash.

I thank the distinguished Senator.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. REID. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. DORGAN. Yes.

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that during the morning business of the Senate, Larry Ferderfer, a congressional fellow, be allowed privileges of the floor.

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

Mr. REID. If I may further ask unanimous consent, Mr. President. I can see the time is running. I know Senator BRYAN is here to give a statement and Senator BINGAMAN is here to give a statement. I wanted to give a statement on something other than Social Security and the balanced budget.

I am wondering if we could have the permission of the Chair, and I ask unanimous consent to extend morning business also for Senator BRYAN, Senator BINGAMAN, myself, and Senator DORGAN until 2:15.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. Regular order will be enforced with Senators allowed to speak for up to 10 minutes of morning business. Under the order, morning business is allowed for up to 10 minutes.

Mr. DORGAN. Mr. President, let me add a final comment about this, and to say that in the coming days, if and when Senators come to the floor to try to revise history or describe what happened in a manner that does not comport with what I think happened last week, others of us will come to the floor to correct it. We will not let stand assertions by some who say ''Gee, the only reason we lost this vote on the constitutional amendment to balance the budget was because some people did not understand what we were trying to do. We had no intention of using the Social Security trust funds.''

Well, in private conversations, we were told, ''Look, fellows; in this language, we all understand you cannot balance the budget without using the Social Security trust funds.''

I wish we had heard that in public, as well, and maybe the American people would understand more clearly what was behind the political circumstances last week.

In fact, a lot of this was just politics, as all of us know. Twenty-four hours after the vote, the Republican National Committee already had their advertisements on the air, paid for and running. They knew what they were doing. The slash and burn attack of politics is fine. They can do that. They have the money. But it is all about politics. The fact is, we have a serious budget deficit problem in this country. We ought to fix it. We ought not raid the Social Security trust fund to do it.

When Abraham Lincoln was debating Stephen Douglas, he was apparently exasperated. He could not get Douglas to understand a point he was trying to make. Finally, he stopped and looked at him. ''Tell me, sir. How many legs does a cow have?'' Douglas said, ''Four.'' ''Well, sir. Now, if you called the tail a leg, how many legs would the cow have?'' Douglas said, ''Five.'' Lincoln said, ''That is where you are wrong. Just because you call a tail a leg does not at all make it a leg.''

The folks come here and say they want a balanced budget at the end of 7 years, and at the end of the 7 years, they have taken the trust fund to balance the budget. They do not have a balanced budget. They might call it that. But they have raided the Social Security trust funds to do it. I do not know what arithmetic books they studied to give them this sort of advice on how to achieve these things.

The people who spoke the loudest about changing the American Constitution on the deficit are the same ones who, through polling, have devised this Contract With America that would also have us enact a very big tax cut right now. They would cut three-quarters of a trillion dollars from revenue with a big tax cut because that is popular. So they say, ''Let us have a big tax cut. Let us have a defense increase, one of the biggest areas of public spending. Let us increase defense spending. Let us cut taxes. And let us change the Constitution to require a balanced budget.'' And while they change the Constitution, they would define revenues and expenditures in a way that would raid the Social Security trust funds to balance the budget.

Some of us say, ''No. It does not make any sense.'' They say: ''It does not make sense to you? Then we attack you back home with paid ads.'' That is fine. They have a right to do that in this country. But the American people deserve to know the truth, as well.

There is an old virtue in this country about saving. One of the sobering things we did in the 1980's was to decide in 1983 that we would save for the future in the Social Security trust funds. I was part of that. I helped write it. Unfortunately, in these circumstances, in recent years, and also, if we passed a constitutional amendment enshrining in that language forever in the future, we would have misspent the Social Security trust funds. At least, I am not willing to be a part of that. Others can describe it the way they see it, or the way they want to. But I would simply leave it at this: We were told in private, by the same people who said in public, ''We have no intention of using the Social Security trust funds,'' we were told in private, ''Look, fellows. The only way we can balance the budget is by using the Social Security trust funds.''

If I told the folks in my hometown that the only way you can balance the budget is by raiding the Social Security trust funds, they would then say you need to take a new course in budget balancing. Of course, you need to balance the Federal budget. You can, and you should. But at the same time, you can, should, and must save the money you promised the workers in this country and the retired people in this country that you would have in the Social Security trust funds.

You promised them you would do that. You owe it to them to do that. It is not a case where you do one or the other. You do both—balance the Federal budget and be honest with the trust funds. And, if someone tries to do it differently, tries to shortcut by saying let us use the trust funds to balance the budget, I think a lot of people would appreciate somebody who says, ''No, it does not make any sense.''

This is not about politics. It is about principle. If you are not willing to stand for principle from time to time, then you should not be here. I am not complaining about the political pressure. They can attack forever. But when they come to the floor to revise the story of what happened last week, then I intend to be on the floor, and I hope the Senator from Nevada and others will be prepared to correct the RECORD every single day they do it. The American people need to understand what happened. And we have an obligation to tell them the truth about what went on in the Senate last week.

We did not start this. I heard this discussion and felt the need to come over and respond to it. I prefer that we not have these discussions. I prefer instead that we decide that what happened last week happened last week. Let us try to work this week on what benefits this country.

But to forever, today, every day, and every way, bring this up is just politics. It is just: ''How do we win and how do we force the others to lose?'' I know I am representing myself in an assertive way because of what I just heard. I say that the Presiding Officer at this point is someone who I know believes the less politics the better. We are all elected through the political system, and I am proud of the system. I support the system.

John F. Kennedy used to say, ''Every mother hopes their child can grow up to be President as long as they do not get involved in politics.'' But we must make public decisions and it is a necessary system. Party politics, it seems to me, ought to play a lesser role than public principle on important public issues.

I hope we can put all that aside and decide to march in unison toward the goals of the people. They want a better economy and more opportunity in the future. Both political parties have an obligation to join hands and see if we can find ways to try to bring that about and give to the American people an economy that is growing and provides more opportunity.

Mr. President, I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada [Mr. BRYAN] is recognized.

NUCLEAR WASTE DEBATE AT LOS ALAMOS

Mr. BRYAN. Mr. President, I want to focus my colleagues' attention on a subject that has consumed a good bit of my energy now for more than a decade. It is the subject of a high-level nuclear waste repository and an ill-conceived proposal by the nuclear power industry that Yucca Mountain in Nevada is the ideal place to do that.

I want to further call to my colleagues' attention the front page article in the New York Times yesterday which, in my judgment, says it all. I have had it blown up here. ''Scientists Fear Atomic Explosion of Buried Waste, Debate by Researchers, Argument Strikes New Blow Against a Proposal for a Repository in Nevada.''

That does pretty well sum it up, because for the past 13 years, there has been an unremitting, relentless effort to locate a high-level nuclear waste dump at Yucca Mountain, assuring us in Nevada that it is perfectly safe, nothing to worry about. This article reveals that, since last summer, Department of Energy scientists at Los Alamos National Laboratory, one of the most distinguished laboratories in America, have been studying a premise advanced by one of their colleagues that nuclear waste stored in a geologic repository in volcanic tuff risks ''going critical.'' That is nuclear jargon—''going critical.'' To those of us who are laymen, it means an explosion, a detonation, in which radioactive material would be scattered for miles and miles.

Needless to say, the consequences of a spontaneous nuclear explosion 90 miles from the city of Las Vegas would have a devastating impact. I must say, Mr. President, I continue to be shocked and outraged that the Department of Energy and the nuclear power industry continue to force the acceptance of a dump on Nevada when it appears that their own scientists cannot reach consensus on the most fundamental safety questions related to nuclear waste.

As the New York Times article points out, ''even if scientists can debunk the new argument that buried

waste at Yucca Mountain might eventually explode, the existence of so serious a dispute so late in the planning process might cripple the plan or even kill it.''

Nevadans are no strangers to the uncertainties of science when it comes to nuclear matters. I must say, the distinguished occupant of the chair and the great State that he represents are no strangers to this issue either. It has been 41 years since the first atmospheric detonation occurred at the Nevada test site outside of Las Vegas. Nevadans, Utahans, and Americans alike were assured there was absolutely no risk, no safety hazard, nothing to be concerned about. Let us in the scientific community reassure you that you have nothing to be concerned about.

Mr. President, I have used this opportunity on the floor to share my own reaction. I was initially in the eighth grade at that time. Our science teachers had us go out and, using a scientific calculation after seeing that flash that was embellished in the early morning dawn and feeling the seismic impact, you could actually ascertain the distance from ground zero to where that flash was being received. We were pretty excited about it. I was 13 at the time. By the time we were in high school, it had become such a part of the southern Nevada culture that businesses, wishing to demonstrate their own patriotism, were renaming business establishments atomic this and atomic that. Some may recall there was a fashion in America, an atomic hair-do. We who were students of Las Vegas High School were so enthralled by the experience that the cover of our annual, the Wildcat Echo, had the nuclear mushroom cloud on it. We thought we were part of something that was very exciting and important to the country and that it contained no risk for us.

The constituents of the distinguished occupant of the chair were told this as well. We know, decades later, that the people who were downwind—most of them, fortunately for us in Nevada, were not in Nevada; unfortunately for our sister State to the east, they were in Utah. They suffered the genetic effects, the cancer and the other serious illnesses because we were all told, and as good Americans we believed, there is absolutely no risk to health or safety.

Well, fast forward, Mr. President. We are now told that burying high-level nuclear waste is absolutely safe. As I have indicated, there is a relentless drumbeat of pressure and publicity, coordinated, if you will, between the Department of Energy, which on this issue simply serves as a surrogate of a nuclear power industry.

But why are the public officials in Nevada opposed to this, because is it really safe? Is it just a matter of science and nothing to be concerned about?

Mr. President, if I am appearing a bit cynical, it is because that has, sadly, been my experience. My senior colleague and I, Senator REID, have lived in southern Nevada. This has been part of our experience from the time of our youth until the time we entered public life, and now as we have service together in the U.S. Senate.

Last Thursday, before this story broke, the Senate Energy Committee held a hearing. May I say to the new chairman, the distinguished chairman from Alaska, it was a very fair hearing. We in Nevada had a chance to express our view, and the Secretary of Energy and the civilian radioactive waste manager, Mr. Dreyfus, was there, and those in the nuclear power industry were there. This was last Thursday.

Let me put this in context. In this debate in the scientific community in which there are three teams comprised of 10 scientists—that is 30 scientists—they have been unable to rebut the assertion that there is genuine fear that an explosion can occur in a geologic repository. This discussion has been going on for months and months and months.

I knew nothing about this discussion. Like Senator REID, I have meetings at least monthly, probably more frequently, asking, ''What is the latest?'' ''What is happening?'' ''What are you going to do?'' My point is that as recently as this past Thursday, the nuclear power industry and its advocates repeatedly assert that there is no scientific or engineering basis holding back progress at Yucca Mountain, that all of the opposition to Yucca Mountain is purely political.

Bunk. These people that have formulated this premise, which has been unable to be rebutted, are not people that have been hired by Senator REID, myself, the Governor of Nevada, or antinuclear activists. These are people within the Department of Energy's own distinguished laboratory at Los Alamos. Not a word of this was shared with us. We learned it, as did millions of Americans, by becoming aware of the story yesterday in the New York Times and in subsequent news accounts that have followed.

For 13 years, blindly they have proceeded on the premise that it has to be a deep geological burial and Yucca Mountain is the only place it has to be. I must say that some public officials from my own State came to the hearing last Thursday to say, look, maybe we ought to cop out, sell out for a few bucks and see what we can get—the so-called benefits argument.

That is to their disgrace, Mr. President. There can be no compromise with the health and safety of the citizens of our State. And I must say that the nuclear power industry, in its cynicism, continues to advocate ''just negotiate for benefits; just negotiate for benefits.''

Well, the newest proposal now is that we have to have an interim storage facility; not a permanent, but an interim is what we need. And, you guessed it, the interim storage proposal, well, that should go to Nevada, too. And the premise for that is because Yucca Mountain is going to be a permanent repository, let us just have them all next door. That will require a statutory legislative change to the Nuclear Waste Policy Act. And, I must say, in light of this concern here, I do not know how any fair-minded Member of the U.S. Senate cannot take a look and say, ''Maybe we ought to take a little time out and take a pulse on this.''

Even before this revelation, the testimony before the committee on Thursday was that there is about a 50–50 chance of the permanent repository at Yucca Mountain ever being licensed. As I say, this most recent revelation should put that into further context.

Senator REID and I for some time, joined by our government and district political officeholders, Democrat and Republican alike, in our State, have called for an independent review, an independent review. We have been joined by the GAO, the Nuclear Waste Technical Review Board and many, many others in the community.

Secretary O'Leary has simply refused our request. We waste billions on the program—proponents of the dump and opponents of the dump agree on that—more than $4 billion. And now, Mr. President, it is time to insist upon this independent review.

I do not expect Secretary O'Leary will change her position, but it will be my purpose to introduce an independent review process by legislation later this week.

I thank my distinguished colleague, the senior Senator from Nevada.

Mr. President, I ask unanimous consent that the text of the Sunday New York Times article be printed in the RECORD.

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

[From the New York Times, Mar. 5, 1995]

SCIENTISTS FEAR ATOMIC EXPLOSION OF BURIED WASTE; DEBATE BY RESEARCHERS

(By William J. Broad)

Debate has broken out among Federal scientists over whether the planned underground dump for the nation's high-level atomic wastes in Nevada might erupt in a nuclear explosion, scattering radioactivity to the winds or into ground water or both.

The debate, set off by scientists at the Los Alamos National Laboratory in New Mexico, is the latest blow to the planned repository deep below Yucca Mountain in the desert about 100 miles northwest of Las Vegas. Opponents of nuclear power and Nevada officials have long assailed the project as ill-conceived and ill-managed, and it has encountered numerous delays.

Even if scientists can debunk the new argument that buried waste at Yucca Mountain might eventually explode, the existence of so serious a dispute so late in the planning process might cripple the plan or even kill it. Planning for the repository began eight years ago and studies of its feasibility have so far cost more than $1.7 billion. The Federal Government wants to open the repository in 2010 as a permanent solution to the problem of disposing of wastes from nuclear power plants and from the production of nuclear warheads.

The possibility that buried wastes might detonate in a nuclear explosion was raised privately last year by Dr. Charles D. Bowman and Dr. Francesco Venneri, both physicists at Los Alamos, the birthplace of the atomic bomb. In response, lab managers formed three teams with a total of 30 scientsts to investigate the idea and, if possible, disprove it.

While uncovering many problems with the thesis, the teams were unable to lay it to rest, laboratory officials say. So the lab is now making the dispute public in scientific papers and is considering having it aired at large scientific meetings as well.

''If we knew how to put the stake through it's heart, we'd do it,'' Dr. John C. Browne, head of energy research at the lab, said in an interview. Going further, some panel members said they felt that the new thesis had been refuted.

Dr. Bowman, the idea's chief advocate, said the internal debate had changed some elements of the thesis but over all had left it honed and strenghened.

''We think there's a generic problem with putting fissile materials underground,'' he said in an interview, referring to substances that fission, or split part, in a nuclear chain reaction.

The few scientists outside the laboratory who have become aware of the debate say the explosion thesis is provocative and probably wrong. Nonetheless, they say, the stakes are too high to sweep the idea under the rug.

''It is important to see whether it has anything to do with the situation that might arise in an actual repository,'' said Dr. Richard L. Garwin, a prominent physicist at the International Business Machines Corporation who has long advised the Federal Government on nuclear arms and their dismantlement.

Highly radioactive wastes are the main orphan of the nuclear era, having found no permanent home over the decades. In theory, if the Yucca plan wins approval after a careful study of the area's geology, a labyrinth of bunkers carved beneath the mountain would hold thousands of steel canisters for 10,000 years, until radioactive decay rendered the wastes less hazardous.

The spent fuel from nuclear reactors is permeated with plutonium, which is a main ingredient used in making nuclear bombs.

Since plutonium 239 has a half-life of 24,360 years, significant amounts of it would remain active for more than 50,000 years, long after the steel canisters that once held the radioactive material had dissolved. (A radioactive substance's half-life is the period required for the disintegration of half of its atoms.)

With the end of the cold war, the Nevada site has increasingly been studied for a possible added role as a repository for the plutonium from scrapped nuclear arms. In January 1994, the National Academy of Sciences, which advises the Federal Government, suggested that the plutonium be mixed with highly radioactive wastes and buried, or burned in reactors and then buried. In either case, some plutonium would end up going underground.

On Wednesday, President Clinton, trying to win a permanent global ban on the spread of nuclear arms, ordered substantial cuts in American stockpiles of weapons plutonium but did not say what would become of the deadly substance. Officials said it would remain in temporary storage above ground until a decision was made on its ultimate disposition.

The scientist leading the charge against the burial of fissile materials, Dr. Bowman, has an alternative plan in which particle accelerators would, by a kind of nuclear alchemy, transmute radioactive wastes, as well as plutonium, into more benign elements before they were buried. Dr. Bowman is the head of the planning effort for the proposed project.

Although that gives him a personal stake in the explosion argument, experts say that such situations are common in science and that ideas must be judged on their merits.

Last summer and fall, Dr. Bowman began talking of the dangers of underground storage and was urged to set them down in an internal Los Alamos report, which he did by November. The crux of his argument was that serious dangers would arise thousands of years from now after the steel canisters dissolved and plutonium slowly began to disperse into surrounding rock.

The rocky material, he said, could aid the start of a chain reaction by slowing down speeding subatomic particles known as neutrons that fly out of plutonium atoms undergoing spontaneous decay. Neutrons of a certain speed can act like bullets to split atoms in two in a burst of nuclear energy.

Under some circumstances, Dr. Bowman theorized, the slowing of the neutrons could make an individual pile of plutonium explode in a nuclear blast equal in force to about a thousand tons of high explosive, setting off other blasts throughout the vast repository.

The team assembled to review the thesis concluded that it held serious flaws, said Dr. Browne of Los Alamos. First, dispersal of plutonium, if it happened at all, would take much longer than envisioned—so long that the plutonium would have mostly decayed.

Second, the review team felt that if a plutonium pile did begin to heat up, the reaction would automatically slow down and stop as the heat made the pile expand.

Third, the team felt that any reaction would be too slow to cause an explosion and that, at worst, a pile would simply heat up like a reactor.

''The burden of proof rests on Charlie,'' said Dr. Browne, referring to Dr. Bowman. ''He's hypothesized some scenarios that, if correct, are clearly very important. In spite of the fact that there is a sizable amount of opposition to Charlie's paper, our feeling is that the subject is so important that it deserves additional peer review outside the laboratory, since we could not resolve the disagreement internally.''

Dr. Bowman says the explosion thesis is alive and well. On Friday he finished an 11-page draft paper thick with graphs and equations that lays it out in new detail.

The team criticisms, he said in an interview, repeatedly fall flat. For instance, dispersal could happen relatively quickly, especially if water percolated through the dump. Even if slow, plutonium 239 decays into uranium 235, which harbors the same explosive risks but requires millions of years to decay into less dangerous elements.

So too with the other criticisms, he says. Water could aid the slowing of neutrons and make sure the reaction went forward rather than automatically slowing down. And a pile could explode, he insists, while conceding that the blast from a single one might have a force of a few hundred tons of high explosive rather than the thousand or more originally envisioned.

On the other hand, his new paper says plutonium in amounts as small as one kilogram, or 2.2 pounds, could be dangerous.

''We got some helpful criticism and that, combined with additional work, has made our thesis even stronger,'' he said.

The most basic solution, Dr. Bowman said, would be removing all fissionable material from nuclear waste in a process known as reprocessing or by transmuting it in his proposed accelerator. Other possible steps would include making steel canisters smaller and spreading them out over larger areas in underground galleries—expensive steps in a project already expected to cost $15 billion or more.

A different precaution, Dr. Bowman said, would be to abandon the Yucca site, where the volcanic ground is relatively soluble. Instead, the deep repository might be dug in granite, where migration of materials would be slower and more difficult.

Cathy Roche, vice president for communications of the Nuclear Energy Institute, a nuclear industry trade group based in Washington, said the debate suggested the need for more study of the Yucca site, not less.

''We're concerned that this not be used as an excuse by the opponents of waste solutions to stop the scientific analysis of the mountain,'' she said.

Dr. Daniel A. Dreyfus, the head of civilian radioactive waste management at the Energy Department in Washington, which runs Los Alamos and the Yucca Mountain studies, said he was keeping an open mind on whether Dr. Bowman's thesis might trigger an overhaul of the project.

''The characterization work has any number of uncertainties,'' he said in an interview. ''Criticality is clearly a major consideration when you put a whole bunch of high-level waste anywhere. Whether Yucca Mountain is the right site, I don't know.

''Maybe there's no good solution,'' he added. ''But walking away from the problem is no solution either. We better keep trying, because we already made the decision to have the wastes in the first place.''

Mr. BRYAN. Mr. President, I yield back any time I may have remaining.

(Mr. GORTON assumed the chair.)

Mr. REID. Mr. President, I extend my appreciation publicly, as I have done privately on a number of occasions, for the leadership of RICHARD BRYAN on this issue. And I say RICHARD BRYAN, because his leadership on this issue started long before he became a Member of the U.S. Senate. During his tenure as Governor of the State of Nevada, he was a leader in recognizing the fallacy of attempting to geologically bury nuclear waste next to the No. 1 destination resort of the world—Las Vegas.

Mr. President, I, like my friend, the junior Senator from Nevada, as a little boy used to watch the flashes in the morning sky. I lived about 60 miles from Las Vegas, 60 miles farther away from the explosion than did Senator BRYAN. We would get up—it would be dark—a bunch of little kids, and we would see that flash in the sky. Sometimes in Searchlight, where I was born and raised, we would hear the explosion, because by the time it got to Searchlight, a lot of times the sound would bounce clear over Searchlight.

But, as I told many people, we were the lucky ones, because the winds did not blow toward Searchlight. The winds blew toward St. George, they blew toward Enterprise in Utah, and those young men and women who watched the night sky explode got diseases and some died. I have talked to parents, I have talked to children, sons and daughters. And, of course, there are the stories that have been written about sheep, people herding sheep. Herders would get up in the morning and the wool would just come off their

animals, even though they were still alive.

So, Mr. President, this is a serious matter, and I know everyone recognizes it is a serious matter.

But for those of us who have lived with this since 1982, to see this headline in the New York Times yesterday says it all. ''Scientists Fear Atomic Explosion of Buried Waste''; just like on Senator BRYAN's chart, his visual aid, on the front page of the New York Times.

And what troubles me so much is this has been going on for months and months. It is easy for the people in charge of the program, when somebody says, ''Oh, don't worry about it.'' They come and testify. They write papers. But when there is evidence by a scientific community that says an explosion could occur, we do not hear about it.

How many congressional hearings have we had since this took place? Several. How many public gatherings have we had where Department of Energy officials have come forward? Numerous.

The Secretary of Energy, I say to my friend from Nevada, has recently said that this is a priority with her to get nuclear waste in Nevada. I wonder if there would be a sting of conscience that would say, ''I wonder if we should be worried about this atomic explosion.''

And, Mr. President, it is not as if it has not happened before. In the former Soviet Union, they had an explosion from nuclear waste.

The article is frightening, to say the least. ''Debate has broken out''—I am reading directly from this article—''among Federal scientists whether the planned underground dump for the Nation's high-level atomic wastes in Nevada might erupt in a nuclear explosion, scattering radioactivity to the winds or ground water or both.''

This is not sensationalism that the Senators from Nevada has created. This is a newspaper article and it comes from the scientific community.

We have been called everything—''unpatriotic'' was one of the better terms we have been called—because we have stood in the road to try to stop this thing from happening.

''The debate, set off by scientists at the Los Alamos National Laboratory in New Mexico''— one of the finest scientific institutions in the world—''is the latest blow to the planned repository.''

I wish I believed that.

It says, ''Even if scientists can debunk the new argument that buried waste at Yucca Mountain might eventually explode, the existence of so serious a dispute so late in the planning process might cripple the plan or even kill it.''

I hope so, because, as I say, Mr. President, rather than do as they do with all the so-called good news that comes in relation to the repository, they hid this. This has been hidden. And they did it by saying, ''We do not believe it is possible.'' And here we are going to have 30 scientists prove this wrong. They have tried to prove that it is wrong for almost 10 months. They cannot. They admit this. The scientists, the three teams, were not told to go prove how it could happen, I say to my friend from Nevada, they were asked to prove how it could not happen, and they could not do it.

The possibility that buried wastes might detonate in a nuclear explosion was raised privately last year by Dr. Charles D. Bowman and Dr. Francesco Venneri, both physicists at Los Alamos * * * the teams were unable to lay it to rest * * *.

Dr. Bowman, among other things, said, ''We think there's a generic problem with putting fissile materials underground.'' That is an understatement, reading the rest of this stuff.

Highly radioactive wastes are the main orphan of the nuclear era, having found no permanent home over the decades.

The spent fuel from nuclear reactors is permeated with plutonium, which is a main ingredient used in making nuclear bombs.

''Since plutonium 239,'' listen to this, ''has a half-life of 24,360 years, significant amounts of it would remain active,'' to say the least.

Should we not stop and just relax a little bit and not be driven by the nuclear power industry? Sure, they have invested a lot of money in nuclear waste disposal in Nevada. That is the only place they have cast their lot.

Should we not stop and let common sense dictate proper policy? We are not talking here about storing wheat. We are not talking about storing tires that may burn for a little while. We are talking about storing nuclear waste that will explode like an atomic bomb that occurred at Nagasaki and Hiroshima. And hundreds of times they have been exploded in the deserts of Nevada.

I have heard many times people say, ''Well, what is the alternative?'' There are a lot of alternatives. The No. 1 alternative has been created, again, by scientists. During this period of 13 years they have been trying to figure out a way we can transport nuclear waste, and scientists came up with an idea that might work pretty well. That is a dry cast storage container.

But why transport it? If it is safe to haul in a truck, why do we not leave it where it is, and then it is really safe. Now, this is not something that HARRY REID, who has a very inadequate scientific background, came up with. Scientists came up with this. And they have said leave it where it is.

It is really time to step back, think, and study this issue. It is time to do some scientific investigation, to look at other technologies, to look at other sites. It is time to drop the efforts to amend the Nuclear Waste Policy Act, to drop efforts to speed the process up. It is premature to change our strategy, to accelerate our strategy, to think about moving nuclear waste anywhere else.

In this newspaper article one of the scientists said, I think you better give up on Nevada and start looking someplace else. Mr. President, I do not want to create this problem for somebody else. We have to know what we are going to do before we start talking about burying geological waste. One scientist here said we better look to granite formation because the water will not come through and water could help accelerate the process that could lead to an explosion.

There are some who say that there is another crisis that exists. Our cooling ponds are filled. I say, leave them filled. Move the spent fuel rods out and put them into dry cast storage containers at the reactor sites. We have time. It is perfectly safe to store the waste where it is.

Why the rush? The rush is because the nuclear waste power industry is fixated on this. It is like an obsession. They do not want to be proven that they may have been wrong and spent billions of dollars of the ratepayers money wrongly. That is what it amounts to.

Mr. President, I am happy this came out, even if it was through the newspaper. I think it would have been more appropriate had people from the Department of Energy at the hearing that was held the other day testified that we have another problem that has come up: Scientists fear atomic explosion of buried waste.

I do not know how the newspaper got this information. There is nothing in the article to indicate how or where they got it. I do not know if they got it from the Department of Energy. However they got it, this is not an appropriate way to do business when we are dealing with the most poisonous substance known to man, namely, plutonium.

It gives me pause about the Department of Energy. I have called publicly for doing away with the Department of Energy. This certainly does not distract from my initial goal. I think it adds to it. I think the functions of the Department of Energy should be spread out among other agencies, some to the Department of Defense, some to Interior, some to the EPA.

I am very disappointed in my Government, especially the Department of Energy. I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Texas.

Mrs. HUTCHISON. I thank the Chair.

(The remarks of Mrs. HUTCHISON pertaining to the introduction of S. 498 are located in today's RECORD under

''Statements on Introduced Bills and Joint Resolutions.'')

DR. MIKE CAUDLE FINDS FOREIGN SOIL, COMMON GROUND

Mr. HELMS. Mr. President, all of us think and talk a lot about priorities these days, and that it is good. And ever so often we read or hear about a special person with special priorities and principles. When we do, a sense of admiration wells up within us—and, in my own case, a sense of regret that I haven't done more than I have in terms of what my father used to call the Lord's work.

I have reached the age, Mr. President, when far younger men and women than I are doing wonderful and remarkable things. Many of them I have met; some are like members of the family. One in particular came to mind the other night when I was reading the 1994 annual report of the Knoxville Medical Center, of the University of Tennessee.

But I am moving ahead of my story. Many years ago I met a young man named Bob Caudle whom I found impressive. I was then one of the senior officers of Capitol Broadcasting Co. in Raleigh which owned and operated a television station, a radio station, two statewide radio networks and an assortment of other related enterprises.

I persuaded Bob Caudle to join Capitol Broadcasting's team. He served well until he retired and then agreed to become a part of the Helms Senate family. We don't have a staff, Mr. President—not in Washington nor in Raleigh nor in Hickory. We're a family that is praised by even my strongest critics for the splendid constituent service they render—not only to North Carolinians but to citizens all over the country who contact us seeking assistance.

Bob and Jackie Caudle had two little boys when Bob began work at the television station. Later a precious little baby girl, Lisa, rounded out the Caudle family.

Lisa Caudle is today a beautiful young woman with one of the most beautiful voices I've ever heard. Both of the Caudle boys long ago became men, both became highly respected physicians. Dr. Bob Caudle, Jr., is in practice in Raleigh. Dr. Michael Caudle, hereinafter referred to as Mike, is now chairman of the University of Tennessee's Medical Center's department of obstetrics and gynecology.

I mentioned the 1994 annual report of the University of Tennessee's Medical Center of Knoxville. The entire issue is devoted to the subject of compassion. The foreword discloses to all of us the definition of compassion. Note these eloquent words, Mr. President:

Deep inside ourselves, there is a place where compassion knows no limits; where love and concern for our fellow human beings become omnipotent. But for many, limited courage and determination leave this wellspring untapped. For others, this wellspring is where they find their life's purpose.

Such is the case for the physicians, staff and volunteers features in these pages. The Medical Center was their starting point, but their compassion has led them beyond the institution's walls. They have gone where others are weak, vulnerable, lonely and broken. Their journeys have changed them forever.

Mr. President, there follows immediately in that annual report a full-page color picture of Dr. Mike Caudle, striding along a walkway at the medical center, stethoscope in the right pocket of his white physician's jacket. And then, on the next page, begins an in-depth tribute to that distinguished physician who, it seems, was a polite little boy visiting his dad at the Raleigh television station—surely it could be no longer than a few weeks ago.

No, Mr. President, it was awhile ago, and I want Senators, and others who peruse the CONGRESSIONAL RECORD, to have this tribute, headed ''Foreign Soil, Common Ground'' available for reading.

Therefore, Mr. President, I ask unanimous consent that the aforementioned article be printed in the RECORD.

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

In August of 1961, 10-year-old Michael Caudle sat mesmerized by the family television set on which he saw the raising of the Berlin Wall. He wondered what life would be like for those people who were literally being sealed off from the rest of the world. He later learned that ''the wall'' was only part of something called the Iron Curtain, a symbol of Soviet domination throughout Eastern Europe. Thirty-two years later in 1993, Caudle's childhood wonderings were realized when he visited Romania on a medical mission trip. Now a physician serving as chairman of University Medical Center's Department of Obstetrics and Gynecology, Dr. Caudle was persuaded to make the journey after listening to a speech given at his church by a Romanian Parliament member. Touched by this description of the many needs in Romania, he decided to serve as a link to the country, spending a week teaching at the medical school in Timisoara and performing obstetrical and gynecological procedures at rural clinics.

Although Dr. Caudle had always wanted to visit Eastern Europe, he found his first few minutes there a bit unsettling. ''When I got off the airplane, they bodily searched me. They have these military people with AK–47s and they X-ray your luggage,'' he explained. ''They asked what I was doing there, and I told them I was working for the Romanian doctors who were waiting for me outside. They looked outside and slammed my luggage down and left. When I asked my Romanian colleagues why the guards suddenly left me alone, they said, 'Every gun in that airport needs an OB/GYN doctor for his wife. They aren't going to mess with you,'''.

As Dr. Caudle began his work, he soon discovered that many women were desperate for sterilization, a procedure that was previously illegal in Romania. ''I told the doctors 'I don't think it's a good idea for women to be pregnant all the time. What you should be doing is a sterilization procedure called tubal ligation,''' Dr. Caudle recalled. ''I explained it to some patients with the help of one of their doctors, and several volunteered to have it done. The word spread quickly once the women realized what this could mean for them. This was a big step toward getting at least a few people out of a cycle that has kept women constantly pregnant, anemic and sick.''

This cycle was only part of a ''reign of terror'' begun under Romania's ruthless dictator, Nicolae Ceausescu, who ruled Romania from 1965 until 1989. Wanting to limit individuality and thoughts of freedom, Ceausescu banned education of the humanities and sciences. His rules grew even more despotic when he banned contraceptives and demanded that women bear at least five children.

Ceausescu's restrictions and demands bankrupted the country and alienated its people. Romania's discontent led to a revolution in December 1989 when a revolt occurred in the city of Timisoara over the deportation of an ethnic Hungarian pastor. The uprising resulted in the deaths of hundreds when Ceausescu ordered his army to fire on the crowd. Protests began in many cities the day after the massacre, and on December 22, the dictator was forced to leave the country. He was soon captured, however, and executed after a brief trial.

In the aftermath of the revolution, Romania is still in a state of social and economic despair. Every aspect of life is reduced to a minimal level, particularly health care. In this setting, Dr. Caudle found himself playing the multiple roles of physician, technician, engineer and teacher.

''You can see the value of people like me spending time there and providing technical instruction. They are finally getting some equipment, but it has just been collecting dust because they don't know how to use it. The key is education. I could go over there and see patients for the rest of my life, but teaching through the university multiplies the effort,'' Dr. Caudle said.

With the aid of a translator, Dr. Caudle gave several lectures to the medical students. ''They are very bright. It is quite difficult to get into medical school there,'' he explained. ''They came to class with lists of questions they had spent hours preparing. 'How do you do this in America?' or 'How do you do that?' They were very well read, but they have old textbooks.''

This teaching experience, however, was a two-way street, particularly in the rural settings. Dr. Caudle had to learn to function without the technology he has grown used to in the States. He also learned that maturity and a proven track record are advantageous for medical missions like this one.

''They challenge your authority on everything because they are so well read. They have their own reasons for doing things, and they argue with you,'' Dr. Caudle remembered. ''What I have learned is that there are some things we do in the States that I'm not sure are right anymore. We do them as a habit and they do it differently. Now I can't decide which way is right.''

The questions went beyond obstetrical and gynecological issues as Dr. Caudle's first visit came to a close. He realized that the time spent in Romania had influenced him in a profound way. ''Dr. Dragulescu, the rector of the medical school in Timisoara, was thanking me for making sacrifices to come to his country and I said, 'Your people died in the streets, your children died. What is it for me to come here for a week compared to what you've been through?' I went over there to help, but what happened was that I found out what was really important to me. It reorients your priorities and how you spend your time,'' he explained.

Although he could justifiably feel overwhelmed at the enormity of the problems which exist there, Dr. Caudle feels that he and others can make a difference. ''Romania

is like much of the rest of the world. Life there is filled with chronic misery. It's the slow drip of the economy that drags Romanians down, and that's why Americans need to go over there to help,'' he urged. ''Beyond what Americans can accomplish, it's such a privilege to meet so many of these people who are to Romanians what our revolutionary patriots are to us.''

This emotional experience was translated into action as Dr. Caudle returned home and began a search to legitimize these types of visits. That search led him to discover an organization on The University of Tennessee's Knoxville campus called the Alliance of Universities for Democracy. Founded in 1990, the group is an alliance of American universities and more than 100 Eastern European members. The Alliance promotes democracy and encourages Eastern European Universities to develop closer relationships with their communities.

Beyond legitimizing medical missions, the Alliance also serves as a way for equipment to be shared. ''There are companies in the States that dispose of medical equipment in landfills. Some of that equipment is 20 years ahead of what they have in Romania. These companies are willing to send it over there, and the Alliance gives these kinds of efforts a name—a way to do this sort of thing,'' Dr. Caudle explained.

Dr. Caudle completed his second mission trip in June 1994. He also arranged this past October for Rector Dragulescu's first visit to the United States. Dragulescu, a cardiologist, spent time comparing medical technologies with University Medical Center's faculty, as well as formulating an overall picture of health care in this country.

Although the rector's visit lasted only two weeks, one of the graduates of a Romanian medical school will be doing a five-year OB/GYN residency at University Medical Center. Totally unrelated to Dr. Caudle's visit, medical student Cristian Andronic applied for the residency program here. Because Dr. Caudle was impressed by and familiar with the medical schools in Romania, he granted Andronic an interview.

''I told him that if he wanted to find a way to get here, we would take a look at him. I'll be darned if he didn't scrape up the money to come, which was close to a year's salary for someone over there. He flew to Chicago and caught a bus to Knoxville,'' Dr. Caudle said. ''He'll be here for several years. My hope is that he will then return to Romania to practice and teach.''

These types of exchanges, both short and long term, provide a more realistic view of the United States than the idealistic ones held by many Romanians. ''They love Americans, particularly in western Romania. You see little American flags in the backs of their cars. It's an ideal we can't possibly live up to, but it's also a great opportunity for us,'' Dr. Caudle commented.

''It's a huge obligation to be an American in Romania,'' he added. ''They have read all about George Washington and the founding of our country on principles of freedom and 'one nation under God' and they take it all very seriously.''

It seems to have all come full circle. He was a post-war boy interested in and bothered by events more than half a world away. He grew up and pursued a career seemingly unrelated to these interests. But his career is precisely what led him to discover this other world. The ideals upon which his country was founded are now held sacred by these faraway people who are no longer strangers.

''My relationship with my friends in Romania has brought all these things about the Iron Curtain, my faith and the reality of these people into one form. You know, they are more like us than they are different. They have the same basic hopes, needs and desires,'' Dr. Caudle concluded.

''Their courage is tremendous and they have taught me a lot. I feel like I'm helping to fight for their freedom because they still don't have it yet—not in the sense of a workable economy, which is necessary to stay free. It would be easy to slowly drift right back into some kind of communistic or totalitarian regime. They have to continue to fight for freedom—it's an elusive thing.''

WAS CONGRESS IRRESPONSIBILE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, up to now the incredibly enormous Federal debt has been like the weather—everybody has talked about it but hardly anybody has undertaken the responsibility of doing anything about it. The balanced budget amendment failed to pass the Senate—by one vote! There'll be another vote later this or next year.

A lot of politicians talk a good game—when they are back home—about bringing Federal deficits and the Federal debt under control. But many of them regularly vote in support of bloated spending bills that roll through the Senate, and the American people took note of that on November 8.

As of Friday, March 3, at the close of business, the Federal debt stood—down to the penny—at exactly $4,840,472,285,419.16. This debt, remember, was run up by the Congress of the United States.

The Founding Fathers decreed that the big-spending bureaucrats in the executive branch of the U.S. Government must never be able to spend even a dime unless and until authorized and appropriated by the U.S. Congress.

The U.S. Constitution is quite specific about that, as every schoolboy is supposed to know.

Do not be misled by politicians who declare that the Federal debt was run up by some previous President or another, depending on party affiliation. Sometimes you hear false claims that Ronald Reagan ran it up; sometimes they play hit-and-run with George Bush.

These buck-passing declarations are false, as I said earlier, because the Congress of the United States is the culprit. The Senate and the House of Representatives are the big spenders.

Mr. President, most citizens cannot conceive of a billion of anything, let alone a trillion. It may provide a bit of perspective to bear in mind that a billion seconds ago, Mr. President, the Cuban missile crisis was in progress. A billion minutes ago, the crucifixion of Jesus Christ had occurred not long before.

Which sort of puts it in perspective, does it not, that Congress has run up this incredible Federal debt totaling 4,808 of this billions—of dollars. In other words, the Federal debt, as I said earlier, stood this morning at 4 trillion, 840 billion, 472 million, 285 thousand, 419 dollars, and 16 cents. It will be even greater at closing time today.

DEATH OF HOWARD W. HUNTER, PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

Mr. CRAIG. Mr. President, I join with the family, friends and over 9 million members of the Church of Jesus Christ of Latter-Day Saints in grieving the death of Howard W. Hunter, president of the Church of Jesus Christ of Latter-Day Saints.

President Hunter was born November 14, 1907, in Boise, ID, the son of John William and Nellie Marie Rasmussen Hunter. He had been President of the Latter-Day Saints church since June 5, 1994, when he succeeded another Idahoan, the late Ezra Taft Benson. He was known as a gentle, kind, and humble man. He will be remembered for his compassionate nature, which blended well with his thoughtful, orderly leadership style. Howard W. Hunter was a soft-spoken man who stressed love, forgiveness, and attendance at the temples of the church.

During his long life, Howard W. Hunter was noted for his hard work and strength of character.

President Hunter began working early in life in Boise, selling newspapers on street corners, delivering telegrams, and later working in a newspaper office. He excelled scholastically and was active in the Scouting Program, becoming the second Boy Scout in Idaho to attain the rank of Eagle Scout. He became interested in music as a young boy, won a marimba in a high school contest and became proficient with the saxophone, clarinet, violin, and drums. As a young man he organized a dance band and in 1927 the band, called Hunter's Croonaders, went on a 5-month Asian cruise abroad the S.S. *President Jackson*. He gave up a promising musical profession in favor of marriage, family life, church service, and his law career.

Howard W. Hunter enjoyed a successful career as a corporate attorney and served as a director of a number corporations, including Beneficial Life Insurance Co., First Security Corp., and New World Archaeological Foundation.

President Howard H. Hunter spent a life of service to others and will be missed by all those who came to know him and were the recipient of his many years of dedicated service.

I would ask all Senators to join with me in a heartfelt thank you to Howard W. Hunter and an expression of comfort to his surviving wife, Inis Bernice Egan, his sons John J. Hunter and Richard A. Hunter, and his 18 grandchildren, and 23 great-grandchildren.

MATT URBAN

Mr. LEVIN. Mr. President, a friend of mine named Matt Urban passed away over the weekend, leaving a legacy of superlative achievement in a military career that will enlighten generations to come about what it means to be a soldier, a patriot and a hero.

I would like to share my memory of Matt Urban and a few of the things that impressed us in Michigan about this citizen and civic leader, this family man who was I believe the most decorated soldier in the history of the U.S. military.

He will be remembered in our hearts and in our history books for his staggering courage and fearless valor in the face of the grave danger that comes with war. Duty to country and loyalty to the men with whom he fought side-by-side drove him on the battlefields of victorious campaigns across North Africa, Sicily, Normandy, and Belgium in World War II.

Matt's military career was legendary. Indeed, his exploits on the battlefield are larger than life. He earned 29 combat medals, including seven Purple Hearts, the Medal of Honor, the American Campaign Medal, and French Croix de Guerre with a Silver gilt Star. Each and every medal tells a story of a man who seemed to show no fear, a man determined to carry on the fight for freedom for his countrymen.

His final Medal of Honor, awarded in a White House ceremony in 1980, marked an act of heroism that had come to characterize his feats in combat. He rescued his men, who were caught in a hail of German gunfire, by climbing aboard an empty tank and training its cannon on the enemy.

We all pray the battles Matt Urban survived are the likes of which no soldier will ever see again.

These battles were waged at a great cost, but they also gained great and lasting rewards for our Nation and our allies. Matt Urban was a disciple for democracy, fighting hard battles in the trenches of Europe so that we and our grandchildren may live free from tyranny and prosper.

Matt Urban's greatness was not just on the battlefield. In Monroe and later in Holland, MI he served as a valued employee in their recreation departments working to make the lives of children from those towns brighter and happier. He capped his career as a city employee in Holland managing the civic center, an ideal vocation for one of our State's leading citizens.

While Matt Urban's body is laid to rest, his memory and impact on our lives lingers on. As a member of a screening committee I assembled to nominate Michigan's finest young men and women for appointments at our military academies, he served as the vibrant link connecting yesterday's soldier to tomorrow's generation of new leadership. The tradition of duty, honor, and country and the motivation to do right that he inspired in the lives he touched continues today in the spirits of the young men and women he helped usher into new military careers.

THE BALANCED BUDGET AMENDMENT—A HISTORICAL PERSPECTIVE

Mr. BYRD. Mr. President, on Tuesday last, February 28, 1995, the Senate was supposed to vote on the final disposition of the constitutional amendment to balance the budget. It may be of interest to my colleagues to know that exactly 200 hundred years ago, on February 28, 1795, the Senate was meeting at Congress Hall in Philadelphia, then the nation's capital. Our information is incomplete about the details of that day's session because, as was its practice at that time, the Senate met behind closed doors and kept only the briefest of minutes as required by the Constitution. What we do know, based on news accounts derived from members who were willing to talk to local journalists, is that Senators were most concerned that day about paying the government's debts and raising further income to meet growing expenses.

The Senate debated and approved, by a vote of 21–1, ''An act making further provision for the support of Public Credit, and for the Redemption of the Public Debt.'' The Senate rejected four proposed amendments, including an amendment offered by Senator Aaron Burr to require repayment, during a 12–20-year period, of the principal on a subscription loan to fund the foreign debt. As ultimately enacted, the bill required that ''the principal of the said loan may be reimbursed at any time, at the pleasure of the United States.'' This suggested the Senate's majority recognized that the government might not be in a position to repay its loans within Burr's 12–20-year period. Lenders to the government would have to be satisfied with repayment at some indefinite time in the future.

Related to this concern about managing for government expenditures, the Senate also approved committee amendments to a bill to require the Comptroller of the Treasury to order the submission of accounts and vouchers by all individuals who had received public funds, and to file suit against individuals who had failed to comply, and ordered that the bill pass to a third reading.

Concerned with revenue sources, the Senate also received from the House and referred to a committee a bill that would impose duties on snuff and refined sugar.

Mr. President, I ask unanimous consent that the proceedings of February 28, 1795, as shown in the ''Annals of Congress,'' along with the ''Act for the Support of Public Credit and for the Redemption of the Public Debt,'' which was passed on March 3, 1795, be printed in the RECORD.

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

[From the ''Annals of Congress''—Senate Proceedings, February 28, 1795]

SATURDAY, FEBRUARY 28.

* * * * *

On motion, to insert the following section after the 5th, to wit:

''*Be it further enacted,* That a Loan be opened at the Treasury to the full amount of the outstanding and unbarred new emission bills of credit, the sums which shall be subscribed to be payable in the principal and interest of such bills, computing the interest thereon to the first day of January next, and that the subscriber or subscribers shall be entitled to receive therefor a certificate for the amount of the principal sum so subscribed and paid, bearing an interest of five per centum per annum from the first day of January next, payable quarter yearly at the Treasury, and redeemable at the pleasure of the United States, by the payment of the sum specified therein, and containing a stipulation that the United States will redeem the same before the expiration of thirty years from the passing of this act, and also to another certificate for the amount of the interest on the sum so subscribed, computing the same to the first of January next, bearing an interest of three per centum per annum from the first day of January next, payable quarter yearly at the Treasury, and redeemable at the pleasure of the United States, by the payment of the sum specified therein:''

It passed in the negative.

On motion, by Mr. Burr, to add the following proviso to the 11th section, to wit:

''*Provided, nevertheless,* That, whenever the six per cent. stock shall be under par, it shall be the duty of the Commissioners of the Sinking Fund to lay out, in the purchase of the said stock, the money applicable to the payment of the said two per cent. of principal, or so much thereof as can be laid out in the purchase thereof, at a rate under par:''

It passed in the negative.

On motion, by Mr. Burr, to expunge the last section of the bill, to wit:

''SEC. 20. *And be it further enacted,* That so much of the act laying duties upon carriages for the conveyance of persons, and of the act laying duties on licenses for selling wines and foreign distilled spirituous liquors by retail, and of the act laying certain duties upon snuff and refined sugar, and of the act laying duties on property sold at auction, as limits the duration of the said several acts, be, and the same are hereby, repealed; and that all the said several acts be, and the same are hereby, continued in force until the first day of March, one thousand eight hundred and one:''

It passed in the negative.

On the question, Shall this bill pass as amended? it was determined in the affirmative—Yeas 21, nays 1, as follows:

YEAS.—Messrs. Bradford, Bradley, Brown, Burr, Cabot, Ellsworth, Foster, Frelinghuysen, Gunn, Hawkins, Izard, King, Langdon, Livermore, Martin, Mitchell, Robinson, Ross, Rutherfurd, Strong, and Vining.

Mr. Jackson voted in the negative,

Resolved, That this bill pass with the amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled ''An act to alter and amend the act entitled 'An act laying certain duties upon snuff and refined sugar;'' in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill, send from the House of Representatives for concurrence, entitled, ''An act for the more effectual recovery of debts due from individuals to the United States;'' and having agreed to sundry amendments reported by the committee,

Ordered, That this bill pass to the third reading, as amended.

Mr. FRELINGHUYSEN, from the committee to whom was recommitted the bill, sent from

the House of Representatives for concurrence, entitled ''An act for continuing and regulating the Military Establishment of the United States, and for repealing sundry acts heretofore passed on that subject,'' reported further amendments, which were considered and agreed to, and the bill amended accordingly.

Ordered, That this bill pass to the third reading.

The bill, sent from the House of Representatives for concurrence, entitled ''An act to alter and amend the act entitled 'An act laying certain duties upon snuff and refined sugar,'' was read the first time, and, by unanimous consent, the rule was dispensed with, and the bill was read the second time, and referred to Messrs. CABOT, ELLSWORTH, and IZARD, to consider and report thereon to the Senate.

AN ACT FOR THE SUPPORT OF PUBLIC CREDIT, AND FOR THE REDEMPTION OF THE PUBLIC DEBT, MARCH 3, 1795

Be it enacted, &c., That it shall be lawful for the Commissioners of the Sinking Fund, and they are hereby empowered, with the approbation of the President of the United States, to borrow, or cause to be borrowed, from time to time, such sums, in anticipation of the revenue appropriated, not exceeding, in one year, one million of dollars, to be reimbursed within a year from the time of each loan, as may be necessary for the payment of the interest which shall annually accrue on the public debt; and for the payment of the interest on any such temporary loan, which shall not exceed six per centum per annum, so much of the proceeds of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and stills, as may be necessary, shall be, and are hereby, appropriated.

SEC. 2. *And be it further enacted,* That a loan be opened at the Treasury to the full amount of the present foreign debt, to continue open until the last day of December, in the year one thousand seven hundred and ninety-six, and that the sums which may be subscribed to the said loan shall be payable and receivable, by way of exchange, in equal sums of the principal of the said foreign debt; and that any sum so subscribed and paid shall bear an interest equal to the rate of interest, which is now payable on the principal of such part of the foreign debt as shall be paid or exchanged therefor, together with an addition of one-half per centum per annum; the said interest to commence on the first day of January next succeeding the time of each subscription, and to be paid quarterly, at the same periods at which interest is now payable and paid upon the domestic funded debt: *Provided,* That the principal of the said loan may be reimbursed at any time, at the pleasure of the United States.

SEC. 3. *And be it further enacted,* That credits to the respective subscribers for the sums by them respectively subscribed to the said loan, shall be entered and given on the books of the Treasury in like manner as for the present domestic funded debt; and that certificates therefor, of a tenor conformable with the provisions of this act, signed by the Register of the Treasury, shall issue to the several subscribers, and that the said credits, or stock standing in the names of the said subscribers, respectively, shall be transferable, in like manner, and by the like ways and means, as are provided by the seventh section of the act aforesaid, entitled ''An act making provision for the debt of the United States,'' touching the credits or stock therein mentioned; and that the interest to be paid upon the stock which shall be constituted by virtue of the said loan shall be paid at the offices or places where the credits for the same shall from time to time stand or be, subject to the like conditions and restrictions as are prescribed in and by the eighth section of the act last aforesaid.

SEC. 4. *And be it further enacted,* That the interest and principal of all loans authorized by this act shall be made payable at the Treasury of the United States only, so far as relates to the payment of the principal and interest of the domestic debt.

SEC. 5. *And be it further enacted,* That so much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and stills, heretofore appropriated for the interest of the foreign debt, as may be liberated or set free, by subscriptions to the said loan, together with such further sums of the proceeds of the said duties as may be necessary, shall be, and they are hereby, pledged and appropriated, for the payment of the interest which shall be payable upon the sums subscribed to the said loan, and shall continue so pledged and appropriated until the principal of the said loan shall be fully reimbursed and redeemed: *Provided, always,* That nothing herein contained shall be construed to alter, change, or in any manner affect the provisions heretofore made concerning the said foreign debt, according to contract, either during the pendency of the said loan or after the closing thereof; but every thing shall proceed, touching the said debt, and every part thereof, in the same manner as if this act had never been passed, except as to such holders thereof as may subscribe to the said loan, and from the time of the commencement thereof in each case, that is, when interest on any sum subscribed shall begin to accrue.

SEC. 6. *And be it further enacted,* That the several and respective duties laid and contained in and by the act, entitled ''An act laying additional duties on goods, wares, and merchandise imported into the United States,'' passed the seventh day of June, one thousand seven hundred and ninety-four, shall, together with the other duties heretofore charged with the payment of interest on the public debt, continue to be levied, collected, and paid, until the whole of the capital or principal of the present debt of the United States, and future loans which may be made pursuant to law, for the exchange, reimbursement, or redemption thereof, or of any part thereof, shall be reimbursed or redeemed, and shall be, and hereby are, pledged and appropriated for the payment of interest upon the said debt and loans, until the same shall be so reimbursed or redeemed.

SEC. 7. *And be it further enacted,* That the reservation made by the fourth section of the aforesaid act, entitled ''An act making provision for the reduction of the public debt,'' be annulled, and, in lieu thereof, that so much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and stills, as may be necessary, be, and the same hereby are, substituted, pledged, and appropriated for satisfying the purpose of the said reservation.

