## SECURITIES LITIGATION REFORM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 105 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. 1058.

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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. 1058) to reform Federal securities litigation, and for other purposes, with Mr. COMBEST in the chair.

The Clerk read the title of the bill.

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

Under the rule, the gentleman from Virginia [Mr. BLILEY] will be recognized for 30 minutes, and the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Virginia [Mr. BLILEY].

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

Mr. Chairman, I rise in support of H.R. 1058, the Securities Litigation Reform Act. A recent survey by the National Venture Capital Association found that 62 percent of responding entrepreneurial companies that went public in 1986 had been sued by 1993. The survey concluded that, if historical rates continue, ''unprecedented numbers of newly public companies are likely to be sued in the coming years.'' This is a national tragedy and a situation the Congress cannot allow to continue. H.R. 1058 is an important first step in our continuing review of litigation reform.

H.R. 1058 is the product of months of intensive negotiations. I would like to highlight for the Members of this body major changes that were made to this legislation during the committee drafting process.

The entire bill has been modified where necessary to make clear