SEC. 8. *And be it further enacted,* That the following appropriations, in addition to those heretofore made be made, to the fund constituted by the seventh section of the act, entitled ''An act supplementary to the act making provision for the debt of the United States,'' passed the eighth day of May, one thousand seven hundred and ninety-two, to be hereafter denominated ''The Sinking Fund,'' to wit: First. So much of the proceeds of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, as, together with the moneys which now constitute the said fund, and shall accrue to it, by virtue of the provisions hereinbefore made, and by the interest upon each installment, or part of principal which shall be reimbursed, will be sufficient, yearly and every year, commencing the first day of January next, to reimburse and pay so much as may rightfully be reimbursed and paid, of the principal of that part of the debt or stock which, on the said first day of January next, shall bear an interest of six per centum per annum, redeemable by payments on account both of principal and interest, not exceeding, in one year, eight per centum, excluding that which shall stand to the credit of the Commissioners of the Sinking Fund, and that which shall stand to the credit of certain States, in consequence of the balances reported in their favor by the Commissioners for settling accounts between the United States and individual States: Secondly. The dividends which shall be from time to time declared on so much of the stock of the Bank of the United States as belongs to the United States, (deducting thereout such sums as will be requisite to pay interest on any part remaining unpaid of the loan of two million of dollars had of the Bank of the United States, pursuant to the eleventh section of the act by which the said Bank is incorporated:) Thirdly. So much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, as, with the said dividends, after such deduction, will be sufficient, yearly and every year, to pay the remaining instalments of the principal of the said loan as they shall become due, and as, together with any moneys which, by virtue of provisions in former acts, and herein-before made, shall, on the first day of January, in the year one thousand eight hundred and two, belong to the said Sinking Fund, not otherwise specially appropriated; and with the interest on each instalment, or part of principal, which shall from time to time be reimbursed or paid of that part of the debt or stock, which, on the first day of January, in the year one thousand eight hundred and one, shall begin to bear an interest of six per centum per annum, will be sufficient, yearly and every year, commencing on the first day of January, in the year one thousand eight hundred and two, to reimburse and pay so much as may rightfully be reimbursed and paid of the said principal of the said debt or stock which shall so begin to bear an interest of six per centum per annum, on the said first day of January, in the year one thousand eight hundred and one, excluding that which shall stand to the credit of the Commissioners of the Sinking Fund and that which shall stand to the credit of certain States, as aforesaid: Fourthly. The net proceeds of the sales of lands belonging, or which shall hereafter belong to the United States, in the Western Territory thereof: Fifthly. All moneys which shall be received into the Treasury on account of debts due to the United States by reason of any matter prior to their present Constitution: And, lastly, All surplusses of the revenues of the United States which shall remain, at the end of any calendar year, beyond the amount of the appropriations charged upon the said revenues, and which, during the session of Congress next thereafter, shall not be otherwise specially appropriated or reserved by law.

SEC. 9. *And be it further enacted,* That as well the moneys which shall accrue to the said Sinking Fund, by virtue of the provisions of this act, as those which shall have accrued to the same by virtue of the provisions of any former act or acts, shall be

under the direction and management of the Commissioners of the Sinking Fund, or the officers designated in and by the second section of the act, entitled ''An act making provision for the reduction of the Public Debt,'' passed the twelfth day of August, one thousand seven hundred and ninety, and their successors in office; and shall be and continue appropriated to the said fund until the whole of the present debt of the United States, foreign and domestic, funded and unfunded, including future loans, which may be made for reimbursing or redeeming any instalments or parts of principal of the said debt, shall be reimbursed and redeemed; and shall be, and are hereby declared to be, vested in the said Commissioners, in trust, to be applied according to the provisions of the aforesaid act of the eighth day of May, in the year one thousand seven hundred and ninety-two, and of this act, to the reimbursement and redemption of the said debt, including the loans aforesaid, until the same shall be fully reimbursed and redeemed. And the faith of the United States is hereby pledged that the moneys or funds aforesaid shall inviolably remain and be appropriated and vested, as aforesaid, to be applied to the said reimbursement and redemption, in manner aforesaid, until the same shall be fully and completely effected.

SEC. 10. *And be it further enacted,* That all reimbursements of the capital or principal of the Public Debt, foreign and domestic, shall be made under the superintendence of the Commissioners of the Sinking Fund, who are hereby empowered and required, if necessary, with the approbation of the President of the United States, as any instalments or parts of the said capital or principal become due, to borrow, on the credit of the United States, the sums requisite for the payment of the said instalments or parts of principle: *Provided,* That any loan which may be made to the said Commissioners shall be liable to reimbursement at the pleasure of the United States; and that the rate of interest thereupon shall not exceed six per centum per annum; and, for greater caution, it is hereby declared that it shall be deemed a good execution of the said power to borrow, for the said Commissioners, with the approbation of the President, to cause to be constituted certificates of stock, signed by the Register of the Treasury, for the sums to be respectively borrowed, bearing an interest of six per centum per annum, and redeemable at the pleasure of the United States; and to cause the said certificates of stock to be sold in the market of the United States, or elsewhere: *Provided,* That no such stock be sold under par. And for the payment of interest on any sum or sums which may be so borrowed, either by direct loans or by the sale of certificates of stock, the interest on the sum or sums which shall be reimbursed by the proceeds thereof, (except that upon the funded stock, bearing and to bear an interest of six per centum, redeemable by payments, not exceeding in one year eight per centum on account both of principal and interest,) and so much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and upon stills, as may be necessary, shall be, and hereby are, pledged and appropriated.

SEC. 11. *And be it further enacted,* That it shall be the duty of the Commissioners of the Sinking Fund to cause to be applied and paid, out of the said fund, yearly and every year, at the Treasury of the United States, the several and respective sums following, to wit: First—Such sum and sums as, according to the right for that purpose reserved, may rightfully be paid for, and towards the reimbursement or redemption of such Debt or stock of the United States, as, on the first day of January next, shall bear an interest of six per centum per annum, redeemable by payments, not exceeding in one year eight per centum, on account both of principal and interest, excluding that standing to the credit of the Commissioners of the Sinking Fund, and that standing to the credit of certain States, as aforesaid, commencing the said reimbursement or redemption on the said first day of January next. Secondly—Such sum and sums as, according to the conditions of the aforesaid Loan, had of the Bank of the United States, shall be henceforth payable towards the reimbursement thereof, as the same shall respectively accrue. Thirdly—Such sum and sums, as according to the right for that purpose reserved, may rightfully be paid for and towards the reimbursement or redemption of such Debt or stock of the United States as, on the first day of January, in the year one thousand eight hundred and one, shall begin to bear an interest of six per centum per annum, redeemable by payments, not exceeding in one year eight per centum, on account both of principal and interest, excluding that standing to the credit of the Commissioners of the Sinking Fund, and that standing to the credit of certain States, as aforesaid, commencing the said reimbursement or redemption, on the first day of January, in the year one thousand eight hundred and two; and also to cause to be applied all such surplus of the said fund as may at any time exist, after satisfying the purposes aforesaid, towards the further and final redemption of the present Debt of the United States, foreign and domestic, funded and unfunded, including loans for the reimbursement thereof, by payment or purchase, until the said Debt shall be completely reimbursed or redeemed.

SEC. 12. *Provided always, and be it further enacted,* That nothing in this act shall be construed to vest in the Commissioners of the Sinking Fund a right to pay, in the purchase or discharge of the unfunded Domestic Debt of the United States, a higher rate than the market price or value of the Funded Debt of the United States: *And, provided also,* That if, after all the debts and loans aforesaid, now due, and that shall arise under this act, excepting the said Debt or stock bearing an interest of three per cent., shall be fully paid and discharged, any part of the principal of the said Debt or stock bearing an interest of three per cent., as aforesaid, shall be unredeemed, the Government shall have liberty, if they think proper, to make other and different appropriations of the said funds.

SEC. 13. *And be it further enacted,* That all priorities heretofore established in the appropriations by law, for the interest on the Debt of the United States, as between the different parts of the said Debt, shall, after the year one thousand seven hundred and ninety-six, cease, with regard to all creditors of the United States who do not, before the expiration of the said period, signify, in writing, to the Comptroller of the Treasury, their dissent therefrom; and that thenceforth, with the exception only of the debts of such creditors who shall so signify their dissent, the funds or revenues charged with the said appropriations shall, together, constitute a common or consolidated fund, chargeable indiscriminately, and without priority, with the payment of the said interest.

SEC. 14. *And be it further enacted,* That all certificates, commonly called Loan Office certificates, final settlements, and indents of interest, which, at the time of passing this act, shall be outstanding, shall on or before the first day of January, in the year one thousand seven hundred and ninety-seven, be presented at the office of the Auditor of the Treasury of the United States, for the purpose of being exchanged for other certificates of equivalent value and tenor, or, at the option of the holders thereof, respectively, to be registered at the said office, and returned; in which case it shall be the duty of the said Auditor to cause some durable mark or marks to be set on each certificate, which shall ascertain and fix its identity, and whether genuine, or counterfeit, or forged; and every of the said certificates which shall not be presented at the said office within the said time, shall be forever after barred or precluded from settlement of allowance.

SEC. 15. *And be it further enacted,* That if any transfer of stock standing to the credit of a State shall be made pursuant to the act, entitled ''An act authorizing the transfer of the stock standing to the credit of certain States,'' passed the second day of January, in this present year, after the last day of December next, the same shall be upon condition, that it shall be lawful to reimburse, at a subsequent period of reimbursement, so much of the principal of the stock so transferred as will make the reimbursement thereof equal in proportion and degree to that of the same stock transferred previous to the said day.

SEC. 16. *And be it further enacted,* That, in regard to any sum which shall have remained unexpended upon any appropriation other than for the payment of interest on the Funded Debt; for the payment of interest upon, and reimbursement, according to contract, of any loan or loans made on account of the United States, for the purposes of the Sinking Fund, or for a purpose in respect to which a longer duration is specially assigned by law, for more than two years after the expiration of the calendar year in which the act of appropriation shall have been passed, such appropriation shall be deemed to have ceased and been determined; and the sum so unexpended shall be carried to an account on the books of the Treasury, to be denominated ''The Surplus Fund.'' But no appropriation shall be deemed to have so ceased and been determined until after the year one thousand seven hundred and ninety-five, unless it shall appear to the Secretary of the Treasury, that the object thereof hath been fully satisfied; in which case it shall be lawful for him to cause to be carried the unexpended residue thereof to the said account of ''the Surplus Fund.''

SEC. 17. *And be it further enacted,* That the Department of the Treasury, according to the respective duties of the several officers thereof, shall establish such forms and rules of proceeding for and touching the execution of this act as shall be conformable with the provisions thereof.

SEC. 18. *And be it further enacted*, That all the restrictions and regulations heretofore established by law for regulating the execution of the duties enjoined upon the Commissioners of the Sinking Fund shall apply to and be in as full force for the execution of the analogous duties enjoined by this act as if they were herein particularly repeated and re-enacted: and a particular account of all sales of stock, or of loans by them made, shall be laid before Congress within fourteen days after their meeting next after the making of any such loan or sale of stock.

SEC. 19. *And be it further enacted*, That in every case in which power is given by this act to make a loan, it shall be lawful for such loan to be made of the Bank of the United States, although the same may exceed the sum of fifty thousand dollars.

SEC. 20. *And be it further enacted*, That so much of the act laying duties upon carriages for the conveyance of persons, and of the act laying duties on licenses for selling wines and foreign distilled spirituous liquors by retail, and of the act laying certain duties

upon snuff and refined sugar, and of the act laying duties on property sold at auction, as limits the duration of the said several acts, be, and the same is hereby repealed; and that all the said several acts be, and the same are hereby, continued in force until the first day of March, one thousand eight hundred and one.

Approved, March 3, 1795.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is now closed.

PAPERWORK REDUCTION ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 244, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 244) to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Paperwork Reduction Act of 1995''.

SEC. 2. COORDINATION OF FEDERAL INFORMATION POLICY.

Chapter 35 of title 44, United States Code, is amended to read as follows:

''CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

''Sec.
''3501. Purposes.
''3502. Definitions.
''3503. Office of Information and Regulatory Affairs.
''3504. Authority and functions of Director.
''3505. Assignment of tasks and deadlines.
''3506. Federal agency responsibilities.
''3507. Public information collection activities; submission to Director; approval and delegation.
''3508. Determination of necessity for information; hearing.
''3509. Designation of central collection agency.
''3510. Cooperation of agencies in making information available.
''3511. Establishment and operation of Government Information Locator Service.
''3512. Public protection.
''3513. Director review of agency activities; reporting; agency response.
''3514. Responsiveness to Congress.
''3515. Administrative powers.
''3516. Rules and regulations.
''3517. Consultation with other agencies and the public.
''3518. Effect on existing laws and regulations.
''3519. Access to information.
''3520. Authorization of appropriations.

''§ 3501. Purposes

''The purposes of this chapter are to—

''(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

''(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

''(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

''(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

''(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

''(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

''(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

''(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

''(A) privacy and confidentiality, including section 552a of title 5;

''(B) security of information, including the Computer Security Act of 1987 (Public Law 100–235); and

''(C) access to information, including section 552 of title 5;

''(9) ensure the integrity, quality, and utility of the Federal statistical system;

''(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

''(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

''§ 3502. Definitions

''As used in this chapter—

''(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

''(A) the General Accounting Office;

''(B) Federal Election Commission;

''(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

''(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

''(2) the term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

''(A) reviewing instructions;

''(B) acquiring, installing, and utilizing technology and systems;

''(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

''(D) searching data sources;

''(E) completing and reviewing the collection of information; and

''(F) transmitting, or otherwise disclosing the information;

''(3) the term 'collection of information'—

''(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

''(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

''(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

''(B) shall not include a collection of information described under section 3518(c)(1);

''(4) the term 'Director' means the Director of the Office of Management and Budget;

''(5) the term 'independent regulatory agency' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

''(6) the term 'information resources' means information and related resources, such as personnel, equipment, funds, and information technology;

''(7) the term 'information resources management' means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

''(8) the term 'information system' means a discrete set of information resources and processes, automated or manual, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

''(9) the term 'information technology' has the same meaning as the term 'automatic data processing equipment' as defined by section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2));

''(10) the term 'person' means an individual, partnership, association, corporation,

business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

''(11) the term 'practical utility' means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

''(12) the term 'public information' means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public; and

''(13) the term 'recordkeeping requirement' means a requirement imposed by or for an agency on persons to maintain specified records.

''§ 3503. Office of Information and Regulatory Affairs

''(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

''(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

''(c) The Administrator and employees of the Office of Information and Regulatory Affairs shall be appointed with special attention to professional qualifications required to administer the functions of the Office described under this chapter. Such qualifications shall include relevant education, work experience, or related professional activities.

''§ 3504. Authority and functions of Director

''(a)(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including service delivery to the public. In performing such oversight, the Director shall—

''(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

''(B) provide direction and oversee—

''(i) the review of the collection of information and the reduction of the information collection burden;

''(ii) agency dissemination of and public access to information;

''(iii) statistical activities;

''(iv) records management activities;

''(v) privacy, confidentiality, security, disclosure, and sharing of information; and

''(vi) the acquisition and use of information technology.

''(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

''(b) With respect to general information resources management policy, the Director shall—

''(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

''(2) foster greater sharing, dissemination, and access to public information, including through—

''(A) the use of the Government Information Locator Service; and

''(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

''(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

''(4) oversee the development and implementation of best practices in information resources management, including training; and

''(5) oversee agency integration of program and management functions with information resources management functions.

''(c) With respect to the collection of information and the control of paperwork, the Director shall—

''(1) review proposed agency collections of information, and in accordance with section 3508, determine whether the collection of information by or for an agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

''(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement and acquisition and to reduce information collection burdens on the public;

''(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

''(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; and

''(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.

''(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

''(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

''(2) promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.

''(e) With respect to statistical policy and coordination, the Director shall—

''(1) coordinate the activities of the Federal statistical system to ensure—

''(A) the efficiency and effectiveness of the system; and

''(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

''(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

''(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—

''(A) statistical collection procedures and methods;

''(B) statistical data classification;

''(C) statistical information presentation and dissemination;

''(D) timely release of statistical data; and

''(E) such statistical data sources as may be required for the administration of Federal programs;

''(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

''(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

''(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

''(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

''(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

''(A) be headed by the chief statistician; and

''(B) consist of—

''(i) the heads of the major statistical programs; and

''(ii) representatives of other statistical agencies under rotating membership; and

''(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

''(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

''(B) all costs of the training shall be paid by the agency requesting training.

''(f) With respect to records management, the Director shall—

''(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;

''(2) review compliance by agencies with—

''(A) the requirements of chapters 29, 31, and 33 of this title; and

''(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

''(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

''(g) With respect to privacy and security, the Director shall—

''(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;

''(2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

''(3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

''(h) With respect to Federal information technology, the Director shall—

''(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

''(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

''(B) oversee the development and implementation of standards under section 111(d)

of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));

''(2) monitor the effectiveness of, and compliance with, directives issued under sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759) [and review proposed determinations under section 111(e) of such Act];

''(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

''(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

''(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

''(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

''(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

''§ 3505. Assignment of tasks and deadlines

''In carrying out the functions under this chapter, the Director shall—

''(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least five percent, and set annual agency goals to—

''(A) reduce information collection burdens imposed on the public that—

''(i) represent the maximum practicable opportunity in each agency; and

''(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

''(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

''(2) with selected agencies and non-Federal entities on a voluntary basis, conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; *and*

''(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

''(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

''(B) plans for—

''(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

''(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

''(iii) meeting the information technology needs of the Federal Government in accordance with [the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759), and] the purposes of this chapter; and

''(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.[; and

[''(4) in cooperation with the Administrator of General Services, issue guidelines for the establishment and operation in each agency of a process, as required under section 3506(h)(5) of this chapter, to review major information systems initiatives, including acquisition and use of information technology.]

''§ 3506. Federal agency responsibilities

''(a)(1) The head of each agency shall be responsible for—

''(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

''(B) complying with the requirements of this chapter and related policies established by the Director.

''(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter.

''(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate a senior official who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated for the military departments, the respective duties of the officials shall be clearly delineated.

''(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

''(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

[''(5) The head of each agency shall establish a permanent information resources management steering committee, which shall be chaired by the senior official designated under paragraph (2) and shall include senior program officials and the Chief Financial Officer (or comparable official). Each steering committee shall—

[''(A) assist and advise the head of the agency in carrying out information resources management responsibilities of the agency;

[''(B) assist and advise the senior official designated under paragraph (2) in the establishment of performance measures for information resources management that relate to program missions;

[''(C) select, control, and evaluate all major information system initiatives (including acquisitions of information technology) in accordance with the requirements of subsection (h)(5); and

[''(D) identify opportunities to redesign business practices and supporting information systems to improve agency performance.]

''(b) With respect to general information resources management, each agency shall—

''(1) [develop information systems, processes, and procedures to] *manage information resources to*—

''(A) reduce information collection burdens on the public;

''(B) increase program efficiency and effectiveness; and

''(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

''(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

''(3) develop and maintain an ongoing process to—

''(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

[''(B) develop and maintain an integrated, comprehensive and controlled process of information systems selection, development, and evaluation;

''[(C)] *(B)* in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

''[(D)] *(C)* establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

''(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

''(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

''(c) With respect to the collection of information and the control of paperwork, each agency shall—

''(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

''(A) review each collection of information before submission to the Director for review under this chapter, including—

''(i) an evaluation of the need for the collection of information;

''(ii) a functional description of the information to be collected;

''(iii) a plan for the collection of the information;

''(iv) a specific, objectively supported estimate of burden;

''(v) a test of the collection of information through a pilot program, if appropriate; and

''(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

''(B) ensure that each information collection—

''(i) is inventoried, displays a control number and, if appropriate, an expiration date;

''(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

''(iii) contains a statement to inform the person receiving the collection of information—

''(I) the reasons the information is being collected;

''(II) the way such information is to be used;

''(III) an estimate, to the extent practicable, of the burden of the collection; and

''(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

''(C) assess the information collection burden of proposed legislation affecting the agency;

''(2)(A) except as provided under subparagraph (B), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

''(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

''(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

''(iii) enhance the quality, utility, and clarity of the information to be collected; and

''(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

''(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); and

''(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

''(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

''(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

''(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

''(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

''(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

''(iii) an exemption from coverage of the collection of information, or any part thereof;

''(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

''(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

''(F) contains the statement required under paragraph (1)(B)(iii);

''(G) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

''(H) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

''(I) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

''(d) With respect to information dissemination, each agency shall—

''(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through—

''(A) encouraging a diversity of public and private sources for information based on government public information, and

''(B) agency dissemination of public information in an efficient, effective, and economical manner;

''(2) regularly solicit and consider public input on the agency's information dissemination activities; and

''(3) not, except where specifically authorized by statute—

''(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

''(B) restrict or regulate the use, resale, or redissemination of public information by the public;

''(C) charge fees or royalties for resale or redissemination of public information; or

''(D) establish user fees for public information that exceed the cost of dissemination.

''(e) With respect to statistical policy and coordination, each agency shall—

''(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

''(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

''(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

''(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

''(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

''(6) make data available to statistical agencies and readily accessible to the public.

''(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

''(g) With respect to privacy and security, each agency shall—

''(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

''(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

''(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

''(h) With respect to Federal information technology, each agency shall—

''(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

''(2) assume responsibility and accountability [for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759);] *for information technology investments;*

''(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

''(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

[''(5) establish, and be responsible for, a major information system initiative review process, which shall be developed and implemented by the information resources management steering committee established under subsection (a)(5), consistent with guidelines issued under section 3505(4), and include—

[''(A) the review of major information system initiative proposals and projects (including acquisitions of information technology), approval or disapproval of each such initiative, and periodic reviews of the development and implementation of such initiatives, including whether the projected benefits have been achieved;

[''(B) the use by the committee of specified evaluative techniques and criteria to—

[''(i) assess the economy, efficiency, effectiveness, risks, and priority of system initiatives in relation to mission needs and strategies;

[''(ii) estimate and verify life-cycle system initiative costs; and

[''(iii) assess system initiative privacy, security, records management, and dissemination and access capabilities;

[''(C) the use, as appropriate, of independent cost evaluations of data developed under subparagraph (B); and

[''(D) the inclusion of relevant information about approved initiatives in the agency's annual budget request.]

''(5) ensure responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

''(A) integrated with budget, financial, and program management decisions; and

''(B) used to select, control, and evaluate the results of major information systems initiatives.

''§ 3507. Public information collection activities; submission to Director; approval and delegation

''(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

''(1) the agency has—

''(A) conducted the review established under section 3506(c)(1);

''(B) evaluated the public comments received under section 3506(c)(2);

''(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations,

and other related materials as the Director may specify; and

''(D) published a notice in the Federal Register—

''(i) stating that the agency has made such submission; and

''(ii) setting forth—

''(I) a title for the collection of information;

''(II) a summary of the collection of information;

''(III) a brief description of the need for the information and the proposed use of the information;

''(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

''(V) an estimate of the burden that shall result from the collection of information; and

''(VI) notice that comments may be submitted to the agency and Director;

''(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

''(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

''(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

''(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

''(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

''(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)—

''(A) the approval may be inferred;

''(B) a control number shall be assigned without further delay; and

''(C) the agency may collect the information for not more than 2 years.

''(d)(1) For any proposed collection of information contained in a proposed rule—

''(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

''(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

''(2) When a final rule is published in the Federal Register, the agency shall explain—

''(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

''(B) the reasons such comments were rejected.

''(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

''(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—

''(A) from disapproving any collection of information which was not specifically required by an agency rule;

''(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

''(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or

''(D) from disapproving any collection of information contained in a final rule, if—

''(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

''(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

''(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

''(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

''(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

''(2) Any written communication between the Office of the Director, the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

''(3) This subsection shall not require the disclosure of—

''(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

''(B) any communication relating to a collection of information which has not been approved under this chapter, the disclosure of which could lead to retaliation or discrimination against the communicator.

''(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

''(A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or

''(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

''(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

''(g) The Director may not approve a collection of information for a period in excess of 3 years.

''(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

''(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

''(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

''(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall—

''(A) publish an explanation thereof in the Federal Register; and

''(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

''(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

''(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

''(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

''(j)(1) The agency head may request the Director to authorize collection of information prior to expiration of time periods established under this chapter, if an agency head determines that—

''(A) a collection of information—

''(i) is needed prior to the expiration of such time periods; and

''(ii) is essential to the mission of the agency; and

''(B) the agency cannot reasonably comply with the provisions of this chapter within such time periods because—

''(i) public harm is reasonably likely to result if normal clearance procedures are followed; or

''(ii) an unanticipated event has occurred and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information related to the event or is reasonably likely to cause a statutory or court-ordered deadline to be missed.

''(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any

collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

"§ 3508. Determination of necessity for information; hearing

''Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent that the Director determines that the collection of information by an agency is unnecessary for the proper performance of the functions of the agency, for any reason, the agency may not engage in the collection of information.

"§ 3509. Designation of central collection agency

''The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.

"§ 3510. Cooperation of agencies in making information available

''(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

''(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

''(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

"§ 3511. Establishment and operation of Government Information Locator Service

''In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

''(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the 'Service'), which shall identify the major information systems, holdings, and dissemination products of each agency;

''(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

''(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

''(4) consider public access and other user needs in the establishment and operation of the Service;

''(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

''(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

"§ 3512. Public protection

''Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain, provide, or disclose information to or for any agency or person if the collection of information subject to this chapter—

''(1) does not display a valid control number assigned by the Director; or

''(2) fails to state that the person who is to respond to the collection of information is not required to comply unless such collection displays a valid control number.

"§ 3513. Director review of agency activities; reporting; agency response

''(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

''(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

''(1) be taken to address information resources management problems identified in the report; and

''(2) improve agency performance and the accomplishment of agency missions.

"§ 3514. Responsiveness to Congress

''(a)(1) The Director shall—

''(A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and

''(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

''(2) The Director shall include in any such report a description of the extent to which agencies have—

''(A) reduced information collection burdens on the public, including—

''(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

''(ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter; and

''(iii) a list of any increase in the collection of information burden, including the authority for each such collection;

''(B) improved the quality and utility of statistical information;

''(C) improved public access to Government information; and

''(D) improved program performance and the accomplishment of agency missions through information resources management.

''(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

"§ 3515. Administrative powers

''Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

"§ 3516. Rules and regulations

''The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

"§ 3517. Consultation with other agencies and the public

''(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

''(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

''(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

''(2) take appropriate remedial action, if necessary.

"§ 3518. Effect on existing laws and regulations

''(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

''(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

''(c)(1) Except as provided in paragraph (2), this chapter shall not apply to the collection of information—

''(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

''(B) during the conduct of—

''(i) a civil action to which the United States or any official or agency thereof is a party; or

''(ii) an administrative action or investigation involving an agency against specific individuals or entities;

''(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

''(D) during the conduct of intelligence activities as defined in section 4–206 of Executive Order No. 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

''(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

''(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89–306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

''(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

''§ 3519. Access to information

''Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

''§ 3520. Authorization of appropriations

''(a) Subject to subsection (b), there are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter, and for no other purpose, $8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

''(b)(1) No funds may be appropriated pursuant to subsection (a) unless such funds are appropriated in an appropriation Act (or continuing resolution) which separately and expressly states the amount appropriated pursuant to subsection (a) of this section.

''(2) No funds are authorized to be appropriated to the Office of Information and Regulatory Affairs, or to any other officer or administrative unit of the Office of Management and Budget, to carry out the provisions of this chapter, or to carry out any function under this chapter, for any fiscal year pursuant to any provision of law other than subsection (a) of this section.''.

SEC. 3. EFFECTIVE DATE.

The provisions of this Act and the amendments made by this Act shall take effect on June 30, 1995.

The PRESIDING OFFICER. The Presiding Officer, in his capacity as a Senator from the State of Washington, suggests the absence of a quorum.

The legislative clerk proceeded to call the roll.

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

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

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. DOLE. Mr. President, let me just take a moment to indicate that we have not yet given up on this side of the Capitol on the balanced budget amendment to the Constitution.

I view the one-vote loss as a temporary setback. I am very optimistic about passing the balanced budget amendment with the necessary two-thirds vote in this Congress. It means either this year or next year. We will be making every effort, not only on this side of the aisle, but along with Senator SIMON on the other side of the aisle, to secure one additional vote. That is all it takes, one additional vote. We can call it up, reconsider it, no debate, and then vote on the balanced budget amendment; no debate, 67 votes, and it will then go to the States for ratification.

I hope that any of my colleagues who may have voted the other way have had time to think about this seriously. It is an item supported by 80 percent of the American people. It is a discipline we need in the Congress of the United States. My view is its time has come and, in my view, it will happen this Congress. And I hope that we will have even more than the 67 votes required.

All those who have been frightening and trying to scare senior citizens, I suggest that has not been effective. We have indicated from the start that we are not touching Social Security, and we will proceed on that basis in the budget discussions. I guess we will determine before many weeks who really is serious about reducing the deficit and about getting to a balanced budget. For all those who indicated in their statements that we do not need a balanced budget amendment to do that, we will have an opportunity to determine which one of those Senators meant what they said, or which others were just saying it because it might be something people like to hear in their States.

But, again, I ask those who voted with us last year on the balanced budget amendment to search their conscience, dig out their old speeches and their old press releases and their old campaign spots, and take another look at the amendment that lost by one vote. It was identical, with the exception of a change of date from 2001 to 2002 and with the so-called Nunn language, which we think improved the amendment.

This is something that should not be given up easily. We intend to pursue it.

Again, I thank my colleagues on both sides of the aisle for their bipartisan efforts to reach the magic number of 67.

I yield the floor.

PAPERWORK REDUCTION ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I rise in support of S. 244, the Paperwork Reduction Act of 1995. This legislation was, this year as last year, reported out unanimously from the Committee on Governmental Affairs, reflecting the bipartisan efforts of Senators NUNN, GLENN, and myself.

The legislation reaffirms the fundamental purpose of the Paperwork Reduction Act of 1980—to reduce the paperwork burden imposed on the public by the Federal Government. But it does much more. It increases the scope of the act by 50 percent in overturning the Supreme Court's decision in Dole v. United Steelworkers of America. In that case the Supreme Court surprised many of us who had worked on fashioning this legislation by limiting OMB's authority to review Government collections of information only to those instances where the paperwork flowed from a private party to the Government and thus excluded instances where the Government requires information to be provided to another party.

By overturning the Dole case, all paperwork falls under the act and is thereby subject to review by the Office of Information and Regulatory Affairs.

Under the act, each agency—and the act covers all agencies, even independent agencies—must analyze each information collection for its need and its practical utility. All such information collections, even those of independent agencies, must be approved by OIRA before they become effective.

The legislation also authorizes appropriations for OIRA for 5 more years at $8 million each year. OIRA is not only the hub of the wheel in enforcing this act but has come to play a significant role in executing executive orders on the subject of regulatory review. As we work in committee to draft comprehensive regulatory reform legislation, it is clear that OIRA will have even a greater role. This authorization of greater appropriations is a very important provision.

The paperwork burden produced by Government's enormous appetite for information is an ever increasing problem. The fact that the problem is growing does not mean that the efforts under the Paperwork Reduction Act of 1980 have not been worthwhile. The problem would have been even worse without such efforts. The mechanism for reducing burdens cannot be faulted because Congress passes more laws that generate more paperwork.

Now, the legislation before us recognizes that an information collection may be problematic not only because the collection has no public utility but also because the collector may already have access to the information and need not bother our citizenry with a request for the same information. I applaud the efforts of GAO to underscore this simple truth by highlighting the

benefits of information resources management. This legislation effectuates the principle that information resources management and reduction of paperwork burden are two sides of the same coin. While some may view the two aspects as competing for scarce OIRA resources, that view is mistaken. The two aspects are inextricably linked.

This legislation enjoys widespread support among the business community, both big and small, as well as among State and local governments and the people, all who bear the burden of Federal Government paperwork collections. They all will be pleased to see that this legislation strengthens the paperwork reduction aspects of the act and that, in particular, it retains the direction of OIRA that it manage the paperwork burden on the public to achieve a 5-percent annual reduction.

Paperwork burdens, like other regulatory burdens, are a hidden tax on the American people—a tax without measure, a tax unrestricted by budgetary or constitutional limitations, but a tax no less real.

Government paperwork collections are a burden on the public. The legislation indicates an increased sensitivity to that fact by requiring each agency to develop a paperwork clearance process to review and solicit public comment on proposed information collections before submitting them to OMB for review. Public accountability is also strengthened through requirements for public disclosure of communications with OMB regarding information collections—with protections for whistleblowers complaining of unauthorized collections—and for OMB to review the status of any information collection upon public request. In combination with more general requirements, such as encouraging data sharing between the Federal Government and State and local and tribal governments, this legislation strives to further the goals of the act of minimizing government information collection burdens while maximizing the utility of government information.

With regard to the act's over-arching information resources management—IRM—policies, the legislation charges agency heads with the responsibility to carry out agency IRM activities to improve agency productivity, efficiency, and effectiveness. It makes program officials responsible and accountable for those information resources supporting their programs. The IRM mandate is strengthened by focusing on managing information resources in order to improve program performance, including the delivery of services to the public and the reduction of information collection burdens on the public.

With the Federal Government spending approximately $25 billion a year on information technology, the stakes are too high not to press for the most efficient and effective management of information resources. With such improvements in information resources management, the reduction of information collection burdens on the public and maximizing the utility of government information will not otherwise occur.

This legislation is not the final word on the very important subject of information technology. The committee will be fashioning legislation later this session to restructure and redesign the Federal Government for the 21st century. One essential aspect of a modern Federal Government is the effective use of information technology to better accomplish public missions at lower costs. We will be back.

Finally, I want to underscore a point to which Senators GLENN, NUNN, and I gave considerable attention. This legislation is a rewrite of the 1980 act. Its form is necessitated by the number of technical and other changes made. This form is in no way intended to start a new legislative history with the 1995 act. Rather, this legislation is only a pro tanto modification intended to carry on the legislative history of the 1980 act. The report, at page 3, makes this very same point. This is an important point. It should be noted by anyone interested in the legislative history that guides the interpretation of the Paperwork Reduction Act.

In closing, I wish to commend my colleagues, Senator GLENN and Senator NUNN, for their cooperation and patience in fashioning legislation on a very, very complex subject. This legislation, in my opinion, merits the full support of every Member.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, today, the Senate turns to consideration of S. 244, the Paperwork Reduction Act of 1995. As the Senator from Delaware, my good friend, Senator ROTH, has already explained, this bill reauthorizes appropriations for the Office of Information and Regulatory Affairs [OIRA] and it strengthens the Paperwork Reduction Act of 1980. This represents years of hard work which began in the 100th Congress.

S. 244 is substantially identical to S. 560, the Paperwork Reduction Act of 1994, which was approved by the Senate, not once but twice in the closing days of the last Congress. It passed the Senate by unanimous voice vote on October 6, 1994. the following day, the text of S. 560 was attached to a House-passed measure, H.R. 2561, and returned to the House. Unfortunately, it was not cleared for action before the adjournment of the 103d Congress. The House of Representatives did not act on it.

Like S. 560 in the last Congress, S. 244 enjoys strong bipartisan support. Chairman ROTH and Senator GLENN are both original cosponsors. Both have worked long and hard on this needed legislation to strengthen the Paperwork Reduction Act of 1980 and to reauthorize appropriations for OIRA. The crafting of a consensus bill in the last Congress was made possible by the skill and leadership of my friend from Ohio, Mr. GLENN, and my friend from Delaware, Mr. ROTH.

Leading cosponsors of S. 244 also include the new chairman of the Committee on Small Business, Senator KIT BOND, and the committee's ranking Democratic member, Senator BUMPERS. Former Chairman BUMPERS and successive ranking Republican members of the Committee on Small Business, including Senators Boschwitz, Kasten, and Pressler, have been original cosponsors of the predecessor legislation in the 101st and 102d Congress. The Committee on Small Business, of which I am a member as well as the Governmental Affairs Committee, has played a crucial supporting role in sustaining the effort to enact legislation to strengthen the 1980 act. Such support is not surprising since relief from paperwork and regulatory burdens is vital to the small business community. It has become a focus of activity for the Committee on Small Business, the Committee on Governmental Affairs, and several other committees in the Senate as well as their counterparts in the House of Representatives.

This year we are being joined by colleagues from both sides of the aisle, many of whom are present or former members of the Committee on Small Business as well as the Committee on Governmental Affairs. When introduced, S. 244 had 21 bipartisan cosponsors. My friend from Mississippi, Mr. LOTT, as inadvertently omitted from the list. He should have been on the list when it was originally introduced.

Mr. President, I ask unanimous consent that Senator LOTT be added to list of original cosponsors to the bill.

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

Mr. NUNN. Further, Mr. President, I ask unanimous consent that the following Senators be added as additional cosponsors—Senator STEVENS, Senator AKAKA, Senator GRASSLEY, Senator THOMAS, Senator COHEN, Senator THOMPSON, Senator ROCKEFELLER, and Senator D'AMATO.

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

Mr. NUNN. In this Congress, the House of Representatives is decidedly more receptive to this legislation. A modified version of S. 560 was included in H.R. 9, the Job Creation and Wage Enhancement Act of 1995, which includes many of the regulatory and paperwork relief provisions of the Republican Contract With America. Representatives BILL CLINGER, the new chairman of the House Committee on Government Reform and Oversight, the new name for the Committee on Government Operations, was the principal Republican cosponsor to H.R. 2995, the House companion to S. 560 in the last Congress. So he has been working on this a long time. In this Congress, he introduced H.R. 830, the Paperwork Reduction Act of 1995, with Representatives NORM SISISKY as the principal Democratic cosponsor.

I might add Representative SISISKY has worked on this legislation for several years with me, including trying last year to get this legislation through the House in the last couple of weeks of the session. On February 22, the House passed H.R. 830 by a rollcall vote of 418–0.

Like the reported version of S. 560 in the last Congress, S. 244 has the support of the Clinton administration. During testimony before the House Small Business Committee on Friday, January 27, Sally Katzen, Administrator of the Office of Information and Regulatory Affairs, stated the administration's support for S. 244.

The Paperwork Reduction Act of 1995 enjoys strong support from the business community, especially the small business committee. It has the support of a broad Paperwork Reduction Act coalition, representing virtually every segment of the business community. Participating in the coalition are the major national small business associations—the National Federation of Independent Business [NFIB], the Small Business Legislative Council [SBLC], and National Small Business United [NSBU], as well as the many specialized national small business association, like the American Subcontractors Association, that comprise the membership of SBLC or NSBU. Other participants represent manufacturers, aerospace and electronics firms, construction firms, providers of professional and technical services, retailers of various products and services, and the wholesalers and distributors who support them.

Leadership for the coalition is being provided by the Council on Regulatory and Information Management, known as C–RIM and by the U.S Chamber of Commerce. C–RIM is the new name for the Business Council on the Reduction of Paperwork, which has dedicated itself to paperwork reduction and regulatory reform issues for more than a half century. While he was C–RIM's executive director, Bob Coakley worked tirelessly on advancing this legislation. Bob came to C–RIM after many years of service to the Committee on Governmental Affairs, especially for our former colleague, Lawton Chiles, the father of the Paperwork Reduction Act of 1980, when he was in the Senate. Of course he is now Governor of Florida.

The coalition also includes a number of professional associations and public interest groups that support strengthening the Paperwork Reduction Act of 1980. These include the Association of Records Managers and Administrators [ARMA] and Citizens for a Sound Economy [CSE], to name but two very active coalition members.

Given the regulatory and paperwork burdens faced by State and local governments, legislation to strengthen the Paperwork Reduction Act is high on the agenda of the associations representing elected officials. As Governor of Florida, Lawton Chiles, has worked hard on this issue within the National Governors Association. During its 1994 annual meeting, the National Governors Association adopted a resolution in support of legislation to strengthen the Paperwork Reduction Act of 1980.

The principal purpose of the Paperwork Reduction Act of 1995 is to reaffirm and provide additional tools by which to attain the fundamental objective of the Paperwork Reduction Act of 1980—to minimize the Federal paperwork burdens imposed on individuals, businesses, especially small businesses, educational and nonprofit institutions, and State and local governments.

The Paperwork Reduction Act of 1995 provides a 5-year reauthorization of appropriations for the Office of Information and Regulatory Affairs [OIRA]. Created by the 1980 act, OIRA serves as the focal point at OMB for the Act' implementation. OIRA is also the focal point for the regulatory review process, which is exercised under an Executive order. As the Congress undertakes its fundamental changes to the Government processes for the formulation of regulations, OIRA's role and its broad authorities under the Paperwork Reduction Act will be become even more obvious.

I would like to highlight just a few of the provisions of the bill. It reemphasizes the fundamental responsibilities of each Federal agency to minimize new paperwork burdens by thoroughly reviewing each proposed collection of information for need and practical utility, the act's fundamental standards—need and practical utility. The bill makes explicit the responsibility of each Federal agency to conduct this review itself, before submitting the proposed collection of information for public comment and clearance by OIRA in the Office of Management and Budget.

The bill before us reflects the provisions of S. 560 that further enhance public participation in the review of paperwork burdens, when they are first being proposed or when an agency is seeking to obtain approval to continue to use an existing paperwork requirement. Strengthening public participation is at the core of the 1980 act and is strengthened even further in this act.

The Paperwork Reduction Act of 1995 maintains the 1980 act's Government-wide 5-percent goal for the reduction of paperwork burdens on the public. Given past experience, some question the effectiveness of such goals in producing net reductions in Government-wide paperwork burdens. The Coalition believe that the bill should reflect individual agency goals as well. If seriously implemented, the proponents argue that such agency goals can become an effective restraint on the cumulative growth of Government-sponsored paperwork burdens. Although this provision is not in the bill before the committee today, I am hopeful that it will be strengthened in this manner before becoming law.

The bill includes amendments to the 1980 act which further empower members of the public to help police Federal agency compliance with the act. I would like to describe two of these provisions.

One provision would enable a member of the public to obtain a written determination from the OIRA Administrator regarding whether a federally sponsored paperwork requirement is in compliance with the act. If the agency paperwork requirement is found to be noncompliant, the Administrator is charged with taking appropriate remedial action. This provision is based upon a similar process added to the Office of Federal Procurement Policy Act in 1988.

The second provision encourages members of the public to identify paperwork requirements that have not been submitted for review and approval pursuant to the act's requirements. Although the act's public protection provisions explicitly shield the public from the imposition of any formal agency penalty for failing to comply with such an unapproved, or bootleg, paperwork requirement, individuals often feel compelled to comply. This is especially true when the individual has an ongoing relationship with the agency and that relationship accords the agency substantial discretion that could be used to redefine their future dealings. In other words, leverage. Under S. 244, a member of the public can blow the whistle on such a bootleg paperwork requirement and be accorded the protection of anonymity.

Next, I would like to emphasize that the Paperwork Reduction Act of 1995 clarifies the 1980 act to make explicit that it applies to Government-sponsored third-party paperwork burdens. These are recordkeeping, disclosure, or other paperwork burdens that one private party imposes on another private party at the direction of a Federal agency. In 1990, the U.S. Supreme Court decided that such Government-sponsored third-party paperwork burdens were not subject to the Paperwork Reduction Act.

That was contrary to the authors' original intent as has been often stated by the Governor of Florida, then-Senator Lawton Chiles.

The Court's decision in Dole versus United Steelworkers of America created a potentially vast loophole. The public could be denied the act's protections on the basis of the manner in which a Federal agency chose to impose a paperwork burden, indirectly rather than directly. It is worthy of note that Lawton Chiles went to the trouble and expense of filing an amicus brief to the Supreme Court arguing that no such exemption for third-party paperwork burdens was intended. Given the plain works of the statute, the Court decided otherwise. The bill makes explicit the act's coverage of all Government-sponsored paperwork burdens. Once this bill is enacted, we can feel confident that this major loophole

will be closed. But given more than a decade of experience under the act, it is prudent to remain vigilant to additional efforts to restrict the act's reach and public protections.

The smart use of information by the Government, and its potential to minimize the burdens placed on the public, is a core concept of the 1980 act. The information resources management [IRM] provisions of the Paperwork Reduction Act of 1995 build upon the foundation laid more than a decade ago by our former colleague from Florida. These provisions of S. 244 are the major contribution of my friend from Ohio, who has emphasized the potential of improved IRM policies to make Government more effective in serving the Public.

Mr. President, I would like to recognize the contributions of several staff members. First, David Plocher, counsel for Senator GLENN, who along with Tony Coe, an associate counsel in the Office of Senate Legislative Counsel, did much of the drafting. Next, I would like to recognize Frank Polk, the committee's Republican staff director, who assisted Senator ROTH over the many years of effort that have gotten us to this point, and also on my staff Rocky Rief and Matthew Sikes, who have been diligent in working on this legislation; and, finally, certainly not least and probably more than any other individual person, Bill Montalto, who has provided assistance to me as well as Chairman BUMPERS and the ranking Republican members of the Small Business Committee. In this and many other efforts Bill has served well many Members of the Senate, the Committee on Small Business, and indeed the entire small business community. For 13 years, Bill Montalto has served the Small Business Committee. Six years prior to that he was in the service of the U.S. Army. He was there a lawyer and counsel and a logistics specialist.

I have had an opportunity to work with this remarkable public servant for all of those 13 years as he served the Small Business Committee. We have worked on a number of legislative initiatives, such as the mentor-protege program which is now functioning. On the Federal Acquisition Streamlining Act, Bill brought his expertise in the small business arena to bear in that legislation which was passed by the Armed Services Committee and the Governmental Affairs Committee, and helped initiate and further small business development centers that are operating all over the country. Bill was invaluable in his creation of the concept of developing that legislation. The SBA 504 program, no one knows more about that program than Bill, and the SBA Preferred Surety BOND Program and numerous others which have helped our small business community.

Bill will be leaving the Small Business Committee on the Senate side, and my understanding is that he will be going to a key position on the Small Business Committee on the House side. So we will continue, hopefully, to benefit from his advice and his expertise and his dedication in all of these areas.

So to Bill Montalto I owe a special debt of gratitude today, and I am sure Senator BUMPERS, who was chairman of the Small Business Committee, now ranking Democrat, and others who have worked with him would echo my sentiments expressed here today. I am sure Senator BOND and others who have worked on this legislation, also, would certainly know that Bill has done a wonderful job here.

Mr. President, with those comments, I urge my colleagues to pass this legislation. I hope we can pass it today or certainly tomorrow. And I hope that we will be able to have a meeting of the minds with the House and send this bill to the President. It is long overdue. I think it will help begin to alleviate some of the crushing burden of paperwork for so much of our business community.

I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, it is with great pleasure that I rise in support of the Paperwork Reduction Act of 1995, S. 244. As an original cosponsor, I see this legislation playing a critical role in the broader initiative to minimize Government regulatory and paperwork burdens imposed at the Federal level.

I want to say a very special thanks to Chairman ROTH for moving this bill through his committee. We have given his committee the great blessing of about two-thirds of the urgent legislation to be brought before the Senate. We thank him for moving this bill forward.

In addition, a very special thanks to the Senator from Georgia [Mr. NUNN] who has long been a champion of paperwork reduction who has worked long and hard. With his leadership we passed this several times in the Senate. As he indicated in his opening remarks, it now looks like we have a receptive majority in the House. I am hopeful that the good work that those two friends, as well as the distinguished Senator from Ohio, Senator GLENN, have put in, along with Senator BUMPERS, my predecessor, will bear fruit.

Small businesses are especially hard hit by excessive regulatory and paperwork burdens imposed by the Federal bureaucracy. Each time I return home to my State of Missouri, small business owners come up to me and say how the unnecessary burdens of Federal regulations are really crushing them. The Federal requirements too often force these hard-working men and women and small business owners to divert time, energy, and their resources away from productive activities, reducing the competitiveness of the business and impeding their growth.

As chairman of the Small Business Committee, I have had the opportunity to hear a lot from people around the country in the last few months. They are the ones who seem to be crying ''enough'' during last November's election. They have told us they are fed up with Government that is inefficient and wasteful. They want that to change. They are unhappy with the Government's failure to meet their expectations in carrying out its responsibility.

People want Government to work well. Basic governmental functions to insure we have clean water to drink, safe medicines to take, and safe food to eat are sought by all Americans. But they look at our Government today and see an institution that must be brought under control.

And it is not hard to understand their frustration. The paperwork burden imposed on Americans in 1993 totaled 6.6 billion hours. Small businesses alone spend 1 billion hours simply filling out Government paperwork at an annual cost of $100 billion. Furthermore, Government regulation costs individuals and businesses more than $500 billion annually or about $5,000 per family. Just imagine the potential benefit to our economy if some of this valuable time could have been spent on product development or sales.

First, let me assure my colleagues that the Paperwork Reduction Act of 1995 will not impose new regulatory burdens on individuals and businesses. Under the Paperwork Reduction Act, we expect more from the agencies, not from the public. Whenever an agency imposes a paperwork requirement, it must estimate the total amount of time needed to fulfill the requirement. The burden is not merely how long it takes to complete the Government form, report or survey. A greater burden is likely to be the time necessary to understand the requirement, identify the information needed to respond, compile the data, and then submit it in the required format. It is likely the Government format is vastly different from how the small business owner maintains the data.

The Council on Regulation and Information Management [C–RIM], a group which has sought since 1942 to rationalize and minimize the Federal regulatory and paperwork reduction processes, believes that Federal agencies underestimate the total time burden imposed by their paperwork by nearly one-third. C–RIM believes the actual burden is closer to 10 billion hours, not the 6.6 billion claimed by Federal agencies. If you estimate compliance cost at $50 per hour, the annual cost of federally imposed paperwork burdens totals $500 billion.

As a nation, we cannot afford to continue to heap new paperwork and regulatory burdens on individuals and businesses. While recognizing that the total Federal paperwork burden has continued to grow, the Paperwork Reduction Act of 1980 has brought some successes. First, the 1980 act assures that the public will have an opportunity to comment upon proposed Federal paperwork burdens and to suggest

ways to collect necessary information in a less burdensome way. The Paperwork Reduction Act of 1995 strengthens participation by the public. Small businesses will have an opportunity earlier in the process to shed light on the practical business reality on a proposed paperwork requirement. In this bill, we are giving them opportunities to point out when nearly identical information is being collected by another Federal agency. In addition, small businesses will be able to comment on the timing of the submission of the data as well as the format.

Recently, the House of Representatives passed its version of the Paperwork Reduction Act of 1995. It is very appropriate that we in the Senate act on this important legislation today. This act is part of a broad down payment on the regulatory relief program we must pass if we expect Americans to maintain trust and respect in their Government.

Another bill I hope we will consider soon is S. 350, the Regulatory Flexibility Amendments Act of 1995. Earlier this year, I introduced this bill to remove the prohibition against judicial review of agency compliance with the Regulatory Flexibility Act. The purpose of the Reg Flex Act is very simple. It rejects the notion that one size fits all under Government regulations. Under this act, Federal regulators must take into account the needs of small business in drafting new regulations.

The SBA Chief Counsel for Advocacy is charged with monitoring Federal agency compliance with the Reg Flex Act. Unfortunately, too often regulators in some Federal agencies give mere lipservice to the Reg Flex Act requirements, because the Reg Flex Act specifically prohibits judicial enforcement of the law's requirements. As a result, too many Federal regulators have ignored their responsibilities under the act, even when the Chief Counsel for Advocacy notifies the agencies of their failure to comply.

My bill is intended to encourage Federal agencies to comply with their reg flex obligations by permitting small businesses to go into Federal court to enforce compliance by an agency. The judge also will have the freedom to stay implementation of a regulation until the agency comes into compliance. On March 8, I will chair a hearing before the Senate Committee on Small Business to receive testimony from public and private witnesses on how to implement better the Reg Flex Act. It is my intention to review other administrative remedies to enforce the Reg Flex Act so new regulations are written correctly in the first place, so the need to challenge agencies in Federal court might be minimized.

Mr. President, when I first elected to the U.S. Senate, I did not realize so much of my time would be devoted to getting the Government off the backs of individuals and small businesses. As the co-chair of the Senate Regulatory Relief Task Force, we have targeted for reform the 10 worst regulatory burdens. This move will help small businesses, who are the hardest hit by many of these burdensome regulations. We need to reinforce the notion that our Government should be a friend of small business. Government should not be an enemy of growth and new jobs. Unfortunately, today we find a regulatory environment that creates too many roadblocks that impede the growth of small business.

The Paperwork Reduction Act of 1995 is an important step toward bringing our Government under control. For our Government to demand paperwork requiring 10 billion hours per year to fill out is a sign that much work needs to be done to reach this goal. This bill will help move us in the right direction, and I urge to support its passage.

Mr. DOLE. Mr. President, today we begin consideration of S. 244, the Paperwork Reduction Act of 1995. This is a badly needed piece of legislation, and enjoys broad bipartisan support. Americans are drowning in paperwork and need relief now.

This legislation is an important part of our package of reforms to downsize Government; to get the Government off the backs of the American people. Together with regulatory reform and unfunded mandates legislation, paperwork reduction is an important step forward toward improving the lives of ordinary Americans by injecting some common sense into the requirements of the Federal Government on our citizens.

The Paperwork Reduction Act of 1995 strengthens the Paperwork Reduction Act of 1980 by setting a goal of reducing the paperwork burdens imposed by the Federal Government by 5 percent; clarifying that the act will apply to all Government-sponsored collections of information; and strengthening and improving both information technology management and information dissemination. These are reforms and improvements that are long overdue.

Mr. President, I have had many people, particularly those with small businesses, tell me that they would be willing to forgo some aspects of a Federal program that might benefit them if only they could be protected from unnecessary paperwork as well. As it is, the burdens involved are nothing more than a tax: a tax on our productivity. This costs America jobs. It deters those who would otherwise open businesses from doing so; and it is often the difference between a successful and a failing business.

The American people spoke clearly in last November's elections: ''rein in big government.'' They want and deserve a smaller and more responsive Government. They also want and deserve a system of Government that respects the intentions of the Founding Fathers as reflected in the 10th amendment to the Constitution: Those powers not delegated to the Federal Government are reserved to the people and to the States.

The 10th amendment is not merely an abstract point of political philosophy—it reflects the voice of experience by those who understood that Government works best when it governs least and when decisions are made at the level closest to the people. Decisions about what to require in the way of forms, justifications, documentation and recordkeeping made in Washington, DC, often lack this sense of the practical limits on Government. Thus, what may seem perfectly reasonable to a bureaucrat in Washington, DC—who only deals with his or her specific program—is experienced by many Americans as an exercise in frustration, and often of harassment. When you multiply that one bureaucrat by the literally thousands of programs that seem reasonable in a vacuum, it does not take long to see that we have the recipe for disaster.

Mr. President, when everyone is in charge, no one is in charge. Thus, we cannot absolve ourselves of the burdens caused by the executive branch that is, after all, attempting to carry our what it believes to the dictates of Congress. Congress has an important role—indeed, an obligation—to exercise the kind of oversight that reins in the excesses of Government. S. 244 is an important step forward, and I urge my colleagues to support its passage.

Mr. GLENN. Mr. President, I am very happy that we are today one important step closer to reauthorization of the Paperwork Reduction Act. This law is essential to reducing the burdens of Government paperwork on the American people. The law is also key to improving the management of Federal Government information systems—this is essential because the Federal Government is now spending $25 billion a year on information technology.

The bill we bring to the floor today is the product of several years of bipartisan effort. In fact, this bill is virtually identical to the bill passed by unanimous consent in October 1994. This year, I hope we can quickly go all the way and get the bill signed into law.

Our bill makes important improvements to the 1980 Paperwork Reduction Act. It strengthens the paperwork clearance process and information resources management—both in OMB and the agencies:

We reauthorize the act for 5 years;

We overturn the Dole versus United Steelworkers Supreme Court decision, so that information disclosure requirements are covered by the OMB paperwork clearance process;

We require agencies to evaluate paperwork proposals and solicit public comment on them before the proposals go to OMB for review;

We create additional opportunities for the public to participate in paperwork clearance and other information management decisions;

We strengthen agency and OMB information resources management [IRM] requirements;

We establish information dissemination standards and require the development of a Government Information Locator Service [GILS] to ensure improved public access to Government information, especially that maintained in electronic format; and

We make other improvements in the areas of Government statistics, records management, computer security, and the management of information technology.

These are important reforms and improvements to the act. We should act on this legislation quickly.

Mr. NUNN. Mr. President, I ask unanimous consent that letters of support from the Paperwork Reduction Act Coalition and individual member organizations may be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE PAPERWORK REDUCTION ACT COALITION,
March 2, 1995.

Hon. SAM NUNN,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR NUNN: The organizations comprising the steering committee of the Paperwork Reduction Act Coalition wish to express our strong and enthusiastic support for S. 244, the ''Paperwork Reduction Act of 1995.''

As you know, we have been steadfastly working for enactment of this legislation since 1989. This commitment stems from our belief that S. 244 will significantly strengthen the ability of the federal government to reduce the regulatory paperwork burden upon the private sector and the American public. Time and again it has been demonstrated that unnecessary regulatory costs hinder economic growth and retard job creation and retention. With as much as nine percent of the gross domestic product involved in meeting the federal government's information needs, it is imperative that a strengthened Paperwork Reduction Act be aggressively used to improve productivity, eliminate waste, and reduce the burdens upon businesses and taxpayers.

To illustrate the breadth of support for this legislation, we have attached a partial list of the members of the Paperwork Reduction Act Coalition. Their commitment to this issue is every bit as sincere as ours.

We came so close last Congress with passage of S. 560. Now that the House has passed its companion legislation, we have the opportunity to successfully bring this debate to a close. We look forward to helping you achieve that goal.

Sincerely,

Chamber of Commerce of the United States; Citizens for a Sound Economy, Council on Regulatory and Information Management; National Association of Manufacturers; National Federation of Independent Business; National Small Business United; Small Business Legislative Council; Aerospace Industries Association of America; Air Transport Association of America; Alliance of American Insurers; American Consulting Engineers Council; American Institute of Merchant Shipping; American Iron and Steel Institute; American Petroleum Institute.

American Subcontractors Association; American Telephone and Telegraph; Associated Builders and Contractors; Associated Credit Bureaus; Associated General Contractors of America; Association of Manufacturing Technology; Association of Records Managers and Administrators; Automotive Parts and Accessories Association; Biscuit and Cracker Manufacturers' Association; Bristol Myers; Chamber of Commerce of the United States; Chemical Manufacturers Association; Chemical Specialties Manufacturers Association; Citizens Against Government Waste.

Citizens for a Sound Economy; Computer and Business Equipment Manufacturers Association; Contract Services Association of America; Copper and Brass Fabricators Council; Council on Regulatory and Information Management; Dairy and Food Industries Supply Association; Direct Selling Association; Eastman Kodak Company; Electronic Industries Association; Financial Executive Institute; Food Marketing Institute; Gadsby & Hannan; Gas Appliance Manufacturers Association; General Electric; Glaxo, Inc.; Greater Washington Board of Trade; Hardwood Plywood and Veneer Association.

Independent Bankers Association of America; International Business Machines; International Communication Industries Association; International Mass Retail Association; Kitchen Cabinet Manufacturers Association; Mail Advertising Service Association International; McDermott, Will & Emery; Motorola Government Electronics Group; National Association of Home Builders of the United States; National Association of Manufacturers; National Association of Plumbing-Heating-Cooling Contractors; National Association of the Remodeling Industry; National Association of Wholesalers-Distributors.

National Federation of Independent Business; National Food Brokers Association; National Food Processors Association; National Foundation for Consumer Credit; National Glass Association; National Restaurant Association; National Roofing Contractors Association; National Security Industrial Association; National Small Business United; National Society of Professional Engineers; National Society of Public Accountants; National Tooling and Machining Association; Northrop Corporation; Packaging Machinery Manufacturers Institute; Painting and Decorating Contractors of America.

Printing Industries of America; Professional Services Council; Shipbuilders Council of America; Small Business Legislative Council; Society for Marketing Professional Services; Sun Company, Inc.; Sunstrand Corporation; Texaco; United Technologies; Wholesale Florists and Florists Supplies of America.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL.

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Floorcovering Association.
American Gear Manufacturers Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Travel Agents, Inc.
American Sod Producers Association.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
American Wholesale Marketers Association.
AMT—The Association of Manufacturing Technology.
Apparel Retailers of America.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Bowling Proprietors Association of America.
Building Service Contractors Association International.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bakers Association.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Television Association.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Association of Truck Stop Operators.
National Association of Women Business Owners.
National Chimney Sweep Guild.
National Association of Catalog Showroom Merchandisers.
National Coffee Service Association.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Food Brokers Association.
National Independent Flag Dealers Association.
National Knitwear Sportswear Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.

National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Venture Capital Association.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Passenger Vessel Association.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Promotional Products Association International.
Retail Bakers of America.
Small Business Council of America, Inc.
Small Business Exporters Association.
SMC/Pennsylvania Small Business.
Society of American Florists.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, March 1, 1995.

CUT GOVERNMENT REDTAPE AND EXCESSIVE PAPERWORK—SUPPORT S. 244

Hon. SAM NUNN,
U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the more than 600,000 small business owners of NFIB, I am writing to express our strong support for S. 244, legislation to strengthen the Paperwork Reduction Act (PRA).

Small business is struggling to swim against the rising tide of regulatory paperwork required by the federal government. This flood of paperwork is overwhelming to small business owners and threatens their ability to survive and prosper. In fact, a recent NFIB Education Foundation survey found that the burden of federal regulation and paperwork was the fastest rising problem facing small business owners. Strengthening the PRA is essential to the livelihood of small business in America.

If you want entrepreneurs in your state to spend less time filling out forms and more time creating jobs then vote YES on S. 244. Final passage of S. 244 will be a Key Small Business Vote for the 104th Congress.

Sincerely.

JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, March 2, 1995.

To Members of the United States Senate:

The U.S. Chamber of Commerce Federation of 215,000 businesses, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 72 American Chambers of Commerce abroad identified the need for federal paperwork reduction as its number three issue of greatest significance for the 104th Congress. Accordingly, I urge your strong support for S. 244, the ''Paperwork Reduction Act of 1995.''

Consider this:

Paperwork burdens carry a $510 billion price tag annually for the American economy;

The American public spends 6.8 billion hours annually complying with federal paperwork mandates;

Businesses pay at least twice as much in paperwork costs than for corporate taxes;

Businesses (both small and large) carry more than 60 percent of the paperwork burden; and

The financial impact from paperwork burdens equals about nine percent of the Gross Domestic Product annually.

Clearly, this problem has reached gargantuan proportions and must be reversed. The ''Paperwork Reduction Act of 1995'' is essential to this goal. If enacted, S. 244 would provide for a stronger Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget to conduct centralized reviews of proposed and existing paperwork burdens. It also would provide for increased opportunities for the public to comment on proposed paperwork mandates and for realistic assessments of estimated reporting and recordkeeping. Significantly, S. 244 would reverse the 1990 Supreme Court decision in *Dole* vs. *United Steelworkers,* which had the effect of limiting OIRA's ability to oversee a substantial amount of the federally imposed paperwork burden, despite the intentions of the authors of the original Paperwork Reduction Act of 1980. Any information required to be disclosed to third parties (i.e., where the data is not provided directly to the government) would be subject to the paperwork review process. Finally, this legislation would prescribe specific goals for substantive reductions in the amount of federally required information.

Because information is the key to meeting many of the needs of society, we acknowledge the validity of appropriate reporting requirements. The business community—and particularly small businesses—do require, however, an information-collection process that is rational and reasonable, and that reflects the centrality of our role as job creators.

Again, please vote ''YES'' on S. 244, the ''Paperwork Reduction Act of 1995.''

Sincerely,

R. BRUCE JOSTEN.
Senior Vice President,
Membership Policy Group.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. NUNN. Mr. President, while we are waiting and working out, hopefully, the managers' amendment, I would like to speak briefly on another subject, with the stipulation that if someone comes in, I will be glad to be interrupted.

THE 1996 PARALYMPIC GAMES

Mr. NUNN. Mr. President, last month I spoke on the floor detailing for my colleagues the exciting history of the Paralympic games. Many Americans are aware of, and excited about, the 16 days of Centennial Olympic games competition to be held in Atlanta during July and August, 1996. However, a number of people remain unaware of the 12 days of Paralympic competition that will be held less than 2 weeks after the conclusion of the Olympic Games. Atlanta is proud to host the Paralympics games along with the 4,000 athletes, 1,000 coaches, and team staff that it will bring to Georgia from more than 100 nations.

The Paralympic movement, dating back to 1946, has involved scores of outstanding men and women with a wide variety of disabilities. Last month, I spoke of the accomplishments of Al Mead, an above-the-knee amputee. Al lost his leg due to a fall he took as a nine year old that led to complications requiring amputation. He is a former world record-holder in the long jump and the 100 meters, and a long jump silver-medalist in the Barcelona Paralympics. His accomplishments are awe-inspiring, and I look forward to watching Al perform, along with thousands or other people, in Atlanta in 1996.

Today, I would like to call attention to another outstanding Paralympian, a young woman named Trischa Zorn. Trischa has been legally blind since birth with a condition called anaridia—the absence of an iris. Despite her condition, she has been a top performer in both the Paralympics and the Olympic swimming competitions. At age 7, she began swimming along with her sister's swim team in Tustin, CA. By the age of 10, her family moved to Mission Viejo where she began training in earnest.

Due to her 20/1000 vision, Trischa had difficulty knowing when it was time to make her turns at the end of each length of the pool. Over the years she trained herself to count each stroke across the length of the pool so that she would know when she was approaching turns. With incredible dedication and determination, Trischa, in 1980 at the age of 16, was named first alternate on the U.S. Olympic swimming team. As we all know, to be selected as first alternate for the U.S. Olympic team is a tremendous achievement for the most able-bodied among us. It means competing at levels most of us will never approach. However, to be named first alternate to the U.S. Olympic team and to be legally blind is truly an incredible achievement.

After a highly successful high school swimming career, Trischa was recruited by the University of Nebraska's women's swimming program. By her sophomore year at Nebraska, Trischa was named to the Big Eight all-academic team along with receiving All-American honors her junior and senior years.

After graduating from Nebraska in 1987, Trischa got her master's degree in school administration from Indiana University/Purdue University at Indianapolis. She obtained her certification to teach both in the pool and in the classroom, all the while maintaining her vigorous training schedule.

At the 1992 Paralympic games in Barcelona, Trischa was the top overall medalist. She won 12 medals—10 gold, 2 silver—and broke 6 world records. At the 1990 World Championships for the Disabled, she scored a ''Perfect 11,'' winning a gold medal in every swimming event. In the 1988 Seoul Paralympics, she won 12 gold medals,

earning the nickname ''The Golden Girl.'' Trischa has been awarded such titles as the first-ever Physically Challenged Athlete of the Year, Indianapolis Woman of the Year, and she was nominated for the 1988 Sports Illustrated Sportsman of the Year Award.

Obviously, Mr. President and my colleagues, this is a woman who has focused on her abilities and almost dismissed her disabilities. She is now focusing on the 1996 Paralympics. All of us in Atlanta, and all who will be coming from all over the world to those events, look forward to watching ''The Golden Girl'' add more medals and records to her already impressive list of accomplishments.

Mr. President, I yield the floor.

PAPERWORK REDUCTION ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. ROTH. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, that they be considered original text for purposes of further amendment, and that no points of order be waived.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

Mr. ROTH. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BROWN. Mr. President, I would like to ask the manager of the bill a few questions.

Mr. ROTH. I am available to answer the questions of the Senator from Colorado.

Mr. BROWN. I thank the chairman. Under section 3505 the Director of the Office of Management and Budget has a duty to, in consultation with agency heads, set annual agency goals to reduce information collection burdens. Would the chairman agree that the Secretary of Commerce may take this opportunity to reduce the paperwork burden on persons relating to the compilation and publication of censuses of agriculture and irrigation, of manufactures, of mineral industries, and other businesses, including the distributive trades, service establishments, and transportation?

Mr. ROTH. I believe it would be appropriate for the Secretary of Commerce to review the paperwork burden associated with this census collection.

Mr. BROWN. I thank the Senator for that clarification. Under section 3506, each agency shall reduce the information collection burdens on the public. These industry and economic censuses cause business owners and farmers to maintain a great deal of paperwork in order to complete the census. The 1992 Agriculture Census alone required farmers and ranchers to answer more than 200 questions. It is my understanding that if a hospital, for example, has a garden where they grow lettuce or fruits only for their patients, they may still be considered a farmer and be required to fill out the 200 questions in the agriculture census even though their crops never go to market. Would the chairman agree that this section would require the Secretary of Commerce to reduce burdens created by the compilation and publication of censuses of agriculture and irrigation, of manufactures, of mineral industries, and other businesses, including the distributive trades, service establishments, and transportation?

Mr. ROTH. Clearly this section requires agencies to review the information collection actions it carries out. To the extent that the Secretary is able to reduce the information collection burden on the affected public in this area, this section requires the Secretary to do so.

Mr. BROWN. I am particularly concerned about the unnecessary duplication in the collection of information in these censuses. Would the Senator agree that sections 3509 and 3510 are intended to encourage agencies to share information and avoid repetitive collections of the same information?

Mr. ROTH. This act not only encourages information sharing, section 3509 in particular authorizes the OMB Director to designate a central collection agency to obtain information for two or more agencies where it is not inconsistent with applicable law.

Mr. BROWN. I thank the chairman for his assistance and I yield the floor.

AMENDMENT NO. 317

(Purpose: To clarify certain definitions and intelligence related provisions, and for other purposes)

Mr. ROTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. ROTH], for himself and Mr. NUNN, proposes an amendment numbered 317.

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

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

The amendment is as follows:

On page 8, lines 19 and 20, strike out ''and processes, automated or manual,''.

On page 8, line 25, beginning with ''section'' strike out all through line 2 on page 9 and insert in lieu thereof ''section 111(a)(2) and (3)(C)(i) through (v) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2) and (3)(C)(i) through (v));''.

On page 22, line 24, strike out ''a senior official'' and insert in lieu thereof ''senior officials''.

On page 23, line 2, strike out ''for the military departments''.

On page 46, lines 8 and 9, strike out ''collection of information prior to expiration of time periods established under this chapter'' and insert in lieu thereof ''a collection of information''.

On page 46, line 13, strike out ''such time periods'' and insert in lieu thereof ''time periods established under this chapter''.

On page 46, lines 17 and 18, strike out ''within such time periods because'' and insert in lieu thereof ''because''.

On page 46, line 21, strike out ''or''.

On page 46, beginning with line 22, strike out all through line 2 on page 47 and insert in lieu thereof the following:

''(ii) an unanticipated event has occurred; or

''(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.''

On page 49, line 14, insert ''(a)'' before ''In order''.

On page 50, insert between lines 22 and 23 the following new subsection:

''(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.).''

On page 56, lines 4 and 5, strike out ''section 4–206 of Executive Order No. 12036, issued January 24, 1978,'' and insert in lieu thereof ''section 3.4(e) of Executive Order No. 12333, issued December 4, 1981,''.

On page 58, insert between lines 2 and 3 the following new section:

SEC. 3. PAPERWORK BURDEN REDUCTION INITIATIVE REGARDING THE QUARTERLY FINANCIAL REPORT PROGRAM AT THE BUREAU OF THE CENSUS.

(a) PAPERWORK BURDEN REDUCTION INITIATIVE REQUIRED.—As described in subsection (b), the Bureau of the Census within the Department of Commerce shall undertake a demonstration program to reduce the burden imposed on firms, especially small businesses, required to participate in the survey used to prepare the publication entitled ''Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations''.

(b) BURDEN REDUCTION INITIATIVES TO BE INCLUDED IN THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall include the following paperwork burden reduction initiatives:

(1) FURNISHING ASSISTANCE TO SMALL BUSINESS CONCERNS.—

(A) The Bureau of the Census shall furnish advice and similar assistance to ease the burden of a small business concern which is attempting to compile and furnish the business information required of firms participating in the survey.

(B) To facilitate the provision of the assistance described in subparagraph (A), a toll-free telephone number shall be established by the Bureau of the Census.

(2) VOLUNTARY PARTICIPATION BY CERTAIN BUSINESS CONCERNS.—

(A) A business concern may decline to participate in the survey, if the firm has—

(i) participated in the survey during the period of the demonstration program described under subsection (c) or has participated in the survey during any of the 24 calendar quarters previous to such period; and

(ii) assets of $50,000,000 or less at the time of being selected to participate in the survey for a subsequent time.

(B) A business concern may decline to participate in the survey, if the firm—

(i) has assets of greater than $50,000,000 but less than $100,000,000 at the time of selection; and

(ii) participated in the survey during the 8 calendar quarters immediately preceding the firm's selection to participate in the survey for an additional 8 calendar quarters.

(3) EXPANDED USE OF SAMPLING TECHNIQUES.—The Bureau of the Census shall use statistical sampling techniques to select firms having assets of $100,000,000 or less to participate in the survey.

(4) ADDITIONAL BURDEN REDUCTION TECHNIQUES.—The Director of the Bureau of the Budget may undertake such additional paperwork burden reduction initiatives with respect to the conduct of the survey as may be deemed appropriate by such officer.

(c) DURATION OF THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall commence on October 1, 1995, and terminate on the later of—

(1) September 30, 1998; or

(2) the date in the Act of Congress providing for authorization of appropriations for section 91 of title 13, United States Code, first enacted following the date of the enactment of this Act, that is September 30, of the last fiscal year providing such an authorization under such Act of Congress.

(d) DEFINITIONS.—For purposes of this section:

(1) The term ''burden'' shall have the meaning given that term by section 3502(2) of title 44, United States Code.

(2) The term ''collection of information'' shall have the meaning given that term by section 3502(3) of title 44, United States Code.

(3) The term ''small business concern'' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

(4) The term ''survey'' means the collection of information by the Bureau of the Census at the Department of Commerce pursuant to section 91 of title 13, United States Code, for the purpose of preparing the publication entitled ''Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations''.

On page 58, insert between lines 2 and 3 the following new section:

SEC. 4. OREGON OPTION PROPOSAL.

(a) FINDINGS.—The Senate finds that—

(1) Federal, State and local governments are dealing with increasingly complex problems which require the delivery of many kinds of social services at all levels of government;

(2) historically, Federal programs have addressed the Nation's problems by providing categorical assistance with detailed requirements relating to the use of funds which are often delivered by State and local governments;

(3) although the current approach is one method of service delivery, a number of problems exist in the current intergovernmental structure that impede effective delivery of vital services by State and local governments;

(4) it is more important than ever to provide programs that respond flexibly to the needs of the Nation's States and communities, reduce the barriers between programs that impede Federal, State and local governments' ability to effectively deliver services, encourage the Nation's Federal, State and local governments to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national goals, and improve the accountability of all levels of government by better measuring government performance and better meeting the needs of service recipients;

(5) the State and local governments of Oregon have begun a pilot project, called the Oregon Option, that will utilize strategic planning and performance-based management that may provide new models for intergovernmental social service delivery;

(6) the Oregon Option is a prototype of a new intergovernmental relations system, and it has the potential to completely transform the relationships among Federal, State and local governments by creating a system of intergovernmental service delivery and funding that is based on measurable performance, customer satisfaction, prevention, flexibility, and service integration; and

(7) the Oregon Option has the potential to dramatically improve the quality of Federal, State and local services to Oregonians.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Oregon Option project has the potential to improve intergovernmental service delivery by shifting accountability from compliance to performance results and that the Federal Government should continue in its partnership with the State and local governments of Oregon to fully implement the Oregon Option.

On page 58, line 3, strike out **''SEC. 3.''** and insert in lieu thereof **''SEC. 5.''**.

Mr. ROTH. Mr. President, the managers' amendment I have sent to the desk contains four parts. The first part is a series of committee amendments. The second consists of a few technical amendments requested by the intelligence community. The third is an amendment authored by Senator COVERDELL which eases compliance with the Census Bureau's Quarterly Financial Reports requirements. The fourth is a provision authored by Senator HATFIELD relating to the Oregon option.

The first part, amendments reported by the committee, was developed by Senators COHEN, GLENN, NUNN, and myself. It modifies several provisions of the bill regarding procurement of information technology. In the time since the language of this legislation was drafted last year, the Congress passed the Federal Acquisition Streamlining Act and the President signed it into law. That act and other events have created the opportunity to revise portions of the Paperwork Reduction Act. In summary, the amendment will better focus the information technology provisions on achieving results.

This amendment was the result of a collaborative effort by Senators COHEN, GLENN, NUNN, and myself. Senators NUNN, GLENN, and I developed the bill now before the Senate. With Senator COHEN, we also had primary responsibility for the drafting and passage of last year's acquisition reform bill. So, there is broad agreement by the key sponsors of both efforts on the value of the Cohen-Roth-Glenn-Nunn amendment for the Paperwork Reduction Act.

More work is needed to fix the Government's problems in using information technology. We have had hearings at the Governmental Affairs Committee, and the General Accounting Office is doing a major audit of the situation. Beyond that, Senator COHEN and I are working on legislation to follow up on the committee's acquisition reform efforts. The language in the committee's version of the Paperwork Reduction Act also will remove potential areas of conflict between this bill and the acquisition reform efforts the committee is currently pursuing.

The second part consists of technical amendments intended to assure that the responsibilities given to OMB in the bill concerning the oversight of information technology activities within the Department of Defense and the intelligence community are the same as the authorities in the current Paperwork Reduction Act.

I understand that, during the development of these amendments, concern was expressed about computer security within the executive branch. In the previous Congress Senator GLENN and I asked the Office of Technology Assessment to study security and privacy in the electronic age. In its report, entitled ''Information Security and Privacy in Network Environments,'' OTA outlined important legal and policy issues involved in the security of such environments and recommended substantial congressional involvement in addressing those issues. The report also describes the organizational relationships concerning these matters and the delicacy with which they were crafted in enacting the Computer Security Act of 1987. These are complex issues which the committee intends to address in depth later this session. In the meantime, however, the bill we are considering today leaves existing authorities unchanged.

The third portion of the amendment is the Coverdell provision to establish a demonstration program within the Census Bureau to reduce the paperwork burden on small business resulting from the Quarterly Financial Report Program. The demonstration program expires on September 30, 1998, the date on which the Quarterly Financial Report Program itself expires, or if such program is itself further extended, then the demonstration expires in such later year.

During such time the Census Bureau is required to assist first-time respondents in fulfilling the information collection under the Quarterly Report Program, or if the program is reauthorized for a subsequent period, the demonstration would expire on that later date. Particularly, the Bureau is mandated to establish a toll-free telephone number for those seeking such assistance.

Perhaps more important than the assistance for first-time respondents is the Coverdell provision's protection against a firm's repeated requirement of participation. No firm with assets of $50 million or less may be required to participate twice if it has participated since October 1, 1989. And no firm of $100 million or less may be required to participate if it has participated within the last eight quarters.

I support the provision authored by Senator COVERDELL and commend him for his initiative.

The fourth provision is a sense of the Senate resolution expressing support for an innovative statewide effort to

improve intergovernmental assistance and service delivery. Authored by Senator HATFIELD, the resolution recognizes that the State and local governments of Oregon have begun a comprehensive project to coordinate their use of Federal funds to address social needs. Joined by the Federal Government in this effort, they are attempting to trade more flexibility in the use of those funds for more accountability for measurable performance. This provision expresses a recognition that this approach has the potential to improve intergovernmental service delivery and ought to be encouraged.

I support all four parts of the amendment and urge its adoption.

I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, the Senator from Delaware has explained the managers' amendment. I think there is nothing to add. I urge adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 317) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

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

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

The Senator from Arkansas is recognized.

(The remarks of Mr. BUMPERS and Mr. BENNETT pertaining to the introduction of S. 504 are located in today's RECORD under ''Statements on Introduced bills and Joint Resolutions.'')

THE DOLLAR-YEN RELATIONSHIP

Mr. BENNETT. Mr. President, I have enjoyed this exchange. While I have the floor, I would like to talk briefly about the issue that I came to the floor to talk about before I became fascinated with the arguments by my friend from Arkansas.

Mr. President, I happen to be chairman of the Senate prayer breakfast group. In that role, I attended the National Prayer Breakfast addressed by President Clinton and the Reverend Andrew Young. While we were there, we had Scripture readings, one from the New Testament and one from the Old Testament. Ruth Bader Ginsburg from the Supreme Court read the Scripture from the Old Testament. And I would like to repeat that which she read here on the floor of the Senate today because it covers beautifully the issue I want to address briefly.

It is from Deuteronomy, chapter 25, and starts with verse 13.

> Do not have two differing weights in your bag, one heavy, one light. Do not have two differing measures in your house, one large, one small. You must have accurate and honest weights and measures so that you may live long in the land the Lord, your God, is giving you.

Honest weights and measures—do not have one large and one small.

The newspapers this morning are full of the story of the relationship between the dollar and the yen or the dollar and the deutsche mark. We recognize that the dollar for us is the unit of account that we use to measure the value of our work, measure the value of our products, and measure the value of our lands. All of these things are measured by the number of dollars that they can bring. In Japan the measure is the yen. Now, says the Bible, do not have two measures in your bag, one big and one small, one heavy and one light. Do not switch the measures.

Yet, when it comes to the unit of account between national economies, we seem to have gotten into the idea that we can switch the measures. We have gone through that with the Mexicans. When we debated NAFTA on this floor, the unit of account was 3.5 pesos equals $1. Oh, it varied a little. It was in a band between 3.1 and 3.5. But we adopted NAFTA. We supported NAFTA on the firm assumption that the relationship between the dollar and the peso would be as stable as the weights and measures described in the Bible, that there would not be a breaking of the trust between those two countries.

Then, in December there was, as our friends to the South said, ''Well, we are no longer going to hold the rigidity of that weight and measure between those two currencies. We are going to say the dollar buys you 4.5 pesos. We are going to have a lighter weight in our bag than we had before.''

I have spoken about the peso. I have perhaps spent too much time in the Senate talking about the peso. I tried to get the administration to work toward trying to get the weights and measures back to where they were. The administration does not seem to be interested in that. I will continue to bring it up from time to time. But today, I want to talk about the dollar and the yen because that is on the front pages. Mexico for some reason seems to have disappeared from the front pages even though the economic disaster in Mexico probably has more impact on our country long term than the relationship between the dollar and the yen.

We are being told in this morning's papers that the dollar is falling against the yen, that the problem is in the free flight of the dollar, that we must do something to defend the dollar. There is an explicit assumption in that statement that I would like to challenge. What if—just think about it—what if the dollar is the stable measure and it is the yen that is fluctuating in the wrong direction? What if, as you reach into your bag, you pull out the weight that the Bible talks about and it is the dollar that you find there? How are we going to know, if we have two fluctuating against each other, which one is the stable one? Or maybe neither is the stable one? But the unspoken assumption in this morning's paper that the yen is stable and it is the dollar that is falling is the assumption I want to challenge. How can you challenge it?

Well, there is a third unit of measure that I would like to introduce into the equation. That is the measure that has been used for a unit of account of value since biblical times and probably before. There were no dollars, there were no yens when Moses wrote what I have read in Deuteronomy. But there was a measure for money, and it was called gold.

How is the dollar valued currently with respect to that ancient metal? We have been talking about it—the Senator from Arkansas and I—in terms of mining. Let us talk about it in terms of money for just a minute.

The dollar is currently somewhere in the neighborhood where $380 buys you an ounce of gold; a little below that right now, down in the $370's. But the dollar has been fairly stable for months, maybe even going back to a year, around the $380 to $385 mark.

You look at it today. The dollar is still stable in that area with respect to gold. The yen, on the other hand, has been falling with respect to gold. The price of gold in yen is $320 to the ounce. When we add this third element to the equation, it begins to change our perception just a little. Maybe it is the dollar that is stable and the yen that is fluctuating improperly instead of the other way around as this morning's papers indicate.

What would happen if Alan Greenspan, who follows these things more carefully perhaps than any of us, got on the telephone and called his office number in Japan and said, Why don't you start printing extra yen? Do you know what would happen if they started printing extra yen? The value of the yen with respect to gold would begin to change. Of course, if we stayed stable with the price of gold, the value of the yen with respect to dollars would begin to change. And you would see the dollar-yen relationship begin to come together around the common point.

For the sake of illustrating the point, let us say it was at $380 an ounce of gold and the yen would come to the point where you could buy gold at $380 an ounce with yen as well. So the yen and the dollar relationship would be solidified around their common relationship to gold.

I think a number of very interesting things would happen in the world if that were to happen. I leave you with

this intriguing thought which Mr. Greenspan left with us when he testified before the Banking Committee. He said, ''If the United States were on a gold standard, the Mexican peso crisis would not have occurred,'' because, you see, what he is really saying is, if we pegged our unit of account to a weight and a measure that did not change, to a weight and a measure that did not have a light version and a small version, to use the language of the Bible, but had only one, our currency would be the strongest in the world and the other nations would peg their currency to our currency, instead of having a situation where both currencies are constantly moving and producing the kind of uncertainty that this morning's headlines give us.

Mr. President, I have no legislation to offer on this. I expect I probably will have as the Congress unfolds. But I take the occasion of this morning's headlines to once again raise the issue. I raised it last year in the last Congress when Mr. Greenspan first suggested in his testimony before the Banking Committee that pegging the dollar to gold might be a good idea. I have been watching it closely ever since Mr. Greenspan said that. I have been trying to become a student of this issue ever since Mr. Greenspan said that. I have talked about it on the floor of the Senate ever since Mr. Greenspan said that. So far, nobody has noticed. Perhaps nobody will notice it today.

I find it very interesting that in this morning's paper, everybody is interested in the relationship between the dollar and the yen and the dollar and the deutsche marks, just as they were all interested in the relationship between the dollar and the peso. Nobody is addressing the fundamental question raised in the scriptural reference that Ruth Bader Ginsburg gave us at the National Prayer Breakfast when she told us, as the Bible has told us, that we must have stability and honesty in our weights and measures.

I can think of no place where it is more vital to have that stability and honesty than in the weight and measure that we use to measure value throughout the world, which is our currency.

I thank the Chair and yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from California [Mrs. BOXER], is recognized.

Mrs. BOXER. I ask unanimous consent to speak as in morning business at this time.

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

The Senator is recognized.

THE VOTE ON THE BALANCED BUDGET AMENDMENT

Mrs. BOXER. Mr. President, I have just returned from California, where there was obviously great interest in the vote on the balanced budget amendment. I have to say that the response to my vote, in general, was one that greatly encourages me. I have to say, however, that what is of greater interest to my constituency, the people of California, the largest State in the Nation—31 million people—is that we get down to working on the actual budget.

It is one thing to debate a balanced budget amendment that would not take effect until 2002 or later. Depending on if and when the States ratify it, it could be the year 3000, for all we know. It is another thing to actually sit down at the table and work together, Republicans and Democrats alike, and bring back a budget that we can all be proud of. Since I am on the Senate Budget Committee, I truly look forward to that exercise. I hope we can come back here with a bipartisan product that cuts into that deficit and gets us on that glidepath toward a balanced budget that we have been talking about.

Mr. President, there is no question that the vote last week on the balanced budget amendment was clearly one of the most important votes in this Congress. There is talk among some of my colleagues on the other side of the aisle that there could be retribution against those who voted no, including punishing the senior Senator from Oregon who, in my view, simply did what we are supposed to do around here—listen to our conscience, adhere to our principles, and vote those principles and vote that conscience. We only have that chance here once in awhile, that these issues of principle and conscience come before us.

To hear some of my colleagues tell it, the voters will be raging against any one of us who voted against this part of the Contract With America. Well, I have to say to you that threats and political maneuvering have no place in this debate, particularly when we are talking about amending the Constitution of the United States of America. When we do that, every Member of Congress should have the right to vote in the best interest of his or her constituency, as that Senator sees it, without fear of political retribution from his or her party. The stakes are too great and they are too long lasting.

This is not some bill that can be overturned easily. We are talking about the Constitution of the United States of America, the most long-lasting symbol of our freedom.

In the case of the balanced budget amendment, to me, the stakes were enormous. First, the very viability of the Social Security system and, second, the real fear that the amendment, as drafted, would have rendered the Federal Government helpless to respond in cases of economic recession or natural disaster. I have talked about that on the Senate floor.

I showed the pictures of disaster emergencies that have been visited upon States over the recent years, and how terrible it would be if we had to go and look at the faces of our constituency at the very moment of their need and say: We cannot do anything about it because this amendment says you cannot really do it unless you get a supermajority vote, and we simply cannot get those 60 votes.

I think back to my father telling me about the dark days of the Depression. I was born after that, and my dad said, ''You cannot believe what it was like.'' He said, ''Until FDR came in there, you had Herbert Hoover saying, 'Let the States take care of it.' '' I went back and I checked some of the quotes. It is unbelievable. It is the same thing you hear today: ''The States can take care of all of these problems. You do not need the Federal Government.''

Meanwhile, people were jumping out of windows and selling apples on the street. I am not going to be here and vote for an amendment that would cause us to make that same mistake again. If I do, in my view, I am not being true to my conscience nor to the people that I represent. When I came here, I said I was going to fight for them—not against them, but for them.

I want it clear that in 1992, as a Member of the House of Representatives, I voted for a constitutional amendment to balance the budget. But there was a very big difference in that amendment in 1992 and this amendment that I opposed just last week. That amendment would have protected Social Security, and it was flexible enough so that a simple majority vote could have allowed us to act in an emergency. It gave the President the ability to declare an urgency—it was called a declaration of urgency—if in a particular budget year the country needed special spending to solve a crisis.

That is an amendment I would vote for again today. But I want to make something perfectly clear. During this debate, Democrats offered many constructive changes to the Republican balanced budget amendment, which I felt was so inflexible. But of the many amendments offered, the Republicans accepted only one, which was the amendment offered by the senior Senator from Georgia, SAM NUNN. That clarified, somewhat, the role of the power of the Federal courts in balancing the budget. All of the other amendments—and there were many—were tabled, basically on a party-line vote.

Republicans appeared to be under strict instructions to vote down any change to the amendment—even changes they supported in the past. They did vote for the Nunn amendment, but the basic message to the Democrats was: Offer all of the suggestions you like, but we are not really going to accept them. And then when Democrats, who had clearly laid out their problems with the amendment, voted against the amendment, they were berated for voting no, as if they were doing something that was so unusual, when we had spent all of that

time trying to offer constructive amendments.

The majority leader even delayed the vote for one day. That is very unusual. He wanted to make sure the heat was put on us. He wanted to make sure he could get that final vote so that the Contract With America—that Republican Contract With America—could move forward.

I happen to believe that move backfired, because in that 24-hour period, the focus was on the amendment. And, as our colleague, Senator ROBERT BYRD, who was such a leader in this debate, has said, the amendment could be compared to a used car—and I agree with him—a used car that looks great on the outside, but when the public looked under the hood, it did not look so good.

Our Democratic leader, Senator DASCHLE, told the Social Security story, and that changed the public support for this amendment. Although 70 percent support a balanced budget amendment to the Constitution, support drops to 30 percent when those questioned understand that the Social Security trust fund would not be protected and could be looted. Let me repeat that: seventy percent of the people support a balanced budget amendment in the abstract, but when you tell them that Social Security trust funds can be looted to balance the budget, it flip-flops completely and 70 percent then oppose it.

By the way, that same poll was taken in my home State of California with exactly the same result.

I thought Senator KENT CONRAD said it best when he described the raid on Social Security like this. He said, if your boss came into your office one day and said, ''Look, I think you are doing a great job, but I can't meet my operating expenses this year, so I am going to take the money you put into your pension fund and I am going to use it to pay the bills. After all,'' the boss could say, ''you are a young person. You are not going to retire for a long time. So if I take that money, you don't have to worry. Someday I will put it back.''

Well, I say if your boss does that, you ought to call the police, and you have a right to do it, because that is pure theft.

But that was exactly what was going to happen to Social Security. It is not a matter of never touching the benefits. We have touched benefits before. We have changed the system before. We will probably have to do it again. But it is a matter of the Social Security trust fund itself.

The Republican leadership refused to protect Social Security in that balanced budget amendment. During the debate, they said they would never touch it. They would never touch Social Security. They said they had no intention of ever using the surplus or raiding Social Security. They even had an amendment that said they would not do it.

Well, that is why several of my Democratic colleagues thought, ''Well, gee. They say they are never going to touch Social Security. Maybe we have a chance here to make this amendment work, to change it, to build the protections of Social Security into the amendment itself.''

Well, in private negotiations, it went something like this, according to what I have been told. The Republicans said to my colleagues, ''Look, we need your vote. We promise, we will put it in writing, we will stop using the surplus in Social Security by the year 2012.''

Well, my colleagues were not happy with that.

They said, ''What about 2008? We will stop using the surplus in the year 2008.''

Well, I ask you: If someone says they will not ever touch Social Security in one breathe and in the next breathe they say they will stop touching it in 2012, what does that mean to you? It is like getting beaten up by a bully and all the while you are getting hit, he says, ''I'm not hitting you.'' And then he says, ''OK, I'll stop hitting you in 5 minutes, but, remember, I'm not hitting you now.'' That is doublespeak.

So I think it is important to remember every time you hear the Republicans say that they would never hurt Social Security, ask them why they refused to change their constitutional amendment to make it impossible for anyone to raid it. Keep asking them that question, because all the talk is simply that. They would not protect Social Security, period. We gave them every chance.

I want every single person who paid a FICA tax—that is the Social Security payroll tax—to realize the benefits. We know now—there was a very recent survey—that four out of five families are not prepared enough for their retirement. They are going to need Social Security in order to survive. Let us not ruin a system that has worked so well.

If the Republicans want an amendment to the Constitution—and I know they want it; they are going to bring it back up here—they can have it if they protect Social Security.

I, myself, felt, as I said before, that there are other crucial issues to address—the issue of recession, the issue of disaster—but clearly there are enough votes on the Democratic side of the aisle to get that amendment through if the Republicans agree to protect Social Security.

My colleagues put it in writing and they sent the letter over to the other side.

So, where are we now? The balanced budget amendment for now is off the table, but what is on the table is the budget itself, which takes me back to my opening remarks.

I am on the Budget Committee and I am waiting to see the Republican budget for next year. I look forward to making progress on the deficit.

We saw President Clinton's budget. He has deficit reduction in it. There are some who say it is not enough. Maybe we can do more. I look forward to doing more, as long as we ensure that our Nation takes care of its basic needs and its future. You do not want to destroy this country. We want to get this country on a glidepath toward a balanced budget; frankly, towards a surplus budget. That is what we really should be going for.

I think it is important to note that, had the balanced budget amendment passed and were we back here today, there would have been a lot of hoopla, but the deficit would not have declined by one penny. Deficit reduction will begin in the Budget Committee with real cuts.

Two years ago, we made real progress on the deficit by carrying out President Clinton's plan to cut the deficit by $500 billion. That was a tough deficit reduction vote. We did not get one Republican vote. So it was hard, but it passed.

Again, the President has submitted a follow-up budget. He says it reflects his priorities, what he thinks we need to invest in—education, technology, et cetera—and that it achieves deficit reduction. And he includes a middle-class tax plan in there.

I am ready, willing, and able to look at the President's budget, look at my Republican friends' budget, and to work on a budget with my Democratic colleagues so that we can really put our best ideas together and start doing our work. But I want to make one thing clear tonight. I will not work in any way to injure the children of this country. No way. But if we look at the product that is coming over from the House of Representatives, that is exactly what is going on.

I will never forget the new chairman of the House Appropriations Committee telling the press that he is having the time of his life as he ends the Federal school lunch program and the nutrition program for women, infants and children. He actually held up a knife at the opening session and waived it around. Even the children in the country saw it.

In my mind, that knife is a symbol—a symbol—of what is happening here in Washington. It is going too far. It is slashing. It is injuring. It is hurting.

What are we, as a people, if we take effective feeding programs and gut them? Do we want to become a nation where old people become bag ladies because Social Security has been looted, and little children have their hands out and their tummies swollen like they do in some faraway land? I do not think that is what the American people want.

I do not care if it is in somebody's contract. It is not in my contract. Anything I can do to protect the children under the rules of this Senate, I will do. I am here to announce that I will do anything I have to do to protect the children.

Do the people want change? Yes. Do the people want deficit reduction? Yes. But do they want us to hurt the innocents in our country? No. And I will not and others will not.

Often I read the Constitution. I carry it around, a little pocket-sized version, and I say God bless this Constitution for giving us a bicameral legislature so that the impact of a radical revolution—and it has been called such—the impact of a radical revolution can be studied or modified or turned back.

I have been in politics for a while. This is a time of rough rhetoric and threats and the worst type of politics I have ever seen. When I got elected to the Senate I really made a very basic promise to the people of California: That is, I would fight for them, for their environment, for their families, for their grandmas and grandpas, and for their jobs. I also promised to fight for what I believe in. I said I would never be intimidated by threats. I repeat that today.

There are some awfully good men and women in this U.S. Senate, across party lines. I think it is time that we change the atmosphere of the Congress—we can do it here in the U.S. Senate—and that we work together for the people. I think if we do that we will make great progress on the deficit, on this economy, and on restoring the American dream. We can do it.

However, we need to look at some of these proposals that truly will hurt our Nation, because when we wage an assault on the most vulnerable people in our country, we wage an assault on all of America. Thank you, Mr. President. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAMS). Without objection, it is so ordered.

PAPERWORK REDUCTION ACT

The Senate continued with consideration of the bill.

AMENDMENT NO. 318

(Purpose: To provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes)

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 318.

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

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

The amendment is as follows:

At the end of the pending measure, add the following new section:

SEC. . TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any report specified in the list described under subsection (c) shall cease to be effective, with respect to that requirement, 5 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) The Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576).

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives of the first session of the 103d Congress under clause 2 of rule III of the Rules of the House of Representatives.

Mr. MCCAIN. Mr. President, this amendment is based on S. 233, the Reporting Requirements Sunset Act of 1995. The amendment would sunset all congressionally mandated reports after 5 years except those required by the Inspector General Act and the Chief Financial Officers Act.

The objective of the amendment, Mr. President, is very clear. It is to alleviate the massive costs to taxpayers and the huge burdens Congress has placed upon Federal agencies with statutory reporting requirements.

Let me repeat, Mr. President, this amendment calls for sunset of all congressionally required, mandated reports in 5 years. It does not require that those congressionally mandated reports be ended immediately. These reports, many of which are very important to keep the Congress informed as to the activities of the executive branch of Government, can be reauthorized and probably should be reauthorized. But what I am seeking here is simply a sunset of all these reports over a 5-year period.

Now, Mr. President, I use as my source no less an important person than the Vice President of the United States. When sending his report to the Congress, called ''Creating a Government That Works Better and Costs Less, Report of the National Performance Review,'' by Vice President AL GORE, on September 7, 1993, he said:

Action: *Reduce the burden of congressionally mandated reports.*

Woodrow Wilson was right. Our country's 28th president once wrote that ''there is no distincter tendency in congressional history than the tendency to subject even the details of administration'' to constant congressional supervision.

One place to start in liberating agencies from congressional micromanagement is the issue of reporting requirements. Over the past decades, we have thrown layer upon layer of reporting requirements on federal agencies, creating an almost endless series of required audits, reports, and exhibits.

Today the annual calendar is jammed with report deadlines. On August 31 of each year, the Chief Financial Officers (CFO) Act requires that agencies file a 5-year financial plan and a CFO annual report. On September 1, budget exhibits for financial management activities and high risk areas are due.

He goes on to say:

In fiscal year 1993, Congress required executive branch agencies to prepare 5,348 reports. Much of this work is duplicative. And because there are so many different sources of information, not one gets an integrated view of an agency's condition—least of all the agency manager who needs accurate and up to date numbers. Meanwhile, trapped in this blizzard of paperwork, no one is looking at results.

We propose to consolidate and simplify reporting requirements, and to redesign them so that the manager will have a clear picture of the agency's financial condition, the condition of individual programs, and the extent to which the agency is meeting its objectives. We will ask Congress to pass legislation granting OMB the flexibility to consolidate and simplify statutory reports and establishing a sunset provision in any reporting requirement adopted by Congress in the future.

That is the recommendation of the Vice President.

Mr. President, some Americans might be interested to know some of the requirements, some of the reports that are required, which have been mandated by the Congress to be submitted to Congress every year:

''Transportation, Sale, and Handling of animals for research and pets.'' That is a report which is required annually.

''Effects of Changes in the Stratosphere Upon Animals.'' That is only required every 2 years.

''U.S.-Japan Cooperative Medical Science Program.'' That is an annual report.

''Operation of Mobile Trade Fairs.'' That is an annual report required, mandated by the Congress.

''Studies of the Striped Bass.'' That is an annual report.

''Number of Customs Service Undercover Operations Commenced, Pending, and Closed''; an annual report.

''Monitoring of the Stratosphere''; that is biennially.

''Effectiveness of Ice Control Programs on the Kankakee River in Wilmington, Illinois.'' That is a mandated annual report.

''Activities Involving Electric and Hybrid Vehicle Research''; annually.

''International Coffee Agreement.'' That is an annual report.

And, as appropriate: ''Recommendations for Correcting High Coffee Prices.''

''Summary and Analysis of Agency Statements With Respect to Motor Vehicle Use.'' That is an annual report.

''World Food Day.'' This is an annual report that is mandated by the Congress; a report on World Food Day.

Here is another one which is probably a compelling report that everyone in

the Congress reads, I am sure, every year when it comes in:

''The Air Force Participation in State Department Housing Pools.''

''The Telephone Bank Board.''

''The Financial Report of the Agricultural Hall of Fame.''

Mr. President, I have always been interested in the Agricultural Hall of Fame. I am just not sure that I need a report every year on its condition.

''Developing an Agricultural Information Exchange Program With Ireland.''

''Investigations Into Increased Use of Protein By-Products From Alcohol Fuel Production''; annually.

''Continuation Pay for Armed Forces Dentists.''

Mr. President, I have to make a confession right now. I have been on the Armed Services Committee, now in my 9th year, and I have never read the annual report that is required concerning the continuation pay for Armed Forces dentists. I am probably doubly guilty because for 8 of those years, I was a member of the Personnel Subcommittee, and I still never read that congressionally mandated report requiring the Congress to be updated annually on the Continuation Pay for Armed Forces Dentists. So I am one of those guilty parties who has failed to pay attention to these vital reports that are sent to the Congress on an annual basis.

''Average Cost per-Mile of Privately Owned Motorcycles, Automobiles, and Airplanes''; annually.

''Proposed Reductions in Pricing Policy for Space Transportation System For Commercial and Foreign Users.''

And finally, last but not least, the Congress is requiring a report annually concerning the condition of the ''Ladies of the Grand Army of the Republic,'' on an annual basis.

I do not know if that report requires an update on the individual health of the members or perhaps the status of the Grand Army of the Republic's finances. But again, although I must confess my deep and abiding interest in the activities of the Ladies of the Grand Army of the Republic, I have not read that annual report, either. But I intend to do so at least once because for the life of me I cannot imagine—I cannot imagine—why the Congress of the United States would require an annual report concerning the Ladies of the Grand Army of the Republic. I am sure that Senator NUNN would want, perhaps, to have included in that a report on the Daughters of the Confederacy, given his regional interests.

However, I do not think that either of these, frankly, are required. And the reality is that each of these reports costs money. Someone has to take time from his or her duties and go to work and compile these reports and send them over to the Congress of the United States. And the fact is, I am sorry to be a bit jocular about this issue, but no one reads most of these reports.

What we do to the bureaucrats and the people who are hard-working men and women is two things. One, waste their time; and then, two, we do not get the emphasis that we really need on the reports that are vital to Congress, the reports that are necessary to help us do our work. Instead, we clutter it up with 5,300 reports.

In case you think we have been doing this forever, let me remind you, for the RECORD, in 1970 the GAO stated that Congress mandated only 750 reports. Now we have spiraled past 5,300. I believe the number, to be exact, is 5,348 reports last year. Further, the GAO study states that Congress imposes about 300 new requirements on Federal agencies each year.

Mr. President, we should sunset these and we should also have a requirement that any report that is mandated by Congress have a sunset provision in it. If the report is necessary, if it is vital, if it is something that the Congress needs in order to do its work, then we can easily reauthorize these every 5 years.

As Senators LEVIN and COHEN, who have worked very hard on this issue have noted, the Department of Agriculture alone has estimated the cost of preparing the 280 reports it had to submit to Congress last year at $40 million.

The sum of $40 million was spent last year just by the Department of Agriculture alone in preparing the 280 reports that they had to submit to Congress.

Mr. President, I support the bills that have been proposed by Senator LEVIN and Senator COHEN to eliminate several hundred specific reports. I think many of them should be done away with now. I hope that we can consider Senator LEVIN's and Senator COHEN's legislation as soon as possible. In the meantime, why do we not get about the business of sunsetting these?

Mr. President, I am joined by my friends at the National Taxpayers Union and the Citizens for a Sound Economy. Let me just quote briefly from the National Taxpayers Union letter and the letter from Citizens for a Sound Economy.

> National Taxpayers Union, America's largest taxpayer organization, is pleased to endorse * * * the bill to terminate all congressionally mandated reports after five years. This legislation would save millions of taxpayer dollars that are now wasted on unnecessary reports.
>
> National Taxpayers Union is pleased to support this important ''sunset'' bill and encourages you to offer it as an amendment to pending legislation on the Senate floor. The sooner wasteful government reports can be eliminated, the better it will be for America's taxpayers.

The Citizens Against Government Waste are also in support of this amendment.

Mr. President, Citizens for a Sound Economy says:

> While it is important for Congress to keep a watchful eye on the activities of Federal agencies, requiring more than 5,300 reports from the executive branch each year is a costly case of extreme micromanagement. These reports—most of which are probably never read and many of which are redundant—constitute a monumental waste of time, money and manpower. Ultimately, American taxpayers pay for these unnecessary reports. The price tag on these reports was $757 million in 1993.

Mr. President, I think that is an important point that the Citizens for a Sound Economy have made. The price tag on this 5,300 reports last year, in 1993, 2 years ago, was $757 million.

So I urge my colleagues. I would like to see, frankly, this amendment accepted by both sides. I would be more than happy to discuss this issue with my friends on the other side, the managers of the bill. I want to thank them for their hard work on this issue.

Let me also point out the final report of the Senate members of the Joint Committee on the Organization of Congress which was issued in December 1993. On page 22, it said—this is the report of a bipartisan group of Senate members chaired by Senator BOREN and Senator DOMENICI. The other members were Senators SASSER, FORD, REID, SARBANES, PRYOR, KASSEBAUM, LOTT, STEVENS, COHEN, and LUGAR.

Item 33 of this report, Organization of Congress recommendation, the requirement for an executive agency to report to Congress should be effective for no more than 5 years. They go on to say the proliferation of mandatory agency reporting is a matter of wide concern. Several times in recent years the House Government Operations Committee and the Senate Governmental Affairs Committee have acted to eliminate the reports which have outlived their usefulness. However, the recent reports should not continue in perpetuity without some clear evidence that the report serves a useful policy and purpose. The proliferation of mandatory agency reports has been a matter of wide concern in the Congress and in the executive branch. This provision would automatically terminate such reports and will encourage committees and Members who find a particular report valuable to act to extend the statutory requirement for a specific report.

Mr. President, I want to thank both Senator ROTH, the distinguished chairman of the committee, and Senator NUNN for their hard work on this bill. I believe that this amendment is an appropriate addition to it. I would like to see us understand that, if this amendment were passed, we may not save $757 million because I think we all are aware that there are a number of reports that need to be made to Congress and there are many areas which the Congress needs to be aware of. But there is also literally thousands that have long outlived their usefulness, if they ever had any, and it is time that we sunseted them all.

Mr. President, I yield the floor.

Mr. President, I ask unanimous consent that the letters from the Citizens for a Sound Economy and the National

Taxpayers Union be printed in the RECORD.

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

CITIZENS FOR A SOUND ECONOMY,
Washington, DC, July 29, 1994.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: This is to express the support of Citizens for a Sound Economy (CSE) for S. 1971, which would eliminate all congressionally mandated reports after five years. CSE is a 250,000 member grassroots advocacy group that promotes free market economic policies.

While it is important for Congress to keep a watchful eye on the activities of federal agencies, requiring more than 5300 reports from the executive branch each year is a costly case of extreme micromanagement. These reports—most of which are probably never read and many of which are redundant—constitute a monumental waste of time, money and manpower. Ultimately, American taxpayers pay for these unnecessary reports. The price tag on these reports was $757 million in 1993. S. 1971 would reduce that burden substantially.

Citizens for a Sound Economy therefore applauds your sponsorship of S. 1971, and we urge you and your colleagues to pass this bill.

Sincerely,

PAUL BECKNER,
President.

NATIONAL TAXPAYERS UNION,
Washington, DC, June 13, 1994.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Office Building, Washington, DC.

DEAR SENATOR MCCAIN: National Taxpayers Union, America's largest taxpayer organization, is pleased to endorse S. 1971, your bill to terminate all congressionally mandated reports after five years. This legislation would save millions of taxpayer dollars that are now wasted on unnecessary reports.

S. 1971 would ''sunset'' the more than 5,300 Executive Branch department and agency reports that Congress now requires. It would provide a five-year window of opportunity for important and necessary reports to be reauthorized. This would alleviate the present avalanche of reports mandated by laws enacted over the years.

In the words of Vice President Gore's National Performance Review Report, ''over the past decades, we have thrown layer upon layer of reporting requirements on federal agencies, creating an almost endless series of required audits, reports, and exhibits.''

NTU agrees with that analysis as well as the recommendation of the Senate members of the Joint Committee on the Organization of Congress, to limit all agency reporting requirements enacted by Congress to an effective period of no more than five years. Again, as in S. 1971, those reports that are particularly valuable could be reauthorized for a specific period.

National Taxpayers Union is pleased to support this important ''sunset'' bill and encourages you to offer it as an amendment to pending legislation on the Senate floor. The sooner wasteful government reports can be eliminated, the better it will be for America's taxpayers.

We urge your Senate colleagues to join with you to enact the provisions of S. 1971.

Sincerely,

AL CORS, Jr.,
Director, Government Relations.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, it is my hope that we can accept this amendment. I am checking right now to make sure there is no one who has a strong feeling otherwise.

But I think the Senator from Arizona makes a good case. These reports oftentimes are needed when first requested and then they get into law and they become permanent fixtures. So where we can eliminate a lot of these reports, I would certainly welcome that.

We have done some similar things in the authorization bill in the defense report. Once, I recall, DOD complained very much about all the reports. We gave them the authority to come up and tell us all they did not want. Lo and behold, they ended up wanting most of them.

So you never know who has decided they like reports until you test the waters. But I think that is what the Senator from Arizona is doing here. He is testing the water. It would be up to those, I understand, who want to keep a report to have it specifically reviewed as well as have it go on in perpetuity. I hope we accept this, and I think we will get an affirmative OK of that in just a minute.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I wonder if the managers of the bill would object if I went off this while they are looking for that approval and spoke as if in morning business for a short period of time.

Mr. ROTH. Mr. President, I say to the distinguished Senator that there will be no objection so long as we are able to come back for a unanimous-consent request and that we be free to do so.

Mr. GORTON. There will be no problem.

Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business.

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

THE BALANCED BUDGET AMENDMENT

Mr. GORTON. Mr. President, last Thursday at the end of the dramatic vote on the balanced budget amendment and its rejection by a single vote, there were many who felt that this was a tragedy with respect to dealing with the problems facing the United States and its huge budget deficits now and during the course of this year.

While I was a strong supporter of that amendment, and while I hope that the majority leader is able to bring it back up for another and more successful vote sometime in future, I believe that its rejection not only did not reduce the pressure on Members of the U.S. Senate, House of Representatives or the President of the United States to work toward a balanced budget, but I believe that in fact it increased that pressure.

On several occasions during the 5-week long debate on that proposition, I observed, as did others, that this body was divided essentially into three groups of Members with respect to the balanced budget and the balanced budget amendment:

First, the rather large majority, those who believe that the present system was broken and needed to be fixed by radical and dramatic action, the imposition of an outside discipline on all of us to see to it that we did what we know needs to be done, but against which political pressures have for some 30 years been invariably successful;

A smaller group of Members, who not only thought that a balanced budget amendment was undesirable but thought that a balanced budget itself was undesirable, who favor the status quo, not only with respect to the Constitution, but with respect to our own fiscal actions;

And a third group who were very prominent in the debate who agreed with the proposition that we need a more responsible fiscal policy, that we need to work toward a balanced budget, but that we did not need the discipline of a constitutional amendment to cause that to take place.

It is in one sense to that group, but also those who supported the constitutional amendment, that I speak here this evening. I believe that all of us are under the gun at this point.

I think it behooves the party on this side of the aisle, the conservatives in this body, to seriously attempt to pass a budget resolution which, if followed for a 7-year period, would lead to a balanced budget in the year 2002, and to do that without touching Social Security and to do it with at least a modest tax cut on the level proposed by the President of the United States.

I think that Members on this side will undertake that very, very difficult task. I believe that, if anything, the great majority of those who voted for the constitutional amendment find themselves even more determined today than they were a week ago to follow in fact the discipline they wanted to set for the indefinite future, even without that constitutional discipline. But I believe that goal encompasses not just those on this side of the aisle, not just the chairman of the Senate Budget Committee, but his distinguished ranking Democratic member, who also voted for the constitutional amendment, and the majority of the members of the Senate Budget Committee.

More important, however, Mr. President, I hope that that goal, in reality, will be shown to be the goal of all of those Members who said that they believe in a balanced budget but not in the amendment. If they will join with us, if they will express their support for a course of action bringing us to a

balanced budget within 7 years, without any reductions in Social Security benefits, and with some reduction in taxes, they will have done in fact what they claim to support in theory. And if they will join with the 66 Members who voted for the constitutional amendment, we should have upward of 80 votes in this body for a responsible budget resolution, for the actions in reconciliation and outside of reconciliation necessary, to meet that goal this year, right now.

I am optimistic, Mr. President. I think that determination is there, and I hope that the leadership of this body will be able to see to it that we start working toward it in fact, not just in theory, very soon, in the course of the next few weeks.

We have all had our say. Those of us for the constitutional amendment should remain committed. Those against it, who claim to believe in a balanced budget, should be even more dedicated to the proposition that we do the job. If that is the result of last week's debate, our loss will not have been in vain.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PAPERWORK REDUCTION ACT

The Senate continued with consideration of the bill.

Mr. MCCAIN. Mr. President, I will be asking unanimous consent to modify my amendment, in language to be worked out amongst staff, that this amendment not be in application to reports that are triggered by specific legislation that is on the books.

For example, the War Powers Act requires a report from the executive branch to the Congress, and there are certain pieces of legislation that are on the books and in law that require specific reports to be made in the event of certain actions or events taking place. In arms sales, there is a report that needs to be made to Congress in the event of an arms sale to certain countries under certain circumstances. So the staff understands and Senator LEVIN and Senator ROTH understand.

I ask unanimous consent that I may modify my amendment in a technical way to ensure that the language exempts those reports that are triggered by acts of Congress.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me thank, first of all, my friend from Arizona for this modification. His amendment is right on target. We should be sunsetting reports which are automatically and routinely filed. Many of them are not needed. We should sunset those reports after a period of time as his amendment does.

On the other hand, we should not put into jeopardy those reports, such as the War Powers Act reports and arms sales reports, which are not those routine, regular reports that are automatic, but rather are triggered by events that are important to Congress, as indicated by the legislation that is already on the books.

I wish to thank the Senator from Arizona for that modification.

In addition, I believe that the Senator from Delaware will be seeking unanimous consent that I be allowed to offer an amendment—which I believe will be accepted—in the morning, which will eliminate a number of reports, I believe 200 reports, which have been cleared by various committees that are no longer needed.

Senator MCCAIN's amendment is a sunset amendment, a very important amendment. What my amendment does is take a smaller number of reports that are currently required which should no longer be filed, which take a lot of time and take a lot of money. We have methodically gone through, report by report by report, and have determined, I believe, from memory, that there are in the area of 200 to 300 reports that we can eliminate—not just sunset, but absolutely eliminate.

I think the Senator from Delaware will be making a unanimous-consent request, if a unanimous-consent request is required—I am not sure what the status is—but will be offering a unanimous-consent request that would allow me to offer an amendment tomorrow morning, with 10 minutes of debate.

Mr. ROTH. Mr. President, I say to my distinguished friend from Michigan that that is my intent.

I, first of all, wish to congratulate the distinguished Senator from Arizona for his amendment, because I do think it is a valuable one. We look forward to seeing it adopted.

I believe the proposal of the distinguished Senator from Michigan adds a positive factor. We are trying to work out a unanimous-consent that would allow him to bring it up the first thing tomorrow morning at 10:30.

I very much appreciate that.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDERS FOR TOMORROW

Mr. ROTH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10:30 a.m. on Tuesday, March 7, and that immediately following the prayer, the Senate resume consideration of S. 244, and Senator LEVIN be recognized to offer an amendment dealing with reports on which there be 10 minutes for debate, to be equally divided in the usual form. I further ask that Senator WELLSTONE be recognized to offer an amendment dealing with children immediately following the debate or conclusion of the Levin amendment, on which there be 90 minutes to be equally divided in the usual form.

I further ask that following the conclusion of debate on the Wellstone amendment, the Senator be recognized to offer a second amendment dealing with gifts on which there be 90 minutes, to be equally divided in the usual form.

I further ask that following the disposition of debate on the second Wellstone amendment, Senator GREGG be recognized to offer an amendment dealing with education, and that no second-degree amendments be in order prior to a motion to table and if offered, the second degree amendments be relevant.

I further ask that the above-listed amendments be the only amendments remaining in order to S. 244.

I further ask unanimous consent that any votes ordered on or in relation to the above-mentioned amendments, be stacked to occur beginning at 2:15 p.m. on Tuesday, if all time is used or yielded back.

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

Mr. LEVIN addressed the Chair.

Mr. ROTH Mr. President, I renew my unanimous-consent request.

Mr. LEVIN. The minority has no objection.

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

Mr. ROTH. Mr. President, I thank the distinguished Senator from Michigan. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BROWN). Without objection, it is so ordered.

AMENDMENT NO. 318, AS MODIFIED

Mr. ROTH. Mr. President, on behalf of the distinguished senior Senator from Arizona, I send an amendment modification to the desk.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment, as modified, is as follows:

At the end of the pending measure, add the following new section:

SEC. . TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual or other regular periodic reports specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, 5 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452);

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576).

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) includes only the annual semiannual, or other regular periodic reports on the list prepared by the Clerk of the House of Representatives for the first session of the 103d Congress under clause 2 of rule III of the Rules of the House of Representatives.

Mr. ROTH. Mr. President, I think that amendment is self-explanatory. It has already been explained. I think it is acceptable to the minority as well as the majority.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I wish to thank the Senators from Delaware and Arizona for the modification. It now makes it apply only to those reports which are filed annually, semiannually, or at other regular intervals, regular periodic intervals. It will not include reports which are triggered by events, or possible events, such as a War Powers Act report or weapons sales report where the requirement is based on an external event which is not a regular periodic event like a date on a calendar.

That was acceptable to the Senator from Arizona, and I think it now will make this accomplish its goal, which is to try to get rid of a whole bunch of reports which we get every year or 6 months which nobody really relies on but not wipe out reports, or sunset reports which we do heavily rely on which are those reports such as the War Powers Act or weapons sales reports which are triggered by specific events covered by statute which the Congress indicated its intent to obtain reports on for those other external reasons.

So we do very much appreciate the modification.

Mr. ROTH. Mr. President, if there is no further debate, I urge acceptance of the amendment.

The PRESIDING OFFICER. Without objection, the amendment as modified, is agreed to.

So the amendment (No. 318), as modified, was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE NATIONAL ENDOWMENT FOR DEMOCRACY—MESSAGE FROM THE PRESIDENT—PM 26

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Pursuant to the provisions of section 504(h) of Public Law 98–164, as amended (22 U.S.C. 4413(i)), I transmit herewith the 11th Annual Report of the National Endowment for Democracy, which covers fiscal year 1994.

Promoting democracy abroad is one of the central pillars of the United States security strategy. The National Endowment for Democracy has proved to be a unique and remarkable instrument for spreading and strengthening the rule of democracy. By continuing our support, we will advance America's interests in the world.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

NATIONAL PROGRAM FOR FLOODPLAIN MANAGEMENT—MESSAGE FROM THE PRESIDENT—PM 27

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Environment and Public Works:

To the Congress of the United States:

It is with great pleasure that I transmit *A Unified National Program for Floodplain Management* to the Congress. The Unified National Program responds to section 1302(c) of the National Flood Insurance Act of 1968 (Public Law 90–448), which calls upon the President to report to the Congress on a Unified National Program. The report sets forth a conceptual framework for managing the Nation's floodplains to achieve the dual goals of reducing the loss of life and property caused by floods and protecting and restoring the natural resources of floodplains. This document was prepared by the Federal Interagency Floodplain Management Task Force, which is chaired by FEMA.

This report differs from the 1986 and 1979 versions in that it recommends four national goals with supporting objectives for improving the implementation of floodplain management at all levels of government. It also urges the formulation of a more comprehensive, coordinated approach to protecting and managing human and natural systems to ensure sustainable development relative to long-term economic and ecological health. This report was prepared independent of *Sharing the Challenge: Floodplain Management Into the 21st Century* developed by the Floodplain Management Review Committee, which was established following the Great Midwest Flood of 1993. However, these two reports complement and reinforce each other by the commonality of their findings and recommendations. For example, both reports recognize the importance of continuing to improve our efforts to reduce the loss of life and property caused by floods and to preserve and restore the natural resources and functions of floodplains in an economically and environmentally sound manner. This is significant in that the natural resources and functions of our riverine and coastal floodplains help to maintain the viability of natural systems and provide multiple benefits for people.

Effective implementation of the Unified National Program for Floodplain Management will mitigate the tragic loss of life and property, and disruption of families and communities, that are caused by floods every year in the United States. It will also mitigate the unacceptable losses of natural resources and result in a reduction in the financial burdens placed upon governments to compensate for flood damages caused by unwise land use decisions made by individuals, as well as governments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the second time and placed on the calendar:

S.J. Res. 28. Joint resolution to grant consent of Congress to the Northeast Interstate Dairy Compact.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. HUTCHISON:

S. 498. A bill to amend title XVI of the Social Security Act to deny SSI benefits for individuals whose disability is based on alcoholism or drug addiction, and for other purposes; to the Committee on Finance.

By Mr. JOHNSTON:

S. 499. A bill to provide an exception to the coverage of State and local employees under

Social Security; to the Committee on Finance.

S. 500. A bill to amend the Internal Revenue Code of 1986 to provide certain deductions of school bus drivers shall be allowable in computing adjusted gross income; to the Committee on Finance.

By Mr. BREAUX (for himself and Mr. JOHNSTON):

S. 501. A bill to amend the Internal Revenue Code of 1986 to permit the tax-free rollover of certain payments made by employers to separated employees; to the Committee on Finance.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 502. A bill to clarify the tax treatment of certain disability benefits received by former police officers or firefighters; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 503. A bill to amend the Endangered Species Act of 1973 to impose a moratorium on the listing of species as endangered or threatened and the designation of critical habitat in order to ensure that constitutionally protected private property rights are not infringed, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BUMPERS (for himself, Mr. LAUTENBERG, Mr. LEAHY, Mr. AKAKA, Mr. LEVIN, Mr. PRYOR, Mr. KOHL, Mr. FEINGOLD, and Mr. PELL):

S. 504. A bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HARKIN:

S. 505. A bill to direct the Administrator of the Environmental Protection Agency not to act under section 6 of the Toxic Substances Control Act to prohibit the manufacturing, processing, or distribution of certain fishing sinkers or lures; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MURKOWSKI (for himself, Mr. LIEBERMAN, Mr. BROWN, Mr. ROBB, Mr. D'AMATO, Mr. SIMON, Mr. THOMAS, Mr. HELMS, Mr. COATS, Mr. PELL, Mr. WARNER, Mr. AKAKA, Mr. GRAMS, Mr. DOLE, Mr. KEMPTHORNE, Mr. DORGAN, Mr. SPECTER, Mr. HATFIELD, Mr. LUGAR, Mr. FEINGOLD, Mr. ROTH, Mr. THURMOND, Mr. HATCH, Mr. GORTON, Mr. CAMPBELL, Mr. MACK, Mr. INOUYE, Mr. ASHCROFT, Mr. CHAFEE, Mr. ROCKEFELLER, Mr. SIMPSON, Mr. COCHRAN, Mr. CONRAD, Mr. DEWINE, Mr. GREGG, and Mr. CRAIG):

S. Con. Res. 9. A concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 498. A bill to amend title XVI of the Social Security Act to deny SSI benefits for individuals whose disability is based on alcoholism or drug addiction, and for other purposes; to the Committee on Finance.

LEGISLATION TO DENY SSI BENEFITS TO INDIVIDUALS WHOSE DISABILITY IS BASED ON DRUG OR ALCOHOL ADDICTION

Mrs. HUTCHISON. Mr. President, I would like to introduce a bill this morning because there is something fundamentally wrong with a Government program that pays drug addicts to remain addicted and pays alcoholics to continue being addicted to alcohol. Yet, that is precisely what the Supplemental Security Income Program currently does: It grants substance abusers an entitlement based upon their addiction.

Most Americans are surprised to learn that drug abuse is now classified as a disability and that addicts and alcoholics are given SSI payments which they use to supply their addictions rather than to obtain food, shelter, and treatment which, of course, was the purpose of the program.

This simply defies the commonsense test. It wastes resources and does actual harm to those it claims to help. SSI payments may, under these circumstances, provide a perverse incentive to beneficiaries. We pay them to stay on drugs, we pay them not to work, and we pay them to avoid recovery.

In the words of one doctor who has spent her entire professional career dealing with the problems of addiction, SSI payments ''* * * undermine the very thing they are supposed to be doing for my patients—promoting their rehabilitation.''

In 1994, 100,000 drug addicts and alcoholics were on the SSI rolls and received an estimated $382 million in Federal benefits, benefits that came out of the pockets of responsible, hardworking, taxpaying Americans.

The SSI caseload of drug addicts and alcoholics has expanded more than 700 percent since 1988 when there were only 13,000 such individuals in the programs. At their current rate of increase, their numbers are expected to rise to 200,000 within 5 years.

Sadly, only 10 percent ever recover and escape the SSI rolls. Such a recovery rate is devastating. We have botched our attempt to provide a safety net and have instead provided these individuals the means to continue their free-fall into addiction. Congress cannot in good conscience continue this policy.

So today, I am introducing a bill to stop payments to individual addicts and instead rededicate those resources to put addiction research and treatment programs on the books. These funds will be put to much more constructive alternative uses. Society as a whole will benefit because treatment programs reduce criminal justice costs and lost productivity.

Drug addicts and alcoholics do not need an allowance from the Government which they can then use to feed their addictions. What they need is treatment. The drug addicts and alcoholics program within SSI was intended to support these individuals while they were under treatment. But that is not how things worked out. The program has been difficult to monitor and they have, in fact, not found that people who are taking the benefits are going into rehabilitation programs. In fact, rehabilitation is actually discouraged because rehabilitation results in loss of benefits of the program.

Substance abuse is taking a horrible toll on our society. The current SSI Program is doing nothing to remedy that unfortunate fact. My bill would alter our fundamental approach to substance abuse and abusers. Instead of general monthly payments, the abusers would be given treatment programs that require participation by them and commitment by them to stop their habit and rehabilitate themselves to be responsible citizens. It will save money, and it will put our taxpayer dollars to better use.

By Mr. JOHNSTON:

S. 499. A bill to provide an exception to the coverage of State and local employees under Social Security; to the Committee on Finance.

S. 500. A bill to amend the Internal Revenue Code of 1986 to provide that certain deductions of schoolbus drivers shall be allowable in computing adjusted gross income; to the Committee on Finance.

LEGISLATION TO HELP SCHOOLBUS DRIVERS

• Mr. JOHNSTON. Mr. President, today I am introducing legislation to help assist our Nation's schoolbus drivers who provide a very important role in the education of our children. Recently, several broad-based tax provisions have been enacted into law which adversely affect schoolbus drivers. The bills I am introducing today will provide some of our most dedicated school employees with relief which they need and deserve.

The first measure would permit busdrivers to deduct actual operating expenses, regardless of whether or not they itemize on their Federal tax returns. This was the law prior to enactment of the Tax Reform Act of 1986. Under current law, however, schoolbus drivers' actual expenses are treated as miscellaneous expenses, thus limiting the deduction to those who itemize and subjecting it to the 2-percent floor. The floor has prevented many schoolbus drivers from qualifying for any deduction for their actual operational expenses because they cannot meet the 2-percent floor applicable to miscellaneous itemized deductions. The result has been a substantial increase in schoolbus drivers' annual income tax liability. Moreover, even those busdrivers who itemize and qualify for deductions under the 2-percent floor have been penalized, especially those who file joint returns.

The second measure would exempt schoolbus drivers—and other State and local employees who work on a part-time, seasonal, or temporary basis—

from paying Social Security taxes. Many of these individuals are already covered under State and local retirement systems; however, the law currently requires that they pay into Social Security as well. The result is increased costs to the employer and smaller take-home paychecks for the employees. Perversely, some States may even decide to remove these workers from their retirement systems, which could result in a reduction in, or loss of, retirement benefits for which the employees have worked for many years.

Our schoolbus drivers do a yeoman's job in transporting future generations to and from school. We all agree that education of our youth should be one of our highest priorities. Let's pass this legislation and provide some relief to those individuals who make it possible for our children to arrive at school in a safe and timely manner.●

By Mr. BREAUX (for himself and Mr. JOHNSTON):

S. 501. A bill to amend the Internal Revenue Code of 1986 to permit the tax-free rollover of certain payments made by employers to separated employees.

TAX FREE ROLLOVER OF CERTAIN PAYMENTS TO SEPARATED EMPLOYEES

● Mr. BREAUX. Mr. President, I rise today to reintroduce legislation to help those employees who are living under a new reality of the 1990's—corporate downsizing. This bill will allow taxpayers who lose their jobs due to corporate downsizing to roll over, tax-free, any lump sum payment received as part of the termination into an individual retirement account [IRA] or similar qualified plan. Taxes would be paid when the funds are withdrawn at retirement. This will allow the upfront payment to serve the purpose of providing the necessary income for retirement. This legislation will relieve an enormous tax burden on thousands of Americans and further encourage retirement savings. Last year the bill was estimated to cost $405 million over 5 years.

Without this legislation, many workers, generally 5 to 10 years from retirement age, will see between 40 to 50 percent of these payments immediately eaten up by Federal, State, and local income taxes. Of course, if these payments are made out of excess funds in a qualified retirement plan funded by the employer, this problem does not arise. This however, is not always the case. Given the generally dismal rate of underfunded private retirement plans, payments will often come out of the general revenues of the company rather than from a qualified plan, and thus will not qualify for the tax exempt rollover provisions that currently exist under the code.

Mr. President, I hope that my colleagues will join me by cosponsoring this important legislation.●

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 502. A bill to clarify the tax treatment of certain disability benefits received by former police officers or firefighters; to the Committee on Finance.

POLICE AND FIREFIGHTERS TAX CLARIFICATION ACT

● Mr. DODD. Mr. President, today I am reintroducing an important piece of legislation that will provide a measure of tax fairness for more than 1,000 police officers, firefighters and their families in my home State of Connecticut. I am pleased to be joined in this effort by Senator LIEBERMAN.

This bill clarifies the tax treatment of heart and hypertension benefits awarded to Connecticut's police officers and firefighters prior to 1992. The clarification is necessary because of an error made in the original version of Connecticut's heart and hypertension law. Under the law, Connecticut intended to treat heart and hypertension benefits as workmen's compensation for tax purposes. Unfortunately, because of the language used in the State statute, the heart and hypertension benefits became taxable under a ruling by the Internal Revenue Service [IRS] in 1991.

Since the IRS ruling, Connecticut has amended its law. But that change does not help those police officers, firefighters, and their families, who received benefits prior to the amendment. These law-abiding citizens accepted the benefits with the understanding that they were not taxable. Now, as a result of the problem with the State law, and through no fault of their own, they are being charged with back taxes, interest, and penalties by the IRS.

Mr. President, we must address this unfortunate situation. Our firefighters and police officers are dedicated public servants. Every day, they face enormous difficulties and dangers protecting our homes and neighborhoods. The hazards they face make their jobs particularly stressful. They need the security provided by heart and hypertension benefits. They should not have to contend with back taxes and penalties that are being assessed due to an error in State law.

Under this legislation, which would exempt heart and hypertension benefits from taxable income for the years prior to the IRS ruling—1989, 1990, and 1991—we can treat these public servants and their families more fairly. This bill is narrowly drafted to accomplish that limited purpose and would not affect the tax treatment of heart and hypertension benefits awarded after January 1, 1992.

Mr. President, my efforts to pass this legislation date back to the 102d Congress. During that Congress, Senator LIEBERMAN and I worked with Representatives BARBARA KENNELLY and ROSA DELAURO and this bill became a part of the Revenue Act of 1992. Although the Revenue Act was passed by Congress, it was vetoed by President Bush 1 day after he lost the election. We tried again during the 103d Congress, but we were unable to move the bill through the relevant committees.

I am hopeful that we can pass this legislation quickly this year so that we can remove the threat of back taxes and penalties that hangs over Connecticut's police officers, firefighters, and their families.●

By Mr. BUMPERS (for himself, Mr. LAUTENBERG, Mr. LEAHY, Mr. AKAKA, Mr. LEVIN, Mr. PRYOR, Mr. KOHL, Mr. FEINGOLD, and Mr. PELL):

S. 504. A bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes; to the Committee on Energy and Natural Resources.

MINERAL EXPLORATION AND DEVELOPMENT ACT

Mr. BUMPERS. Mr. President, I rise today to introduce the Mineral Exploration and Development Act of 1995.

This is the fourth Congress that I have proposed comprehensive legislation to reform the 1872 mining law. Obviously, if I had been successful in the past, I would not be here again today. There are few issues around here that I have such strong feelings about as I have on this subject.

Mr. President, as it provided for in 1872, and what it still permits today, the 1872 mining law allows for any citizen of this country to go on any of the 550 million acres of Federal lands open to mining, drive down four stakes encompassing 20 acres of land and notify the Bureau of Land Management that the land is subject to a mining claim. If, at some time in the future, the claimant decides that that 20-acre claim has gold, silver, copper, platinum, or any other hardrock mineral under it, the claimant can demand—literally demand—a deed from the U.S. Government for that 20 acres. If the BLM decides that yes, it does indeed have commercially mineable minerals under the claim, the Government will give you a deed to the land. Mr. President, they will give you a deed for either $2.50 an acre or $5 an acre, depending on the type of mining claim you have.

Mr. President, it is very difficult to make this case because the people across the country say that this simply cannot be true. No government in its right mind, especially a government that is in debt $4.6 trillion, would give away the public domain and billions of dollars worth of minerals for $2.50 an acre, with billions of dollars worth of gold under it. Well, unhappily, we are crazy enough to do just that, and we have been doing it since 1872.

Mr. President, there are estimates that between $1 and $4 billion worth of gold and other minerals are removed from our public lands every year. The taxpayers, the very owners of the public lands, don't even receive one red cent in return.

Mr. President, the Goldstrike Mine in Nevada is owned by a subsidiary of

American Barrick Resources, which is a Canadian corporation. Incidentally, many of the top gold-mining companies in this country are foreign owned.

On September 10, 1992, Barrick filed an application for patents on 1,800 acres of its Golstrike Mine with the Bureau of Land Management. The BLM checked it out and found that there were commercial quantities of gold underneath that 1,800 acres.

(Mr. CRAIG assumed the chair.)

Mr. BUMPERS. As a result, the Bureau of Land Management had no choice but to give Barrick a deed to the 1,800 acres of land for $9,000; $5 an acre. According to Barrick—not DALE BUMPERS—the land contains $10 billion dollars' worth of gold.

And so Barrick is going to mine 10 billion dollars' worth of gold—and what do you think Uncle Sam's return will be? Absolutely nothing.

Let me ask my colleagues: If you had 1,800 acres of land and Barrick Mining Co. was getting ready to mine 10 billion dollars' worth of gold off your land, what would you expect in return? Five percent? Ten percent? As a matter of fact, the Newmont Mining Co. in Nevada pays an 18-percent royalty to a private landowner in the Carlin Trend of Nevada.

However, the U.S. taxpayers will not receive one red cent in royalties. And it is our land. It is our gold. It belongs to the people of this country.

People who watch speeches like this on the floor of the Senate say this couldn't possibly be true.

It not only can happen, but it has been happening for years and years and years. And I can tell you, with the makeup of the Senate in the 104th Congress, it will likely continue to happen. While I may not win this battle this year, I am certainly not going to quit speaking out about it.

While the hardrock mining companies argue that the imposition of a reasonable royalty would put them out of business, they continue to ignore the fact that gross royalties are paid for all other minerals that are extracted from the taxpayer-owned land. We charge people who mine coal 12.5 percent. If you extract natural gas from Federal lands, you pay the U.S. Government a 12.5-percent royalty. If you mine geothermal resources, as we do out West, it is 10 to 15 percent of gross revenues. If you drill oil on Federal lands, you pay a 12.5-percent royalty.

However, if you mine for gold, silver, or copper, you do not pay one red cent to the U.S. Government.

Why? Because the mining companies have the political clout in this body to prevent the enactment of comprehensive mining law reform. Last year the House of Representatives passed a comprehensive and reasonable mining law reform bill. However, when it came over to the Senate it fell into the same old sump hole.

Occasionally, ''60 Minutes'' or ''20–20'' or ''Prime Time Live'' will do a 10- to 20-minute segment on this issue. Sam Donaldson will say, ''Can you believe this?'' And the next morning, my phone rings off the wall.

Several years ago, after ABC did a story on the mining law, a Senator called and said, ''For God's sake, get me on your bill as a cosponsor. My phone hasn't stopped ringing.'' We put him on as a cosponsor. However, when it came time to vote on my amendment to impose a moratorium on the issuance of patents, he voted against it. He just had not yet heard from the mining industry when he cosponsored my bill.

The 1872 mining law does not reflect modern environmental protection policies. Past mining activities have left a legacy of unreclaimed lands, acid mine drainage, and hazardous waste. Approximately 60 abandoned hardrock mining sites are currently on the Superfund National Priority List. Some estimate that it could cost taxpayers upward of $50 billion to clean up these sites.

The 1872 mining law does not contain any bonding or reclamation requirements or any requirements for protecting the environment. While BLM and Forest Service regulations address these issues, their regulations, particularly BLM's, are full of loopholes and weak.

The Mineral Exploration and Development Act of 1995 would provide BLM and the Forest Service with sufficient authority to regulate mining to minimize adverse impacts to the environment. It would mandate reclamation and bonding and would direct the agencies to promulgate specific reclamation standards.

Some of the Senators who come on this floor and make these long speeches about what a wonderful thing the 1872 mining law is and how wonderful it has been to their States, should take a look at what the State governments do. For example, Arizona charges a 2-percent royalty on the gross value of the minerals extracted from State-owned land. If you mine on private or Federal lands, Arizona charges a 2.5-percent severance tax.

What do we charge? Nothing.

Montana gets a 5-percent royalty for raw metallic minerals mined on State lands and they charge a severance tax of 1.6 percent of the gross value in excess of $250,000 for gold, silver, and platinum mined on all lands in the State.

The State of Utah charges a 4-percent gross value royalty on nonfissionable metalliferous metals.

Utah also charges a 2.6-percent severance tax on all metalliferous minerals, including those that are on Federal lands. Whether there is a patent on it or not, whether it is private lands or Federal lands, you pay a severance tax in the State of Utah.

What does the U.S. Government charge? absolutely nothing.

Wyoming charges a 5-percent royalty on the gross sales value of gold, silver, and trona mined on State-owned land, and a 2-percent net of the minemouth value severance tax on everything that is mined anywhere in that State.

However, the mining industry will continue to insist that if my bill or anything even close to it passes, it will be the end of the world as we know it.

Now, Mr. President, I started out talking about the fact that this is the sixth year I have fought this battle. When I first started back about 1990, I could not even fathom that this was actually going on in this country. Sadly, it continues unabated.

The argument of the mining industry then was, ''It will put us out of business if you charge us a royalty.'' ''How about 3 percent?'' ''No, we cannot afford 3 percent.'' ''Two percent?'' ''No, we cannot afford 2 percent. Cannot afford anything.'' Now they say: ''We will pay a small royalty, but you must allow us to deduct every imaginable and unimaginable cost of mining first''.

Mr. President, at the beginning of the 103d Congress gold was selling in this country for $333 an ounce. The mining industry said, ''we cannot afford to pay an 8-percent royalty or even a 5-percent royalty when we are selling gold for $333 an ounce. It would bankrupt us.'' Gold is now selling for approximately $375 an ounce. However, the mining industry is still claiming poverty.

Mr. President, when I first started fighting on this issue in 1990 we had 1.2 million mining claims in this country. Today, because a person now has to pay $100 a year in order to hold his claim, that number has been reduced to 330,000 claims. Do you know why there has been such a precipitous drop in the number of claims? All those claims out there were filed to build summer homes on the land or they were filed hoping some big mining company would come along and say, ''How about letting us explore your claim?'' because they did not have to pay a red cent to keep that claim viable.

Mr. President, almost every one of these mining companies do, in fact, pay royalties. However, they don't pay royalties to the landowner—the American taxpayer. Rather, they pay royalties to somebody they bought the claim from. So who is really getting the royalty? It is the guy who had the claim.

If I had claims amounting to 1,000 acres, never touched it, a mining company could come by and say, ''We would like to have that claim to mine on.'' If I said, ''OK,'' they will look it over. If they find out it has gold on it, they will say, ''We will pay you a 5-percent royalty on all the gold we take off of your land.'' That goes on time and time again. Virtually every major mining company in the United States that mines on Federal lands is paying a pretty good-sized royalty to the guy who went out there and drove the stakes into the ground with no intention of ever doing anything.

Mr. President, I have tried every year to convince the Senate to enact comprehensive mining law reform. In addition, I have tried to impose a moratorium to prohibit the Interior Department from granting patents. The House of Representatives passed such a moratorium every year since I started this fight, and every year the Senate has killed it. Last year the Senate finally agreed to the moratorium during a House-Senate Appropriations conference.

In 1991 I came within a single vote of passing the patent moratorium. Just 4 days later, the Stillwater Mining Co. filed applications for patents on a little more than 2,000 acres of land in Montana. It took them just 4 days to figure out that they might have to pay a royalty one of these days if they did not get a patent. Assuming they get these patents, Stillwater will pay just $10,000 for the 2,000 acres of land. According to Stillwater's own figures, the land contains roughly 35 to 38 billion dollars' worth of platinum and palladium.

And, Mr. and Mrs. Taxpayer, what do you think you are going to get for the 38 billion dollars' worth of platinum and palladium that you own? You guessed it. Not one penny.

Mr. President, I will just make this little summation. The patent moratorium that we passed last year grandfathered-in about 350 patent applications. If we do not keep the moratorium pending until Congress is ready to enact comprehensive reform, the U.S. Government will continue to give away our public lands.

In addition, we will continue to permit mining companies to walk away from unmitigated environmental disasters leaving the taxpayers to pick up the tab. They did not get a red cent out of it, but the taxpayers get the luxury of cleaning up the mess.

Mr. President, my bill constitutes what I believe to be the minimum required for comprehensive mining law reform. It provides for the Secretary to have considerable input into the siting of mining operations to ensure that areas such as Yellowstone National Park are not ruined.

My bill provides for an 8-percent gross royalty. It provides for bonding to make sure that the land is put back in half decent shape when mining operations are completed. It stops this business of giving deeds to people for $2.50 an acre.

Opponents of comprehensive reform will soon introduce a bill that would continue to permit patenting. Rather than $2.50 or $5 an acre, the claimant would have to pay the fair market value for the surface of the land. That is only marginally better than the $5 an acre they pay now.

Senators trying to pass this as reform will say: ''Well, they are paying fair market value.'' You give me the Gulf of Mexico; I will pay for the fair market of the surface of the Gulf of Mexico if you give me all the oil underneath it.

Mr. President, I intend to pursue this matter as long as I am in the U.S. Senate. I want to say to my colleagues and to the American people, there is no greater travesty—no greater travesty—than the continuation of this mining law and allowing the mining interests of this country to take the valuable resources that belong to every taxpayer in the country.

We have a $4.6 trillion debt and Speaker GINGRICH and the proponents of the Contract With America want to put children in orphanages, take away school lunches, and dramatically cut food stamps. But the mining companies can't compensate the taxpayers because there are enough western Senators here to stop it. Where are our priorities?

So I will probably not succeed this year. If I could not succeed last year, given the makeup of the Senate this year, I will not prevail and I am tired of fighting the battle, but I am not tired enough to quit.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of my remarks.

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

S. 504

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be referred to as the ''Mineral Exploration and Development Act of 1995''.

(b) TABLE OF CONTENTS.—

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT
Sec. 101. Definitions, references, and coverage.
Sec. 102. Lands open to location; rights under this Act.
Sec. 103. Location of mining claims.
Sec. 104. Claim maintenance requirements.
Sec. 105. Penalties.
Sec. 106. Preemption.
Sec. 107. Limitation on patent issuance.
Sec. 108. Multiple mineral development and surface resources.
Sec. 109. Mineral materials.
TITLE II—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT
Sec. 201. Surface management.
Sec. 202. Inspection and enforcement.
Sec. 203. State law and regulation.
Sec. 204. Unsuitability review.
Sec. 205. Lands not open to location.
TITLE III—ABANDONED MINERALS MINE RECLAMATION FUND
Sec. 301. Abandoned Minerals Mine Reclamation Fund.
Sec. 302. Use and objectives of the fund.
Sec. 303. Eligible areas.
Sec. 304. Fund allocation and expenditures.
Sec. 305. State reclamation programs.
Sec. 306. Authorization of appropriations.
TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS
Sec. 401. Policy functions.
Sec. 402. User fees.
Sec. 403. Regulations; effective dates.
Sec. 404. Transitional rules; mining claims and mill sites.
Sec. 405. Transitional rules; surface management requirements.
Sec. 406. Basis for contest.
Sec. 407. Savings clause claims.
Sec. 408. Severability.
Sec. 409. Purchasing power adjustment.
Sec. 410. Royalty.
Sec. 411. Savings clause.
Sec. 412. Public records.

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT

SEC. 101. DEFINITIONS, REFERENCES, AND COVERAGE.

(a) DEFINITIONS.—As used in this Act:

(1) The term ''applicant'' means any person applying for a plan of operations under this Act or a modification to or a renewal of a plan of operations under this Act.

(2) The term ''claim holder'' means the holder of a mining claim located or converted under this Act. Such term may include an agent of a claim holder.

(3) The term ''land use plans'' means those plans required under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) or the land management plans for National Forest System units required under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), whichever is applicable.

(4) The term ''legal subdivisions'' means an aliquot quarter section of land as established by the official records of the public land survey system, or a single lot as established by the official records of the public land survey system if the pertinent section is irregular and contains fractional lots, as the case may be.

(5) The term ''locatable mineral'' means any mineral not subject to disposition under any of the following:

(A) the Mineral Leasing Act (30 U.S.C. 181 and following);

(B) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following);

(C) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following); or

(D) the Mineral Leasing for Acquired Lands Act (30 U.S.C. 351 and following).

(6) The term ''mineral activities'' means any activity for, related to or incidental to mineral exploration, mining, beneficiation and processing activities for any locatable mineral, including access. When used with respect to this term—

(A) the term ''exploration'' means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade, and value;

(B) the term ''mining'' means the processes employed for the extraction of a locatable mineral from the earth;

(C) the term ''beneficiation'' means the crushing and grinding of locatable mineral ore and such processes which are employed to free the mineral from other constituents, including but not necessarily limited to, physical and chemical separation techniques; and

(D) the term ''processing'' means processes downstream of beneficiation employed to prepare locatable mineral ore into the final marketable product, including but not limited to, smelting and electrolytic refining.

(7) The term ''mining claim'' means a claim for the purposes of mineral activities.

(8) The term ''National Conservation System unit'' means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or a national conservation area, national recreation area, or a national forest monument.

(9) The term ''operator'' means any person, partnership, or corporation with a plan of operations approved under this Act.

(10) The term ''Secretary'' means, unless otherwise provided in this Act—

(A) the Secretary of the Interior for the purposes of title I and title III;

(B) the Secretary of the Interior with respect to land under the jurisdiction of such Secretary and all other lands subject to this Act (except for lands under the jurisdiction of such Secretary and all other lands subject to this Act (except for lands under the jurisdiction of the Secretary of Agriculture) for the purposes of title II; and

(C) the Secretary of Agriculture with respect to lands under the jurisdiction of the Secretary of Agriculture for the purposes of title II.

(11) The term ''substantial legal and financial commitments'' means significant investments that have been made to develop mining claims under the general mining laws such as: long-term contracts for minerals produced; processing, beneficiation, or extraction facilities and transportation infrastructure; or other capital-intensive activities. Costs of acquiring the mining claim or claims, or the right to mine alone without other significant investments as detailed above, are not sufficient to constitute substantial legal and financial commitments.

(12) The term ''surface management requirements'' means the requirements and standards of section 201, section 203, and section 204 of this Act, and such other standards as are established by the Secretary governing mineral activities and reclamation.

(b) REFERENCES.—(1) Any reference in this Act to the term ''general mining laws'' is a reference to those Acts which generally comprise chapters 2, 12A, and 16, and sections 161 and 162 of title 30, United States Code.

(2) Any reference in this Act to the ''Act of July 23, 1955'', is a reference to the Act of July 23, 1955, entitled ''An Act to amend the Act of July 31, 1947 (61 Stat. 681), and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes.'' (30 U.S.C. 601 and following).

(c) COVERAGE.—This Act shall apply only to mineral activities and reclamation on lands and interests in land which are open to location as provided in this Act.

SEC. 102. LANDS OPEN TO LOCATION; RIGHTS UNDER THIS ACT.

(a) OPEN LANDS.—Mining claims may be located under this Act on lands and interests in lands owned by the United States to the extent that—

(1) such lands and interests were open to the location of mining claims under the general mining laws on the date of enactment of this Act;

(2) such lands and interests are opened to the location of mining claims by reason of section 204(f) or section 205 of this Act; and

(3) such lands and interests are opened to the location of mining claims state the date of enactment of this Act by reason of any administrative action or statute.

(b) RIGHTS.—The holder of a mining claim located or converted under this Act and maintained in compliance with this Act shall have the exclusive right of possession and use of the claimed land for mineral activities, including the right of ingress and egress to such claimed lands for such activities, subject to the rights of the United States under section 108 and title II.

SEC. 103. LOCATION OF MINING CLAIMS.

(a) GENERAL RULE.—A person may locate a mining claim covering lands open to the location of mining claims by posting a notice of location, containing the person's name and address, the time of location (which shall be the date and hour of location and posting), and a legal description of the claim. The notice of location shall be posted on a conspicuous, durable monument erected as near as practicable to the northeast corner of the mining claim. No person who is not a citizen, or a corporation organized under the laws of the United States or of any State or the District of Columbia, may locate or hold a claim under this Act.

(b) USE OF PUBLIC LAND SURVEY.—Except as provided in subsection (c), each mining claim located under this Act shall—

(1) be located in accordance with the public land survey system, and

(2) conform to the legal subdivisions thereof. Except as provided in subsection (c), the legal description of the mining claim shall be based on the public land survey system and its legal subdivision.

(c) EXCEPTIONS.—(1) If only a protracted survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The legal description of the mining claim shall be based on the protracted survey and the mining claim shall be located as near as practicable in conformance with a protracted legal subdivision.

(B) The mining claim shall be monumented on the ground by the erection of a conspicuous durable monument at each corner of the claim.

(C) The legal description of the mining claim shall include a reference to any existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent natural object.

(2) If no survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The mining claim shall be a regular square, with each side laid out in cardinal directions, 40 acres in size.

(B) The claim shall be monumented on the ground by the erection of a conspicuous durable monument at each corner of the claim.

(C) The legal description of the mining claim shall be expressed in metes and bounds and shall include a reference to any existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent natural object. Such description shall be of sufficient accuracy and completeness to permit recording of the claim upon the public land records and to permit the Secretary and other parties to find the claim upon the ground.

(3) In the case of a conflict between the boundaries of a mining claim as monumented on the ground and the description of such claim in the notice of location referred to in subsection (a), the notice of location shall be determinative.

(d) FILING WITH SECRETARY.—(1) Within 30 days after the location of a mining claim pursuant to this section, a copy of the notice of location referred to in subsection (a) shall be filed with the Secretary in an office designated by the Secretary.

(2) Whenever the Secretary receives a copy of a notice of location of a mining claim under this Act, the Secretary shall assign a serial number to the mining claim, and immediately return a copy of the notice of location to the locator of the claim, together with a certificate setting forth the serial number, a description of the claim, and the claim maintenance requirements of section 104. The Secretary shall enter the claim on the public land records.

(e) LANDS COVERED BY CLAIM.—A mining claim located under this Act shall include all lands and interests in lands open to location within the boundaries of the claim, subject to any prior mining claim referenced under subsections (c) and (d) of section 404.

(f) DATE OF LOCATION.—A mining claim located under this Act shall be effective based upon the time of location.

(g) CONFLICTING LOCATIONS.—Any conflicts between the holders of mining claims located or converted under this Act relating to relative superiority under the provisions of this Act may be resolved in adjudication proceedings before the Secretary. Such adjudication shall be determined on the record after opportunity for hearing. It shall be incumbent upon the holder of a mining claim asserting superior rights in such proceedings to demonstrate to the Secretary that such person was the senior locator, or if such person is the junior locator, that prior to the location of the claim by such locator—

(1) the senior locator failed to file a copy of the notice of location within the time provided under subsection (d); or

(2) the amount of rental paid by the senior locator was less than the amount required to be paid by such locator pursuant to section 104.

(h) EXTENT OF MINERAL DEPOSIT.—The boundaries of a mining claim located under this Act shall extend vertically downward.

SEC. 104. CLAIM MAINTENANCE REQUIREMENTS.

(a) IN GENERAL.—(1) In order to maintain a mining claim under this Act a claim holder shall pay to the Secretary an annual rental fee. The rental fee shall be paid on the basis of all land within the boundaries of a mining claim at a rate established by the Secretary of not less than—

(A) $5 per acre in each of the first through fifth years following location of the claim;

(B) $10 per acre in each of the sixth through tenth years following location of the claim;

(C) $15 per acre in each of the eleventh through fifteenth years following location of the claim;

(D) $20 per acre in each of the sixteenth through twentieth years following location of the claim; and

(E) $25 per acre in the twenty-first diligence year following location of the claim, and each year thereafter.(2) The rental fee shall be due and payable at a time and in a manner as prescribed by the Secretary.

(b) FAILURE TO COMPLY.—(1) If a claim holder fails to pay the rental fee as required by this section, the Secretary shall immediately provide notice thereof to the claim holder and after 30 days from the date of such notice the claim shall be deemed forfeited and such claim shall be null and void by operation of the law, except as provided under paragraphs (2) and (3). Such notice shall be sent to the claim holder by registered or certified mail to the address provided by such claim holder in the notice of location referred to in section 103(a) or in the most recent instrument filed by the claim holder pursuant to this section. In the even such notice is returned as undelivered, the Secretary shall be deemed to have fulfilled the notice requirements of this paragraph.

(2) No claim may be deemed forfeited and null and void due to a failure to comply with the requirements of this section if the claim holder corrects such failure to the satisfaction of the Secretary within 10 days after the date such claim holder was required to pay the rental fee.

(3) No claim may be deemed forfeited and null and void due to a failure to comply with the requirements of this section if, within 10 days after date of the notice referred to in paragraph (1), the claim holder corrects such failure to the satisfaction of the Secretary, and if the Secretary determines that such failure was justifiable.

(c) PROHIBITION.—The claim holder shall be prohibited from locating a new claim on the lands included in a forfeited claim for one year from the date such claim is deemed forfeited and null and void, except as provided in subsection (d).

(d) RELINQUISHMENT.—A claim holder deciding not to pursue mineral activity on a claim may relinquish such claim by notifying the Secretary. A claim holder relinquishing a claim is responsible for reclamation as required by section 201 of this Act and all other applicable requirements. A claim holder who relinquishes a claim shall not be subject to the prohibition of subsection (c) of this section; however, if the Secretary determines that a claim is being relinquished and relocated for the purpose of avoiding compliance with any provision of this Act, including payment of the applicable annual rental fee, the claim holder shall be subject to the prohibition in subsection (c) of this section.

(e) SUSPENSION.—Payment of the annual rental fee required by this section shall be suspended upon the payment of the royalty required by section 410 of this Act in an amount equal to or greater than the applicable annual rental fee. During any subsequent period of non-production, or period when the royalty required by section 410 of this Act is an amount less than the applicable annual rental fee, the claimant shall pay to the Secretary a total amount equal to the applicable annual rental fee.

(f) FEE DISPOSITION.—The Secretary shall deposit all moneys received from rental fees collected under this subsection into the Fund referred to in title III.

SEC. 105. PENALTIES.

(a) VIOLATION.—Any claim holder who knowingly or willfully posts on a mining claim or files a notice of location with the Secretary under section 103 that contains false, inaccurate or misleading statements shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(b) REVIEW.—No civil penalty under this section shall be assessed until the claim holder charged with the violation has been given the opportunity for a hearing on the record under section 202(f).

SEC. 106. PREEMPTION.

The requirements of this title shall preempt any conflicting requirements of any State, or political subdivision thereof relating to the location and maintenance of mining claims as provided for by this Act. The filing requirements of section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744) shall not apply with respect to any mining claim located or converted under this Act.

SEC. 107. LIMITATION ON PATENT ISSUANCE.

(a) MINING CLAIMS.—After January 4, 1995, no patent shall be issued by the United States for any mining claim located under the general mining laws unless the Secretary of the Interior determines that, for the claim concerned—

(1) a patent application was filed with the Secretary on or before October 1, 1994; and

(2) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims were fully complied with by that date. If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mining claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

(b) MILL SITES.—After October 1, 1994, no patent shall be issued by the United States for any mill site claim located under the general mining laws unless the Secretary of the Interior determines that for the mill site concerned—

(1) a patent application for such land was filed with Secretary on or before October 1, 1994; and

(2) all requirements applicable to such patent application were fully complied with by that date. If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mill site claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

SEC. 108. MULTIPLE MINERAL DEVELOPMENT AND SURFACE RESOURCES.

(A) IN GENERAL.—The provisions of sections 4 and 6 of the Act of August 13, 1954 (30 U.S.C. 524 and 526), commonly known as the Multiple Minerals Development Act, and the provisions of section 4 of the Act of July 23, 1955 (30 U.S.C. 612), shall apply to all mining claims located or converted under this Act.

(b) ENFORCEMENT.—The Secretary of the Interior, or the Secretary of Agriculture, as the case may be, shall take such actions as may be necessary to ensure the compliance by claim holders with section 4 of the Act of July 23, 1955 (30 U.S.C. 612).

SEC. 109. MINERAL MATERIALS.

(a) DETERMINATIONS.—Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), is amended as follows:

(1) Insert ''(a)'' before the first sentence.

(2) Strike ''or cinders'' and insert in lieu thereof ''cinders, or clay''.

(3) Add the following new subsection at the end thereof:

''(b)(1) Subject to valid existing rights, after the date of enactment of the Mineral Exploration and Development Act of 1995, all deposits of mineral materials referred to in subsection (a), including the block pumice referred to in such subsection, shall only be subject to disposal under the terms and conditions of the Materials Act of 1947.

''(2) For purposes of paragraph (1), the term 'valid existing rights' means that a mining claim located for any such mineral material had some property giving it the distinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection, was properly located and maintained under the general mining laws prior to the date of enactment of the Mineral Exploration and Development Act of 1995, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the date of enactment of the Mineral Exploration and Development Act of 1995 and that such claim continues to be valid.''

(b) MINERAL MATERIALS DISPOSAL CLARIFICATION.—Section 4 of the Act of July 23, 1955 (30 U.S.C. 612), is amended as follows:

(1) In subsection (b) insert ''and mineral material'' after ''vegetative''.

(2) In subsection (c) insert ''and mineral material'' after ''vegetative''.

(c) CONFORMING AMENDMENT.—Section 1 of the Act of July 31, 1947, entitled ''An Act to provide for the disposal of materials on the public lands of the United States'' (30 U.S.C. 601 and following) is amended by striking ''common varieties of'' in the first sentence.

(d) SHORT TITLES.—(1) SURFACE RESOURCES.—The Act of July 23, 1955, is amended by inserting after section 7 the following new section.

''SEC. 8. This Act may be cited as the 'Surface Resources Act of 1955'.''.

(2) MINERAL MATERIALS.—The Act of July 31, 1947, entitled ''An Act to provide for the disposal of materials on the public lands of the United States'' (30 U.S.C. 601 and following) is amended by inserting after section 4 the following new section:

''SEC. 5. This Act may be cited as the 'Materials Act of 1947'.''.

(e) REPEAL.—(1) The Act of August 4, 1892 (27 Stat. 348) commonly known as the Building Stone Act is hereby repealed.

(2) The Act of January 31, 1901 (30 U.S.C. 162) commonly known as the Saline Placer Act is hereby repealed.

TITLE II—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT

SEC. 201. SURFACE MANAGEMENT.

(a) IN GENERAL.—Notwithstanding the last sentence of section 302(b) of the Federal Land Policy and Management Act of 1976, and in accordance with this title and other applicable law, the Secretary shall require that mineral activities and reclamation be conducted so as to minimize adverse impacts to the environment.

(b) PLANS OF OPERATION.—Except as provided under paragraph (2), no person may engage in mineral activities that may cause a disturbance of surface resources unless such person has filed a plan of operations with, and received approval of such plan of operations, from the Secretary.

(2)(A) A plan of operations may not be required for mineral activities related to exploration that cause a negligible disturbance of surface resources not involving the use of mechanized earth moving equipment, suction dredging, explosives, the use of motor vehicles in areas closed to off-road vehicles, the construction of roads, drill pads, or the use of toxic or hazardous materials.

(B) A plan of operations may not be required for mineral activities related to exploration that, after notice to the Secretary, involve only a minimal and readily reclaimable disturbance of surface resources related to and including initial test drilling not involving the construction of access roads, except activities under notice shall not commence until an adequate financial guarantee is established for such activities pursuant to subsection (1).

(c) CONTENTS OF PLANS.—Each proposed plan of operations shall include a mining permit application and a reclamation plan together with such documentation as necessary to ensure compliance with applicable Federal and State environmental laws and regulations.

(d) MINING PERMIT APPLICATION REQUIREMENTS.—The mining permit referred to in subsection (c) shall include such terms and conditions as prescribed by the Secretary, and each of the following:

(1) The name and mailing address of—

(A) the applicant for the mining permit;

(B) the operator if different than the applicant;

(C) each claim holder of the lands subject to the plan of operations if different than the applicant;

(D) any subsidiary, affiliate or person controlled by or under common control with the applicant, or the operator or each claim holder, if different than the applicant; and

(E) the owner or owners of any land, or interests in any such land, not subject to this Act, within or adjacent to the proposed mineral activities.

(2) A statement of any plans of operation held by the applicant, operator or each claim holder if different than the applicant, or any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant.

(3) A statement of whether the applicant, operator or each claim holder if different

than the applicant, and any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant has an outstanding violation of this Act, any surface management requirements, or applicable air and water quality laws and regulations and if so, a brief explanation of the facts involved, including identification of the site and the nature of the violation.

(4) A description of the type and method of mineral activities proposed, the engineering techniques proposed to be used and the equipment proposed to be used.

(5) The anticipated starting and termination dates of each phase of the mineral activities proposed.

(6) A map, to an appropriate scale, clearly showing the land to be affected by the proposed mineral activities.

(7) A description of the quantity and quality of surface and ground water resources within and along the boundaries of, and adjacent to, the area subject to mineral activities based on 12 months of pre-disturbance monitoring.

(8) A description of the biological resources found in or adjacent to the area subject to mineral activities, including vegetation, fish and wildlife, riparian and wetland habitats.

(9) A description of the monitoring systems to be used to detect and determine whether compliance has and is occurring consistent with the surface management requirements and to regulate the effects of mineral activities and reclamation on the site and surrounding environment, including but not limited to, groundwater, surface water, air and soils.

(10) Accident contingency plans that include, but are not limited to, immediate response strategies, corrective measures to mitigate impacts to fish and wildlife, ground and surface waters, notification procedures and waste handling and toxic material neutralization.

(11) Any measures to comply with any conditions on minerals activities and reclamation that may be required in the applicable land use plan, including any condition stipulated pursuant to section 204(d)(1)(B).

(12) A description of measures planned to exclude fish and wildlife resources from the area subject to mineral activities by covering, containment, or fencing of open waters, beneficiation, and processing materials; or maintenance of all facilities in a condition that is not harmful to fish and wildlife.

(13) Such environmental baseline data as the Secretary, by rule, shall require sufficient to validate the determinations required for plan approval under this Act.

(e) RECLAMATION PLAN APPLICATION REQUIREMENTS.—The reclamation plan referred to in subsection (c) shall include such terms and conditions as prescribed by the Secretary, and each of the following:

(1) A description of the condition of the land subject to the mining plant permit prior to the commencement of any mineral activities.

(2) A description of reclamation measures proposed pursuant to the requirements of subsections (m) and (n).

(3) The engineering techniques to be used in reclamation and the equipment proposed to be used.

(4) The anticipated starting and termination dates of each phase of the reclamation proposed.

(5) A description of the proposed condition of the land following the completion of reclamation.

(6) A description of the maintenance measures that will be necessary to meet the surface management requirements of this Act, such as, but not limited to, drainage water treatment facilities, or liner maintenance and control.

(7) The consideration which has been given to making the condition of the land after the completion of mineral activities and final reclamation consistent with the applicable land use plan.

(f) PUBLIC PARTICIPATION.—(1) Concurrent with submittal of a plan of operations, or a renewal application for a plan of operations, the applicant shall publish a notice in a newspaper of local circulation for 4 consecutive weeks that shall include: the name of the applicant, the location of the proposed mineral activities, the type and expected duration of the proposed mineral activities, and the intended use of the land after the completion of mineral activities and reclamation. The Secretary shall also notify in writing other Federal, State and local government agencies that regulate mineral activities or land planning decisions in the area subject to mineral activities.

(2) Copies of the complete proposed plan of operations shall be made available for public review for 30 days at the office of the responsible Federal surface management agency located nearest to the location of the proposed mineral activities, and at the country courthouse of the county in which the mineral activities are proposed to be located, prior to final decision by the Secretary. During this period, any person and the authorized representative of a Federal, State or local governmental agency shall have the right to file written comments relating to the approval or disapproval of the plan of operations. The Secretary shall immediately make such comments available to the applicant.

(3) Any person that is or may be adversely affected by the proposed mineral activities may request, after filing written comments pursuant to paragraph (2), a public hearing to be held in the county in which the mineral activities are proposed. If a hearing is requested, the Secretary shall conduct a hearing. When a hearing is to be held, notice of such hearing shall be published in a newspaper of local circulation for 2 weeks prior to the hearing date.

(g) PLAN APPROVAL.—(1) After providing notice and opportunity for public comment and hearing, the Secretary may approve, require modifications to, or deny a proposed plan of operations, except as provided in section 405. To approve a plan of operations, the Secretary shall make each of the following determinations:

(A) The mining permit application and reclamation plan are complete and accurate.

(B) The applicant has demonstrated that reclamation as required by this Act can be accomplished under the reclamation plan and would have a high probability of success based on an analysis of such reclamation measures in areas of similar geochemistry, topography and hydrology.

(C) The proposed mineral activities, reclamation and condition of the land after the completion of mineral activities and final reclamation would be consistent with the land use plan applicable to the area subject to mineral activities.

(D) The area subject to the proposed plan of operations is not included within an area designated unsuitable under section 204 for the types of mineral activities proposed.

(E) The applicant has demonstrated that the plan of operations will be in compliance with the requirements of all other applicable Federal requirements, and any State requirements agreed to by the Secretary pursuant to subsection 203(c).

(2) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsection (1) and, based on information supplied by the applicant, a determination of the probable hydrologic consequences of the proposed mineral activities and reclamation.

(3)(A) A plan of operations under this section shall not be approved if the applicant, operator, or any claim holder if different than the applicant, or any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant, is currently in violation of this Act, any surface management requirement or of any applicable air and water quality laws and regulations at any site where mineral activities have occurred or are occurring.

(B) The Secretary shall suspend an approved plan of operations if the Secretary determines that any of the entities described in section 201(d)(1) were in violation of the surface management requirements at the time the plan of operations was approved.

(C) A plan of operations referred to in this subsection shall not be approved or reinstated, as the case may be, until the applicant submits proofs that the violation has been corrected or is in the process of being corrected to the satisfaction of the Secretary; except that no proposed plan of operations, after opportunity for a hearing, shall be approved for any applicant, operator or each claim holder if different than the applicant with a demonstrated pattern of willful violations of the surface management requirements of such nature and duration and with such resulting irreparable damage to the environment as to clearly indicate an intent not to comply with the surface management requirements.

(h) TERM OF PERMIT; RENEWAL.—(1) The approval of a plan of operations shall be for a stated term. The term shall be no greater than that necessary to accomplish the proposed operations, and in no case for more than 10 years, unless the applicant demonstrates that a specified longer term is reasonably needed to obtain financing for equipment and the opening of the operation.

(2) Failure by the operator to commence mineral activities within one year of the date scheduled in an approved plan of operations shall be deemed to require a modification of the plan.

(3) A plan of operations shall carry with it the right of successive renewal upon expiration only with respect to operations on areas within the boundaries of the existing plan of operations, as approved. An application for renewal of such plan of operations shall be approved unless the Secretary determines, in writing, any of the following:

(A) The terms and conditions of the existing plan of operations are not being met.

(B) Mineral activities and reclamation activities as approved under the plan of operations are not in compliance with the surface management requirements of this Act.

(C) The operator has not demonstrated that the financial guarantee would continue to apply in full force and effect for the renewal term.

(D) Any additional revised or updated information required by the Secretary has not been provided.

(E) The applicant has not demonstrated that the plan of operations will be in compliance with the requirements of all other applicable Federal requirements, and any State requirements agreed to by the Secretary pursuant to subsection 203(c).

(4) A renewal of a plan of operations shall be for a term not to exceed the period of the original plan as provided in paragraph (1). Application for plan renewal shall be made at least 120 days prior to the expiration of an approved plan.

(5) Any person that is, or may be, adversely affected by the proposed mineral activities may request a public hearing to be held in the county in which the mineral activities

are proposed. If a hearing is requested, the Secretary shall conduct a hearing. When a hearing is held, notice of such hearing shall be published in a newspaper of local circulation for 2 weeks prior to the hearing date.

(i) PLAN MODIFICATION.—(1) Except as provided under section 405, during the term of a plan of operations the operator may submit an application to modify the plan. To approve a proposed modification to a plan of operations the Secretary shall make the determinations set forth under subsection (g)(1). The Secretary shall establish guidelines regarding the extent to which requirements for plans of operations under this section shall apply to applications to modify a plan of operations based on whether such modifications are deemed significant or minor; except that:

(A) any significant modifications shall at a minimum be subject to subsection (f), and

(B) any modification proposing to extend the area covered by the plan of operations (except for incidental boundary revisions) must be made by application for a new plan of operations.

(2) The Secretary may, upon a review of a plan of operations or a renewal application, require reasonable modification to such plan upon a determination that the requirements of this Act cannot be met if the plan is followed as approved. Such determination shall be based on a written finding and subject to notice and hearing requirements established by the Secretary.

(j) TEMPORARY CESSATION OF OPERATIONS.—(1) Before temporarily ceasing mineral activities or reclamation for a period of 180 days or more under an approved plan of operations or portions thereof, an operator shall first submit a complete application for temporary cessation of operations to the Secretary for approval.

(2) The application for approval of temporary cessation of operations shall include such terms and conditions as prescribed by the Secretary, including but not limited to the steps that shall be taken during the cessation of operations period to minimize impacts on the environment. After receipt of a complete application for temporary cessation of operations the Secretary shall conduct an inspection of the area for which temporary cessation of operations has been requested.

(3) To approve an application for temporary cessation of operations, the Secretary shall make each of the following determinations:

(A) The methods for securing surface facilities and restricting access to the permit area, or relevant portions thereof, shall effectively ensure against hazards to the health and safety of the public and fish and wildlife.

(B) Reclamation is contemporaneous with mineral activities as required under the approved reclamation plan, except in those areas specifically designated in the application for temporary cessation of operations for which a delay in meeting such standards is necessary to facilitate the resumption of operations.

(C) The amount of financial assurance filed with the plan of operations is sufficient to assure completion of the reclamation plan in the event of forfeiture.

(D) Any outstanding notices of violation and cessation orders incurred in connection with the plan of operations for which temporary cessation is being requested are either stayed pursuant to an administrative or judicial appeal proceeding or are in the process of being abated to the satisfaction of the Secretary.

(k) REVIEW.—Any decision made by the Secretary under subsections (g), (h), (i), (j) or (l) shall be subject to review under section 202(f).

(l) BONDS.—(1) Before any plan of operations is approved pursuant to this Act, or any mineral activities are conducted pursuant to subsection (b)(2), the operator shall file with the Secretary financial assurance payable to the United States and conditional upon faithful performance of all requirements of this Act. The financial assurance shall be provided in the form of a surety bond, trust fund, cash or equivalent. The amount of the financial assurance shall be sufficient to assure the completion of reclamation satisfying the requirements of this Act if the work had to be performed by the Secretary in the event of forfeiture, and the calculation shall take into account the maximum level of financial exposure which shall arise during the mineral activity including, but not limited to, provision for accident contingencies.

(2) The financial assurance shall be held for the duration of the mineral activities and for an additional period to cover the operator's responsibility for revegetation under subsection (n)(6)(B).

(3) The amount of the financial assurance and the terms of the acceptance of the assurance shall be adjusted by the Secretary from time to time as the area requiring coverage is increased or decreased, or where the costs of reclamation or treatment change, but the financial assurance must otherwise be in compliance with this section. The Secretary shall specify periodic times, or set a schedule, for reevaluating or adjusting the amount of financial assurance.

(4) Upon request, and after notice and opportunity for public comment, the Secretary may release in whole or in part the financial assurance if the Secretary determines each of the following:

(A) Reclamation covered by the financial assurance has been accomplished as required by this Act.

(B) The operator has declared that the terms and conditions of any other applicable Federal requirements, and State requirements pursuant to subsection 203(b), have been fulfilled.

(5) The release referred to in paragraph (4) shall be according to the following schedule:

(A) After the operator has completed the backfilling, regrading and drainage control of an area subject to mineral activities and covered by the financial assurance, and has commenced revegetation on the regraded areas subject to mineral activities in accordance with the approved plan of operations, 50 percent of the total financial assurance secured for the area subject to mineral activities may be released.

(B) After the operator has completed successfully all mineral activities and reclamation activities and all requirements of the plan of operations and the reclamation plan and all the requirements of this Act have in fact been fully met, the remaining portion of the financial assurance may be released.

(6) During the period following release of the financial assurance as specified in paragraph (5)(A), until the remaining portion of the financial assurance is released as provided in paragraph (5)(B), the operator shall be required to meet all applicable standards of this Act and the plan of operations and the reclamation plan.

(7) Where any discharge from the area subject to mineral activities requires treatment in order to meet the applicable effluent limitations, the treatment shall be monitored during the conduct of mineral activities and reclamation and shall be fully covered by financial assurance and no financial assurance or portion thereof for the plan of operations shall be released until the operator has met all applicable effluent limitations and water quality standards for one full year without treatment.

(8) Jurisdiction under this Act shall terminate upon release of the final bond. If the Secretary determines, after final bond release, that an environmental hazard resulting from the mineral activities exists, or the terms and conditions of the plan of operations or the surface management requirements of this Act were not fulfilled in fact at the time of release, the Secretary shall reassert jurisdiction and all applicable surface management and enforcement provisions shall apply for correction of the condition.

(m) RECLAMATION.—(1) Except as provided under paragraphs (5) and (7) of subsection (n), lands subject to mineral activities shall be restored to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance, or other beneficial uses, provided such other uses are not inconsistent with applicable land use plans.

(2) All required reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities and shall use the best technology currently available.

(n) RECLAMATION STANDARDS.—The Secretary shall establish reclamation standards which shall include, but not necessarily be limited to, provisions to require each of the following:

(1) SOILS.—(A) Topsoil removed from lands subject to mineral activities shall be segregated from other spoil material and protected for later use in reclamation. If such topsoil is not replaced on a backfill area within a time-frame short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be used so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation.

(B) In the event the topsoil from lands subject to mineral activities is of insufficient quantity or of inferior quality for sustaining vegetation, and other suitable growth media removed from the lands subject to the mineral activities are available that shall support vegetation, the best available growth medium shall be removed, segregated and preserved in alike manner as under subparagraph (A) for sustaining vegetation when restored during reclamation.

(C) Mineral activities shall be conducted to prevent any contamination or toxification of soils. If any contamination or toxification occurs in violation of this subparagraph, the operator shall neutralize the toxic material, decontaminate the soil, and dispose of any toxic or acid materials in a manner which complies with this section and any other applicable Federal or State law.

(2) STABILIZATION.—All surface areas subject to mineral activities, including spoil material piles, waste material piles, ore piles, subgrade ore piles, and open or partially backfilled mine pits which meet the requirements of paragraph (5) shall be stabilized and protected during mineral activities and reclamation so as to effectively control erosion and minimize attendant air and water pollution.

(3) EROSION.—Facilities such as but not limited to basins, ditches, streambank stabilization, diversions or other measures, shall be designed, constructed and maintained where necessary to control erosion and drainage of the area subject to mineral activities, including spoil material piles and waste material piles prior to the use of such material to comply with the requirements of paragraph (5) and for the purposes of paragraph (7), and including ore piles and subgrade ore piles.

(4) HYDROLOGIC BALANCE.—(A) Mineral activities shall be conducted to minimize disturbances to the prevailing hydrologic balance of the area subject to mineral activities and adjacent areas and to the quality and quantity of water in surface and ground water systems, including stream flow, in the area subject to mineral activities and adjacent areas, and in all cases the operator shall comply with applicable Federal or State effluent limitations and water quality standards.

(B) Mineral activities shall prevent the generation of acid or toxic drainage during the mineral activities and reclamation, to the extent possible using the best available demonstrated control technology; and the operator shall prevent any contamination of surface and ground water with acid or other toxic mine drainage and shall prevent or remove water from contact with acid or toxic producing deposits.

(C) Reclamation shall, to the extent possible, also include restoration of the recharge capacity of the area subject to mineral activities to approximate premining condition.

(D) Where surface or underground water sources used for domestic or agricultural use have been diminished, contaminated or interrupted as a proximate result of mineral activities, such water resource shall be restored or replaced.

(5) GRADING.—(A) Except as provided under this paragraph (7), the surface area disturbed by mineral activities shall be backfilled, graded and contoured to its natural topography.

(B) The requirement of subparagraph (A) shall not apply with respect to an open mine pit if the Secretary finds that such open pit or partially backfilled pit would not pose a threat to the public health or safety or have an adverse effect on the environment in terms of surface or groundwater pollution.

(C) In instances where complete backfilling of an open pit is not required, the pit shall be graded to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

(6) REVEGETATION.—(A) Except in such instances where the complete backfill of an open mine pit is not required under paragraph (5), the area subject to mineral activities, including any excess spoil material pile and excess waste pile, shall be revegetated in order to establish a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area subject to mineral activities, capable of self-regeneration and plant succession and at least equal in extent of cover to the natural revegetation of the surrounding area.

(B) In order to insure compliance with subparagraph (A), the period for determining successful revegetation shall be for a period of 5 full years after the last year of augmented seeding, fertilizing, irrigation or other work, except that such period shall be 10 full years where the annual average precipitation is 26 inches or less.

(7) EXCESS SPOIL AND WASTE.—(A) Spoil material and waste material in excess of that required to comply with paragraph (5) shall be transported and placed in approved areas, in a controlled manner in such a way so as to assure long-term mass stability and to prevent mass movement. In addition to the measures described under paragraph (3), internal drainage systems shall be employed, as may be required, to control erosion and drainage. The design of such excess spoil material piles and excess waste material piles shall be certified by a qualified professional engineer.

(B) Excess spoil material piles and excess waste material piles shall be graded and contoured to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

(8) SEALING.—All drill holes, and openings on the surface associated with underground mineral activities, shall be sealed when no longer needed for the conduct of mineral activities to ensure protection of the public, fish and wildlife, and the environment.

(9) STRUCTURES.—All buildings, structures or equipment constructed, used or improved during mineral activities shall be removed, unless the Secretary determines that the buildings, structures or equipment shall be of beneficial use in accomplishing the postmining uses or for environmental monitoring.

(10) FISH AND WILDLIFE.—All fish and wildlife habitat in areas subject to mineral activities shall be restored in a manner commensurate with or superior to habitat conditions which existed prior to the mineral activities, including such conditions as may be prescribed by the Director, Fish and Wildlife Service.

(o) ADDITIONAL STANDARDS.—The Secretary may, by regulation, establish additional standards to address the specific environmental impacts of selected methods of mineral activities, such as, but not limited to, cyanide leach mining.

(p) DEFINITIONS.—As used in subsections (m) and (n):

(1) The term ''best technology currently available'' means equipment, devices, systems, methods, or techniques which are currently available anywhere even if not in routine use in mineral activities. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, scheduling of activities and design of sedimentation ponds. Within the constraints of the surface management requirements of this Act, the Secretary shall have the discretion to determine the best technology currently available on a case-by-case basis.

(2) The term ''best available demonstrated control technology'' means equipment, devices, systems, methods, or techniques which have demonstrated engineering and economic feasibility and practicality in preventing disturbances to hydrologic balance during mineral activities and reclamation. Such techniques will have shown to be effective and practical methods of acid and other mine water pollution elimination or control, and other pollution affecting water quality. The ''best available demonstrated control technology'' will not generally be in routine use in mineral activities. Within the constraints of the surface management requirements of this Act, the Secretary shall have the discretion to determine the best available demonstrated control technology on a case-by-case basis.

(3) The term ''spoil material'' means the overburden, or nonmineralized material of any nature, consolidated or unconsolidated, that overlies a deposit of any locatable mineral that is removed in gaining access to, and extracting, any locatable mineral, or any such material disturbed during the conduct of mineral activities.

(4) The term ''waste material'' means the material resulting from mineral activities involving beneficiation, including but not limited to tailings, and such material resulting from mineral activities involving processing, to the extent such material is not subject to subtitle C of the Resource Conservation and Recovery Act of 1976 or the Uranium Mill Tailings Radiation Control Act.

(5) The term ''ore piles'' means ore stockpiled for beneficiation prior to the completion of mineral activities and reclamation.

(6) The term ''subgrade ore'' means ore that is too low in grade to be of economic value at the time of extraction but which could reasonably be economical in the foreseeable future.

(7) The term ''excess spoil'' means spoil material that may be excess of the amount necessary to comply with the requirements of subsection (m)(3).

(8) The term ''excess waste'' means waste material that may be excess of the amount necessary to comply with the requirements of subsection (m)(3).

SEC. 202. INSPECTION AND ENFORCEMENT.

(a) INSPECTIONS AND MONITORING.—(1) The Secretary shall make such inspections of mineral activities so as to ensure compliance with the surface management requirements. The Secretary shall establish a frequency of inspections for mineral activities conducted under an approved plan of operations, but in no event shall such inspection frequency be less than one complete inspection per calendar quarter or two complete inspections annually for a plan of operations for which the Secretary approves an application under section 201(j).

(2)(A) Any person who has reason to believe they are or may be adversely affected by mineral activities due to any violation of the surface management requirements may request an inspection. The Secretary shall determine within 10 days of receipt of the request whether the request states a reason to believe that a violation exists, except in the event the person alleges and provides reason to believe that an imminent danger as provided by subsection (b)(2) exists, the 10-day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the person filing the complaint and such person shall be allowed to accompany the inspector during the inspection. The identity of the person supplying information to the Secretary relating to a possible violation or imminent danger or harm shall remain confidential with the Secretary if so requested by that person, unless that person elects to accompany an inspector on the inspection.

(B) The Secretary shall, by regulation, establish procedures for the review of any decision by his authorized representative not to inspect or by a refusal by such representative to ensure remedial actions are taken the respect to any alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(3)(A) The Secretary shall require all operators to develop and maintain a monitoring and evaluation system which shall be capable of identifying compliance with all surface management requirements.

(B) Monitoring shall be conducted as close as technically feasible to the mineral activity or reclamation involved, and in all cases the monitoring shall be conducted within the area affected by mineral activities and reclamation.

(C) The point of compliance shall be as close to the mineral activity involved as is technically feasible, but in any event shall be located to comply with applicable State and Federal standards. In no event shall the point of compliance be outside the area affected by mineral activities and reclamation.

(D) The operator shall file reports with the Secretary on a quarterly basis on the results of the monitoring and evaluation process except that if the monitoring and evaluation show a violation of the surface management requirements, it shall be reported immediately to the Secretary.

(E) The Secretary shall determine what information must be reported by the operator

pursuant to subparagraph (B). A failure to report as required by the Secretary shall constitute a violation of this Act and subject the operator to enforcement action pursuant to this section.

(F) The Secretary shall evaluate the reports submitted pursuant to this paragraph, and based on those reports and any necessary inspection shall take enforcement action pursuant to this section.

(b) ENFORCEMENT.—(1) If the Secretary or authorized representative determines, on the basis of an inspection that an operator, or any person conducting mineral activities under section 201(b)(2), is in violation of any surface management requirement, the Secretary or authorized representative shall issue a notice of violation to the operator or person describing the violation and the corrective measures to be taken. The Secretary or authorized representative shall provide such operator or person with a reasonable period of time to abate the violation. If, upon the expiration of time provided for such abatement, the Secretary or authorized representative finds that the violation has not been abated he shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.

(2) If the Secretary or authorized representative determines, on the basis of an inspection, that any condition or practice exists, or that an operator, or any person conducting mineral activities under section 201(b)(2), is in violation of the surface management requirements, and such condition, practice or violation is causing, or can reasonably be expected to cause—

(A) an imminent danger to the health or safety of the public; or

(B) significant, imminent environmental harm to land, air or water resources;

the Secretary or authorized representative shall immediately order a cessation of mineral activities or the portion thereof relevant to the condition, practice or violation.

(3)(A) a cession order by the Secretary or authorized representative pursuant to paragraphs (1) or (2) shall remain in effect until the Secretary or authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Secretary or authorized representative. In any such order, the Secretary or authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order. The Secretary shall require appropriate financial assurances to insure that the abatement obligations are met.

(B) Any notice or order issued pursuant to paragraphs (1) or (2) may be modified, vacated or terminated by the Secretary or authorized representative. An operator, or person conducting mineral activities under section 201(b)(2), issued any such notice or order shall be entitled to a hearing on the record pursuant to subsection (f).

(4) If, after 30 days of the date of the order referred to in paragraph (3)(A), the required abatement has not occurred the Secretary shall take such alternative enforcement action against the responsible parties as will most likely bring about abatement in the most expeditious manner possible. Such alternative enforcement action shall include, but is not necessarily limited to, seeking appropriate injunctive relief to bring about abatement.

(5) In the event an operator, or person conducting mineral activities under section 201(b)(2), is unable to abate a violation or defaults on the terms of the plan of operation the Secretary shall forfeit the financial assurance for the plan of operations if necessary to ensure abatement and reclamation under this Act.

(6) The Secretary shall not forfeit the financial assurance while a review is pending pursuant to subsections (f) and (g).

(c) COMPLIANCE.—(1) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction or restraining order, in the district court of the United States for the district in which the mineral activities are located whenever an operator, or person conducting mineral activities under section 201(b)(2):

(A) violates, fails or refuses to comply with any order issued by the Secretary under subsection (b); or

(B) interferes with, hinders or delays the Secretary in carrying out an inspection under subsection (a). Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under clause (A) shall continue in effect until the completion or final termination of all proceedings for review of such order under subsections (f) and (g), unless the district court granting such relief sets it aside or modifies it.

(2) Notwithstanding any other provision of law, the Secretary shall utilize enforcement personnel from the Office of Surface Mining Reclamation and Enforcement to augment personnel of the Bureau of Land Management and the Forest Service to ensure compliance with the surface management requirements, and inspection requirements of subsection (a). The Bureau of Land Management and the Forest Service shall each enter into a memorandum of understanding with the Office of Surface Mining Reclamation and Enforcement for this purpose.

(d) PENALTIES.—(1) Any operator, or person conducting mineral activities under section 201(b)(2), who fails to comply with the surface management requirements shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. No civil penalty under this subsection shall be assessed until the operator charged with the violation has been given the opportunity for a hearing under subsection (f).

(2) An operator, or person conducting mineral activities under section 201(b)(2), who fails to correct a violation for which a cessation order has been issued under subsection (b) within the period permitted for its correction shall be assessed a civil penalty of not less than $1,000 per violation for each day during which such failure continues, but in no event shall such assessment exceed a 30-day period.

(3) Whenever a corporation is in violation of the surface management requirements or fails or refuses to comply with an order issued under subsection (b), any director, officer or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same penalties that may be imposed upon an operator under paragraph (1).

(e) CITIZEN SUITS.—(1) Except as provided under paragraph (2), any person having an interest which is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance—

(A) against the Secretary where there is alleged a violation of any of the provisions of this Act or any regulation promulgated pursuant to this Act or terms and conditions of any plan of operations approved pursuant to this Act;

(B) against any other person alleged to be in violation of any of the provisions of this Act or any regulation promulgated pursuant to this Act or terms and conditions of any plan of operations approved pursuant to this Act;

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act or any regulation promulgated pursuant to this Act which is not within the discretion of the Secretary; or

(D) against the Secretary where it is alleged that the Secretary acts arbitrarily or capriciously or in a manner inconsistent with this Act or any regulation promulgated pursuant to this Act. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties. (2) No action may be commenced except as follows:

(A) Under paragraph (1)(A) prior to 60 days after the plaintiff has given notice in writing of such alleged violation to the Secretary, or to the person alleged to be in violation; except no action may be commenced against any person alleged to be in violation if the Secretary has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the provisions of this title (but in any such action in a court of the United States the person making the allegation may intervene as a matter of right.)

(B) Under paragraph (1)(B) prior to 60 days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the environment or to the health or safety of the public or would immediately affect a legal interest of the plaintiff.

(3) Venue of all actions brought under this subsection shall be determined in accordance with title 28 U.S.C. 1391(a).

(4) The court, in issuing any final order in any action brought pursuant to paragraph (1) may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(5) Nothing in this subsection shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief, including relief against the Secretary.

(f) REVIEW BY SECRETARY.—(1)(A) Any, operator, or person conducting mineral activities under section 201(b)(2), issued a notice of violation or cessation order under subsection (b), or any person having an interest which is or may be adversely affected by such decisions, notice or order, may apply to the Secretary for review of the notice or order within 30 days of receipt thereof, or as the case may be, within 30 days of such notice or order being modified, vacated or terminated.

(B) Any operator, or person conducting mineral activities under section 201(b)(2), who is subject to a penalty under subsection (d) or section 105 may apply to the Secretary for review of the assessment within 30 days of notification of such penalty.

(C) Any person having an interest which is or may be adversely affected by a decision made by the Secretary under subsections (g), (h), (i), (j), and (l) of section 201, or subsection 202(a)(2), or subsection 204(g), may apply to the Secretary for review of the decision within 30 days after it is made.

(2) The Secretary shall provide an opportunity for a public hearing at the request of any party. Any hearing conducted pursuant

to this subsection shall be on record and shall be subject to section 554 of title 5 of the United States Code. The filing of an application for review under this subsection shall not operate as a stay on any order or notice issued under subsection (b).

(3) Following the hearing referred to in paragraph (2), if requested, but in any event the Secretary shall make findings of fact and shall issue a written decision incorporating therein an order vacating, affirming, modifying or terminating the notice, order or decision, or with respect to an assessment, the amount of penalty that is warranted. Where the application for review concerns a cessation order issued under subsection (b), the Secretary shall issue the written decision within 30 days of the receipt of the application for review, unless temporary relief has been granted by the Secretary under paragraph (4).

(4) Pending completion of any proceedings under this subsection, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under subsection (b) together with a detailed statement giving reasons for such relief. The Secretary shall expeditiously issue an order or decision granting or denying such relief. The Secretary may grant such relief under such conditions as he may prescribe only if such relief shall not adversely affected the health or safety of the public or cause significant, imminent environmental harm to lad, air or water resources.

(5) The availability of review under this subsection shall not be construed to limit the operation of rights established under subsection (e).

(g) JUDICIAL REVIEW.—(1) Any action by the Secretary in promulgating regulations to implement this Act, or any other actions constituting rulemaking by the Secretary to implement this Act, shall be subject to judicial review in the United States District of Columbia. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed in the United States District Court for the District of Columbia within 60 days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who commented or otherwise participated in the rulemaking or who may be adversely affected by the action of the Secretary.

(2) Final agency action under this Act, including such final action on those matters described under subsection (f), shall be subject to judicial review in accordance with paragraph (4) and pursuant to 28 U.S.C. 1391(a) of the United States Code on or before 60 days from the date of such final action.

(3) The availability of judicial review established in this subsection shall not be construed to limit the operations of rights established under subsection (e).

(4) The court shall hear any petition or complaint filed under this subsection solely on the record made before the Secretary. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order or decision of the Secretary.

(h) PROCEEDINGS.—Whenever a proceeding occurs under subsection (a), (f), or (g), or under section 201, or under section 204(g), at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary or the court to have been reasonably incurred by such person for or in connection with participation in such proceedings, including any judicial review of the proceeding, may be assessed against either party as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings, deems proper.

SEC. 203. STATE LAW AND REGULATION.

(a) STATE LAW.—(1) Any reclamation standard or requirement in State law or regulation that meets or exceeds the requirements of subsections (m) and (n) of section 201 shall not be construed to be inconsistent with any such standard.

(2) Any bonding standard or requirement in State law or regulation that meets or exceeds the requirements of section 201(1) shall not be construed to be inconsistent with such requirements.

(3) Any inspection standard or requirement in State law or regulation that meets or exceeds the requirements of section 202 shall not be construed to be inconsistent with such requirements.

(b) APPLICABILITY OF OTHER STATE REQUIREMENTS.—(1) Nothing in this Act shall be construed as affecting any air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act.

(2) Nothing in this Act shall be construed as affecting in any way the right of any person or enforce or protect, under applicable law, such person's interest in water resources affected by mineral activities on lands subject to this Act.

(c) COOPERATIVE AGREEMENTS.—(1) Any State may enter into a cooperative agreement with the Secretary for the purposes of the Secretary applying such standards and requirements referred to in subsection (a) and subsection (b) to mineral activities or reclamation on lands subject to this Act.

(2) In such instances where the proposed mineral activities would affect lands not subject to this Act in addition to lands subject to this Act, in order to approve a plan of operations the Secretary shall enter into a cooperative agreement with the State that sets forth a common regulatory framework consistent with the surface management requirements of this Act for the purposes of such plan of operations.

(3) The Secretary shall not enter into a cooperative agreement with any State under this section until after notice in the Federal Register and opportunity for public comment.

(d) PRIOR AGREEMENTS.—Any cooperative agreement or such other understanding between the Secretary and any State, or political subdivision thereof, relating to the surface management of mineral activities on lands subject to this Act that was in existence on the date of enactment of this Act may only continue in force until the effective date of this Act, after which time the terms and conditions of any such agreement or understanding shall only be applicable to plans of operations approved by the Secretary prior to the effective date of this Act except as provided under section 405.

(e) DELEGATION.—The Secretary shall not delegate to any State, or political subdivision thereof, the Secretary's authorities, duties and obligations under this Act, including with respect to any cooperative agreements entered into under this section.

SEC. 204. UNSUITABILITY REVIEW.

(a) IN GENERAL.—The Secretary of the Interior in preparing land use plans under the Federal Land Policy and Management Act of 1976, and the Secretary of Agriculture in preparing land use plans under the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, shall each conduct a review of lands that are subject to this Act in order to determine whether there are any areas which are unsuitable for all or certain types of mineral activities pursuant to the standards set forth under subsection (e). In the event such a determination is made, the review shall be included in the applicable land use plan.

(b) SPECIFIC AREAS.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture, on the basis of any information available, shall each publish a notice in the FEDERAL REGISTER identifying and listing the lands subject to this Act which are or may be determined to be unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). After opportunity for public comment and proposals for modifications to such listing, but not later than the effective date of this Act, each Secretary shall begin to review the lands identified pursuant to this subsection to determine whether such lands are unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e).

(c) LAND USE PLANS.—(1) At such time as the Secretary revises or amends a land use plan pursuant to the provisions of law other than this Act, the Secretary shall identify lands determined to be unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). The Secretary shall incorporate such determinations in the applicable land use plans.

(c) If lands covered by a proposed plan of operations have not been reviewed pursuant to this section at the time of submission of a plan of operations, the Secretary shall, prior to the consideration of the proposed plan of operations, review the areas that would be affected by the proposed mineral activities to determine whether the area is unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). The Secretary shall use such review in the next revision or amendment to the applicable land use plan to the extent necessary to reflect the unsuitability of such lands for all or certain types of mineral activities according to the standards set forth in subsection (e).

(3) This section does not require land use plans to be amended until such plans are adopted, revised, or amended pursuant to provisions of law other than this Act.

(d) EFFECT OF DETERMINATION.—(1) If the Secretary determines an area to be unsuitable under this section for all or certain types of mineral activities, he shall do one of the following:

(A) In any instance where a determination is made that an area is unsuitable for all types of mineral activities, the Secretary of the Interior, with the consent of the Secretary of Agriculture for lands under the jurisdiction of the Secretary of Agriculture, shall withdraw such area pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(B) In any instance where a determination is made that an area is unsuitable for certain types of mineral activities, the Secretary shall take appropriate steps to limit or prohibit such types of mineral activities. (2) Nothing in this section may be construed as affecting lands where mineral activities under approved plans of operations or under notice (as provided for in the regulations of the Secretary of the Interior in effect prior to the effective date of this Act relating to

operations that cause a cumulative disturbance of five acres or less) were being conducted on the effective date of this Act, except as provided under subsection (g).

(3) Nothing in this section may be construed as prohibiting mineral activities not subject to paragraph (2) where substantial legal and financial commitments in such mineral activities were in existence on the effective date of this Act, but nothing in this section may be construed as limiting any existing authority of the Secretary to regulate such activities.

(4) Any unsuitability determination under this section shall not prevent the types of mineral activities referred to in section 201(b)(2)(A), but nothing in this section shall be construed as authorizing such activities in areas withdrawn pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(e) REVIEW STANDARDS.—(1) An area containing lands that are subject to this Act shall be determined to be unsuitable for all or certain types of mineral activities if the Secretary determines, after notice and opportunity for public comment, that reclamation pursuant to the standards set forth in subsections (m) and (n) of section 201 would not be technologically and economically feasible for any such mineral activities in such area and where—

(A) such mineral activities would substantially impair water quality or supplies within the area subject to the mining plan or adjacent lands, such as impacts on aquifers and aquifer recharge areas;

(B) such mineral activities would occur on areas of unstable geology that could if undertaken substantially endanger life and property;

(C) such mineral activities would adversely affect publicly-owned places which are listed on or are eligible for listing on the National Register of Historic Places, unless the Secretary and the State approve all or certain mineral activities, in which case the area shall not be determined to be unsuitable for such approved mineral activities;

(D) such mineral activities would cause loss of or damage to riparian areas;

(E) such mineral activities would impair the productivity of the land subject to such mineral activities;

(F) such mineral activities would adversely affect candidate species for threatened and endangered species status; or

(G) such mineral activities would adversely affect lands designated as National Wildlife Refuges.

(2) An area may be determined to be unsuitable for all or certain mineral activities if the Secretary, after notice and opportunity for public comment, determines that reclamation pursuant to the standards set forth in subsections (m) and (n) of section 201 would not be technologically and economically feasible for any such mineral activities in such area and where—

(A) such mineral activities could result in significant damage to important historic, cultural, scientific, and aesthetic values or to natural systems;

(B) such mineral activities could adversely affect lands of outstanding aesthetic qualities and scenic Federal lands designated as Class I under section 162 of the Clean Air Act (42 U.S.C. 7401 and following);

(C) such mineral activities could adversely affect lands which are high priority habitat for migratory bird species or other important fish and wildlife species as determined by the Secretary in consultation with the Director of the Fish and Wildlife Service and the appropriate agency head for the State in which the lands are located;

(D) such mineral activities could adversely affect lands which include wetlands if mineral activities would result in loss of wetland values;

(E) such mineral activities could adversely affect National Conservation System units; or

(F) such mineral activities could adversely affect lands containing other resource values as the Secretary may consider.

(f) WITHDRAWAL REVIEW.—In conjunction with conducting an unsuitability review under this section, the Secretary shall review all administrative withdrawals of land from the location of mining claims to determine whether the revocation or modification of such withdrawal for the purpose of allowing such lands to be opened to the location of mining claims under this Act would be appropriate as a result of any of the following:

(1) The imposition of any conditions referred to in subsection (d)(1)(B).

(2) The surface management requirements of section 201.(3) the limitation of section 107.

(g) CITIZEN PETITION.—(1) In any instance where a land use plan has not been amended or completed to reflect the review referred to in subsection (a), any person having an interest that may be adversely affected by potential mineral activities on lands subject to this Act covered by such plan shall have the right to petition the Secretary to determine such lands to be unsuitable for all or certain types of mineral activities. Such petition shall contain allegations of fact with respect to potential mineral activities and with respect to the unsuitability of such lands for all or certain mineral activities according to the standards set forth in subsection (e) with supporting evidence that would tend to establish the allegations.

(2) Petitions received prior to the date of the submission of a proposed plan of operation under this Act, shall stay consideration of the proposed plan of operations pending review of the petition.

(3) Within 4 months after receipt of a petition to determine lands to be unsuitable for all or certain types of mining in areas where a land use plan has not been amended or completed to reflect the review referred to in subsection (a), the Secretary shall hold a public hearing on the petition in the locality of the area in question. After a petition has been filed and prior to the public hearing, any person may support or oppose the determination sought by the petition by filing written allegations of facts and supporting evidence.

(4) Within 60 days after a public hearing held pursuant to paragraph (3), the Secretary shall issue a written decision regarding the petition which shall state the reasons for granting or denying the requested determination.

(5) Reviews conducted pursuant to this subsection shall be consistent with paragraphs (3) and (4) of subsection (d) and with subsection (a).

SEC. 205. LANDS NOT OPEN TO LOCATION.

(a) LANDS.—Subject to valid existing rights, each of the following shall not be open to the location of mining claims under this Act on the date of enactment of this Act:

(1) Lands recommended for wilderness designation by the agency managing the surface, pending a final determination by the Congress of the status of such lands.

(2) Lands being managed by the Bureau of Land Management as wilderness study areas on the date of enactment of this Act except where the location of mining claims is specifically allowed to continue by the statute designating the study area, pending a final determination by the Congress of the status of such lands.

(3) Lands within Wild and Scenic River System and lands under study for inclusion in such system, pending a final determination by the Congress of the status of such lands.

(4) Lands identified by the Bureau of Land Management as Areas of Critical Environmental Concern.

(5) Lands identified by the Secretary of Agriculture as Research Natural Areas.

(6) Lands designated by the Fish and Wildlife Service as critical habitat for threatened or endangered species.

(7) Lands administered by the Fish and Wildlife Service.

(8) Lands which the Secretary shall designate for withdrawal under authority of other law, including lands which the Secretary of Agriculture may propose for withdrawal by the Secretary of the Interior under authority of other law.

(b) DEFINITION.—As used in this section, the term ''valid existing rights'' means that a mining claim located on lands referred to in subsection (a) was property located and maintained under the general mining laws prior to the date of enactment of this Act, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the date of enactment of this Act, and that such claim continues to be valid.

TITLE III—ABANDONED MINERALS MINE RECLAMATION FUND

SEC. 301. ABANDONED MINERALS MINE RECLAMATION FUND.

(a) ESTABLISHMENT.—(1) There is established on the books of the Treasury of the United States a trust fund to be known as the Abandoned Minerals Mine Reclamation Fund (hereinafter in this title referred to as the ''Fund''). The Fund shall be administered by the Secretary of the Interior acting through the Director, Bureau of Land Management.

(2) The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the Fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the Fund in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketplace obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the Fund.

(b) AMOUNTS.—The following amounts shall be credited to the Fund for the purposes of this Act:

(1) All moneys received from the collection of rental fees under section 104 of this Act.

(2) Amounts collected pursuant to sections 105 and 202(d) of this Act.

(3) All moneys received from the disposal of mineral materials pursuant to section 3 of the Materials Act of 1947 (30 U.S.C. 603) to the extent such moneys are not specifically dedicated to other purposes under other authority of law.

(4) Donations by persons, corporations, associations, and foundations for the purposes of this title. (5) Amounts referred to in section 410(e)(1) of this Act.

SEC. 302. USE AND OBJECTIVES OF THE FUND.

(a) IN GENERAL.—The Secretary is authorized to use moneys in the Fund for the reclamation and restoration of land and water resources adversely affected by past mineral (other than coal and fluid minerals) and mineral material mining, including but not limited to, any of the following:

(1) Reclamation and restoration of abandoned surface mined areas.

(2) Reclamation and restoration of abandoned milling and processing areas.

(3) Sealing, filling, and grading abandoned deep mine entries.

(4) Planting of land adversely affected by past mining to prevent erosion and sedimentation.

(5) Prevention, abatement, treatment and control of water pollution created by abandoned mine drainage.

(6) Control of surface subsidence due to abandoned deep mines.

(7) Such expenses as may be necessary to accomplish the purposes of this title.

(b) PRIORITIES.—Expenditure of moneys from the Fund shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from extreme danger from the adverse effects of past minerals and mineral materials mining practices.

(2) The protection of public health, safety, and general welfare from the adverse effects of past minerals and mineral materials mining practices.

(3) The restoration of land and water resources previously degraded by the adverse effects of past minerals and mineral materials mining practices.

SEC. 303. ELIGIBLE AREAS.

(a) ELIGIBILITY.—Lands and waters eligible for reclamation expenditures under this Act shall be those within the boundaries of States that have lands subject to this Act and the Materials Act of 1947—

(1) which were mined or processed for minerals and mineral materials or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this title; and

(2) for which the Secretary makes a determination that there is no continuing reclamation responsibility under State or Federal laws; and

(3) for which it can be established that such lands do not contain minerals which could economically be extracted through the reprocessing or remining of such lands, unless such consideration are in conflict with the priorities set forth under paragraphs (1) and (2) of section 302(b).

In determining the eligibility under this subsection of Federal lands and waters under the jurisdiction of the Forest Service or Bureau of Land Management in lieu of the date referred to in paragraph (1), the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

(b) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this title.

SEC. 304. FUND ALLOCATION AND EXPENDITURES.

(a) ALLOCATIONS.—(1) Moneys available for expenditure from the Fund shall be allocated on an annual basis by the Secretary in the form of grants to eligible States, or in the form of expenditures under subsection (b), to accomplish the purposes of this title.

(2) The Secretary shall distribute moneys from the Fund based on the greatest need for such moneys pursuant to the priorities stated in section 302(b).

(b) DIRECT FEDERAL EXPENDITURES.—Where a State is not eligible, or in instances where the Secretary determines that the purposes of this title may best be accomplished otherwise, moneys available from the Fund may be expended directly by the Director, Bureau of Land Management. The Director may also make such money available through grants made to the Chief of the United States Forest Service, the Director of the National Park Service, and any public entity that volunteers to develop and implement, and that has the ability to carry out, all or a significant portion of a reclamation program, or through cooperative agreements between eligible States and the entities referred to in this subsection.

SEC. 305. STATE RECLAMATION PROGRAMS.

(a) ELIGIBLE STATES.—For the purposes of section 304(a), ''eligible States'' are those States for which the Secretary determines meets each of the following requirements:

(1) Within the State there are mined lands, waters, and facilities eligible for reclamation pursuant to section 303.

(2) The State has developed an inventory of such areas following the priorities established under section 302(b).

(3) The State has established, and the Secretary has approved, a State abandoned minerals and mineral materials mine reclamation program for the purpose of receiving and administering grants under this subtitle.

(b) MONITORING.—The Secretary shall monitor the expenditure of State grants to ensure they are being utilized to accomplish the purposes of this title.

(c) STATE PROGRAMS.—(1) The Secretary shall approve any State abandoned minerals mine reclamation program submitted to the Secretary by a State under this title if the Secretary finds that the State has the ability and necessary State legislation to implement such program and that the program complies with the provisions of this title and the regulations of the Secretary under this title.

(2) No State, or a contractor for such State engaged in approved reclamation work under this title, or a public entity referred to in section 304(b), shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State abandoned minerals mine reclamation program under this section. This paragraph shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

Amounts credited to the Fund are authorized to be appropriated for the purpose of this title without fiscal year limitation.

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 401. POLICY FUNCTIONS.

(a) MINERALS POLICY.—The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended by adding at the end thereof the following: ''It shall also be the responsibility of the Secretary of Agriculture to carry out the policy provisions of paragraphs (1) and (2) of this Act.''.

(b) MINERAL DATA.—Section 5(e)(3) of the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1604) is amended by inserting before the period the following: '', except that for National Forest System lands the Secretary of Agriculture shall promptly initiate actions to improve the availability and analysis of mineral data in Federal land use decisionmaking''.

SEC. 402. USER FEES.

The Secretaries of Interior and Agriculture are authorized to establish and collect from persons subject to the requirements of this Act such user fees as may be necessary to reimburse the United States for a portion of the expenses incurred in administering such requirements. Fees may be assessed and collected under this section only in such manner as may reasonably be expected to result in an aggregate amount of the fees collected during any fiscal year which does not exceed the aggregate amount of administrative expenses referred to in this section.

SEC. 403. REGULATIONS; EFFECTIVE DATES.

(a) EFFECTIVE DATE.—This Act shall take effect 1 year after the date of enactment of this Act, except as otherwise provided in this Act.

(b) REGULATIONS.—(1) The Secretary of the Interior shall issue final regulations to implement title I, such requirements of section 402 and 409 as may be applicable to such title, title III and sections 404, 406, and 407 not later than the effective date of this Act specified in subsection (a).

(2) The Secretary of the Interior and the Secretary of Agriculture shall each issue final regulations to implement their respective responsibilities under title II, such requirements of section 402 as may be applicable to such title, and sections 405 and 409 not later than the effective date of this Act referred to in subsection (a). The Secretary of the Interior and the Secretary of Agriculture shall coordinate the promulgation of such regulations.

(3) Failure to promulgate the regulations specified in this subsection by the effective date of this Act by reason of any appeal or judicial review shall not delay the effective date of this Act as specified in subsection (a).

(c) NOTICE.—Within 60 days after the publication of regulations referred to in subsection (b)(1), the Secretary of the Interior shall give notice to holders of mining claims and mill sites maintained under the general mining laws as to the requirements of section 404. Procedures for providing such notice shall be established as part of the regulations.

(d) NEW MINING CLAIMS.—Notwithstanding any other provision of law, after the effective date of this Act, a mining claim for a locatable mineral on lands subject to this Act—

(1) may be located only in accordance with this Act,

(2) may be maintained only as provided in this Act, and

(3) shall be subject to the requirements of this Act.

SEC. 404. TRANSITIONAL RULES; MINING CLAIMS AND MILL SITES.

(a) CLAIMS UNDER THE GENERAL MINING LAWS.—(1) CONVERTED MINING CLAIMS.—Notwithstanding any other provision of law, within the 3-year period after the effective date of this Act, the holder of any unpatented mining claim which was located under the general mining laws before the effective date of this Act may elect to convert the claim under this paragraph by filing an election to do so with the Secretary of the Interior that references the Bureau of Land Management serial number of that claim in the office designated by such Secretary. The provisions of title I (other than subsections (a), (b), (c), (d)(1), (f), and (h) of section 103) shall apply to any such claim, effective upon the making of such election, and the filing of such election shall constitute notice to the Secretary for purposes of section 103(d)(2). Once a mining claim has been converted, there shall be no distinction made as to whether such claim was originally located as a lode or placer claim.

(2) UNCONVERTED MINING CLAIMS.—Notwithstanding any other provision of law, any claim referred to in paragraph (1) that has not converted within the 3-year period referred to in such paragraph shall be deemed forfeited and declared null and void.

(3) CONVERTED MILL SITE CLAIMS.—Notwithstanding any other provision of law, within the 3-year period after the effective date of this Act, the holder of any unpatented mill site which was located under the general mining laws before the effective date of this Act may elect to convert the site under this paragraph by filing an election to do so with the Secretary of the Interior that references the Bureau of Land Management serial number of that mill site in the office designated by such Secretary. The provisions of title I (other than subsections (a), (b), (c), (d)(1), and (f) of the section 103) shall apply to any such claim, effective upon the making of such election, and the filing of such election shall constitute notice to the Secretary for purposes of section 103(d)(2). A mill site converted under this paragraph shall be deemed a mining claim under this Act.

(4) UNCONVERTED MILL SITE CLAIMS.—Notwithstanding any other provision of law, any mill site referred to in paragraph (3) that has not converted within the 3-year period referred to in such paragraph shall be deemed forfeited and declared null and void.

(5) TUNNEL SITES.—Any tunnel site located under the general mining laws on or before the effective date of this Act shall not be recognized as valid unless converted pursuant to paragraph (1). No tunnel sites may be located under the general mining laws after the effective date of this Act.

(b) SPECIAL APPLICATION OF REQUIREMENTS.—For mining claims and mill sites converted under this section each of the following shall apply:

(1) For the purposes of complying with the requirements of section 103(d)(2), whenever the Secretary receives an election under paragraphs (1) or (3) of subsection (a), as the case maybe, he shall provide the certificate referenced in section 103(d)(2) to the holder of the mining claim or mill site.

(2) The first diligence year applicable to mining claims and mill sites converted under this section shall commence on the first day of the first month following the date the holder of such claim or mill site files an election to convert with the Secretary under paragraphs (1) or (3) of subsection (a), as the case may be, and subsequent diligence years shall commence on the first day of that month each year thereafter.

(3) For the purposes of determining the boundaries of a mining claim to which the rental requirements of section 104 apply for a mining claim or mill site converted under this section, the rental fee shall be paid on the basis of land within the boundaries of the converted mining claim or mill site as described in the notice of location or certificate of location filed under section 314 of the Federal Land Policy and Management Act of 1976.

(c) PRECONVERSION.—Any unpatented mining claim or mill site located under the general mining laws shall be deemed to be a prior claim for the purposes of section 103(e) during the 3-year period referred to in subsections (a)(1) or (a)(3).

(d) POSTCONVERSION.—Any unpatented mining claim or mill site located under the general mining laws shall be deemed to be a prior claim for the purposes of section 103(e) if converted pursuant to subsections (a)(1) or (a)(3).

(e) DISPOSITION OF LAND.—In the event a mining claim is located under this Act for lands encumbered by a prior mining claim or mill site located under the general mining laws, such lands shall become part of the claim located under this Act if the claim or mill site located under the general mining laws is declared null and void under this section or otherwise becomes null and void thereafter.

(f) PREACT CONFLICTS.—(1) Any conflicts in existence on or before the date of enactment of this Act between holders of mining claims located under the general mining laws may be resolved in accordance with applicable laws governing such conflicts in effect on the date of enactment of this Act in a court with proper jurisdiction.

(2) Any conflicts not relating to matters provided for under section 103(g) between the holders of a mining claim located under this Act and a mining claim or mill located under the general mining laws arising either before or after the conversion of any such claim or site under this section shall be resolved in a court with proper jurisdiction.

SEC. 405. TRANSITIONAL RULES; SURFACE MANAGEMENT REQUIREMENTS.

(a) NEW CLAIMS.—Notwithstanding any other provision of law, any mining claim for a locatable mineral on lands subject to this Act located after the date of enactment of this Act, but prior to the effective date of this Act, shall be subject to such surface management requirements as may be applicable to the mining claim in effect prior to the date of enactment of this Act until the effective date of this Act, at which time such claim shall be subject to the requirements of title II.

(b) PREEXISTING CLAIMS.—Notwithstanding any other provision of law, any unpatented mining claim or mill site located under the general mining laws shall be subject to the requirements of title II as follows:

(1) In the event a plan of operations had not been approved for mineral activities on any such claim or site prior to the effective date of this Act, the claim or site shall be subject to the requirements of title II upon the effective date of this Act.

(2) In the event a plan of operations had been approved for mineral activities on any such claim or site prior to the effective date of this Act, such plan of operations shall continue in force for a period of 5 years after the effective date of this Act, after which time the requirements of title II shall apply, except as provided under subsection (c), subject to the limitations of section 204(d)(2). In order to meet the requirements of section 201, the person conducting mineral activities under such plan of operations shall apply for a modification under section 201(i). During such 5-year period the provisions of section 202 shall apply on the basis of the surface management requirements applicable to such plans of operations prior to the effective date of this Act.

(3) In the event a notice had been filed with the authorized officer in the applicable district office of the Bureau of Land Management (as provided for in the regulations of the Secretary of the Interior in effect prior to the date of enactment of this Act relating to operations that cause a cumulative disturbance of five acres or less) prior to the date of enactment of this Act, mineral activities may continue under such notice for a period of 2 years after the effective date of this Act, after which time the requirements of title II shall apply, except as provided under subsection (c), subject to the limitations of section 204(d)(2). In order to meet the requirements of section 201, the person conducting mineral activities under such notice must apply for a modification under section 201(i) unless such mineral activities are conducted pursuant to section 201(b)(2). During such 2-year period the provisions of section 202 shall apply on the basis of the surface management requirements applicable to such notices prior to the effective date of this Act.

(4) In the event a notice (as described in paragraph (3)) had not been filed with the authorized officer in the applicable district office of the Bureau of Land Management prior to the date of enactment of this Act, the claim or site shall be subject to the surface management requirements in effect prior to the effective date of this Act at which time such claims shall be subject to the requirements of title II.

SEC. 406. BASIS FOR CONTEST.

(a) DISCOVERY.—After the effective date of this Act, a mining claim may not be contested or challenged on the basis of discovery under the general mining laws, except as follows:

(1) Any claim located on or before the effective date of this Act may be contested by the United States on the basis of discovery under the general mining laws as in effect prior to the effective date of this Act if such claim is located within units of the National Park System, National Wildlife Refuge System, National Wilderness Preservation System, Wild and Scenic Rivers System, National Trails System, or National Recreation Areas designated by an Act of Congress, or within an area referred to in section 205 pending a final determination referenced in such section.

(2) Any mining claim located on or before the effective date of this Act may be contested by the United States on the basis of discovery under the general mining laws as in effect prior to the effective date of this Act if such claim was located for a mineral material that purportedly has a property giving it distinct and special value within the meaning of section 3(a) of the Act of July 23, 1955, or if such claim was located for a mineral that was not locatable under the general mining laws on or before the effective date of this Act.

(b) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may initiate contest proceedings against those mining claims referred to in subsection (a) at any time, except that nothing in this section may be construed as requiring the Secretary to inquire into or contest the validity of a mining claim for the purpose of the conversion referred to in section 404.

(c) Nothing in this section may be construed as limiting any contest proceedings initiated by the United States under this section on issues other than discovery.

SEC. 407. SAVINGS CLAUSE CLAIMS.

(a) Notwithstanding any other provision of law, except as provided under subsection (b), an unpatented mining claim referred to in section 37 of the Mineral Leasing Act (30 U.S.C. 193) may not be converted under section 404 until the Secretary of the Interior determines the claim was valid on the date of enactment of the Mineral Leasing Act and has been maintained in compliance with the general mining laws.

(b) Immediately after the date of enactment of this Act, the Secretary of the Interior shall initiate contest proceedings challenging the validity of all unpatented claims referred to in subsection (a), including those claims for which a patent application has not been filed. If a claim is determined to be invalid, the Secretary shall promptly declare the claim to be null and void.

(c) No claim referred to in subsection (a) shall be declared null and void under section 404 during the period such claim is subject to a proceeding under subsection (b). If, as a result of such proceeding, a claim is determined valid, the holder of such claim may comply with the requirements of section 404(a)(1), except that the 3-year period referred to in such section shall commence with the date of the completion of the contest proceeding.

SEC. 408. SEVERABILITY.

If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and

the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 409. PURCHASING POWER ADJUSTMENT.

The Secretary shall adjust all rental rates, penalty amounts, and other dollar amounts established in this Act for changes in the purchasing power of the dollar every 10 years following the date of enactment of this Act, employing the Consumer Price Index for all urban consumers published by the Department of Labor as the basis for adjustment, and rounding according to the adjustment process of conditions of the Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890).

SEC. 410. ROYALTY.

(a) RESERVATION OF ROYALTY.—Production of locatable minerals (including associated minerals) from any mining claim located or converted under this Act, or mineral concentrates derived from locatable minerals produced from any mining claim located or converted under this Act, as the case may be, shall be subject to a royalty of not less than 8 percent of the gross income from the production of such locatable minerals or concentrates, as the case may be.

(b) ROYALTY PAYMENTS.—Royalty payments shall be made to the United States not later than 30 days after the end of the month in which the product is produced and placed in its first marketable condition, consistent with prevailing practices in the industry.

(c) REPORTING REQUIREMENTS.—All persons holding claims under this Act shall be required to provide such information as determined necessary by the Secretary to ensure compliance with this section, including, but not limited to, quarterly reports, records, documents, and other data. Such reports may also include, but not be limited to, pertinent technical and financial data relating the quantity, quality, and amount of all minerals extracted from the mining claim.

(d) AUDITS.—The Secretary is authorized to conduct such audits of all persons holding claims under this Act as he deems necessary for the purposes of ensuring compliance with the requirements of this section.

(e) DISPOSITION OF RECEIPTS.—All receipts from royalties collected pursuant to this section shall be distributed as follows—

(1) 50 percent shall be deposited into the Fund referred to in title III;

(2) 25 percent collected in any State shall be paid to the State in the same manner as are payments to States under section 35 of the Mineral Leasing Act; and (3) 25 percent shall be deposited into the Treasury of the United States.

(f) COMPLIANCE.—Any person holding claims under this Act who knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading information required by this section, or fails or refuses to submit such information, shall be subject to the enforcement provisions of section 202 of this Act and forfeiture of the claim.

(g) REGULATIONS.—The Secretary shall promulgate regulations to establish gross income for royalty purposes under subsection (a) and to ensure compliance with this section.

(h) REPORT.—The Secretary shall submit to the Congress an annual report on the implementation of this section. The information to be included in the report shall include, but not be limited to, aggregate and State-by-State production data, and projections of mid-term and long-term hard rock mineral production and trends on public lands.

SEC. 411. SAVINGS CLAUSE

(a) SPECIAL APPLICATION OF MINING LAWS.—Nothing in this Act shall be construed as repealing or modifying any Federal law, regulation, order or land use plan, in effect prior to the effective date of this Act that prohibits or restricts the application of the general mining laws, including such laws that provide for special management criteria for operations under the general mining laws as in effect prior to the effective date of this Act, to the extent such laws provide environmental protection greater than required under this title.

(b) OTHER FEDERAL LAWS.—Nothing in this Act shall be construed as superseding, modifying, amending or repealing any provision of Federal law not expressly superseded, modified, amended or repealed by this Act, including but not necessarily limited to, all of the following laws—

(1) the Clean Water Act (33 U.S.C. 1251 and following);

(2) the Clean Air Act (42 U.S.C. 7401 and following);

(3) title IX of the Public Health Service Act (the Safe Drinking Water Act (42 U.S.C. 300f and following));

(4) the Endangered Species Act of 1973 (16 U.S.C. 1531 and following);

(5) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and following);

(6) the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(7) The Uranium Mill Tailing Radiation Control Act (42 U.S.C. 7901 to 7942);

(8) the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 and following);

(9) the Solid Waste Disposal Act (42 U.S.C. 6901 and following);

(10) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following);

(11) the Act commonly known as the False Claims Act (31 U.S.C. 3729 to 3731);

(12) the National Historic Preservation Act (16 U.S.C. 470 and following);

(13) the Migratory Bird Treaty Act (16 U.S.C. 706 and following); and

(14) the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

(c) PROTECTION OF CONSERVATION AREAS.—In order to protect the resources and values of Denali National Park and Preserve, and all other National Conservation System units, the Secretary of the Interior or other appropriate Secretary shall utilize authority under this Act and other applicable law to the fullest extent necessary to prevent mineral activities within the boundaries of such units that could have an adverse impact on the resources of values of such units.

SEC. 412. AVAILABILITY OF PUBLIC RECORDS.

Copies of records, reports, inspection materials or information obtained by the Secretary under this Act shall be made immediately available to the public, consistent with section 552 of title 5 of the United States Code, in central and sufficient locations in the county, multicounty, and State area of mineral activity or reclamation so that such items are conveniently available to residents in the area proposed or approved for mineral activities or reclamation.

Mr. BUMPERS. I yield the floor, Mr. President.

Mr. BENNETT. Mr. President, I come to the floor to talk about another matter, but I must respond to my friend from Arkansas—and he is, indeed, my friend—and say to him that I would be happy to cosponsor with him a bill that will call for royalty on mining claims. However, we have one slight disagreement about the definition of royalty. My friend from Arkansas wants a royalty on gross revenues, where I am willing to give him a royalty on net revenues.

I know the arguments about that and the answers about that. People say, ''Oh, the bookkeepers will juggle the books in such a way as to guarantee there are no net revenues; therefore, royalty on net will not produce anything of value.''

Royalty on gross, however, has the same impact as a decrease in price. Coming from the State of Utah, where we have had direct experience with what happens when there is a decrease in price in hardrock mining minerals, I know how devastating that can be to the economy.

One of the largest employers in my State is Kennecott, with the largest open-pit copper mine in the world. When the price of copper fell below a certain level—and I will be happy to supply that for the RECORD later on if Senators are interested—Kennecott continued to produce even though they were producing at a loss. They did this because they wanted to maintain their position in the world and maintain their market share.

After awhile, however, they could not continue to do that, and ultimately they shut down. The impact on the economy of the State of Utah, and particularly of the Salt Lake area, was devastating. Kennecott was employing about 5,000 people. Kennecott was buying equipment from suppliers all over the valley that were employing thousands more. Kennecott no longer paid any State income taxes. Certainly, they were not paying any Federal income taxes. And their employees who were out of work were not paying State or Federal income taxes, but many of them were drawing unemployment compensation.

Kennecott was idle for several years until the price of copper went back up. And when the price of copper went back up, Kennecott said we are going to reopen the Kennecott mine. It was a great day for the State of Utah and for the city of Salt Lake when Kennecott reopened. They started rehiring again. They did not hire all 5,000 back; they had modern mining techniques, and they only hired 2,500. Even so, 2,500 good-paying jobs in Utah were most welcome. As long as the price of copper stays up, those jobs will be there and Kennecott will continue to supply that which we need in the economy there.

A gross royalty, as I said, Mr. President, is exactly the same thing as a price cut. If you put a gross royalty of 6 percent on the price of copper, that is exactly the same thing as cutting the price of copper 6 percent. If you say, no, we will do a 3-percent royalty, that is exactly the same thing as cutting the price of copper 3 percent. Can the company afford to pay it? If the price of copper is sufficiently high on the world market, absolutely, no problem. But what happens if the price of copper starts to fall and that margin is the difference, that gross royalty is the difference between a price the company

can survive at and a price the company has to close down at? The end result you know, Mr. President; the company shuts down.

So I am willing to endorse the idea of changing the 1872 mining law. I am willing to join with my friend from Arkansas in writing a change to that law and putting in a royalty for the Federal Government on these minerals. But I want it to be a net royalty rather than a gross royalty so that it does not produce the result of lowering the world price of the commodity for that particular producer.

Let us take two mines, both of them mythical, but they will illustrate the point. In mine A, they are mining gold with a bulldozer. That is how we mine copper, by the way, at the Kennecott copper mine. We mine it with a bulldozer. It is an open pit copper mine, and they just bulldoze the material into the crushers and ultimately into the separators, and ultimately they get the copper.

In mine B, they have to build shafts. They are mining with all kinds of challenges and difficulties finding the vein of gold. In mine A, the cost of mining the gold —again, picking a number out of the air, but these are theoretical mines—in mine A, the gold is selling for $380 an ounce. Their cost of producing it is about $100 an ounce. They have a gross margin of $280 an ounce on that gold. Mine B gold is selling for $380 an ounce. Their cost of producing it is $350 an ounce. They have a margin of $30.

If you come along and put a gross royalty on gold, mine A is not going to pay any attention to that cost at all. Good Heavens, they are earning $230 an ounce. An extra $30 off of that, they are still going to earn $200 an ounce. No problem. They can pay the royalty, not be concerned about it, go on their way, produce gold. But in mine B, $30 an ounce gross royalty means they have to shut down. And when you go into a mining situation, you have to look at not only the price that is being earned on the world market, but you have to look at your cost of production. So if you had a net royalty, the kind that I am willing to support, you would say, in mine A, if the royalty, to pick a number to keep it easy for those of us who cannot calculate too fast, is 10 percent, mine A is going to pay you on that $230 gross margin $23 an ounce. Mine B is going to pay you $3 an ounce. But both mine A and mine B are going to be in business, and both of them are going to be hiring people, and both of them are going to be maintaining payrolls, and both of them are going to be generating income to the Federal Government.

This brings me to the second point where I have a disagreement with my friend from Arkansas when he says these fabulous finds that he describes produce not one penny to the Federal taxpayer. That is simply not so. If the mine is as productive as the Senator indicates that it will be, it produces income taxes from the profits of the company that gets the gold. It produces income taxes from the employees who are working there. It produces income taxes from the profits of the suppliers who produce the machinery and the power, the utilities, the rest of the things that go into making the mine work, and it produces income taxes from the wages of the employees of the suppliers. Indeed, the Federal Government gets an enormous amount of money out of a profitable business operation like a profitable gold mine, a profitable copper mine, a profitable palladium mine, whatever it is.

He wants to add to the amount of money the Federal Government is getting from that operation some more money in the form of a royalty. And as I say, I am willing to support that. The place where I part company with him is on whether the royalty should be on the gross or on the net.

As I have said, if it is on the gross, it represents a unilateral price cut for American operators that foreign operators do not have to absorb. If it is on the net, it represents an additional income tax, if you will, but I am perfectly willing to grant that additional income tax on the grounds that the land they are using is Federal land and there perhaps should be that additional tax.

As I talk to the miners in my State, they are willing to do that, too. There is no opposition now in the mining industry that I am aware of to a Federal royalty on Federal lands as long as it is a net royalty rather than a gross royalty.

As I said, Mr. President, I had not intended to speak about that when I came to the floor, but I always enjoy my friend from Arkansas. It comes as no surprise to him to know that I have heard this speech before, so I have thought some of these things through from previous recitations, and I am sure we will have the debate again as the Congress goes on. I commend him for his diligence. I commend him for his determination to see this thing through, and I hope that in the course of things maybe we can come to an agreement and ultimately resolve this because I am not one who insists we cannot ever, ever change the 1872 mining act.

I see the Senator is on his feet.

Mr. President, I ask unanimous consent that he be allowed to comment without my losing my right to the floor.

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

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. First of all, I wish to say that it is not just me saying it, and perhaps the Senator from Utah would not wish to have commendations from this side of the aisle, but I do want to say that my opinion of him is shared by my colleagues. It developed almost immediately when he came here. He is really one of the fine additions to the Senate. He came here in 1992, was elected in the same year I was reelected. I found him to be an extremely thoughtful, compassionate, truly dedicated public servant. We have worked together on two or three issues, most notably concessions contracts in the national parks. We have gotten along beautifully. He does not vote the way I tell him to all the time, that is my only objection. But I can tell you, he is a man of integrity and a man of intellect, and it pains me that we are on opposite sides of this issue.

I do want to make two or three points in partial rebuttal to what my good friend from Utah has just said.

First, upon the completion of exploration, mining companies generally have a good idea about the amount and type of minerals located at a particular site.

They make big investments to mine, nobody denies that. And they provide a lot of jobs. But let me tell you, looking for oil can be a lot riskier than looking for minerals. Oftentimes, oil companies will spend, in deep sea water, almost $1 billion to drill a well and sometimes hit a duster. Yet, we charge them, if they do happen to hit oil, 12.5 percent of the gross value of the oil they produce. And we charge nothing to the mining industry.

Second, the Senator said that he objected to gross royalties, which I am strongly supportive of. But the Senator's own home State of Utah charges a 4-percent gross royalty on any nonfissionable minerals taken from lands that belong to the State of Utah. And virtually every mining contractor in this country on private lands provides for either a gross royalty or a net smelter return, which is close to a gross royalty. So there is nothing new or unique about that. I would rather take a percentage point or two less in royalties then to go through all those convoluted methods that I have heard discussed in the Energy Committee.

Finally, while I am reluctant to use a personal analogy, my son and a partner went into the baking business approximately 12 years ago. They worked, I would say, 2 or 3 nights a week trying to perfect different recipes, different cooking times, different temperatures, everything—to make what they thought was a perfect product. Then they rented a restaurant that closed at 9 o'clock, and they baked until 1 o'clock in the morning and would go out the next day and sell the product on the streets.

Then they leased a little spot, and then they leased a bigger spot, and they leased a bigger spot, and 2 years ago they bought a big building. It has been growing by leaps and bounds. I guess they would normally have about 20 employees—during the Christmas season, maybe 30 to 35.

I guess that is just about the most graphic case I can think of, because it happens to be in the family, of somebody who went out and started a business, just as the Senator from Utah has

done. Nobody gave him a nickel to do anything. He took a big risk. And it looks as though it is going to be a very successful business.

My point is, nobody gets up on the floor of the Senate to defend the thousands and thousands of people like my son who never asked for anything and built a business. Do you know something else? He pays taxes. Do you know something else? His employees pay taxes. And nobody gets up on the floor of the Senate and says, ''Ain't this wonderful?'' It is only the mining industry, only the mining industry that you hear that argument made for.

Mr. President, I yield the floor.

Mr. BENNETT. I thank my friend. I remind him—remind is the wrong term—I tell him that I did stand on the floor and defend exactly the kind of businesses he just described during the debate last year over the President's economic package, and told stories similar to the one he has told, and demonstrated, I thought, how the devastation of the ''S'' corporation procedure that was contained in the President's plan would damage businesses like that.

I did not prevail on that occasion but I assure my colleague those kinds of presentations in defense of those businesses have been made. I have great admiration for his son. I also happen to like his son's cookies, which the Senator is kind enough to share with me from time to time. They are, indeed, a good product.

We can have this debate, and we will. My point is that there is more to this than simply the question of whether or not the taxpayers are being ripped off by giving away land. It is not that there are bars of gold sitting on the ground, waiting to be picked up and taken to Fort Knox and turned into cash. There are all kinds of processes that must be performed before the gold can be refined, before it can be sold. I say to the Senator, as he talks about the oil industry that faces exactly the same thing, I think his analogy is well taken. The oil industry faces the risk of exploration, the costs of refining, and all of the rest of that.

We have in the State of Utah enough oil, according to the geologists, to dwarf and eclipse the oil in Saudi Arabia. We have trillions and trillions and trillions of barrels of oil in the State of Utah. Why, therefore, are we not producing oil? For the simple reason that in Utah the oil is trapped in what is called oil shale. It is not down beneath the sand, to be pumped out simply by, in the language of the oil industry, sticking a straw in and sipping it up. And the oil shale does not become commercially viable until the world price of oil goes somewhere in the neighborhood of $50 to $60 a barrel.

If we were going to get $60 a barrel for oil, you would see Utah take over for Saudi Arabia, and Utah be the oil center of the universe. But the world price is not at $60 a barrel; the world price is nowhere near $60 a barrel.

Let us say that the world price was close to making shale oil commercially viable but the 12.5-percent increase in the world price represented by the U.S. royalty was the knife edge between its being profitable and not profitable. If that were to be the case and we were facing a serious energy crisis, I would come to the floor and say let us repeal the 12.5-percent royalty. Let us go to a net royalty on oil companies. Indeed, I am willing to talk about that as a possibility here.

You know the gold is there. Yes. When you buy the land, when you patent the land, you know the gold is there. The thing you do not know and cannot predict, cannot be sure of, is the world price of the gold. That is where you are taking a gamble. If the world price of the metal falls below a certain level, you have just lost your money, which is what happened, as I said, in the State of Utah where we lost 5,000 jobs, not because people did not know the copper was there. The copper was still there. The difference is that the world price fell, and when the world price fell below that level, we shut down and we lost all the jobs. And we lost all the employment. When the world price came back up, the jobs came back up.

My concern is not to bail out the rich mining companies. My concern is to hang onto those jobs if I can and say let us put the royalties in such a fashion that we do not cut the price for U.S. producers by an amount that their foreign competitors do not have.

By Mr. HARKIN:

S. 505. A bill to direct the Administrator of the Environmental Protection Agency not to act under section 6 of the Toxic Substances Control Act to prohibit the manufacturing, processing, or distribution of certain fishing sinkers or lures; to the Committee on Environment and Public Works.

COMMON SENSE IN FISHING REGULATIONS ACT

• Mr. HARKIN. Mr. President, today I am introducing the Common Sense In Fishing Regulations Act. This bill limits government regulation run amok, its approval would put a little common sense into an area of extreme overregulation.

In March of last year the Environmental Protection Agency [EPA] proposed a rule that would ban the manufacture and sale of lead fishing sinkers—the weights most anglers use to get their baits and lures down to where the fish are. As an angler myself, I see this as a clear example of overzealous regulators acting far outside the realm of the reasonable and into the ridiculous.

In 1992 the Environmental Defense Fund, a fine organization with highly laudable goals, and several other organizations petitioned EPA under the Toxic Substances Control Act to issue a regulation that would require labels on lead fishing sinkers stating that lead is toxic to wildlife. In a few rare cases it has been shown that waterfowl will ingest sinkers improperly discarded at the water's edge, using them in their digestive tract to help grind their food. Because the sinkers can stay in the birds for an extended time, lead poisoning can develop. The petitioners felt that if anglers were made more aware of the possible dangers of improperly discarding used sinkers they would be even more conscientious with their use. However, EPA went far beyond the scope of the petition and I believe in fact the law and proposed a total ban on the sale and manufacture of lead sinkers.

In their research EPA could document fewer than 50 cases, nationwide, over a period of 16 years in which waterfowl had died of lead poisoning likely due to the ingestion of lead sinkers. Across this entire Nation over a period of 16 years, they could only document a few possible cases and yet they want to stop millions of American anglers from using devices that have been in use on this continent for centuries! If this is not a case of extreme overregulation and micromanagement by a Federal bureaucracy, I don't know what is. EPA has based their actions on speculation and anecdotal information, not on hard scientific research. It is incomprehensible that EPA would base such a far reaching regulation on such a statistically insignificant number of incidents out of a bird population that numbers in the hundreds of millions. No one would dispute that lead in the bloodstream is toxic and that waterfowl could die from using lead in their digestive system. But EPA has clearly not established that lead sinkers ''present or will present an unreasonable risk of injury to human health or the environment'' as is clearly required for such action under the Toxic Substances Control Act. In fact, they clearly state that they cannot establish any threat to human health through the home manufacture of lead sinkers.

And that is where a great many lead sinkers are made. In the basements and garages across this country, many anglers have a side hobby, making sinkers, jigs, and other lead based fishing tackle. They make different types, test their effectiveness, and make modifications on their designs as needed. This adds greatly to the fishing experience and angling challenge through more complete involvement in all aspects of the sport. Yet EPA wants to prohibit this type of activity without any scientific basis whatsoever. The proposed rule even states that the possible risk to human health through home manufacture is impossible to evaluate.

When lead shot for waterfowl hunting was banned several years ago, hundreds of thousands of waterfowl gizzards were examined. There was clear evidence that lead shotgun shell pellets did pose a very real threat to ducks and geese. That is just not the case in this instance. As I stated, there is not enough evidence to warrant such a sweeping regulation.

This ban would also force many small manufacturers out of business. While it can be feasible for a large company to retool and develop alternatives to lead, the costs to a small business in terms of the research and equipment needed to convert their operation is prohibitive and would force many small businesses to close their doors, leaving many individuals without livelihoods. While the larger companies reap the benefits of deeper pockets, the small business is squeezed out.

One of the true ironies in EPA's proposed rule is that it does not ban the use of lead sinkers, or ban the sale of current stocks. It seems strange to me that if these sinkers are so bad for the environment that they must be banned that EPA would allow their continued use in any instance. Anglers can continue to use the sinkers they have on hand after the ban becomes effective, and stores are given time in the proposed rule to sell out whatever stock they have on hand. This proposal thus would create an enforcement nightmare. It might take years, sinkers are pretty durable and often a small number will last an angler for quite some time, to use all the lead sinkers in existence should the ban become effective. In the meantime, will EPA enforcement officers be checking people's garages and basements to ensure that new sinkers are not being made? Will a black market in lead sinkers develop? And what would this regulation require of State fish and game enforcement officers?

Mr. President, a regulation such as this could greatly add to the burden on a State's game wardens. These individuals are some of the hardest working and most efficient law enforcement officials in the country and in an increasingly hostile environment we want to require them to determine the age of every sinker used. This regulation could force law abiding anglers—and most are extremely careful when it comes to game laws—to prove where and when they got any sinkers they are using or face criminal charges. Will anglers be required to keep the receipts for all of their tackle in their tackle boxes to prove purchase dates? All this because EPA has gone wild with regulations.

No group is more widely supportive of environmentally sound regulation than America's anglers. They see the very direct correlation between sound, sane environmental regulations and the benefits gained from them. Without environmental protections, the hobby and industry that is fishing in America would not be viable. Anglers understand all too well that without appropriate protections and regulations one of America's most widely enjoyed outdoor sports would cease to exist. Without sound policies America's water would soon be devoid of fish and most anglers are extremely cognizant of that and act accordingly when in the pursuit of their hobby. But this regulation is far beyond any reasonable and sound environmental policy. It is based on guesswork and supposition, not sound science. It oversteps the bounds of common sense.

Mr. President, before EPA proposes such a rule that will create untold headaches for State enforcement officials, anglers and many small business, it should be ready to provide much more complete proof that it is necessary and would be effective.

Finally, this amendment does not preclude future EPA action on this issue. EPA should take appropriate steps to protect waterfowl, no one is arguing that point. The bill I am introducing today specifies that should more substantial evidence or risk to either human health or wildlife become available then the Administrator is directed to report that information to Congress and make suggestions regarding possible legislative action.

Mr. President, I want to be clear that there are many critically important rules and regulations in place and being drafted on things from protecting worker rights and worker safety to making sure our air is clean. Some are proposing to freeze all regulations and gut many others. That is clearly not the right approach. We need reforms, but we need common sense reforms. We need to be very selective to assure that critical protections are not discarded as we act to block the ridiculous.

Having said that, it is important that this bill be passed as soon as possible as EPA is actively pursuing its course of action on this proposed rule. They have held hearings and the comment period has closed. EPA will soon be coming out with the final rule on this subject and millions of anglers will be seriously affected by the finalization of this ridiculous rule.

I ask my colleagues to support this measure and to help bring a little more common sense to our Government. I ask unanimous consent that a copy of the bill be included in the RECORD.

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

S. 505

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Common Sense in Fishing Regulations Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) millions of Americans of all ages enjoy recreational fishing; fishing is one of the most popular sports;

(2) lead and other types of metal sinkers and fishing lures have been used by Americans fishing for hundreds of years;

(3) the Administrator of the Environmental Protection Agency has proposed to issue a rule under section 6 of the Toxic Substances Control Act, to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass;

(4) the Environmental Protection Agency has based its conclusions that lead fishing sinkers of a certain size present an unreasonable risk of injury to human health or the environment on less than definitive scientific data, conjecture and anecdotal information;

(5) alternative forms of sinkers and fishing lures are considerably more expensive than those made of lead; consequently, a ban on lead sinkers would impose additional costs on millions of Americans who fish;

(6) in the absence of more definitive evidence of harm to the environment, the Federal Government should not take steps to restrict the use of lead sinkers; and

(7) alternative measures to protect waterfowl from lead exposure should be carefully reviewed.

SEC. 3. FISHING SINKERS AND LURES.

(a) DIRECTIVE.—The Administrator of the Environmental Protection Agency shall not, under purported authority of section 6 of the Toxic Substances Control Act (15 U.S.C. 2605), take action to prohibit or otherwise restrict the manufacturing, processing, distributing, or use of any fishing sinkers or lures containing lead, zinc, or brass.

(b) FURTHER ACTION.—If the Administrator obtains a substantially greater amount of evidence of risk of injury to health or the environment than that which was adduced in the rulemaking proceedings described in the proposed rule dated February 28, 1994 (59 Fed. Reg. 11122 (March 9, 1994)), the Administrator shall report those findings to Congress, with any recommendation that the Administrator may have for legislative action.●

ADDITIONAL COSPONSORS

S. 34

At the request of Mr. BREAUX, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 34, a bill to amend the Internal Revenue Code of 1986 to treat geological, geophysical, and surface casing costs like intangible drilling and development costs, and for other purposes.

S. 200

At the request of Mr. BRADLEY, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 200, a bill to amend title 18, United States Code, to regulate the manufacture, importation, and sale of any projectile that may be used in a handgun and is capable of penetrating police body armor.

S. 240

At the request of Mr. DOMENICI, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act.

S. 244

At the request of Mr. HARKIN, his name was added as a cosponsor of S. 244, a bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

At the request of Mr. NUNN, the names of the Senator from Mississippi [Mr. LOTT], the Senator from Alaska [Mr. STEVENS], the Senator from Hawaii [Mr. AKAKA], the Senator from

Iowa [Mr. GRASSLEY], the Senator from Wyoming [Mr. THOMAS], the Senator from Maine [Mr. COHEN], the Senator from Tennessee [Mr. THOMPSON], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 244, supra.

S. 476

At the request of Mr. NICKLES, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 476, a bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes.

SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the names of the Senator from Montana [Mr. BURNS], the Senator from Georgia [Mr. COVERDELL], the Senator from Idaho [Mr. CRAIG], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from New Hampshire [Mr. GREGG], the Senator from North Carolina [Mr. HELMS], the Senator from Oklahoma [Mr. INHOFE], the Senator from Arizona [Mr. KYL], the Senator from Arizona [Mr. MCCAIN], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

SENATE CONCURRENT RESOLUTION 9—RELATING TO A VISIT BY PRESIDENT LEE TENG-HUI OF THE REPUBLIC OF CHINA ON TAIWAN TO THE UNITED STATES

By Mr. MURKOWSKI (for himself, Mr. LIEBERMAN, Mr. BROWN, Mr. ROBB, Mr. D'AMATO, Mr. SIMON, Mr. THOMAS, Mr. HELMS, Mr. COATS, Mr. PELL, Mr. WARNER, Mr. AKAKA, Mr. GRAMS, Mr. DOLE, Mr. KEMPTHORNE, Mr. DORGAN, Mr. SPECTER, Mr. HATFIELD, Mr. LUGAR, Mr. FEINGOLD, Mr. ROTH, Mr. THURMOND, Mr. HATCH, Mr. GORTON, Mr. CAMPBELL, Mr. MACK, Mr. INOUYE, Mr. ASHCROFT, Mr. CHAFEE, Mr. ROCKEFELLER, Mr. SIMPSON, Mr. COCHRAN, Mr. CONRAD, Mr. DEWINE, Mr. GREGG, and Mr. CRAIG) submitted the following concurrent resolution which was referred to the Committee on Foreign Relations:

S. CON. RES. 9

Whereas United States diplomatic and economic security interests in East Asia have caused the United States to maintain a policy of recognizing the People's Republic of China while maintaining solidarity with the democratic aspirations of the people of Taiwan;

Whereas the Republic of China on Taiwan (known as Taiwan) is the United States' sixth largest trading partner and an economic powerhouse buying more than twice as much annually from the United States as do the 1,200,000,000 Chinese of the People's Republic of China;

Whereas the American people are eager for expanded trade opportunities with Taiwan, the sixth largest trading partner of the United States and the possessor of the world's second largest foreign exchange reserves;

Whereas the United States interests are served by supporting democracy and human rights abroad;

Whereas Taiwan is a model emerging democracy, with a free press, free elections, stable democratic institutions, and human rights protections;

Whereas vigorously contested elections conducted on Taiwan in December 1994 were extraordinarily free and fair;

Whereas United States interests are best served by policies that treat Taiwan's leaders with respect and dignity;

Whereas President Lee, a Ph.D. graduate of Cornell University, has been invited to pay a private visit to his alma mater and to attend the annual USA-ROC Economic Council Conference in Anchorage, Alaska;

Whereas there is no legitimate policy grounds for excluding the democratic leader of Asia's oldest republic from paying private visits;

Whereas the Senate of the United States voted several times in 1994 to welcome President Lee to visit the United States; and

Whereas Public Law 103–416 provides that the President of Taiwan shall be welcome in the United States at any time to discuss a host of important bilateral issues: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should promptly indicate that the United States will welcome a private visit by President Lee Teng-hui to his alma mater, Cornell University, and will welcome a transit stop by President Lee in Anchorage, Alaska, to attend the USA-ROC Economic Council Conference.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

Mr. MURKOWSKI. Mr. President, I am introducing today, on behalf of myself and 35 colleagues, a resolution calling on President Clinton to allow his excellency Lee Teng-hui, President of the Republic of China on Taiwan, to come to the United States for a private visit. A nearly identical resolution is also being introduced today by my colleagues in the House of Representatives, Congressmen LANTOS, SOLOMON, and TORRICELLI.

This is not the first time this issue has come before this body. The last Congress spoke very clearly on the question of a visit by President Lee. The Senate approved unanimously a resolution offered by myself and Senator ROBB calling on the administration to make several changes to United States-Taiwan policy, including allowing President Lee to visit the United States. Then, under Senator BROWN's leadership, the Senate agreed by a vote of 94–0 to amend United States immigration laws to add a provision specifically welcoming the leader of the Taiwanese people to enter the United States at any time to discuss issues of mutual concern. This amendment was eventually adopted by the Congress and signed into law.

Unfortunately, up to now, the Clinton Administration has chosen to ignore Congress and yield to the People's Republic of China on this issue. In the last several months, various State Department officials have indicated in public forums that they do not intend to allow President Lee to make a private visit. Mr. President, this State Department policy allows the People's Republic of China to dictate who can and cannot enter the United States—and that offends this Senator and many others.

For many years, Congress and the executive branch have prodded the people of Taiwan to make greater strides toward democracy. Taiwan has responded: Over the last decade, Taiwan has ended martial law, allowed the development of a free and vigorous press, and legalized opposition political parties. Last December, people throughout Taiwan went to the polls in a free and fair election, which was vigorously contested by all parties.

I remind my colleagues that Taiwan is the world's 13th largest trading partner and the United States' 5th largest trading partner. With $17 billion in United States exports to Taiwan in 1994, it purchased twice as many United States products as the People's Republic of China. It holds the world's largest foreign reserves. Taiwan is also friendly, democratic, stable, and prosperous. Its human rights record has steadily improved.

Yet, rather than rewarding Taiwan for these great strides, it remains the policy of the Clinton administration to deny entry into the United States to the democratic leader of Asia's oldest republic; in effect, treating Taiwan like an international pariah. Many of us were outraged last May when the administration refused to allow President Lee to overnight in Hawaii en route to a presidential inauguration in Central America. While we are aware of the need to maintain a productive relationship with the People's Republic of China, there is no defensible argument for allowing Communist bureaucrats in Beijing to block a private visit to the United States by the elected leader of the Taiwanese people.

President Lee, a Ph.D. graduate of Cornell University in New York, has expressed a desire to visit his alma mater. In addition, President Lee has been invited to attend the annual USA–ROC Economic Council Conference in Anchorage, AK. Other Senators and Representatives have invited him to visit their respective States. It would be entirely appropriate to allow one or more of these private visits.

The attached resolution demonstrates the support of the new Congress for democracy movements around the world and our commitment to increased economic ties and people-to-people contacts between the American people and the people of Taiwan. If the administration continues to ignore the voice of Congress, it may be necessary to move further legislation amending United States immigration laws or reopening the 1979 Taiwan Relations Act in order to facilitate these changes.

I urge the administration to reconsider its current position on a visit by President Lee. Certainly, there is ample precedent for allowing a private visit. After all, the administration has

seen the benefit of having Yasser Arafat, leader of the PLO, attend a White House ceremony. Gerry Adams, head of Sinn Fein, the political wing of the Irish Republican Army, has been granted travel visas. Tibet's exile leader, the Dalai Lama, called on Vice President GORE over the strong objections of the People's Republic of China. Each of these men represent unofficial entities with which the United States does not have official ties. Similarly, in each case, other countries with whom we maintain diplomatic relations objected. yet, the administration rightly chose to allow visits to advance other policy goals. A similar rationale should be applied to President Lee.

AMENDMENTS SUBMITTED

PAPERWORK REDUCTION ACT

ROTH (AND NUNN) AMENDMENT NO. 317

Mr. ROTH (for himself and Mr. NUNN) proposed an amendment to the bill (S. 244) to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes; as follows:

On page 8, lines 19 and 20, strike out ''and processes, automated or manual,''.

On page 8, line 25, beginning with ''section'' strike out all through line 2 on page 9 and insert in lieu thereof ''section 111(a)(2) and (3)(C)(i) through (v) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2) and (3)(C)(i) through (v));''.

On page 22, line 24, strike out ''a senior official'' and insert in lieu thereof ''senior officials''.

On page 23, line 2, strike out ''for the military departments''.

On page 46, lines 8 and 9, strike out ''collection of information prior to expiration of time periods established under this chapter'' and insert in lieu thereof ''a collection of information''.

On page 46, line 13, strike out ''such time periods'' and insert in lieu thereof ''time periods established under this chapter''.

On page 46, lines 17 and 18, strike out ''within such time periods because'' and insert in lieu thereof ''because''.

On page 46, line 21, strike out ''or''.

On page 46, beginning with line 22, strike out all through line 2 on page 47 and insert in lieu thereof the following:

''(ii) an unanticipated event has occurred; or

''(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.''

On page 49, line 14, insert ''(a)'' before ''In order''.

On page 50, insert between lines 22 and 23 the following new subsection:

''(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.).''

On page 56, lines 4 and 5, strike out ''section 4–206 of Executive Order No. 12036, issued January 24, 1978,'' and insert in lieu thereof ''section 3.4(e) of Executive Order No. 12333, issued December 4, 1981,''.

On page 58, insert between lines 2 and 3 the following new section:

SEC. 3. PAPERWORK BURDEN REDUCTION INITIATIVE REGARDING THE QUARTERLY FINANCIAL REPORT PROGRAM AT THE BUREAU OF THE CENSUS.

(a) PAPERWORK BURDEN REDUCTION INITIATIVE REQUIRED.—As described in subsection (b), the Bureau of the Census within the Department of Commerce shall undertake a demonstration program to reduce the burden imposed on firms, especially small businesses, required to participate in the survey used to prepare the publication entitled ''Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations''.

(b) BURDEN REDUCTION INITIATIVES TO BE INCLUDED IN THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall include the following paperwork burden reduction initiatives:

(1) FURNISHING ASSISTANCE TO SMALL BUSINESS CONCERNS.—

(A) The Bureau of the Census shall furnish advice and similar assistance to ease the burden of a small business concern which is attempting to compile and furnish the business information required of firms participating in the survey.

(B) To facilitate the provision of the assistance described in subparagraph (A), a toll-free telephone number shall be established by the Bureau of the Census.

(2) VOLUNTARY PARTICIPATION BY CERTAIN BUSINESS CONCERNS.—

(A) A business concern may decline to participate in the survey, if the firm has—

(i) participated in the survey during the period of the demonstration program described under subsection (c) or has participated in the survey during any of the 24 calendar quarters previous to such period; and

(ii) assets of $50,000,000 or less at the time of being selected to participate in the survey for a subsequent time.

(B) A business concern may decline to participate in the survey, if the firm—

(i) has assets of greater than $50,000,000 but less than $100,000,000 at the time of selection; and

(ii) participated in the survey during the 8 calendar quarters immediately preceding the firm's selection to participate in the survey for an additional 8 calendar quarters.

(3) EXPANDED USE OF SAMPLING TECHNIQUES.—The Bureau of the Census shall use statistical sampling techniques to select firms having assets of $100,000,000 or less to participate in the survey.

(4) ADDITIONAL BURDEN REDUCTION TECHNIQUES.—The Director of the Bureau of the Budget may undertake such additional paperwork burden reduction initiatives with respect to the conduct of the survey as may be deemed appropriate by such officer.

(c) DURATION OF THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall commence on October 1, 1995, and terminate on the later of—

(1) September 30, 1998; or

(2) the date in the Act of Congress providing for authorization of appropriations for section 91 of title 13, United States Code, first enacted following the date of the enactment of this Act, that is September 30, of the last fiscal year providing such an authorization under such Act of Congress.

(d) DEFINITIONS.—For purposes of this section:

(1) The term ''burden'' shall have the meaning given that term by section 3502(2) of title 44, United States Code.

(2) The term ''collection of information'' shall have the meaning given that term by section 3502(3) of title 44, United States Code.

(3) The term ''small business concern'' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

(4) The term ''survey'' means the collection of information by the Bureau of the Census at the Department of Commerce pursuant to section 91 of title 13, United States Code, for the purpose of preparing the publication entitled ''Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations''.

On page 58, insert between lines 2 and 3 the following new section:

SEC. 4. OREGON OPTION PROPOSAL.

(a) FINDINGS.—The Senate finds that—

(1) Federal, State and local governments are dealing with increasingly complex problems which require the delivery of many kinds of social services at all levels of government;

(2) historically, Federal programs have addressed the Nation's problems by providing categorical assistance with detailed requirements relating to the use of funds which are often delivered by State and local governments;

(3) although the current approach is one method of service delivery, a number of problems exist in the current intergovernmental structure that impede effective delivery of vital services by State and local governments;

(4) it is more important than ever to provide programs that respond flexibly to the needs of the Nation's States and communities, reduce the barriers between programs that impede Federal, State and local governments' ability to effectively deliver services, encourage the Nation's Federal, State and local governments to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national goals, and improve the accountability of all levels of government by better measuring government performance and better meeting the needs of service recipients;

(5) the State and local governments of Oregon have begun a pilot project, called the Oregon Option, that will utilize strategic planning and performance-based management that may provide new models for intergovernmental social service delivery;

(6) the Oregon Option is a prototype of a new intergovernmental relations system, and it has the potential to completely transform the relationships among Federal, State and local governments by creating a system of intergovernmental service delivery and funding that is based on measurable performance, customer satisfaction, prevention, flexibility, and service integration; and

(7) the Oregon Option has the potential to dramatically improve the quality of Federal, State and local services to Oregonians.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Oregon Option project has the potential to improve intergovernmental service delivery by shifting accountability from compliance to performance results and that the Federal Government should continue in its partnership with the State and local governments of Oregon to fully implement the Oregon Option.

On page 58, line 3, strike out **"SEC. 3."** and insert in lieu thereof **"SEC. 5."**.

McCAIN AMENDMENT NO. 318

Mr. MCCAIN proposed an amendment to the bill, S. 244, supra; as follows:

At the end of the pending measure, add the following new section:

SEC. . TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any report specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, 5 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576).

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives for the first session of the 103d Congress under clause 2 of rule III of the Rules of the House of Representatives.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding an oversight hearing on Tuesday, March 7, 1995, beginning at 10 a.m., in room 485 of the Russell Senate Office Building on Federal programs authorized to address the challenges facing Indian youth.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding an oversight hearing on Wednesday, March 8, 1995, beginning at 2:30 p.m., in room 485 of the Russell Senate Office Building on reforming and downsizing of the Bureau of Indian Affairs.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Monday, March 6, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 2 p.m. The purpose of the hearing is to consider S. 333, the Department of Energy Risk Management Act of 1995.

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

ADDITIONAL STATEMENTS

GIRL SCOUTS AND BOY SCOUTS OF RHODE ISLAND

• Mr. CHAFEE. Mr. President, I am pleased to recognize two outstanding groups of young leaders in the State of Rhode Island. These individuals of the Girl Scouts and Boy Scouts have exhibited great qualities such as leadership and hard work.

Since the beginning of the century, Girl Scouts and Boy Scouts have developed leadership skills in their members through determination, self-reliance, and teamwork.

The Silver and Gold Awards are the two highest honors that can be received by any Girl Scout. Those who have received these awards have demonstrated excellence, hard work, and the desire to help in their community. Likewise, the Eagle Scout is the highest award given to a Boy Scout. Candidates must display leadership in outdoor skills and service projects helpful to their communities and religious and school institutions.

I am proud to congratulate these recipients of these distinguished awards. The young leaders pose as role models to their fellow peers. Their skills learned through Girl and Boy Scouts will serve them well.

I would also like to acknowledge the recipient's parents, their Scout leaders, and Scouting organizations. These selfless people have contributed their time and energy to the Girl and Boy Scouts.

Therefore, with great honor I submit the list of young women and men who have earned these awards.

The list follows:

CLASS OF 1994 EAGLE SCOUTS, NARRAGANSETT COUNCIL, BOY SCOUTS OF AMERICA

ASHAWAY, RI

Robert J. Brown.

BARRINGTON, RI

Daniel G. Decelles, Christopher A. Story, Timothy S. Tehan, Stephen Powers, Robert Andrew Mueller, Scott R. Goff, and Brendan S. Mara.

BRISTOL, RI

Frank J. Parenti, John B. Brogan, Jean-Paul Arsenault, Peter Karl Sanders, and Nicholas P. Boisvert.

CHARLESTOWN, RI

John MacCoy, Jr.

CHEPACHET, RI

John J. Dumas, Jr., Gregory F. Coupe, Ian Arthur Hopkins, Matthew Raymond Siedzik, Robert D. Silva, and Thomas A. Guilbault.

COVENTRY, RI

Jason Clark, Benjamin Mark Estock, Mark E. Randolph, Michael T. Saccoccia, Mark A. Tondreau, Jason R. Cyr, John Henry Potvin, Kyle Gerard Bear, Frank A. Denette, IV, and Daniel M. Wolf.

CRANSTON, RI

Matthew P. Brown, Stephen J. Puerini, Michael Peter Joubert, Andy Guglielmo, Michael A. Aiello, Christopher Petteruti, Louis W. Turchetta, David Pedroso, John Gaccione, Gregory E. Baker, Brian J. Neri, and Jonathan A. Watterson.

CUMBERLAND, RI

David J. Gnatek, Todd Andrew Eckhardt, Jonathan M. Dziok, Matthew J. Turner, and Mark K. O'Neill.

EAST GREENWICH, RI

Jonathan Hecker, Kevin Kazlauskas, and Chris Lundsten.

EAST PROVIDENCE, RI

Caleb Cabral, Francisco Ripley and Michael Frederick Eastwood.

FOSTER, RI

Nicholas T. DiVozzi, Daniel J. Hopkins, Archibald L. Jackson, IV, Craig Jackson, William Rhodes, IV, and Benjamin J. Sinwell.

GLOCESTER, RI

Michael N. Cost.

HOPE VALLEY, RI

Jason M. McClure.

JOHNSTON, RI

Michael Dennehy, Timothy Forsberg, John Arcand Billy S. Rotondo, and Nicholas L. Marsella.

LINCOLN, RI

Ritesh Radadia.

MANVILLE, RI

James P. Cournoyer.

MIDDLETOWN, RI

Timothy J. Davis, Thomas A. Paull, Brian W. Gabriel, and James Adrian Butler.

NEWPORT, RI

Taylor K. Ackman, Peter Michael Fucito, Eric L. Hauquitz, and Stephen C. Grimes.

NORTH KINGSTOWN, RI

John Mainor, Matthew Vanasse, Stephen D. Mosca, Robert A. Russell, III, James R. Fogarty, and Keith E. Piehler.

NORTH PROVIDENCE, RI

Jason A. Parker, Donald E. Almonte, Jr., and Filipe Botelho Correia.

NORTH SCITUATE, RI

Charles B. Cost and Eric Scott Anderson.

NORTH SMITHFIELD, RI

Michael M. Borek, Patrick M. Neville, Eric Andrew George, and Michael G. Hemond.

PASCOAG, RI

Gregg Kwider.

PAWTUCKET, RI

Robert F. Brown, III, David Machowski, Jeff R. LeClair, and Jorge Manuel Correia.

PORTSMOUTH, RI

Jonathan L. Perry, Christopher Hitchcock, and David Eric Johnson.

PROVIDENCE, RI

Dennis L. Arnold, Manny Mederiors, Raymond A. Pagliarini, Christopher P. Spadazzi, and Andrew B. Qualls.

RIVERSIDE, RI

John Midgley, Russell S. Horsman, and Marc Carlson.

SMITHFIELD, RI

Marc P. Cardin, Todd S. Manni, Michael R. Guilmain, Timothy Guilmain, Douglas T. McElroy, William B. Ross, III, Steve A. Marcaccio, Jr., Andrews J. Bailey, Adam Aquilante, and Matthew Cole.

WAKEFIELD, RI

Michael J. Mulhearn.

WARREN, RI

Geoffrey Avila.

WARWICK, RI

Justin J. Hart, Morgan A.L. Goulet, Edward F. Doonan, III, Thomas R. Bushell, Brian C. Stowe, Michael Luszcz, Jeremy M. Kubics, J. Nicholas Betley, and Joseph A. Chappelle.

Jared Fogel, Jacob Thompson, Andrew Gil, Christopher J. Dimase, and David W. Lowell.

WEST KINGSTON, RI

Daniel Jospeh Dorson.

WEST WARWICK, RI

Christopher R. Phillips, David M. Durand, Roger Alan Bonin, Eric David Fields, and Christopher J. Cardillo.

WYOMING, RI

Romeo P. Gervais, III and Christopher Ayotte.

PAWCATUCK, CT

Douglas Gladue, and Michael A. Slater.

BELLINGHAM, MA

Eric Twardzicki.

BLACKSTONE, MA

Bryan Lee White, Jason V. Cardone, Craig R. Cousineau, Jeremy Pontes, and Bryan Lee White.

NORTON, MA

Valerien Joseph Pina, Jr.

REHOBOTH, MA

Michael S. Baker, James D. Paschecco, and Michael Darowski.

SEEKONK, MA

Michael J. Lund, Michael J. Euell, Christopher N. Abell, Aaron C. Shumate, Greg M. Rebello, and Jeffrey A. Benoit.

HACKETTSTOWN, NJ

Brian E. Fox.

MONTAGUE, NJ

Craig E. Scorpio.

GIRL SCOUT SILVER AWARD RECIPIENTS

BARRINGTON, RI

Amanda Macomber and Heidi Scheumann.

BRISTOL, RI

Tanya Karsch, Bethany Manchester, and Patricia Vedro.

CAROLINA, RI

Melissa Reynolds.

COVENTRY, RI

Lisa Brennan, Lisa Charland, Margaret Dunning, and Kristina Triggs.

CRANSTON, RI

Pamela Rhynard.

CUMBERLAND, RI

Gina Antoni, Kerri Ayo, Sarah Billington, Jennifer Bonner, Amanda Condon, Emily Conway, Kyla Gomes, Shannon Goodwillie, Jennifer Gray, Catherine Jones, Allison Manley, Kelly McElroy, Sharon Nahas, Kristen O'Neill, Nikki Parness, Vanessa Sealey, Rebecca Silverman, Nicole Tetreault, Marcy Trocina, and Gina Zollo.

EAST GREENWHICH, RI

Amy Krasner and Catherine Truslow.

EAST PROVIDENCE, RI

Katie Armstrong and Brandi Blakely.

HOPE VALLEY, RI

Megan Olean.

JOHNSTON, RI

Kelli Eramian, Heather Fagan, and Shannon Quigley.

MIDDLETOWN, RI

Mary Chase, Jennifer McCleary, and Mandi Klotz.

PAWTUCKET, RI

Christal Desmarais.

PEACE DALE, RI

Beth Lardaro.

PORTSMOUTH, RI

Maureen Blau, Shana Brady, Adrianne Henderson, Janessa LeComte, and Tiffany Major.

PROVIDENCE, RI

Jennifer Pettis.

RIVERSIDE, RI

Rebecca Fisher, Stephanie Santos, Catherine Sorrentino, and Shannon Tompkins.

RUMFORD, RI

Erin Kelly.

SEEKONK, MASS.

Laurel Durkey, and Kerri Skurka.

WAKEFIELD, RI

Leah Collins, Aimee Lamothe, Pam Lord, Sasha Marge, and Melissa Richmond.

WARREN, RI

Jessica Rogers.

WARWICK, RI

Andrea Agajanian, Kerri Boisvert, Carrie Diaz, Katie Merithew, Andrea Parenteau, Kathleen Rassler, Jessica Shea, and Jessica Tanner.

WEST KINGSTON, RI

Jennifer Perkins.

WICKFORD, RI

Tivia Berman.

COVENTRY, RI

Jaclyn Sheppard and Jessica Stone.

CRANSTON, RI

Chrystal Toppa and Melissa Maynard.

EAST GREENWICH, RI

Kristen Gaffney.

PORTSMOUTH, RI

Kathleen Magrath, Deborah E. Gabriel, and Elizabeth S. Holman.

WARWICK, RI

Tracey Ursillo, Helen Sullivan, and Stephanie Ogarek.

WEST WARWICK, RI

Jennifer Goldberg.●

COMMENDING THE ANTI-DEFAMATION LEAGUE FOR THEIR EFFORTS TO COMBAT HATE CRIMES

● Mr. SIMON. Mr. President, I rise today to applaud the Anti-Defamation League [ADL] for their continuing work to expose and combat hate crimes, and to bring your attention to their most recent ''Audit of Anti-Semitic Incidents.'' For the past 16 years, the ADL has compiled data about anti-Jewish attacks. Their efforts in the collection of data and the development of programs regarding anti-Semitic acts increase public awareness of this problem, and help generate constructive solutions. I commend ADL for continuing this important endeavor, and would like to share with you some of their recent findings.

Unfortunately, the ADL's 1994 survey indicates that the number and severity of anti-Semitic hate crimes has worsened nationwide. There were 2,066 incidents reported to ADL from 46 States, the District of Columbia, and Puerto Rico in 1994 alone. This represents an overall increase of more than 10 percent from 1993, and constitutes the first time the audit total has gone over 2,000. I was particularly troubled by the dramatic rise in the number of violent, destructive, and, in one case, deadly assaults against Jews. For the fourth year, the number of anti-Semitic acts against individuals outnumber the incidents of vandalism against institutions and other property. The number of reported incidents of assault, threat, and harassment totaled 1,197. This represents almost an 11-percent increase from 1993. In fact, acts of harassment and personal assault have risen 291 percent in a 10-year span. Shootings, arsons, and firebombings were also far more prevalent than in previous years. In 1994, there were 25 arsons and 10 arson attempts, compared with the total of 41 arsons in the 5 previous years combined.

While these numbers make a dramatic statement about the magnitude of anti-Semitic hate crime, some specific examples more graphically illustrate the sad story of hatred present in our society today. The most violent incident occurred in New York City, where, on March 1, a lone gunman opened fire on a van filled with Hasidic students crossing the Brooklyn Bridge. One student died in the attack and three other students were seriously wounded. The ADL reports that in Memphis, two older teenagers attacked two 13-year-old Jewish boys with a sword while yelling anti-Semitic epithets.

In February, in Eureka, CA, a bedroom of a Jewish family's home was set afire and a message was left: ''I got a Jew.'' In Michigan, in November, a Jewish couple received a package in the mail containing a severed dog's head wrapped in a plastic bag, on which was written ''Dirty Jew'' and swastikas.

Tragically, anti-Semitic incidents on college campuses continued to rise and increased by 17 percent from 1993. At South Alabama University, a Jewish faculty member found a note in his campus mailbox reading, ''Death to Jews—That means you* * *'' At Northwestern University, ''Kill all the Jews'' was written on a residence hall adviser's memo board in response to the question, ''What do you think of race relations at NU?'' At Temple Law School, a student was harassed by a member of the Western Heritage Society who said, ''I heard you discussing cross burnings and I'd like to arrange one for you.'' From February through April, nearly 300 books in the library of Cleveland State University in Ohio were defaced with hate stickers incorporating Nazi themes.

The ADL's report did contain some positive information, however. The number of arrests made in connection with anti-Semitic crimes more than doubled from the 1993 total. This may be attributable in part to the growing impact of State and Federal hate crime legislation and improved hate crime training programs for law enforcement officials. For example, Colorado law enforcement agencies recently brought charges, resulting from an 8-month investigation into Denver-area hate groups, against 21 young adults, ages ranging from 19 to 26, who were members of white supremist and skinhead organizations.

In closing, I again want to commend the ADL for its outstanding and important work.●

ABOLISH METROPOLITAN WASHINGTON AIRPORTS AUTHORITY—S. 496

● Mr. ROBB. Mr. President, I am pleased to join Senator WARNER in introducing legislation removing congressional oversight from the operations at Washington National and Dulles Airports.

Quick passage of legislation removing congressional oversight is imperative. The Supreme Court recently upheld a lower court's ruling that the congressional review board violates the constitutional separation of executive and legislative powers. Under the lower court's order, Congress must reach a solution to the separation of powers issue by March 31 or the Washington Metropolitan Airports Authority will be unable to complete actions which require the approval of the review board.

Although there are proposals under consideration in the House and Senate relating to the congressional review board, most of the other proposed legislation also addresses matters such as the perimeter rule which limits flights to and from Washington National Airport to 1,250 miles, reconstituting the review board under another name, and the slot rule which limits the number of flights and hours of operation at National Airport. These contentious issues are unrelated to the problem at hand and will delay passage of legislation needed to keep the airports operating.

With a court-imposed deadline fast approaching, it is imperative that we enact this clean bill in an expeditious matter, and I urge quick consideration and passage of this measure.●

CARDINAL JOSEPH BERNARDIN ON HEALTH CARE

● Mr. SIMON. Mr. President, when I think of individuals who speak for our societal conscience from a spiritual perspective, I know of no other more qualified or appropriate than my good friend Cardinal Joseph Bernardin, the Archbishop of Chicago. He recently addressed the Harvard Business School Club of Chicago regarding his concerns with the rapid commercialization of our health care delivery system. I ask that his speech be printed in the RECORD at the end of my remarks.

Whether we agree with it or not, there is a wave of fundamental change underway in our health delivery system. It is the transformation or assimilation of nonprofit hospitals and health providers into for-profit health delivery systems. Almost every day, you will read in the business section about how many hospitals are being purchased by large investor-owned companies.

Let me be clear, I am not opposed to the idea of encouraging private enterprise and industry innovation in our health care system. Indeed, our health care system, which is the best in the world for those who have access to it, was largely built on the foundation of cutting-edge medical technology and research conducted by for-profit pharmaceutical and medial equipment companies.

What I would like for us to reflect upon, however, is whether the rapid unrestrained commercialization of the health care delivery system is in the best long-term interests of our country. Cardinal Bernardin wisely states in his speech that, ''* * * there is a fundamental difference between the provision of medical care and the production and distribution of commodities * * *'' and that ''* * * the primary * * * purpose of medical care delivery should be a cured patient * * * and a healthier community, not to earn a profit * * *.''

As we work together toward reforming portions of our health care system this year, I hope all of us will take some time out to reflect upon the fundamental changes that are taking place in the health care system today and ask whether they are in the best interests of our society tomorrow. As you do so, I hope that you will have Cardinal Bernardin's advice in mind.

The speech follows:

MAKING THE CASE FOR NOT-FOR-PROFIT HEALTHCARE

Good afternoon. It is a privilege to address the Harvard Business School Club of Chicago on the critical, but often conflicted issue of healthcare. Because of its central importance to human dignity, to the quality of our community life, and to the Church's mission in the world, I have felt a special responsibility to devote a considerable amount of attention to healthcare at both the local and national levels.

In the last year, I have spoken at the National Press Club on the need to ensure access to adequate healthcare for all; I have issued a Protocol to help ensure the future presence of a strong, institutional healthcare ministry in the Archdiocese of Chicago; and in order to be more in touch with ongoing developments in the field, I have joined the Board of Trustees of the Catholic Health Association of the United States—the national organization that represents more than 900 Catholic acute and long-term care facilities.

In the interest of full disclosure, I must warn you that this considerable activity does not qualify me as a healthcare expert. Healthcare policy is challenging and extraordinarily complicated, and in this area I am every bit the layman. But because of its central importance in our lives—socially, economically, ethically, and personally—we ''non-experts'' avoid the healthcare challenge at our peril.

I come before you today in several capacities. First, as the Catholic Archbishop of Chicago who has pastoral responsibility for numerous Catholic healthcare institutions in the archdiocese—though each is legally and financially independent. Second, as a community leader who cares deeply about the quality and availability of healthcare services throughout metropolitan Chicago and the United States. And third, as an individual who, like you, will undoubtedly one day become sick and vulnerable and require the services of competent and caring medical professionals and hospitals.

THE GROWING THREAT TO NOT-FOR-PROFIT HEALTHCARE

In each role I am becoming increasingly concerned that our healthcare delivery system is rapidly commercializing itself, and in the process is abandoning core values that should always be at the heart of healthcare. These developments have potentially deleterious consequences for patients and society as a whole. This afternoon, I will focus on one important aspect of this problem: the future vitality and integrity of not-for-profit hospitals.

Not-for-profit hospitals constitute the overwhelming majority of Chicagoland hospitals. They represent more than three quarters of the nonpublic acute-care general hospitals in the country. Not-for-profit hospitals are the core of this nation's private, voluntary healthcare delivery system, but are in jeopardy of becoming for-profit enterprises.

Not-for-profit hospitals began as philanthropic social institutions, with the primary purpose of serving the healthcare needs of their communities. In recent decades, they have become important non-governmental ''safety net'' institutions, taking care of the growing numbers of uninsured and underinsured persons. Indeed, most not-for-profit hospitals regard the provisions of community benefit as their principal mission. Unfortunately, this historic and still necessary role is being compromised by changing economic circumstances in healthcare, and by an ideological challenge to the very notion of not-for-profit healthcare.

Both an excess supply of hospital beds and cost-conscious choices by employers, insurers, and government have forced not-for-profits into new levels of competition for paying patients. They are competing with one another, with investor-owned hospitals, and with for-profit ambulatory facilities. In their struggle for economic survival, a growing number of not-for-profits are sacrificing altruistic concerns for the bottom line.

The not-for-profit presence in healthcare delivery is also threatened by a body of opinion that contends there is no fundamental distinction between medical care and a commodity exchanged for profit. It is argued that healthcare delivery is like other necessary economic goods such as food, clothing, and shelter and should be subject to unbridled market competition.

According to this view, economic competition in healthcare delivery is proposed as a welcome development with claims that it is the surest way to eliminate excess hospital and physician capacity, reduce healthcare prices, and assure the ''industry's'' long-term efficiency. Many proponents of this view question the need for not-for-profit hospitals since they believe investor-owned institutions operate more efficiently than their not-for-profit counterparts and can better attract needed capital. Thus, they attack the not-for-profit hospital tax exemption as an archaic and unwarranted subsidy that distorts the healthcare market by providing exempt institutions an unfair competitive advantage.

This afternoon, I will make three arguments: First, that there is a fundamental difference between the provision of medical care and the production and distribution of commodities; second, that the not-for-profit structure is better aligned with the essential mission of healthcare delivery than is the investor-owned model; and third, that leaders in both the private and public sector have a responsibility to find ways to preserve and strengthen the not-for-profit hospital and healthcare delivery system in the United

States. Before making these arguments I need to clarify an important point.

THE ADVANTAGES OF CAPITALISM AND FREE ENTERPRISE

In drawing the distinction between medical care and other commodities on the one hand, and not-for-profit and investor-owned institutions on the other, I am not expressing any general bias against capitalism or the American free enterprise system. We are all beneficiaries of the genius of that system. To paraphrase Pope John Paul II: If by capitalism is meant an economic system that recognizes the fundamental and positive role of business, the market, private property, and the resulting responsibility for the means for production—as well as free human creativity in the economic sector—then its contribution to American society has been most beneficial.

As a key element of the free enterprise system, the American business corporation has proved itself to be an efficient mechanism for encouraging and minimizing commercial risk. It has enabled individuals to engage in commercial activities that none of them could manage alone. In this regard, the purpose of the business corporation is specific: to earn a growing profit and a reasonable rate of return for the individuals who have created it. The essential element here is a reasonable rate of return, for without it the commercial corporation cannot exist.

SOCIETY'S NON-ECONOMIC GOODS

That being said, it is important to recognize that not all of society's institutions have as their essential purpose earning a reasonable rate of return on capital. For example, the purpose of the family is to provide a protective and nurturing environment in which to raise children. The purpose of education at all levels is to produce knowledgeable and productive citizens. And the primary purpose of social services is to produce shelter, counseling, food, and other programs for people and communities in need. Generally speaking, each of these organizations has as its essential purpose a non-economic goal: the advancement of human dignity.

And this is as it should be. While economics is indeed important, most of us would agree that the value of human life and the quality of the human condition are seriously diminished when reduced to purely economic considerations. Again, to quote Pope John Paul II, the idea that the entirety of social life is to be determined by market exchanges is to run ''the risk of an 'idolatry' of the market, an idolatry which ignores the existence of *goods which by their nature are not and cannot be mere commodities*.'' (Emphasis added.)

This understanding is consistent with the American experience. In the belief that the non-economic ends of the family, social services, and education are essential to the advancement of human dignity and to the quality of our social and economic life, we have treated them quite differently from most other goods and services. Specifically, we have not made their allocation dependent solely on a person's ability to afford them. For example, we recognize that individual human dignity is enhanced through a good education, and that we all benefit by having an educated society; so we make an elementary and secondary education available to everyone, and heavily subsidize it thereafter. By contrast, we think it quite appropriate that hair spray, compact disks, and automobiles be allocated entirely by their affordability.

HEALTHCARE: NOT SIMPLY A COMMODITY

Now it is my contention that healthcare delivery is one of those ''goods which by their nature are not and cannot be mere commodities.'' I say this because healthcare involves one of the most intimate aspects of our lives—our bodies and, in many ways, our minds and spirits as well. The quality of our life, our capacity to participate in social and economic activities, and very often life itself are at stake in each serious encounter with the medical care system. This is why we expect healthcare delivery to be a competent and a caring response to the broken human condition—to human vulnerability.

To be sure, we expect our physician to earn a good living and our hospital to be economically viable, but when it comes to our case we do not expect them to be motivated mainly by economic self-interest. When it comes to our coronary bypass or our hip replacement or our child's cancer treatment, we expect them to be professional in the original sense of that term—motivated primarily by patient need, not economic self-interest. We have no comparable expectation—nor should we—of General Motors of Wal-Mart. When we are sick, vulnerable, and preoccupied with worry we depend on our physician to be our confidant, our advocate, our guide and agent in an environment that is bewildering for most of us, and where matters of great importance are at stake.

The availability of good healthcare is also vital to the character of community life. We would not think well of ourselves if we permitted healthcare institutions to let the uninsured sick and injured go untreated. We endeavor to take care of the poor and the sick as much for our benefit as for theirs. Accordingly, most Americans believe society should provide everyone access to adequate healthcare services just as it ensures everyone an education through grade twelve. There is a practical aspect to this aspiration as well because, like education, healthcare entails community-wide needs which it impacts in various ways: We all benefit from a healthy community; and we all suffer from a lack of health, especially with respect to communicable disease.

Finally, healthcare is particularly subject to what economists call market failure. Most healthcare ''purchases'' are not predictable, nor do medical services come in standardized packages and different grades, suitable to comparison shopping and selection—most are specific to individual need. Moreover, it would be wrong to suggest that seriously ill patients defer their healthcare purchases while they shop around for the best price. Nor do we expect people to pay the full cost of catastrophic, financially devastating illnesses. This is why most developed nations spread the risk of these high-cost episodes through public and/or private health insurance. And due to the prevalence of health insurance, or third-party payment, most of us do not pay for our healthcare at the time it is delivered. Thus, we are inclined to demand an infinite amount of the very best care available. In short, healthcare does not lend itself to market discipline in the same way as most other goods and services.

So healthcare—like the family, education, and social services—is special. It is fundamentally different from most other goods because it is essential to human dignity and the character of our communities. It is, to repeat, one of those ''goods which by their nature are not and cannot be mere commodities.'' Given this special status, the primary end or essential purpose of medical care delivery should be a cured patient, a comforted patient, and a healthier community, not to earn a profit or a return on capital for shareholders. This understanding has long been a central ethical tenet of medicine. The International Code of the World Health Organization, for example, states that doctors must practice their profession ''uninfluenced by motives of profit.''

THE ADVANTAGES OF NOT-FOR-PROFIT INSTITUTIONS

This leads me to my second point, that the primary non-economic ends of healthcare delivery are best advanced in a predominantly not-for-profit delivery system.

Before making this argument, however, I need to be very clear about what I am not saying: I am not saying that not-for-profit healthcare organizations and systems should be shielded from all competition. I believe properly structured competition is good for most not-for-profits. For example, I have long contended that the quality of elementary and secondary education would benefit greatly from the use of vouchers and expanded parental choice in the selection of schools; similarly, the Catholic Health Association's proposal for healthcare reform envisions organized, economically disciplined healthcare systems competing with one another for enrollees.

Second, I am not saying that all not-for-profit hospitals and healthcare systems act appropriately, some do not. But the answer to this problem is greater accountability in their governance and operation, not the extreme measure of abandoning the not-for-profit structure in healthcare.

What I am saying is that the not-for-profit structure is the preferred model for delivering healthcare services. This is so because the not-for-profit institution is uniquely designed to provide essential human services. Management expert Peter Drucker reminds us that the distinguishing feature of not-for-profit organizations is not that they are non-profit, but that they do something very different from either business or government. He notes that a business has ''discharged its task when the customer buys the product, pays for it, and is satisfied with it,'' and that government has done so when its ''policies are effective.'' On the other hand, he writes:

''The 'non-profit' institution neither supplies goods or services nor controls (through regulation). Its 'product' is neither a pair of shoes nor an effective regulation. Its product is a changed human being. The non-profit institutions are human change agents. Their 'product' is a cured patient, a child that learns, a young man or woman grown into a self-respecting adult; a changed human life altogether.''

In other words, the purpose of not-for-profit organizations is to improve the human condition, that is, to advance important non-economic, non-regulatory functions that cannot be as well served by either the business corporation or government. Business corporations describe success as consistently providing shareholders with a reasonable return on equity. Not-for-profit organizations never properly define their success in terms of profit; those that do have lost their sense of purpose.

This difference between not-for-profits and businesses is most clearly seen in the organizations' different approaches to decision making. The primary question in an investor-owned organization is: ''How do we ensure a reasonable return to our shareholders?'' Other questions may be asked about quality and the impact on the community, but always in the context of their effect on profit. A properly focused not-for-profit always begins with a different set of questions:

What is best for the person who is served?

What is best for the community?

How can the organization ensure a prudent use of resources for the whole community, as well as for its immediate customers?

HEALTHCARE'S ESSENTIAL CHARACTERISTICS

I believe there are four essential characteristics of healthcare delivery that are especially compatible with the non-for-profit structure, but much less likely to occur

when healthcare decision making is driven predominantly by the need to provide a return on equity. These four essential characteristics are:

Access.
Medicine's patient-first ethic.
Attention to community-wide needs.
Volunteerism.
Let me discuss each.

First, there is the need for access. Given healthcare's essential relationship to human dignity, society should ensure everyone access to an adequate level of healthcare services. This is why the United States Catholic Conference and I argued strongly last year for universal insurance coverage. This element of healthcare reform remains a moral imperative.

But even if this nation had universal insurance, I would maintain that a strong not-for-profit sector is still critical to access. With primary accountability to shareholders, investor-owned organizations have a powerful incentive to avoid not only the uninsured and underinsured, but also vulnerable and hard-to-serve populations, high-cost populations, undesirable geographic areas, and many low-density rural areas. To be sure, not-for-profits also face pressure to avoid these groups, but not with the added requirement of generating a return of equity.

Second, not-for-profit healthcare organizations are better suited than their investor-owned counterparts to support the patient-first ethic in medicine. This is all the more important as society moves away from fee-for-service medicine and cost-based reimbursement toward capitation. (By ''capitation'' I mean paying providers in advance a fixed amount per person regardless of the services required by any specific individual.)

Whatever their economic disadvantages, fee-for-service medicine and cost-based reimbursement shielded the physician and the hospital from the economic consequences of patient-first ethic in American medicine. Few insured patients were ever undertreated, though some were inevitably overtreated. Now we face a movement to a fully capitated healthcare system that shifts the financial risk in healthcare from the payers of care to the providers.

This development raises a critically important question: ''When the providers is at financial risk for treatment decisions who is the patient's advocate?'' How can we continue to put the patient first in this new arrangement? This challenge will become especially daunting as we move into an intensely price competitive market where provider economic survival is on the line every day. In such an environment the temptation to undertreat could be significant. Again, not-for-profits will face similar economic pressure but not with the added requirement of producing a reasonable return on shareholder equity. Part of the answer here, I believe, is to ensure that the nation not convert to a predominantly investor-owned delivery system.

Third, in healthcare there are a host of community-wide needs that are generally unprofitable, and therefore unlikely to be addressed by investor-owned organizations. In some cases, this entails particular services needed by the community but unlikely to earn a return on investment, such as expensive burn units, neonatal intensive care, or immunization programs for economically deprived populations. Also important are the teaching and research functions needed to renew and advance healthcare.

The community also has a need for continuity and stability of health services. Because the primary purpose of not-for-profits is to serve patients and communities, they tend to be deeply rooted in the fabric of the community and are more likely to remain—if they are needed—during periods of economic stagnation and loss. Investor-owned organizations must, on the other hand, either leave the community or change their product line when return-on-equity becomes inadequate.

Fourth, volunteerism and philanthropy are important components of healthcare that thrives best in a non-for-profit setting. As Peter Drucker has noted, volunteerism in not-for-profit organizations is capable of generating a powerful countercurrent to the contemporary dissolution of families and loss of community values. At a time in our history when it is absolutely necessary to strengthen our sense of civic responsibility, volunteerism in healthcare is more important than ever. From the boards of trustees of our premier healthcare organizations to the hands-on delivery of services, volunteers in healthcare can make a difference in peoples' lives and ''forge new bonds to community, a new commitment to active citizenship, to social responsibility, to values.''

ROLE OF MEDIATING INSTITUTIONS

In addition to my belief that the not-for-profit structure is especially well aligned with the central purpose of healthcare, let me suggest one more reason why each of us should be concerned that not-for-profits remain a vibrant part of the nation's healthcare delivery system: They are important mediating institutions.

The notion of mediating structures is deeply rooted in the American experience: On the one hand, these institutions stand between the individual and the state; on the other, they mediate against the rougher edges of capitalism's inclination toward excessive individualism. Mediating structures such as family, church, education, and healthcare are the institutions closest to the control and aspirations of most Americans.

The need for mediating institutions in healthcare is great. Private sector failure to provide adequately for essential human services such as healthcare invites government intervention. While government has an obligation to ensure the availability of and access to essential services, it generally does a poor job of delivering them. Wherever possible we prefer that government work through and with institutions that are closer and more responsive to the people and communities being served. This role is best played by not-for-profit hospitals. Neither public nor private, they are the heart of the voluntary sector in healthcare.

Earlier, I identified several reasons why I believe investor-owned organizations are not well suited to meeting all of society's needs and expectations regarding healthcare. Should the investor-owned entity ever become the predominant form of healthcare delivery, I believe that our country will inevitably experience a sizeable and substantial growth in government intervention and control.

Until now, I have made two arguments: first, that healthcare is more than a commodity—it is a service essential to human dignity and to the quality of community life; and second, that the not-for- profit structure is best aligned with this understanding of healthcare's primary mission. My concluding argument is that private and public sector leaders have an urgent civic responsibility to preserve and strengthen our nation's predominantly not-for-profit healthcare delivery system.

This is a pressing obligation because the not-for-profit sector in healthcare may already be eroding as a result of today's extremely turbulent competitive environment in healthcare. The problem, let me be clear, is not competition per se, but the kind of competition that undermines healthcare's essential mission and violates the very character of the not-for-profit organization by encouraging it—even requiring it—to behave like a commercial enterprise.

Contemporary healthcare markets are characterized by hospital overcapacity and competition for scare primary care physicians, but also, and more ominously, by shrinking health insurance coverage and growing risk selection in private health insurance markets. These latter two features encourage healthcare providers to compete by becoming very efficient at avoiding the uninsured and high risk populations, and by reducing necessary but unprofitable community services—behavior that strikes at the heart of the not-for-profit mission in healthcare. Moreover, the environment leads some healthcare leaders to conclude that the best way to survive is to become for-profit or to create for-profit subsidiaries. The existence of not-for-profits is further threatened by the aggressive efforts of some investor-owned chains to expand their market share by purchasing not-for-profit hospitals and by publicly challenging the continuing need for not-for-profit organizations in healthcare.

ADVANCING THE NOT-FOR-PROFIT HEALTHCARE MISSION

Each of us and our communities have much to lose if we allow unstructured market forces to continue to erode the necessary and valuable presence of not-for-profit healthcare organizations. It is imperative, therefore, that we immediately begin to find ways to protect and strengthen them.

How can we do this? Without going into specifics, I believe it will require a combination of private sector and governmental initiatives. Voluntary hospital board members and executives must renew their institutions' commitment to the essential mission of not-for-profit healthcare. Simultaneously, government must reform health insurance markets to prevent ''redlining'' and assure everyone reasonable access to adequate healthcare services. Finally, government should review its tax policies to ensure that existing laws and regulations are not putting not-for-profits at an inappropriate competitive disadvantage, but are holding them strictly accountable for their tax exempt status.

Let me conclude by simply reiterating the thesis I made at the beginning of this talk. Healthcare is fundamentally different from most other goods and services. It is about the most human and intimate needs of people, their families, and communities. It is because of this critical difference that each of us should work to preserve the predominantly not-for-profit character of our healthcare delivery in Chicago and throughout the country.●

ORDERS FOR TUESDAY, MARCH 7, 1995

Mr. ROTH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10:30 a.m., on Tuesday, March 7, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, the Senate then immediately begin consideration of S. 244, the Paperwork Reduction Act, and, further, that no rollcall votes occur prior to 2:15 p.m. on Tuesday.

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

Mr. ROTH. Mr. President, I now ask unanimous consent that following the disposition of S. 244, the Paperwork Reduction Act, the Senate proceed to the consideration of H.R. 889, the supplemental appropriations bill.

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

Mr. ROTH. Mr. President, I further ask that the Senate stand in recess between the hours of 12:30 p.m. and 2:15 p.m., in order for the weekly party caucuses to meet.

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

PROGRAM

Mr. ROTH. Mr. President, for the information of all of my colleagues, under the previous order there are four remaining amendments in order to the Paperwork Reduction Act. Therefore, rollcall votes are expected throughout the day on Tuesday, although no votes will occur prior to 2:15 p.m.

Senators should also be aware that following the paperwork reduction bill, the Senate will begin consideration of the supplemental appropriations bill.

RECESS UNTIL TOMORROW AT 10:30 A.M.

Mr. ROTH. Mr. President, if there be no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 7:12 p.m., recessed until Tuesday, March 7, 1995, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 6, 1995:

NATIONAL TRANSPORTATION SAFETY BOARD

JOHN GOGLIA, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR THE TERM EXPIRING DECEMBER 31, 1998, VICE SUSAN M. COUGHLIN, RESIGNED.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

CLIFFORD GREGORY STEWART, OF NEW JERSEY, TO BE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR A TERM OF 4 YEARS, VICE DONALD R. LIVINGSTON, RESIGNED.

IN THE NAVY

THE FOLLOWING-NAMED REAR ADMIRALS (LOWER HALF) IN THE RESTRICTED LINE OF THE U.S. NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

AEROSPACE ENGINEERING DUTY OFFICER

To be rear admiral

BARTON D. STRONG, 000–00–0000

SPECIAL DUTY OFFICER (CRYPTROLOGY)

To be rear admiral

THOMAS F. STEVENS, 000–00–0000

IN THE ARMY

THE FOLLOWING-NAMED OFFICER, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624 AND 628, TITLE 10, UNITED STATES CODE.

To be lieutenant colonel

DAVID C. CHUBER, 000–00–0000

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE U.S. AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

MEDICAL SERVICE CORPS

To be lieutenant colonel

CARL M. ALLEY, 000–00–0000
ROBERT W. BLUM, 000–00–0000
BRUCE R. BROWN, 000–00–0000
DONALD L. BULLARD, 000–00–0000
JAMES L. BYERS, 000–00–0000
STEVEN L. CARDENAS, 000–00–0000
CHI CHIANG, 000–00–0000
LARRY L. COBLER, 000–00–0000
ADANTO R. DAMORE, 000–00–0000
ROBERT L. DITCH, 000–00–0000
FREDA L. FACEY, 000–00–0000
MICHAEL T. FEESER, 000–00–0000
CHESTER A. GOODING, JR., 000–00–0000
SCOTT R. GRAHAM, 000–00–0000
FRED M. HANNAN, JR., 000–00–0000
BRUCE A. HARMA, 000–00–0000
WILFRID J. HILL, 000–00–0000
SUSAN L. HUFSMITH, 000–00–0000
KAREN E. JONES, 000–00–0000
MICHAEL S. JONES, 000–00–0000
PARTICK G. KANE, 000–00–0000
COREY A. KIRSCHNER, 000–00–0000
JOHN R. LAKE, 000–00–0000
SCOTT E. LAWRENCE, 000–00–0000
JODY B. LEJA, 5 000–00–0000
DORON N. MANIECE, 000–00–0000
GARY D. MC MANN, 000–00–0000
BENNY C. MERKEL, 000–00–0000
WILLIAM J. MITCHELL, 000–00–0000
MARYANN MORREALE, 000–00–0000
MILTON T. OBENOSKEY, 000–00–0000
KEVIN P.N. OSHEA, 000–00–0000
LEOARD A. OSTERMANN, 000–00–0000
GARY N. OVERALL, 000–00–0000
KEVIN A. POLLARD, 000–00–0000
MARK A. PRESSON, 000–00–0000
ROBERT G. QUINN, 000–00–0000
REYES P. RAMIREZ, 000–00–0000
ROBERT J. RENNIE, 000–00–0000
RONALD C. RETZER, 000–00–0000
RICHARD D. ROGNEHAUGH, 000–00–0000
SUZANNE M. SILVER, 000–00–0000
DONALD E. TAYLOR, 000–00–0000
MICHAEL D. THORNTON, 000–00–0000
DONALD B. TREMBLEY, 000–00–0000
NANCY A. WAITE, 000–00–0000
CHARLES D. WALLER,, 000–00–0000
DAVID M. WILMOT, 000–00–0000
DAVID E. WOMACK, 000–00–0000
FREDERICK L. WOODS, 000–00–0000
JOHN H. YANCEY, 000–00–0000
ROBERTA L. YOUNG, 000–00–0000

EXTENSIONS OF REMARKS

INTRODUCTION OF A BILL TO ROLL BACK THE HARBOR MAINTENANCE TAX

HON. JIM McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. McDERMOTT. Mr. Speaker, today I am introducing a bill to roll back the Harbor Maintenance Tax [HMT] and provide truth in budgeting. The HMT raises much more money than is needed for harbor maintenance and the Harbor Maintenance Trust Fund contains a huge surplus which is hurting our ports and being used to reduce the size of the Federal deficit. The current high tax rate raises the cost of U.S. exports and encourages shippers to divert cargo to Canadian ports where no such tax is collected. The HMT rate should be rolled back or reduced so that it raises only 100 percent of the costs of harbor maintenance.

The Water Resources Development Act of 1986 established a HMT of 0.04 percent of cargo value to pay for 40 percent of the harbor maintenance activities of the Army Corps of Engineers. In 1990, the Bush administration proposed raising the tax rate to 0.125 percent of cargo value to pay for 100 percent of harbor maintenance work, 0.115 percent, and certain extraneous activities, 0.01 percent, of the National Oceanic and Atmospheric Administration [NOAA]. The 1990 budget agreement approved the full tax rate increase but rejected the diversion of the trust funds to NOAA.

Harbor Maintenance Trust Fund revenues have increased much faster than expenditures as a result of increased trade, stricter enforcement of the tax, fairly constant Corps harbor maintenance appropriations and the artificially high HMT rate. The surplus in the trust fund grew from $120.6 million at the end of fiscal year 1992 to $302.3 million at the end of fiscal year 1993 to $451.4 million at the end of fiscal year 1994. The administration projects that the trust fund surplus will grow to $644.3 million by the end of fiscal year 1995 and $802.9 million by the end of fiscal year 1996.

In fiscal year 1994, the Harbor Maintenance Trust Fund distributed $497.1 million for harbor maintenance activities by the Army Corps of Engineers, but collected $646.2 million, or 130 percent of expenditures. With the additional funds for enforcement of the HMT included in the implementing legislation for GATT, the trust fund surplus may grow even faster in the coming years.

This growing surplus is especially disturbing because of the way the HMT harms the competitiveness of U.S. exports in the international marketplace and diverts cargo to Canadian, and potentially Mexican, ports where no such tax is collected. For example, on all import containers coming into the Port of Seattle, the HMT adds an average cost of $180 per box. This is money that the importer could save by simply diverting the cargo to Vancouver, Canada.

The HMT is especially burdensome to U.S. ports in the Pacific Northwest, Great Lakes region and the Northeast which compete directly with nearby Canadian ports. The burden is even greater for northern ports like Seattle, Tacoma, and Boston that need very little harbor maintenance. The Ports of Seattle and Tacoma estimate that their shippers annually pay over $50 million in harbor maintenance taxes while the ports receive less than $1 million annually in harbor maintenance—this amounts to less than 2 cents back on the dollar.

The growing trust fund surplus may also violate article II of the GATT which only permits ''fees or other charges,'' on trade which are ''commensurate with the cost of services rendered.'' Several European nations have expressed concern to the U.S. Government about this possible GATT violation.

My legislation would rollback the HMT as follows:

First, reduce the harbor maintenance tax rate by 0.02 percentage points in three successive years to 0.65 percent of cargo value; and

Second, provide that in any year thereafter that begins with a Harbor Maintenance Trust Fund balance of under $100 million, the HMT rate will be increased by 0.01 percentage point, and that, in any year that begins with a trust Fund balance of over $100 million, the tax rate will be decreased by 0.01 percentage point.

This method will ensure that the Harbor Maintenance Trust Fund will always have a positive, but medium-sized, balance. The trigger provision would probably not come into play for 6–8 years. The Hazardous Substance Superfund and the Oil Spill Liability Trust Funds operate with similar triggers.

A rollback of the Harbor Maintenance Tax is supported by many shippers, carriers, and ports involved in international trade. This legislation would be a modest step to control the growing surplus in the Harbor Maintenance Trust Fund and check the deleterious effects of the Harbor Maintenance Tax.

RECOGNIZING THE GOLDEN STATE WARRIORS AND FANNIE MAE'S EFFORTS IN THE EAST BAY

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STARK. Mr. Speaker, I stand before you today to recognize a partnership which is making a significant difference in northern California. Fannie Mae, the Golden State Warriors and their owner, Christopher Cohan, have joined in an effort to alleviate some of our community's housing needs.

About a year ago, Fannie Mae and the Golden State Warriors basketball team created the Home Team Fund—a program which assists low-income families and first-time home buyers. In this short period, they have conducted an extensive consumer outreach effort, raised funds for actual construction, and have even pounded nails themselves during the construction of two new homes.

According to Fannie Mae, a lack of knowledge and a fear of the home-buying process prevent many qualified people from taking that first step to buying a home. To tackle this problem or should I say slam-dunk, Fannie Mae and the Warriors sponsored a free Home-Buying Fair at the Oakland Coliseum in April 1994. Local lenders, real estate professionals, counseling agencies, and housing nonprofits were there to encourage and educate those who thought owning a home was out of their reach. More than 5,000 people attended this one day fair to learn about how to buy a home.

The partnership has also raised funds which provide grants for actual construction. In fact, a portion of the gate receipts from this evening's game, and proceeds from a sports memorabilia auction prior to the game, will be contributed to this fund.

Their voluntarism has also included hands-on efforts. In a project managed by East Bay Habitat for Humanity, Warrior players, coaches and staff participated in the actual construction of two new homes in East Oakland. This year, two additional homes will be built and will be sold to families who contribute ''sweat'' equity to the project.

Mr. Speaker, I hope you and my colleagues will join me in congratulating this unconventional, but successful housing partnership. Mr. Cohan and the Warriors' altruistic concern for its community is deserving of special recognition, and we should encourage more organizations to enter into these sort of joint ventures.

TRIBUTE TO STANLEY O. IKENBERRY, PRESIDENT OF THE UNIVERSITY OF ILLINOIS

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. DURBIN. Mr. Speaker, last week the University of Illinois announced that James J. Stukel had been selected to become the 15th president of the University of Illinois. I would like to congratulate Mr. Stukel and wish him the best.

It will not be an easy job, though. You see, Mr. Stukel has a hard act to follow—my friend, Stanley O. Ikenberry. Stan announced his retirement last year and we have not been able to convince him to stay.

Stan Ikenberry has served as president of the University of Illinois for 16 years. He spearheaded the transformation of the University of Illinois at Chicago and helped it become the largest research university campus in the Chicago area. He has helped to lead Illinois into the 21st century with his dedication to the Beckman Institute and the National Center for Supercomputing Applications. Most importantly, he has dedicated his time to ensuring

that the University of Illinois is a top notch educational institution.

Mr. Speaker, Stan Ikenberry celebrated his 60th birthday on March 3, 1995. The University could not have given him a present better than the selection of Jim Stukel to succeed him. With the selection of such a high caliber candidate, Stan now knows that his work will be carried on into the next millennium.

Mr. Speaker, I want to thank Stanley O. Ikenberry for everything he has done for Illinois. Stan, I hope you have a happy and productive retirement. You will be missed.

SCHOOL LUNCHES

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. BEREUTER. Mr. Speaker, this Member highly commends to his colleagues this editorial which appeared in the Omaha World-Hearld on March 2, 1995.

GOP WOULD KEEP SCHOOL LUNCHES AND LET STATES RUN THE PROGRAM

The notion was spread that Republicans in Congress are about to snatch school lunches from the mouths of hungry kids.

It's not going to happen. It hasn't even been proposed. Such talk is part of a gross misunderstanding, orchestrated by critics of a GOP plan that would transfer the school nutrition program from the federal government to the states.

Nobody is proposing that the school lunch program be eliminated. Nobody is recommending that low-income kids be denied free lunches. Certainly nobody is urging that less be spent to keep poor children properly fed—and therefore attentive—during the school day.

Neither does the issue have anything to do with shutting down the cafeteria lines. Some Republicans merely believe that the states can feed the kids more efficiently and bring the program's runaway costs under control. Those Republicans may well be right.

Critics say that states have a poor record in providing social services. Some states have indeed done poorly, although the critics sometimes have to reach back to Mississippi or Alabama in the 1950s or 60's to illustrate their contention. Times have changed. No good reason exists that Governors Nelson, Branstad and Romer and their colleagues shouldn't have the opportunity to show whether they can run the lunch program more efficiently and compassionately than the federal government has run it.

If the states revert to the behavior of a Mississippi in the 1950s, of course, Congress should take another look. But nothing suggests that they would do that.

Unfortunately, the GOP plan has been widely misrepresented. President Clinton said it threatens the interests of children. Ellen Goodman, a Boston Globe columnist, made it sound monstrous when she wrote that the country ''is simply not too broke to feed poor schoolchildren,'' Sen. Patrick Leahy, D-Vt., called it despicable and declared that children would go hungry if it passed. An Agriculture Department official said decades of progress in good nutrition were about to be reversed.

Such overheated rhetoric.

Sponsors of the proposal deny that spending would be cut at all. In 1994, the federal appropriation was $4.3 billion, with the states adding funds of their own. The GOP plan would allocate block grants of $6.78 billion next year, rising to $7.8 billion in 2000. That's not a cut. But critics have another way of measuring things. They note that earlier projections were $5 billion to $7 billion higher over the five-year period. That much will be needed, they contend, to meet population growth and inflation.

Whether the projects reflect genuine need, however, is debatable. Most beneficiaries in the school lunch program are kids from middle-income and upper-income families. They receive subsidized meals even though they are deceptively told that they pay ''full price.'' In the language of the school-lunch bureaucracy, ''full-price'' means that the government is paying only 32 cents of the total instead of the $1.90 it pays for low-income kids.

Under the Republican plan, there would be no subsidies for the rich and middle-income lunchers. But that hardly constitutes forcing children to go hungry. Since when did the government have the right to use the tax of low-income and middle-income people to subsidize families who live in $400,000 houses and earn $300,000 a year?

Other critics of the GOP plan stress the welfare aspect. They talk about the lunches as a way of fighting hunger among kids who may have no alternative to the subsidized meals they receive at school. Some of the critics say the number of needy kids is certain to grow in the next few years.

Suppose they are right. It would provide further vindication for the Republican approach, under which middle-income families and rich families would pay their own way to free more funds for the needy. That isn't a bad thing. Certainly it would constitute the dreadful assault on defenseless children that critics have so deceptively accused the Republicans of proposing.

PERSONAL EXPLANATION

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. ANDREWS. Mr. Speaker, due to a death in my family, I missed a series of votes on Thursday, February 23, Friday, February 24, and Monday, February 27. If I had been present I would have voted as follows:

Rollcall No.	*Vote*
159	no
160	yes
161	yes
162	yes
163	yes
164	yes
165	yes
166	yes
167	yes
168	yes
169	yes
170	no
171	yes
172	yes
173	yes
174	no
175	no

I would appreciate it if these positions could be reflected in the record.

TRIBUTE TO JOSEPH M. FERRAINA

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. PALLONE. Mr. Speaker, on Friday, March 3, 1995, Mr. Joseph M. Ferraina of Long Branch, NJ, was honored by the Amerigo Vespucci Society in a testimonial dinner at the Squire's Pub in West Long Branch, NJ, in honor of a great career as an educator and community leader.

Mr. Speaker, it would take up an entire page of the CONGRESSIONAL RECORD to simply set forth, in list form, the many associations, memberships and achievement of Mr. Ferraina. I would like to offer just a brief overview of some of his public accomplishments.

Mr. Ferraina emigrated from Argentina in 1963 and began his career in Long Branch as a Spanish teacher in 1973. In 1978 he was appointed Vice-Principal of the Long Branch Middle School, and in 1982 he was named principal, a position he held for a decade. Two years ago he was promoted to assistant superintendent of the Long Branch Public Schools, and last year was named superintendent.

Joe Ferraina has many distinctions, associations, memberships, awards, citations and honors to his credit—testimony to the many friends he has made, the many lives he has touched and the real difference he has made.

He was named Principal of the Year by the Monmouth County Elementary and Middle School Administrators Association in 1991. Since 1980, he has served as a Governors Teaching Scholars Mentor. In 1988 he was named Man of the Year by the Amerigo Vespucci Society. Other awards include the Certificate of Merit from the Bilingual Society of Long Branch, the Distinguished Service Citation from the Rotary Club of Long Branch, the Community Service Award from B'nai B'rith, the Certificate of Appreciation from Rotary International, a commendation-resolution from the New Jersey State Senate, a resolution of appreciation from the city of Long Branch, the Community Involvement Award from the Knights of Pythias, the Community Service Commendation from the Superior Court of New Jersey, the Distinguished Service Commendation from the Superior Court of New Jersey, the Paul Harris Award from the Rotary Club of Long Branch and the Humanitarian Award from the NAACP of Long Branch.

Mr. Ferraina remains active in the Rotary Club of Long Branch, having served as president. He is on the Monmouth Medical Center Board of Trustees and the Ronald McDonald House Board of Directors. He continues to chair the highly successful Long Branch Columbus Day Parade Committee. His other community affiliations include: Figli Di Colombo (Sons of Columbus) Club of Long Branch, the Drug and Alcohol Abuse Council, the first aid squad, the Monmouth Medical Human Resources Committee and the Amerigo Vespucci Society of Long Branch. He is also on the Advisory Board of the Core State/New Jersey National Bank Monmouth/Ocean County, the board of directors of Greater Long Branch Chamber of Commerce, the Long Branch Free Public Library board of trustees, and the advisory board of Long Branch Tomorrow, Inc. Last October, he was the main speaker at the Latino American Committee of Monmouth County.

Mr. Speaker, it is great honor for me to pay tribute to Joe Ferraina, someone who represents an excellent role model for today's youth. With his strong communications skills, his fluency in three languages—English, Spanish, and Italian—his effective managerial skills,

his dedication to the community and, most important, his commitment to the students for whom he has taken on such a serious responsibility, Mr. Ferraina exemplifies the best qualities we celebrate in an educator, a community leader and a citizen.

LITIGATION MAYHEM

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. PACKARD. Mr. Speaker, our Republican Contract With America continues to move on track. Last week we passed the Job Creation and Wage Enhancement Act to stop out-of-control Federal spending and regulation. This week we will work to stop out-of-control litigation which is clogging our civil justice system.

Our current legal system is being abused and overused. Frivolous lawsuits and outlandish damage rewards make a mockery of our civil justice system. In the last 30 years the number of Federal lawsuits filed annually tripled. This tidal wave of trivial lawsuits threatens fast-growing firms and burdens consumers by adding big legal bills to the cost of doing business. Our Republican Common Sense Legal Reform Act, H.R. 10, works to correct this injustice.

Common sense legal reforms like product liability, limiting punitive damages, and making attorneys accountable for their litigation tactics will work to stem the current tide of endless litigation. The Republican tort reform proposals work to restore accountability to the legal system and reduce costs to the American people.

Mr. Speaker, the tort reform provisions proposed within our Contract With America will end baseless litigation and exaggerated jury awards. Our Common Sense Legal Reform Act will protect American manufacturers, consumers and workers. We must end this litigation mayhem.

REPUBLICAN MODEST PROPOSAL

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STARK. Mr. Speaker, I always thought that the 1729 ''Modest Proposal'' essay by Jonathan Swift about how to solve the terrible homeless and hunger problems in Ireland was one of the most devastating satires ever written.

The new Republican welfare bill, however, may cause Republican Governors to seriously consider Swift's proposal. By ending cash assistance as an entitlement and drastically cutting the funds available, the Republican bill guarantees that in the next recession, there will be millions of homeless and hungry children in America. To avoid the embarrassment of the failure of their social theories, the Republican Governors may adopt Swift's Modest Proposal and resort to eating the evidence. The following update of Swift's essay was found in the Ways and Means hearing room during the committee's mark-up of the welfare deform legislation. It appears to be 99 percent Swift and 1 percent update.

A MODEST PROPOSAL FOR PREVENTING THE CHILDREN OF POOR PEOPLE IN AMERICA FROM BEING A BURDEN TO THEIR PARENTS OR COUNTRY, AND FOR MAKING THEM BENEFICIAL TO THE PUBLIC

(An up-date of a 1729 proposal by an early Cato Institute thinker, Jonathan Swift, to be added to the Republican Welfare Reform bill)

It is a melancholy object to those who walk through this great Capital, or travel in the country, when they see at red lights, in the streets, and on the steam grates herds of beggars, followed by three, four, or six children, all in rags, and importuning every passenger for Metro fare. These families, instead of being able to work for their honest livelihood, are forced to employ all their time in washing car windows and begging sustenance for their helpless infants, who, as they grow up, turn thieves for want of work.

I think it is agreed by all parties that this prodigious number of children is a very great additional grievance; and therefore whoever could find a fair, cheap, and easy method of making these children sound an useful members of the Republic would deserve so well of the public as to have his statue set up (perhaps in a beggar-free Lafayette Park) as a preserver of the nation.

But my intention is very far from being confined to provide only for the children of professed beggars; it is of a much greater extent, and shall take in the whole number of infants at a certain age who are born of parents who live under duress, to wit: of minimum wage workers, temps, contract workers, legal aliens, illegal aliens, and farm workers.

As best can be computed by the Bureau of Labor Statistics, a child just dropped from its dam may be supported by her milk for a solar year with little other nourishment, at most not above the value of $20, which the mother may certainly get, or the value in scraps, by her lawful occupation of begging, and it is exactly at one year old that I propose to provide for them, in such a manner as, instead of being a charge upon their parents, or the local charities, or wanting food and Levi's and sneakers the rest of their lives, they shall, on the contrary, contribute to the feeding and partly to the clothing of many thousands.

There is likewise another great advantage in my scheme, that it will prevent those voluntary abortions, and that horrid practice of women murdering their bastard children, alas, too frequent among us, sacrificing the poor innocent babes, I doubt, more to avoid the expense than the shame, which would move tears and pity in the most savage and inhuman beast.

The number of souls in America being about 270 million and the number of babies born out of wedlock and without identity of father about 277,000 a year, the question therefore is, how this number shall be reared, and provided for, which in the current national mood seems utterly impossible by all the old socialist methods, for we can neither employ them in handicraft or agriculture; they can very seldom pick up a livelihood by stealing until they arrive at six years old, except where they are of towardly parts, although I confess they learn the rudiments much earlier, during which time they can however be properly looked upon only as probationers.

I am assured by our apparel sweatshop owners that a boy or a girl before twelve years old, is no salable commodity, and even when they come to this age, they will not yield above $300, which cannot turn to a profit either their parents or the Nation, the charge of burgers, French fries, and bluejeans having been at least four times that value.

I shall now therefore humbly propose my own thoughts, which I hope will not be liable to the least objection.

I have been assured by a very knowing Heritage Foundation scholar of my acquaintance, that a young healthy child well nursed is at a year old a most delicious, nourishing and wholesome food, whether stewed, roasted, baked, or boiled, and I make no doubt that it will equally serve in a fricassee, or a ragout.

I do therefore humbly offer it to the Ways and Means Committee's consideration, that of every 277,000 children already computed, twenty thousand may be reserved for breed, whereof only one fifth part to be males, which is more than we allow to sheep, cattle, or swine, and my reason is that these children are seldom the fruits of marriage, a circumstance not much regarded by our savages, therefore one male will be sufficient to serve four females. That the remaining quarter million or so may at a year old be offered in sale to the persons of quality, and fortune, always advising the mother to let them suck plentifully in the last month, so as to render them plump, and fat for a good table. A child will make two dishes at an entertainment for friends, and when the family dines alone, the fore or hind quarter will make a reasonable dish, and seasoned with a little pepper or salsa will be very good boiled on the fourth day, especially in February.

I have reckoned upon a medium, that a child just born will weigh ten pounds, and in a solar year if tolerably nursed increaseth to twenty-eight pounds.

I grant this food will be somewhat dear, and therefore very proper for the owners of plants which have moved to Mexico, who, as they have already devoured most of the parents, seem to have the best title to the children.

I have already computed the charge of nursing a beggar's child (in which list I reckon, as said, various aliens, minimum wager laborers, tenant farmers, etc.) to be about $20 per annum, rags included, and I believe no gentleman would repine to give $6 per pound for the carcass of a good fat child, which, as I have said, will make four dishes of excellent nutritive meat, when he hath only some particular friend or his own family to dine with him. Thus will the Merger and Acquisition dealers of the nation learn to grow popular among the working population for their purchase of these repasts, and the mother will have about $150 net profit, and be fit for work until she produces another child.

Among the merits of this proposal I offer the following:

Whereas the maintenance of 250,000 children from year one upwards cannot be computed at less than $1,000 a piece per annum, the nation's stock will be thereby increased a quarter billion dollars per year, compounded year by year, besides the profit of a new dish, introduced to the tables of all gentleman of fortune who have any refinement of taste, and the money will circulate among ourselves, the goods being entirely of our own growth and manufacture and not from some pesky import.

Whereas the constant breeders, besides the gain of $150 per annum by the sale of their children, will be rid of the charge of maintaining them after the first year.

Finally, this Modest Proposal would be a great inducement to marriage, which all wise nations have either encouraged by rewards, or enforced by laws and penalties. It would increase the care and tenderness of mothers towards their children, when they were sure of a settlement for life, to the poor babes, provided in some sort by the public to

their annual profit instead of expense. We should soon see an honest emulation among the married women, which of them could bring the fattest child to the market. Men would become as fond of their wives, during the time of their pregnancy, as they are now of their mares in foal, their cows in calf, or sows when they are ready to farrow, nor offer to beat or kick them (as it is too frequent a practice) for fear of a miscarriage.

TAXED TO THE LIMIT

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. CRANE. Mr. Speaker, in 1982, I first introduced a bill to replace our entire complicated tax code with one, simple flat income tax. Unfortunately, we were not given the opportunity to debate my bill or fundamental tax reform in general thanks to the Democrat-controlled Ways and Means Committee.

With the advent of Republican control of Congress, we finally have an opportunity to debate fundamental reform of the tax code. I believe that such reform should include the flat income tax.

Echoing that statement is our Senate Colleague CONNIE MACK from Florida. In the March 2, 1995, edition of the Washington Times, Senator MACK wrote an article stating the case for the flat tax. I commend his article to the attention of my colleagues, and urge them to support the concept and implementation of the flat tax when Congress later considers tax reform.

[From the Washington Times, Mar. 2, 1995]

TAXED TO THE LIMIT

(By Connie Mack)

Eighty-two years ago this week Americans' hard-earned money became subject to federal income taxation. After eight decades of misuse by lawmakers, lobbyists, special interests and income redistributors, the income tax system is in dire need of a complete overhaul.

Under the current income tax system, marginal tax rates that were 15 and 28 percent just a few years back are now as high as 45 percent—and in some cases high tax rates are combined with double and even triple taxation of income.

Our current tax system punishes success, stifles work effort, discourages saving and investing and fosters unproductive investments in tax shelters. Simply stated, our tax system hinders the full productive potential of our economy and reduces every American's potential for a higher standard of living.

Like our forefathers, we find ourselves at a crossroads of governmental evolution. The American Revolution was as much a referendum on tax policies as it was on government. Jefferson, Hamilton and Paine looked at the political realities of that time and concluded that the status quo could not meet the needs of the ''New World.'' Today, as we enter the new millennium, the American people are demanding the same kind of imagination and leadership that our forefathers provided. The Republican Economic Plan is a major part of the new revolution that began on Nov. 8.

The Flat Tax is a critical part of this revolution. A flat rate income tax would radically reduce the tax compliance burden currently imposed on every individual and business. People would be able to calculate their income tax liability with ease. The Internal Revenue Service would no longer need to publish 480 different tax forms. Taxpayers would no longer have to wade through 1,378 pages of tax code and 6,439 additional pages of federal tax regulation.

Not only is the tax burden (particularly on the middle-class) at a record high, but Americans waste some $190 billion and 6 billion man-hours just to comply with our onerous tax code. To add some perspective, 6 billion man hours is equal to the amount of man hours it takes to produce all of the cars, trucks and airplanes in this country each year!

If adopted, a flat rate tax system would end the economic damage due to the perverse effects on work incentives caused by high marginal tax rates. The amount of after-tax money an individual keeps for each additional dollar earned can determine whether that individual works overtime, seeks out tax shelters, or goes fishing. Currently, people automatically forfeit more of their money to taxes when they increase their real income and are moved to a higher tax rate—cutting the government in on a larger share of people's hard work and success. It's no wonder Americans feel they have been working longer and harder with so little to show for it—they have.

These deterrents would not exist under a flat tax system. The prevailing ''rich'' vs. ''poor'' tax warfare, which has fostered higher taxes across the board to the disadvantage of everyone, would end. To the greatest possible extent, people would be treated equally under the law. There would be no tax loopholes or giveaways for special interests. A flat tax would provide fundamental fairness in the way we treat all taxpayers.

A generous individual allowance and dependent deduction would insure that low-income families would be completely removed from the tax rolls. Right now, our government takes a huge chunk of peoples' income and then bribes them with their own money by giving it back with a deduction here and tax credit there. A low-rate flat tax would allow tax payers to keep more hard earned money as they earn it; no other tax reform plan treats each individual with as much fairness, simplicity and clarity. The flat tax would eliminate government's current role of micro-managing people's behavior through the tax code, and would encourage individual initiative, ingenuity and opportunity to flourish.

Tax reform is critical to enhancing long-term economic growth. By eliminating destructively high marginal tax rates, the flat tax would boost investment, productivity, wage growth and overall standard of living. We know that reducing high marginal tax rates worked when Presidents Kennedy and Reagan cut them, resulting in two periods of our nation's most robust economic growth.

While Americans continue to work longer and harder to improve their lives, their efforts are being thwarted by an outdated and punitive tax code. Replacing the current income tax system with a flat tax will reduce both the time and amount Americans dedicate to taxes. A revolution began on Nov. 8—and flat-tax reform should be an integral part of this revolution.

A SPECIAL SALUTE TO MARTHA E. BOLDEN: CELEBRATING A LIFE OF ACTIVISM

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STOKES. Mr. Speaker, I take pride in rising today to salute a resident of my congressional district, Mrs. Martha E. Bolden, who was recently profiled in the Plain Dealer newspaper. In the article which is entitled, ''Four Score and Ten: A Life of Activism,'' the reporter explores the life of this outstanding individual and her contributions to our city. Mrs. Bolden is well known for her commitment to improving the lives of others. I want to share with my colleagues and the Nation some information regarding this outstanding individual.

Mrs. Bolden was the operator of a beauty shop in Mobile, AL, during the 1930's when she was encouraged to vote because she was a businessowner. Her $200 poll tax fee was paid by one of the city's black physicians. In order to register to vote, Mrs. Bolden was also required to memorize the seventh amendment to the Constitution. With determination, she overcame this obstacle and became a registered voter, achieving celebrity status in the black community. This action and determination on the part of Martha Bolden represented the beginning of a lifetime of activism.

Mr. Speaker, Mrs. Bolden moved to Cleveland, OH, in 1953. Over the years, the Cleveland community has benefited greatly from her strong leadership. Upon arriving in Cleveland, Mrs. Bolden immediately became active in the Hough community, encouraging her neighbors to vote and work in political campaigns. When riots destroyed city neighborhoods in the mid-1960's, Mrs. Bolden was instrumental in helping to rebuild the city. She was a founding member of the Hough Area Development Corp., which was one of the first community-based development corporations in the country. The organization played a key role in revitalizing the neighborhood, including the development of shopping facilities and housing estates for residents.

Mr. Speaker, I am proud to salute Martha Bolden on the House Floor today. I can recall that she was one of my first clients when I began practicing law in Cleveland. As an attorney, I represented her when she purchased her home in the city. I also recall that Mrs. Bolden was an active worker in my political campaigns. At the age of 90, she is still politically involved as one of the ''101 Women for Stokes.''

Mr. Speaker, Martha E. Bolden is a hero to many, and an inspiration to all of us. Throughout her life, she has given unselfishly of her time and talent in an effort to make our city better and empower the community. Her political activism has made the difference in the lives of many. We salute her for her dedication and commitment. I want to share with my colleagues the article regarding Mrs. Bolden which appeared in the Plain Dealer. I ask them to join me in paying tribute to this exceptional individual.

[From the Plain Dealer, Feb. 6, 1995]

FOUR SCORE AND TEN: A LIFE OF ACTIVISM

(By Olivera Perkins)

CLEVELAND.—Martha E. Bolden says she was never afraid.

Not when she was voting in the 1930s in Mobile, Ala., at a time when racial intimidation ensured most blacks didn't vote. Nor during the Hough riots of 1966, when many buildings burned throughout her neighborhood.

''I never was afraid of anyone,'' she said. ''I knew what I was doing was right and would help blacks trying to get somewhere.''

And, she will tell you, she has no regrets.

At 90, the woman nicknamed Mother of Hough sits in an armchair in the den of her home, spinning historical tales from her life. Time has weakened her body, but not the passion and precision with which she recounts her experiences.

Bolden remembers being in her Mobile beauty shop in the early 1930s when Dr. John Taylor, one of the city's black physicians, stopped by. Taylor told her she should vote because she was a business owner.

Taylor paid Bolden's more than $200 poll tax, designed to keep blacks from voting. And she memorized the U.S. Constitution's Seventh Amendment, a requirement for her to register.

Disturbed that she could pay the tax, the white registrar was confident Bolden would be unable to recite the amendment from memory, she said.

''I was always good at remembering things,'' she recalled.

As a registered voter, Bolden achieved a celebrity status among the city's blacks.

Bolden became one of the few black women in Mobile invited to join the YWCA. But she wasn't treated as an equal to whites. ''I had no voice,'' she said. ''The only thing you could do is sit there like a log.''

When a white member of the YWCA offered the black women a building so they would start their own organization, they accepted. Bolden said she knew the woman was racist, but she and the other blacks wanted the autonomy.

Years later, Bolden continued to talk about her voting experiences. In 1953, she moved to a city where blacks still didn't vote often. That city was Cleveland.

Many of her new neighbors and friends were surprised she had voted in the deep South.

''They would say: 'You mean you voted down South?''' she said. ''But I was just as surprised at the number of black people in Cleveland who didn't vote. They had never voted in the South, so they assumed they couldn't vote here.''

Bolden encouraged her Hough neighbors to vote. She said she worked in several political campaigns, including those of Rep. Louis Stokes and her son-in-law, the late Earl Hooper, a former Cleveland councilman.

By the time the riots came in the mid-1960s, Bolden was widely known in her community.

She recalled that the riots—with four people killed between July 18 and July 24, 1966—frightened many of her neighbors. Many wanted to leave; the flames had killed their civic optimism.

But she had no such thoughts. ''Instead of focusing on the buildings that were burning around me, I tried to keep in mind on how things would be rebuilt,'' she said.

Bolden helped rebuild her neighborhood as a founding member of the Hough Area Development Corp., one of the first community-based development corporations in the country. One of the group's first projects was the Martin Luther King Plaza shopping center at Wade Park and Crawford Avenues. And in 1979, the group put together Crawford Estates, one of the first residential subdivisions built in a Cleveland inner-city neighborhood since World War II.

Claude Banks, who was president of the now-defunct corporation, said Bolden kept the group focused with her direct, but gentle manner.

''Often we would get carried away with our own importance or power base,'' he said. ''She would tell us that we were not there for our own agendas, but the bigger purpose of empowering the community.''

Ken McGovern, a former vice president at University Circle Inc., which worked closely with the Hough group, said Bolden never swayed from her mission.

''She was among a group of indigenous leaders who had the insight to seize control of the political climate of the late 1960s and early 1970s in a positive way,'' he said.

Hunter Morrison, former director of Homes for Hough, a subsidiary of the corporation, said. ''There was always the ideal of being like her, or wanting what was best for the community.''

Even with all of the community activism, Bolden found time to raise a family of 12 children. She credits her husband Gresson, an automobile mechanic who died in 1984, with helping her.

''People would say to me: 'We didn't know you had a husband,''' she said. ''I said you wouldn't know because he's not involved in any of this. He stays at home and takes care of the babies.''

Until she had gallbladder surgery four years ago, Bolden was still active in the community. She even volunteered at the Cleveland Veterans Affairs Medical Center several times a week.

''You would have thought she was going to a job,'' said Ceola King, her daughter. ''She would be very upset if she couldn't get there on time.''

Today, she still does a few things—such as helping her daughter with an array of block club activities.

''Sometimes I say to myself: 'Martha, you have got to rest,''' she said recently. ''But something inside of me says they need you. You can help.''

BLOCK GRANTS WOULD JEOPARDIZE THE SCHOOL LUNCH PROGRAM IN THE 36TH CONGRESSIONAL DISTRICT

HON. JANE HARMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Ms. HARMAN. Mr. Speaker, the pending legislative proposal to turn Child Nutrition Programs into a block grant will mean the end of school lunches in my congressional district—the end of 413,017 meals a day that keep the children in my district healthy and ready to learn.

Recently I met with the director of food service for the Manhattan Beach Unified School District. She explained that because most of the children who benefit from school lunches in my district do not receive fully-subsidized lunches, their schools would drop out of the school lunch program if it were changed to a block grant. Districts such as the Palos Verdes Peninsula Unified School District and the Manhattan Beach Unified School District would be forced to eliminate their successful school lunch programs because the schools simply couldn't afford to continue the program on their own.

Mr. Speaker, I am a deficit hawk and I am prepared to make tough spending choices. But let's not cut programs that work. Let's not cut critical investments in our children. Let's not cut the school lunch program by turning it into a wasteful and misdirected block grant program.

A WINNING GAMBIT IN HARLEM

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. RANGEL. Mr. Speaker, I rise to recognize the achievements of a group of young people from my congressional district in Harlem, members of the Mott Hall Middle School chess team, the Dark Knights. Through their dedication and enjoyment of chess, the Dark Knights have become city-wide and national champions in a demanding game. The team's members, who are black, Latino, and Asian, have, through their belief in themselves challenged us to believe in them, and students like them. I congratulate them and the coaches, parents, and private citizens who have assisted them. They challenge us all to raise the expectations and possibilities our Nation holds for all young people of color. I encourage you to read the attached article from the February 17 Wall Street Journal:

[From the Wall Street Journal, Feb. 17, 1995]

A WINNING GAMBIT IN HARLEM

(By Hugh Pearson)

NEW YORK.—Twenty-eight-year-old Maurice Ashley is standing before a classroom of students in Harlem's Mott Hall Middle School. Behind him, unsurprisingly, is a blackboard. But on it is displayed something unexpected: the diagram of a chessboard. Mr. Ashley is preparing his team of chess-playing hotshots for the following weekend's competition. ''I'm going to show you a game that's so dramatic in exposing weak squares, it's ridiculous,'' he tells them.

The team calls itself the Dark Knights. Its members know they can trust Mr. Ashley's judgment: He is an international chess master—indeed, the highest-ranking black chess player in the world. Last year he coached the Dark Knights to the National Junior High School Chess Team Championship.

Mr. Ashley details the opening moves of the game, then dramatizes an unusual maneuver. ''It's called a Dutch. And it's characterized mainly by the fact that this pawn goes to [position] F5 in order to get real serious control of this E4 square. As you can see, D5 and F5 pawns are controlling E4.'' He pauses. ''What could go wrong with a move like this?''

''It blocks his C8 bishop,'' answers a student.

''That's right. The C8 bishop could have a very hard time getting into the game.''

PROBLEM SOLVING

With such teaching Mr. Ashley guides the team through various moves and countermoves that may come up in competition. Periodically he gives them a break from blackboard instruction and divides the class up into pairs. Over real chessboards, they puzzle out problems of increasing difficulty, sometimes competing with one another. The pairs choose names for themselves, which Mr. Ashley writes on the blackboard so he can keep score.

With the imagination and humor typical of 12-, 13-, and 14-year-olds, one pair decides to call itself ''Storm Soldiers and One Fool''; another is ''Men in Tights.'' Yet another chooses the name ''Confused.'' When this pair gives a wrong answer, Mr. Ashley says:

''I see why you call yourselves confused,'' Everyone laughs.

Mr. Ashley doesn't worry that his students will take his kidding the wrong way. They are good at chess, and they know it. He obviously feels no need to patronize them, reassure them or redeem them from feelings of disadvantage.

When Mr. Ashley coached another team—the Raging Rooks of Harlem—to a national junior-high-school chess championship in 1991, one team member, Sharu Robinson, wondered out loud at the national media attention: ''Why is it that they're acting as though we we're some Cinderella team that came out of nowhere and won? We went, we knew what we were doing, we kicked butt, and that's it. What's the problem?''

Of course the problem—or rather, the surprise—was the color of their skin. ''One, it's about being black,'' says Mr. Ashley, reflecting on the odd reaction he gets when he tells people that he teaches chess to Harlem youths. ''Two, it's the fact that it's chess, which has this mystique surrounding it. It's not the urban game; it's the urbane game, the game of the elite.''

People are often skeptical of the value of chess instruction. ''Chess players are considered to be in their own intellectual stratosphere,'' Mr. Ashley explains. ''The strategy of teaching it to kids already seems wrong. And then to teach it to young black kids on top of that brings in all the stereotypes; that they're too disadvantaged to learn the game; that they aren't really smart; that they're more physical than intellectual. The stereotypes are just so dramatic on all levels that it's too far for most people to stretch.''

Mott Hall defies such stereotypes regularly. More than a quarter of the school's students—who are black, Latino and Asian—receive chess instruction twice weekly, as part of an educational initiative that sees chess as a competitive, engaging way of learning analytical reasoning. The program is financed by a prominent New York real-estate developer, Daniel Rose, as part of his Harlem Educational Activities Fund. The fund itself is an unusual success story.

Besides its chess component, HEAF finances a program designed to improve the reading skills at the New York City elementary school with the lowest average reading scores. (Mott Hall, it should be noted, is the public school for gifted Harlem children; for the past four years its reading scores have been the highest in the city for public middle schools.) The fund also provides tutoring to Harlem youths, to help them prepare for the entrance exams to New York's three most exclusive public high schools (Stuyvesant, Bronx High School of Science and Brooklyn Tech). A mentoring program assists those who are admitted and eventually advises them about picking the right colleges.

HEAF's track record is impressive. One way or another, it has served more than 1,000 youths since its inception in 1988. Besides facilitating Mott Hall's chess victories, the fund has raised the reading scores at the city's lowest-scoring public elementary school substantially. In 1992, only 9% of its students scored at or above the city's average grade level; this past year 30% did. So far the fund's tutorial instruction has helped nearly 200 Harlem youths score high enough to enter the city's top public high schools.

Mr. Rose's efforts are just one of many privately funded programs by wealthy businessmen concerned about the lack of educational opportunities for children who live in poor urban areas. Many such programs, like the ''Student/Sponsor Partnership'' founded in 1986 by Dillion Read investment banker Peter Flanigan, are designed to funnel students from such communities into private and religious schools.

Mr. Rose, by contrast, believes in the importance of public schools. He feels that the private sector has a crucial role to play in making up for dwindling tax dollars. But he also feels that the private sector should lead the way in ensuring that school funds are spent more efficiently. ''The gross expenditures in the New York City public school system are very high,'' he explains. ''But it doesn't show up in the classroom. Given the horrendous number of students graduating as functional illiterates, obviously something isn't working. The resources we have must be redirected.''

To Mr. Rose, chess instruction is one way of redirecting such resources profitably. Mr. Ashley agrees. ''Kids have a natural excitement and curiosity for the game,'' he explains. ''As they get deeper and deeper into it, they become more and more confident, more and more sure of themselves. Their self-esteem rises. I look at the kids I've instructed here in Harlem who have gone on to high school and they have this peaceful aura about them.''

Both men are convinced that the mastery of chess complements—and encourages—academic success. Sharu Robinson, for one, will graduate this year from The Dalton School, one of New York's most prestigious private schools. There is every reason to believe that there are many students like Sharu—especially nonwhite students who may have absorbed a false message about the supposed limits of their intellectual abilities—who can benefit enormously from learning a game that requires of its practitioners analytic reasoning, mental discipline and strategic skill.

Mr. Rose dismisses the recent attention given to hereditary factors in intelligence sparked by controversy over ''The Bell Curve.'' He strongly believes that environment plays the decisive role in intellectual achievement.

A FIRM GROUNDING

Mr. Ashley's personal experience lends support to this view. His family arrived in the U.S. from Kingston, Jamaica, when he was 12. In Kingston he was immersed in an environment where, as he put it, ''I didn't have the word 'disadvantaged' pummeled into my brain.'' So when his mother brought him and his two brothers to live in the Brownsville section of Brooklyn, he had a firm enough grounding to keep himself focused on his studies, even though drug dealers plied their trade nearby. ''I just dealt with it,'' he says. He later graduated from City College and soon after became the chessmaster he is now, capable of leading classrooms of Harlem junior-high-school students to major chess championships.

The following weekend, it happened again. The Dark Knights of Mott Hall captured first place in the New York City Junior High School Chess Team Championship. Team members received the top five individual awards as well.

Whatever Maurice Ashley is doing to register these victories, his efforts obviously help to demonstrate that private philanthropy and talented individuals have a crucial role to play in improving the quality of education in our public schools.

TRIBUTE TO VENOLA WILLIAMS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, I would like to recognize a very special person, Mrs. Venola Williams, a native of Camden, NC. She moved to New York in 1955 and joined the Berean Missionary Church where she is still an active member. She participates in the gospel ensemble and the pastor's aide club.

For a number of years Mrs. Williams was employed at Memorial Sloan Kettering Hospital. In 1986, she became a pre-K family assistant for the board of education in district 19. Venola supports many community activities, including voter registration, the NAACP, and the Berean Vacation Bible School.

Venola is the proud mother of three daughters, and the grandmother of seven. Her mother Lona Mae Bright, and her grandmother Elnora Ferebee, who is 99 years old, are her daily sources of inspiration. I am proud to recognize her contributions to the community.

IRISH EYES ARE SMILING THIS GLORIOUS ST. PATRICK'S DAY 1995

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. GILMAN. Mr. Speaker, I rise with a great deal of joy and pride to join with the many millions of Americans of Irish descent to help honor St. Patrick's Day that will soon be celebrated here, and around the globe.

The Irish and all those who are Irish at heart will soon celebrate this great and joyous holiday.

On March 17, in the city of New York, thousands will proudly march down the magnificent Fifth Avenue. Millions more will watch on television the oldest continuous parade in these United States.

I have been privileged annually to march in the St. Patrick's Day parade in New York City. It has always been a special honor to march with our friends along the beautiful and majestic Fifth Avenue, past the magnificent St. Patrick's Cathedral, weather accommodating or not.

Truly, one can see Irish eyes smiling on each and every face along the parade route, and among the marchers on each of those glorious March 17s, which sometimes are cold, windy, and sometimes rainy days, but always glorious.

Neither weather, which is often not very accommodating, nor controversy, has ever deterred that great parade and the true celebration of Irish-America on St. Patrick's Day in the great city of New York.

That magnificent city, especially with its deep and long historical and cultural ties to Erin, is a fitting place for such a great and historic parade of so many very proud traditions and Irish personalities.

This year the grand marshall is His Eminence, the Cardinal Archbishop of the city of New York John O'Connor, who has always watched the parade from the steps of St. Patrick's Cathedral. Now he will proudly and fittingly lead it down Fifth Avenue this year as he approaches possible retirement.

Many of the Irish who emigrated to America, first either landed in New York City, or made it their home, or in the nearby suburbs.

I was recently surprised to learn that the current Irish Deputy Prime Minister and Minister for Foreign Affairs, Dick Spring, once

tended bar in the great city of New York before his return to Ireland and rise to high authority.

I am particularly proud to have, and more importantly proudly represent, a great many constituents and close personal friends in my district of proud Irish heritage.

Numerous other cities, towns, and villages around New York State, and throughout our great Nation as well will also have parades and other joyous celebrations of St. Patrick's Day across America in the coming weeks.

We in this great Nation have more than 40 million Americans who can trace their roots to Ireland. They are proud to celebrate that heritage with many others, and will do so proudly in the days ahead.

These many Americans of Irish descent and their forebears have contributed much to America's success and prosperity from the time of the American Revolution, through the Civil War, and all our wars abroad, to today.

In the arts and in literature, culture, law, politics, commerce and industry, sports, the judiciary, law enforcement, our armed services, and many other fields and endeavors, the Irish in America have excelled.

The Irish have been highly successful in helping to build and expand America and to make it a stronger and more vibrant Nation with their many significant contributions in these and other fields.

This Nation has a very special relationship with Ireland, based upon this heritage of those millions of our citizens of Irish descent, who themselves, or their forefathers, emigrated here and contributed so much to our heritage and to our Nation's history.

The events and struggle for peace in Northern Ireland today because of that heritage, are of particular interest to them, and to all of us. We now have the best prospects for peace in that troubled region in the last 25 years or more.

The joyous St. Patrick's Day celebrations around the globe by the Irish people, which is a national holiday in the Irish Republic, are again this year particularly filled with a special hope and joy that lasting peace in the north of Ireland may finally be within reach.

Many today hope that finally the diverse traditions and all the concerned parties and both Governments in the region, can finally bring about peace and lasting justice in that long troubled region of Northern Ireland.

The courageous and forward-looking December, 1993 Downing Street Joint Declaration, and the recently released framework document developed under the leadership and efforts of the Prime Ministers of both Great Britain and Ireland give us great hope.

Along with the efforts for peace and reconciliation of John Hume of the SDLP, Gerry Adams of Sinn Fein, and many others, today because of all these developments, the best opportunity for peace in the region in many years, now exists.

The cessation of violence in recent months and the eventual all-party-inclusive talks in the current peace efforts based upon that declaration, and the framework document give us and the whole world a sense that a lasting end may finally be in sight to the violence of the past.

What we want, and what we all hope for, is a true, fair, and just settlement and lasting peace for the north of Ireland. We all wish that this will become a lasting reality as we approach another St. Patrick's Day celebration.

The United States because of our special relationship with both Ireland and Great Britain, must be prepared to play a major role in facilitating and fostering that long desired lasting and just peace in the north.

We here in the United States must be prepared to help move the peace process along, when and where needed—especially if it stalls—as President Clinton pledged during the 1992 Presidential campaign when he talked of appointment of a special envoy for peace.

We will soon be holding historic full committee hearings on Northern Ireland before the International Relations' Committee which I am now proud to chair.

In addition, along with some of my colleagues, I will soon be visiting Ireland in mid-April to continue this commitment to play a constructive and important role in helping promote peace, justice, and a shared and equally distributed economic future in the north of Ireland.

Ireland is rightfully today on America's foreign policy agenda and should be for the foreseeable future. We must all work together until lasting peace and justice become a reality in the Ireland we know and for which we have such a high regard.

Let us all hope and pray once again that this will be the beginning of many St. Patrick's Days when lasting peace and justice will prevail over all of Ireland.

COLA FOR CIVIL SERVICE EMPLOYEES

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STUPAK. Mr. Speaker, I rise today to call attention to an issue brought forth by a constituent of mine, Mr. Charles Stewart, of Gladstone, MI, and to have his letter inserted into the CONGRESSIONAL RECORD. While it is not my usual practice to insert such letters into the RECORD, as I receive and reply to thousands of letters every year, Mr. Stewart has written in very clear terms about an issue of great concern to thousands of Americans in Michigan, and across this country.

Mr. Stewart is one of the many civil service retirees whose Cost of Living Adjustment (COLA) has been delayed. Mr. Speaker, every year this delay causes a budgetary crisis for thousands of our retirees. Mr. Stewart, and others, joined the civil service and signed up for a plan that was to carry them through their retirement. Now, at a crucial point, the rules of the game have been changed and Mr. Stewart, and others, are being forced to wait three months every year for the adjustment they have been promised, and have worked hard for. This is simply wrong.

As Mr. Stewart's letter suggests, there is no reason why retirees should pay such a great price for the budget crunches of today. There are more equitable ways for this Congress to generate revenue without picking on a certain class of citizen. I suggest we continue looking more toward equitable and fair cuts and less toward balancing the budget on the backs of our retires.

Mr. Speaker, I ask Mr. Stewart's letter appear directly following my remarks.

REPRESENTATIVE BART STUPAK,
House Office Building,
Washington, DC.

DEAR BART: For the second year in a row I have received my new year's present from Congress. No increase in my civil service annuity until April 1, 1995.

Year after year as a postal employee I was penalized by Congress, and postal service management. We either received no raise, or raises that were much lower than independent studies indicated we should have been granted. As a result I worked a second job (Bay DeNoc Lure), plus some tax and bookkeeping to support my family.

Now, in retirement we are still ''whipping boys'', and are expected to pay for budgetary mistakes which we did not create, and who should not be held responsible, but are being penalized. It would be easier to accept this discrimination if it was reasonable, and fair which it is not.

May you and your family enjoy a very happy and prosperous New Year.

Sincerely,

CHARLES L. STEWART.

REGARDING DEPARTMENT OF INTERIOR'S ASSERTIONS THAT MIGRATORY BIRD SEASON REGULATIONS WILL BE IMPACTED BY H.R. 1022

HON. JAMES A. HAYES

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. HAYES. Mr. Speaker, last week during the debate on H.R. 450, the Regulatory Transition Act, I thought that I, along with my colleagues, Mr. BAKER of Louisiana, and Mr. YOUNG of Alaska, expediently and prudently clarified language of that bill to address the concerns of the Department of Interior with respect to potential delays in the opening of migratory bird hunting seasons. Such a postponement could have been disastrous to Louisiana's and our Nation's economy.

Now, much to my chagrin, the Department of Interior is at it again. They, through the U.S. Fish and Wildlife Service [USFWS], claim that H.R. 1022, the Risk Assessment and Cost-Benefit Act, would also adversely effect the promulgation of the annual regulations designating migratory bird hunting seasons. As you may know, the taking of migratory birds is specifically prohibited by the Migratory Bird Treaty Act of 1918, unless rulemaking actions by the Department of Interior authorize such hunting seasons.

USFWS has provided as the primary basis for their contention that hunting licensure requirements, although actually instituted and collected by state authorities, cost the hunting public in excess of $100 million per year, thus meeting the threshold requirement contained with the bill's definition of a major rule. Under H.R. 1022, any regulation that is likely to result in annual increase in cost of $25 million or more is classified a major rule. USFWS also asserts that the inclusion of the term indirect in the definition of costs could provide an additional argument that the $100 million makes hunting regulations applicable to the risk analysis requirements.

The intent of H.R. 1022 is clearly not to limit the ability of Federal agencies to move ahead

with legitimate and routine annual regulatory processes, especially those rules that have positive benefit-to-cost ratios. USFWS is trying to create a dubious and incorrect connection between the definitions of indirect costs as germane to the threshold requirement of a major rule and the fees hunters pay to States every year.

H.R. 1022 clearly seeks to differentiate between those regulations which have a significant cost on our Nation's economy and those regulations which have a positive economic impact. By their own information, USFWS states that the economic multiplier associated with migratory bird hunting accounts for somewhere between $700 million and $1 billion per year. In my State of Louisiana, duck hunting pumps some $57 million into our economy. This amount represents the benefits, not the regulatory burdens, that our economy reaps when hunters travel to hunting camps, eat at restaurants, buy equipment, etc., and all of these benefits are made possible by USFWS' regulatory process. Therefore, USFWS' interpretation of the threshold requirement contained within the definition of a major rule is in direct contrast to the objective and meaning of the language of H.R. 1022, and seems motivated more by politics than substance. In fact, the House Committee on Commerce has indicated that H.R. 1022 does not cover regulations for opening and closing of migratory bird hunting seasons.

Injecting risk assessment into the Federal regulatory process will be critical if the Federal Government is to appropriately allocate its limited resources toward our most pressing problems. The yearly analysis that is an integral part of USFWS' migratory bird hunting regulations provides the best available data on bird population to enable the appropriate designation of season lengths and bag limits. This information is crucial to ensure the future sustainability and conservation of the species. Accordingly, I believe that, should the USFWS continue to misinterpret the intent of the legislative history of H.R. 1022, they will be abdicating their responsibilities as the stewards of our wildlife and fisheries resources, and they will have no one to blame but themselves.

TRIBUTE TO MRS. AVELLAR HANSLEY

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, I would like to acknowledge the contributions of Avellar Hansley. She was born in Peachland, NC, and attended high school in Polkton, NC. She and her husband are the parents of three daughters. Mrs. Avellar considers her husband as her primary source of support and encouragement.

When Mrs. Hansley arrived in New York City in 1953, she sought to increase her training and to obtain work in the securities and stocks and bonds industry. She secured work with Chemical Bank and retired from Chemical Bank in 1991.

She is the founder and president of the Linden-Bushwick Block Association, and is directly responsible for transforming city-owned vacant lots into a beautiful Greenthumb Program flower and vegetable garden. Mrs. Hansley is also dedicated to community service. Avellar Hansley is a 9-year member of Community Board Nine in Brooklyn, in addition to the Eastern Star organization, the Local Area Policy Board, and the Greater Free Gift Baptist Church of Brooklyn. I commend her service to the community of Brooklyn.

LEGISLATION TO PROVIDE VETERANS BENEFITS TO MEMBERS OF THE PHILIPPINE COMMONWEALTH ARMY AND THE MEMBERS OF THE SPECIAL PHILIPPINE SCOUTS, H.R. 1136

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. GILMAN. Mr. Speaker, I am proud to introduce legislation, H.R. 1136, to amend title 38, of the United States Code, to provide that persons considered to be members of the Philippine Commonwealth Army Veterans and members of the Special Philippine Scouts—by reason of service with the Armed Forces during World War II—should be eligible for full veterans benefits from the Department of Veterans Affairs.

We must correct the grave injustice that has befallen this brave group of veterans, since their valiant service, on behalf of the United States, during World War II.

On July 26, 1941, President Roosevelt issued a military order, pursuant to the Philippines Independence Act of 1934, calling members of the Philippine Commonwealth Army into the service of the United States Forces of the Far East, under the command of Lt. Gen. Douglas MacArthur.

For almost 4 years, over 100,000 Filipinos, of the Philippine Commonwealth Army fought alongside the Allies to reclaim the Phlippine Islands from Japan. Regrettably, in return, Congress enacted the Rescission Act of 1946. This measure limited veterans eligibility for service-connected disabilities and death compensation and and also denied the members of the Philippine Commonwealth Army the honor of being recognized as veterans of the United States Armed Forces.

A second group, the Special Philippine Scouts called New Scouts who enlisted in the United States Armed Forces After October 6, 1945, primarily to perform occupation duty in the Pacific, were similarly excluded from benefits.

I believe it is time to correct this injustice and to provide the members of the Philippine Commonwealth Army and the special Philippine Scouts with the benefits and the services that they valiantly earned during their service in World War II.

Accordingly, I have introduced legislation, H.R. 1136, that will provide veterans of the Philippine Commonwealth Army and the special Philippine Scouts with the benefits, the compensation, and most importantly, with the recognition they courageously earned.

I urge my colleagues to carefully review this legislation that corrects this grave injustice and provides veterans benefits to members of the Philippine Commonwealth Army and the members of the Special Philippine Scouts.

Mr. Speaker, I insert the full text of the bill at this point in the RECORD.

H.R. 1136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Filipino veterans Equity Act of 1995''.

SEC. 2. CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE.

(a) IN GENERAL.—Section 107 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out ''not'' after ''Army of the United States, shall''; and

(B) by striking out '', except benefits under—'' and all that follows and inserting in lieu thereof a period; and

(2) in subsection (b)—

(A) by striking out ''not'' after ''Armed Forces Voluntary Recruitment Act of 1945 shall''; and

(B) by striking out ''except—'' and all that follows and inserting in lieu thereof a period.

(b) CONFORMING AMENDMENTS.—(1) The heading of such section is amended to read as follows:

''§ 107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts''

(2) The item relating to such section in the table of sections at the beginning of chapter 1 of such title is amended to read as follows:

''107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts.''.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on _____.

(b) APPLICABILITY.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

TRIBUTE TO MARQUETTE POLICE CHIEF GEORGE G. JOHNSON ON HIS RETIREMENT

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STUPAK. Mr. Speaker, I rise today to pay tribute to a friend and distinguished public servant, George G. Johnson, who is retiring this month as Police Chief of Marquette, MI. George Johnson's career spans over four decades of distinguished service as a patrol officer, motorcycle officer, detective and Marquette Chief of Police.

Simply put, George Johnson is one of the most respected and admired law enforcement professionals in the entire state of Michigan. His years of outstanding work are a credit to him, and an example for law enforcement professionals and public servants nationwide.

After serving 6 years in the U.S. Navy, George Johnson joined the Marquette Police Department as a patrol officer in 1955. He served as a motorcycle officer until being promoted to detective in 1961. A short 3 years later, George was promoted to Chief of the Department.

In his capacity as Chief of Police, George Johnson has been a leader both in law enforcement and in the community at large. As Chief of Police, George has taken a leading role in many State and regional law enforcement associations. He has been a charter member of the Michigan Law Enforcement Officers Training Council, the Michigan Association of Chiefs of Police, the State Traffic Committee, The Upper Peninsula Chiefs Association, and Northern Michigan University Police Advisory Council Chairman. He has served as a charter member of the Marquette County Law Enforcement Officers Association. He was also selected Upper Peninsula Officer of the Year in 1967, and recognized in 1987 by the International Association of Chiefs of Police as one of the top 25 law enforcement professionals in the Nation. In 1993, Chief Johnson was chosen by his peers as employee of the Year for the City of Marquette.

George's work in Marquette, with community programs and projects, has helped to improve and enrich the lives of all of his neighbors. Through his work on the Shiras Institute board of directors and other agencies and organizations, George has given his time and talent unselfishly to his community.

Mr. Speaker, George Johnson epitomizes all that is great about public service. His commitment, and drive have served to make Marquette a better place.

While we Northern Michigan will miss George, we want to take this opportunity to express our deep gratitude for a job well done and wish him and his family well in all of his future endeavors.

TRIBUTE TO MARIA E. GONZALEZ

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, it is my pleasure to relate the odyssey of success of Maria E. Gonzalez. Born in Tegucigalpa, Honduras, in 1938, she dreamed of being either a teacher or politician. In some measure, she was able to realize her ambitions.

After arriving in the United States at the age of 16, Ms. Gonzalez graduated from Commerce High School. She met Domingo Gonzalez and their union resulted in four children, and subsequently five grandchildren. When her children became adults, Maria returned to school and received her B.A. from Touro College. She later received a master's degree from Bank Street College of Education. Ms. Gonzalez put her training to good use and became a social studies teacher at Junior High School 296, where she taught sixth-, seventh-, eighth-, and ninth-grade students until 1993. Currently she works as a housing coordinator for Phipps Community, providing social services for the tenants of CPW houses.

Maria has been very active in local politics. She is the female district leader for the 54th assembly district, and a former member of the United Parents Association and the Puerto Rican Teachers Association. Ms. Gonzalez is also the former treasurer for the election campaign of Councilman Martin M. Dilan, and a former assistant to Assemblyman Darryl Towns.

Indeed, she has been able to realize her dreams of teaching and being involved in politics. Her success is truly worthy of mention, and it is my pleasure to highlight her accomplishments and contributions.

APPLE VALLEY GIRLS HOCKEY TEAM WINS HISTORIC VICTORY

HON. WILLIAM P. LUTHER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. LUTHER. Mr. Speaker, a historic event took place last month in my Congressional district. The girls hockey team of Apple Valley High School, a local secondary school in my Congressional district, made history by winning the first Statewide girls hockey tournament. The Apple Valley Eagles, finishing the season with a record of 24–0–1, defeated the South St. Paul Packers by a score of 2 to 0.

Having followed the Eagles' season this year, I cannot overstate the significance of this achievement for the future of women's sports, especially girls hockey high school programs. Minnesota is the home to nearly 25 percent of the Nation's women's hockey teams, and we obviously take great pride in our collective hockey skills. The success of this initial tournament is a sign of much progress and a very hopeful future for the sport. According to Lynn Olson, head of the girls' and women's division of USA Hockey, at least 10 high schools in Minnesota will add teams next season, adding to the current 130 nonschool amateur girls' and women's teams.

These young athletes have become role models for their fellow students. According to Jaime DeGrisseles, an Apple Valley Eagle headed for the University of New Hampshire in the fall: ''I think a lot of younger girls look up to us as role models. I think we'll all look back at this and know we won the first girls' State championship and it will just be amazing.''

The Apple Valley student athletes, their parents, and teachers, and their loyal fans appreciate the hard work and dedication this State championship represents. Their success is well-deserved, and Minnesotans can take great pride in another historic first.

TRIBUTE TO BETTY J. WILLIAMS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, I would like to pay tribute to Ms. Betty J. Williams. Ms. Williams was born August 6, 1944, in Hodges, SC. She is the oldest of six children born to Lawrence and Agnes Williams.

Ms. Williams is a graduate of North Carolina A&T State University where she received her B.S. She later received her M.S. in social work from Columbia University, and her J.D. from New York Law School.

A committed community activist and worker, Ms. Williams is involved in numerous projects. She is the founding member of the World Community of Social Workers, and was instrumental in promoting a pilot program that utilized retired educators to serve as advocates for special education parents. Her numerous organizational affiliations include the Metropolitan Black Bar Association, Delta Sigma Theta Sorority, New York Law School Alumni Association, and the Association of the Bar of the City of New York.

Ms. Williams is a woman of abundant talents and accomplishments, and I am pleased to introduce her to my colleagues.

POINT REYES BIRD OBSERVATORY

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Ms. WOOLSEY. Mr. Speaker, I rise today to recognize one of my district's most valuable resources, the Point Reyes Bird Observatory [PRBO], which is dedicated to protecting our marine environment by increasing our knowledge of birds and their habitats.

PRBO was established in 1965 in order to provide research and education programs concerning songbirds and has expanded their mission to include international biological research on the loss of wetlands and the destruction of rain forests.

As the oldest bird observatory in North America, PRBO has become the authority of the Farallon Islands and provided important long-term studies. They have done extensive research on the Pacific flyway, Antarctica, and other areas, contributing greatly to the scientific pool of information. PRBO sponsors a census of migratory birds and runs a model volunteer program with members of the public and students as field biologists. PRBO is public treasure worthy of national significance.

As we celebrate PRBO's 30th anniversary, I wish to recognize the staff and the many individual volunteers that contribute the time and energy at the observatory, and to thank them for their commitment to improving our understanding our natural environment.

TRIBUTE TO ANDREA KOSTIE-LIEBERMAN

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, in my district I am fortunate to have educators that perform beyond the levels expected of them. Andrea Kostie-Lieberman is illustrative of that type of educator. Andrea is a product of New York public schools. She graduated from Berriman Junior High School and Thomas Jefferson High School. She earned a B.A. and master of science from Brooklyn College. An additional master of science degree was obtained from Pace University.

Andrea is certified by the State of New York as a school district administrator, and as a school administrator-supervisor. She is also certified as an assistant principal and principal. Her educational career began in district 19, where she is currently in charge of district 19's Early Childhood Center P.S. 149 Annex.

Dedicated to service, Andrea shares her educational expertise by serving on many educational committees, including the 10th Congressional Commission on Education. She has served as vice president for membership, and as an executive board member of Phi Delta Kappa. I am proud to recognize Andrea Kostie-Lieberman for her professionalism and dedication.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the Congressional Record on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, March 7, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MARCH 8

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Geological Survey, Department of the Interior.
SD–116

Energy and Natural Resources
To hold oversight hearings on domestic petroleum production and international supply.
SD–366

Governmental Affairs
To resume hearings on proposed legislation to reform the Federal regulatory process, to make government more efficient and effective
SD–342

Labor and Human Resources
To hold hearings on proposed legislation to authorize funds for and to consolidate health professions programs.
SD–430

Small Business
To hold hearings on the proposed ''Regulatory Flexibility Amendments Act''.
SR–428A

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for rural economic and community development services of the Department of Agriculture.
SD–138

Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs, focusing on international organizations and programs.
SD–192

Banking, Housing, and Urban Affairs
To resume oversight hearings on the condition of credit unions.
SD–538

Finance
To hold hearings to examine welfare reform proposals, focusing on the views of the States.
SD–215

1:30 p.m.
Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold hearings to examine intellectual property rights with regard to the People's Republic of China.
SD–419

2:00 p.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold oversight hearings on Forest Service appeals.
SD–366

Select on Intelligence
To hold closed hearings on intelligence matters.
SH–219

2:30 p.m.
Indian Affairs
To hold oversight hearings to examine the structure and funding of the Bureau of Indian Affairs.
SR–485

MARCH 9

9:30 A.M.
Agriculture, Nutrition, and Forestry
To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on cost issues of certain farm programs.
SR–332

Armed Services
To resume hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future year's defense program, focusing on the Army.
SR–222

Energy and Natural Resources
Business meeting, to consider the nomination of Wilma A. Lewis, of the District of Columbia, to be Inspector General, Department of the Interior; to be followed by a closed briefing on international aspects of petroleum supply.
S–407, Capitol

Finance
To continue hearings to examine welfare reform proposals, focusing on policy goals.
SD–215

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Transportation Safety Board.
SD–192

Banking, Housing, and Urban Affairs
Housing Opportunity and Community Development Subcommittee
HUD Oversight and Structure Subcommittee
To hold joint hearings to examine proposals to reorganize the Department of Housing and Urban Development.
SD–538

Foreign Relations
Western Hemisphere and Peace Corps Affairs Subcommittee
To hold hearings to examine the implementation and costs of U.S. policy in Haiti.
SD–419

Governmental Affairs
To hold hearings to examine nuclear non-proliferation issues.
SD–342

Judiciary
To hold hearings on S. 227, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions.
SD–226

Veterans Affairs
To hold hearings on the nomination of Dennis M. Duffy, of Pennsylvania, to be Assistant Secretary of Veterans Affairs for Policy and Planning, and to review the President's budget request for fiscal year 1996 for veterans programs.
SR–418

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Health and Human Services.
SD–138

Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Secret Service, Federal Law Enforcement Training Center, and the Financial Crimes Enforcement Network, Department of the Treasury.
SD–192

Foreign Relations
Near Eastern and South Asian Affairs Subcommittee
To hold hearings to review South Asian proliferation issues.
SD–419

2:30 p.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings to examine the Metropolitan Washington National Airport authority.
SR–253

MARCH 10

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Science Foundation, and the Office of Science and Technology Policy.
SD–138

Environment and Public Works
Superfund, Waste Control, and Risk Assessment Subcommittee
To hold oversight hearings on the implementation of the Comprehensive Environmental Response, Compensation, and Liability Act.
SD–406

Joint Economic
To hold hearings to examine the employment-unemployment situation for February.
SD–562

10:00 a.m.
Finance
To continue hearings to examine welfare reform proposals, focusing on the Administration's views.
SD–215

MARCH 13

9:30 a.m.
Finance
To hold hearings to examine the status of the consumer price index.
SD–215

MARCH 14

9:00 a.m.
Judiciary
To hold hearings to examine proposals to reduce illegal immigration and to control financial costs to taxpayers.

SD–226

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on wetlands and farm policy.
SR–332

Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense.
SD–138

Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Energy Office of Energy Research.
SD–192

Finance
To resume hearings to examine welfare reform proposals, focusing on teen parents receiving welfare.
SD–215

10:00 a.m.
Labor and Human Resources
To hold hearings to examine health care reform issues in a changing marketplace.
SD–430

MARCH 15

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Smithsonian Institution.
SD–116

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD–366

Labor and Human Resources
To continue hearings to examine health care reform issues in a changing marketplace.
SD–430

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for farm and foreign agriculture services of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Justice.
Room to be announced

2:00 p.m.
Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bonneville Power Administration.
SD–192

2:30 p.m.
Indian Affairs
To hold hearings on S. 349, to authorize funds for the Navajo-Hopi Relocation Housing Program.
SR–485

MARCH 16

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on taxpayers' stake in Federal farm policy.
SR–332

Rules and Administration
To hold hearings to examine Architect of the Capitol funding authority for new projects.
SR–301

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Bureau of Investigation and Drug Enforcement Agency, both of the Department of Justice.
S–146, Capitol

Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Highway Administration, Department of Transportation.
SD–192

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Education.
SD–192

MARCH 22

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Fish and Wildlife Service, Department of the Interior.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Natural Resources Conservation Service, Department of Agriculture.
SD–138

2:30 p.m.
Indian Affairs
To hold hearings on S. 441, to authorize funds for certain programs under the Indian Child Protection and Family Violence Prevention Act.
SR–485

MARCH 23

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Railroad Administration, Department of Transportation, and the National Passenger Railroad Corporation (Amtrak).
SD–192

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Alcohol, Tobacco and Firearms and the United States Customs Service, Department of the Treasury.
SD–192

3:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Institutes of Health, Department of Health and Human Services.
SD–138

MARCH 24

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Housing and Urban Development.
SD–138

MARCH 27

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Executive Office of the President, and the General Services Administration.
SD–138

MARCH 28

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Land Management, Department of the Interior.
SD–116

MARCH 29

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food Safety and Inspection Service, Animal and Plant Health Inspection Service, Agricultural Marketing Service, and the Grain Inspection, Packers and Stockyards Administration, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Judiciary, Administrative Office of the Courts, and the Judicial Conference.
S–146, Capitol

10:30 a.m.
Indian Affairs
Business meeting, to consider pending calendar business.
SR–485

MARCH 30

9:30 a.m.
Rules and Administration
To hold hearings to examine the future of the Smithsonian Institution.
SR–301

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of AMVETS, American Ex-Prisoners of War, Vietnam Veterans of America, Blinded Veterans Association, and the Military Order of the Purple Heart.
345 Cannon Building

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Aviation Administration, Department of Transportation.

SD–192

MARCH 31

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on agricultural credit.
SR–332
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Veterans Affairs, the Court of Veteran's Appeals, and Veterans Affairs Service Organizations.
SD–138

APRIL 3

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Internal Revenue Service, Department of the Treasury, and the Office of Personnel Management.
SD–138

APRIL 4

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on market effects of Federal farm policy.
SR–332
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Park Service, Department of the Interior.
SD–138

APRIL 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Aeronautics and Space Administration.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Agricultural Research Service, Cooperative State Research, Education, and Extension Service, Economic Research Service, and the National Agricultural Statistics Service, all of the Department of Agriculture.
SD–138
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Immigration and Naturalization Service, and the Bureau of Prisons, both of the Department of Justice.
S–146, Capitol

APRIL 6

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Emergency Management Agency.
SD–138
Rules and Administration
To resume hearings to examine the future of the Smithsonian Institution.
SR–301

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Treasury and the Office of Management and Budget.
SD–161

APRIL 26

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for energy conservation.
SD–116

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food and Consumer Service, Department of Agriculture.
SD–138
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Legal Services Corporation.
S–146, Capitol

11:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for fossil energy, clean coal technology, Strategic Petroleum Reserve, and the Naval Petroleum Reserve.
SD–116

APRIL 27

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Transit Administration, Department of Transportation.
SD–192

MAY 2

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Forest Service of the Department of Agriculture.
SD–138

MAY 3

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and the Agency for Toxic Substances and Disease Registry.
SD–192

10: a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Agriculture.
SD–138

MAY 4

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Coast Guard, Department of Transportation.
SD–192

MAY 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for Environmental Protection Agency science programs.
SD–138

MAY 11

10:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Indian Affairs, Department of the Interior.
SD–116

1:00 p.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Indian Health Service, Department of Health and Human Services.
SD–116

MAY 17

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Interior.
SD–192

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S3485–S3546

Measures Introduced: Eight bills and one resolution were introduced, as follows: S. 498–505, and S. Con. Res. 9. **Pages S3520–21**

Paperwork Reduction Act: Senate began consideration of S. 244, to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, agreeing to committee amendments, and taking action on amendments proposed thereto, as follows:

Pages S3498–S3513, S3516–20

Adopted:

(1) Roth/Nunn Amendment No. 317, to clarify certain definitions and intelligence related provisions. **Pages S3511–13**

(2) McCain modified Amendment No. 318, to provide for the termination of reporting requirements of certain executive reports submitted to the Congress. **Pages S3516–20**

A unanimous-consent agreement was reached providing for further consideration of the bill and certain amendments to be proposed thereto, on Tuesday, March 7. **Pages S3545–46**

Senate will continue consideration of the bill on Tuesday, March 7.

Emergency Supplemental Appropriations/Defense—Agreement: A unanimous-consent agreement was reached providing for the consideration of H.R. 889, making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995.

Page S3546

Messages From the President: Senate received the following messages from the President of the United States:

Transmitting the annual report of the National Endowment for Democracy; referred to the Committee on Foreign Relations. (PM–26). **Page S3520**

Transmitting a unified program for floodplain management; referred to the Committee on Environment and Public Works. (PM–27). **Page S3520**

Nominations Received: Senate received the following nominations:

John Goglia, of Massachusetts, to be a Member of the National Transportation Safety Board for the term expiring December 31, 1998.

Clifford Gregory Stewart, of New Jersey, to be General Counsel of the Equal Employment Opportunity Commission for a term of 4 years.

2 Navy nominations in the rank of admiral.

Routine lists in the Air Force, Army. **Page S3546**

Messages From the President: **Page S3520**

Statements on Introduced Bills: **Pages S3521–38**

Additional Cosponsors: **Pages S3538–40**

Amendments Submitted: **Pages S3540-41**

Notices of Hearings: **Page S3541**

Authority for Committees: **Page S3541**

Additional Statements: **Pages S3541–45**

Recess: Senate convened at 1 p.m., and recessed at 7:12 p.m., until 10:30 a.m., on Tuesday, March 7, 1995. (For Senate's program, see the remarks of the Acting Majority Leader in today's RECORD on page S3546.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS—OFFICE OF NATIONAL DRUG CONTROL POLICY

Committee on Appropriations: Subcommittee on the Treasury, Postal Service and General Government held hearings on proposed budget estimates for fiscal year 1996 for the Office of National Drug Control Policy, receiving testimony from Lee P. Brown, Director, Office of National Drug Control Policy.

Subcommittee will meet again on Thursday, March 9.

DOE RISK MANAGEMENT ACT

Committee on Energy and Natural Resources: Committee concluded hearings on S. 333, to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities, after receiving testimony from Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Thomas P. Grumbly, Assistant Secretary of Energy for Environmental Management; Bernice Steinhardt, Associate Director, Energy and Science Issues, Resources, Community, and Economic Development Division, General Accounting Office; Gary J. Powers, Carnegie Mellon University, Pittsburgh, Pennsylvania; Steven J. Milloy, Regulatory Impact Analysis Project, and Earnie Deavenport, Eastman Chemical Company, both of Washington, DC; and John S. Applegate, University of Cincinnati, Cincinnati, OH.

House of Representatives

Chamber Action

Bills Introduced: 8 public bills, H.R. 1134–1141; and 4 resolutions, H.J. Res. 75, H. Con. Res. 33, and H. Res. 106 and 107 were introduced.

Page H2716

Reports Filed: Reports were filed as follows:

H.J. Res. 2, proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives, amended (H. Rept. 104–67); and

H. Res. 105, providing for consideration of H.R. 1058, to reform Federal securities litigation (H. Rept. 104–68). **Page H2716**

Speaker Pro Tempore: Read a letter from the Speaker wherein he designates Representative Goss as Speaker pro tempore for today. **Page H2655**

Recess: Recessed at 1 p.m. and reconvened at 2 p.m. **Page H2658**

Presidential Messages: Read the following messages from the President:

Floodplain management: Message wherein he transmits a report on a unified program for national floodplain management—referred to the Committee on Banking and Financial Services; and **Page H2663**

National Endowment for Democracy: Message wherein he transmits the 11th Annual Report of the National Endowment for Democracy for fiscal year 1994. **Page H2663**

Attorney Accountability Act: House completed all general debate and began consideration of amendments to H.R. 988, to reform the Federal civil justice system. Consideration of amendments will resume on Tuesday, March 7. **Pages H2661–H2703**

Agreed to the Goodlatte amendment that clarifies provisions regarding petition for the award of costs and attorneys' fees in civil diversity litigation after an offer of settlement (agreed to by a recorded vote of 317 ayes to 89 noes, Roll No. 200).

Pages H2677–81

Rejected:

The McHale amendment that sought to add language providing guidelines for the legal determination of a frivolous complaint and providing that, if a defendant makes a motion to dismiss a suit within 90 days of the filing of the complaint, and the court finds it to be frivolous, the court must dismiss the claim and award counsel fees and legal costs to the defendant (rejected by a recorded vote of 115 ayes to 306 noes, Roll No. 202); **Pages H2684–96**

The Berman amendment to the McHale amendment that sought to strike provisions regarding the award of costs and attorneys' fees in Federal civil diversity litigation after an order of settlement (rejected by a recorded vote of 186 ayes to 235 noes, Roll No. 201); **Pages H2687–96**

The Hoke amendment that sought to limit the contingency fees attorneys can receive (when a qualifying settlement offer is made and accepted) to the lesser of the previously agreed-to hourly rate for work performed plus expenses or 10 percent of the amount of the settlement offer; and limit the contingency fees (when a qualifying settlement offer is made but rejected) to the total of no more than 33 percent of the difference between the final recovery and the settlement offer, the previously agreed-to hourly rate for work performed, and the attorney's actual expenses (rejected by a recorded vote of 71 ayes to 347 noes, Roll No. 203); and

Pages H2697–H2703

The Conyers amendment to the Hoke amendment that sought to place the same fee limitations on attorneys of both the plaintiff and the defendant.

Pages H2698–99

H. Res. 104, the rule under which the bill is being considered, was agreed to earlier by a voice vote. **Pages H2661–62**

Committees to Sit: The following committees and their subcommittees received permission to sit on Tuesday, March 7, during proceedings of the House under the 5-minute rule: Committees on Agriculture, Banking and Financial Services, Economic and Educational Opportunities, Government Reform and Oversight, National Security, Resources, Transportation and Infrastructure, Veterans' Affairs, and Intelligence. **Page H2703**

Amendments Ordered Printed: Amendments ordered printed pursuant to the rule appear on pages H2717–20.

Quorum Calls—Votes: Four recorded votes developed during the proceedings of the House today and appear on pages H2681, H2695–96, H2702–03. There were no quorum calls.

Adjournment: Met at 12:30 p.m. and adjourned at 10:59 p.m.

Committee Meetings

TRANSPORTATION APPROPRIATIONS

Committee on Appropriations: Subcommittee on Transportation, and Related Agencies held a hearing on the Federal Railroad Administration. Testimony was heard from Jolene M. Molitoris, Administrator, Federal Railroad Administration, Department of Transportation.

SECURITIES LITIGATION REFORM

Committee on Rules: By a recorded vote of 9 to 4, granted a modified open rule providing for 1 hour of general debate on H.R. 1058, Securities Litigation Reform Act. The rule provide for an 8-hour time limit on the amendment process. Priority in recognition may be accorded to Members who have preprinted their amendments in the CONGRESSIONAL RECORD. The rule makes in order the amendments printed in the report accompanying the rule if offered by Representative Wyden or a designee and by Representative Cox or a designee and waives points of order against the amendments for failure to comply with clause 7 of rule XVI. Finally, the rule provides one motion to recommit.

MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT ACT

Committee on Small Business: Held a hearing to review the 8(a) Minority Small Business and Capital Ownership Development Act. Testimony was heard from Robert Neal, Associate Deputy Administrator, Government Contracting and Minority Enterprise Development, SBA; Judith England Joseph, Director, Housing and Community Development Issues, Resources, Division of Community, Economic Development Division, GAO; Ralph C. Thomas III, Associate Administrator, Small and Disadvantaged Business Utilization, NASA; and public witnesses.

GSA CAPITAL INVESTMENT PROGRAM REFORM AND RELATED MATTERS

Committee on Transportation and Infrastructures: Subcommittee on Public Buildings and Economic Development continued hearings on GSA Capital Investment Program Reform legislation and related matters. Testimony was heard from Ken Kimbrough, Commissioner, GSA; David Kessler, Commissioner, FDA, Department of Health and Human Services; the following officials of the Department of the Treasury: Pat Duffy, Division Director, Office of Field Operations, U.S. Customs Services; and David Mader, Chief, Management and Administration, IRS; and Gerald Thacker, Assistant Director, Administrative Office of the United States Courts.

Hearings continue March 9.

Joint Meetings

ORGANIZATIONAL MEETING

Joint Committee on Printing: Committee met and approved Representative Thomas as Chairman and Senator Stevens as Vice Chairman of the committee and adopted its rules of procedure for the 104th Congress.

COMMITTEE MEETINGS FOR TUESDAY, MARCH 7, 1995

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations, Subcommittee on Commerce, Justice, State, and Judiciary, to hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Commerce, 10 a.m., S–146, Capitol.

Subcommittee on Labor, Health and Human Services, and Education, to hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Labor, 2 p.m., SD–192.

Committee on Armed Services, to resume hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future years defense program, 9:30 a.m., SR–222.

Committee on the Budget, to hold hearings to examine various privatization initiatives, 9 a.m., SD–608.

Committee on Commerce, Science, and Transportation, Subcommittee on Oceans and Fisheries, to hold hearings on proposed legislation authorizing funds for fiscal year 1996 for the United States Coast Guard, Department of Transportation, 2:30 p.m., SR–253.

Committee on Energy and Natural Resources, Subcommittee on Parks, Historic Preservation and Recreation, to hold joint hearings with the House Committee on Resources' Subcommittee on National Parks, Forests, and Lands to review the health of the National Park System, 9:30 a.m., SD–366.

Committee on Environment and Public Works, Drinking Water, Fisheries, and Wildlife, to hold hearings on S. 191, to revise the Endangered Species Act of 1973 to ensure that constitutionally protected private property rights are not infringed until adequate protection is afforded by reauthorization of the act, and to protect against economic losses from critical habitat designation, and other proposed legislation to institute a moratorium on certain activities under authority of the Endangered Species Act, 9:30 a.m., SD–406.

Committee on Finance, to hold hearings to examine the Federal Communication Commission's tax certificate program, 9 a.m., SD–215.

Committee on Foreign Relations, to hold hearings on the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or To Have Indiscriminate Effects (The Convention on Conventional Weapons) (Treaty Doc. 103–25), 10 a.m., SD–419.

Subcommittee on Near Eastern and South Asian Affairs, to hold hearings to examine United States policy toward South Asia, 2 p.m., SD–419.

Committee on Governmental Affairs, business meeting, to mark up S. 219, to ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, 10 a.m., SD–342.

Committee on the Judiciary, to hold hearings to examine the jury process, focusing on the search for truth in trials, 10 a.m., SD–226.

Committee on Veterans' Affairs, to hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of the Veterans of Foreign Wars, 9:30 a.m., 345 Cannon Building.

Committee on Indian Affairs, to hold oversight hearings to review Federal programs which address the challenges facing Indian youth, 10 a.m., SR–485.

NOTICE

For a listing of Senate committee meetings scheduled ahead, see pages E529–E531 in today's RECORD.

House

Committee on Agriculture, to mark up Title V, of H.R. 4, Personal Responsibility Act of 1995, 9:30 a.m., 1300 Longworth.

Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, on Animal and Plant Health Inspection Service, 1 p.m., 2362A Rayburn.

Subcommittee on Energy and Water Development, on Secretary of Energy, 10 a.m., 2362B Rayburn.

Subcommittee on Foreign Operations, Export Financing, and Related Agencies, on Agency for International Development and the Peace Corps, 10 a.m., 2360 Rayburn.

Subcommittee on Interior and Related Agencies, on Office of Surface Mining, 10 a.m., and 1:30 p.m., B–308 Rayburn.

Subcommittee on Labor, Health and Human Services, Education and Related Agencies, on Howard University, and Special Institutions, 10 a.m., and on Inspector General, Department of Education, 2 p.m., 2358 Rayburn.

Subcommittee on Military Construction, on Air Force Military Construction, 9:30 a.m., B–300 Rayburn.

Subcommittee on National Security, on Personnel/Quality of Life Issues, 10 a.m., and executive, on U.S. Atlantic Command, 1:30 p.m., H–140 Capitol.

Subcommittee on Transportation, and Related Agencies, on Research and Special Programs Administration, 10 a.m., 2358 Rayburn.

Subcommittee on Veterans' Affairs and Housing and Urban Development, and Independent Agencies, on Department of Veterans Affairs, 10 a.m., and 1:30 p.m., H–143 Capitol.

Committee on Banking and Financial Services, to continue hearings on the following: H.R. 1062, Financial Services Competitiveness Act of 1995; Glass-Steagall Reform; and related issues, 10 a.m., and 2 p.m., 2128 Rayburn.

Committee on the Budget, hearing on Economic Forecasts and the Roles of Deficit Reduction and Productivity, 10 a.m., 210 Cannon.

Committee on Economic and Educational Opportunities, Subcommittee on Employer-Employee Relations, to mark up H.R. 743, Teamwork for Employees and Managers Act of 1995, 9:30 a.m., 2175 Rayburn.

Subcommittee on Postsecondary Education and Training, to continue hearings on training issues, 9 a.m., 2261 Rayburn.

Committee on Government Reform and Oversight, Subcommittee on Civil Service, hearing on the Federal Retirement System (H.R. 804, H.R. 165, H. Con. Res. 2 and H.R. 575), 9:30 a.m., 2247 Rayburn.

Subcommittee on Government Management, Information and Technology, hearing on the Integrity of Government Documents, 2 p.m., 2154 Rayburn.

Committee on International Relations, hearing on Mexico Economic Support Program, 10 a.m., 2172 Rayburn.

Committee on National Security, Subcommittee on Military Personnel and the Subcommittee on Readiness, joint hearing on fiscal year 1996 national defense authorization request, 2:30 p.m., 2118 Rayburn.

Subcommittee on Military Procurement and the Subcommittee on Military Research and Development, joint hearing on the fiscal year 1996 national defense authorization request, 9 a.m., 2118 Rayburn.

Committee on Resources, Subcommittee on Native American and Insular Affairs, oversight hearing on the Bureau of Indian Affairs and the Indian Health Service fiscal year 1996 budget requests, 1 p.m., 1334 Longworth.

Subcommittee on Water and Power Resources, oversight hearing on the Department of Energy and Bureau of Reclamation fiscal year 1996 budget requests, 1 p.m., 1324 Rayburn.

Committee on Rules, to consider H.R. 956, Common Sense Legal Standards Reform Act of 1995, 10:30 a.m., H–313 Capitol.

Committee on Standards of Official Conduct, executive, to consider pending business, 4 p.m., HT–2M Capitol.

Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, to continue hearings on the reauthorization of the Federal Water Pollution Control Act, 10 a.m., 2167 Rayburn.

Permanent Select Committee on Intelligence, executive, hearing on Imagery Intelligence, 10 a.m., H–405 Capitol.

Joint Meetings

Joint Hearing: Senate Committee on Energy and Natural Resources, Subcommittee on Parks, Historic Preservation and Recreation, to hold joint hearings with the House Committee on Resources' Subcommittee on National Parks, Forests, and Lands to review the health of the National Park System, 9:30 a.m., SD–366.

Joint Hearing: Senate Committee on Veterans Affairs, to hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of the Veterans of Foreign Wars, 9:30 a.m., 345 Cannon Building.

Next Meeting of the SENATE

10:30 a.m., Tuesday, March 7, 1995

Senate Chamber

Program for Tuesday: Senate will continue consideration of S. 244, Paperwork Reduction Act.

(Senate will recess from 12:30 p.m. until 2:15 p.m. for respective party conferences.)

Next Meeting of the HOUSE OF REPRESENTATIVES

9:30 a.m., Tuesday, March 7, 1995

House Chamber

Program for Tuesday: Complete consideration of H.R. 988, Attorney Accountability Act; and

Consideration of H.R. 1058, Securities Litigation Reform Act (modified open rule, 1 hour of general debate).

Extensions of Remarks, as inserted in this issue

HOUSE

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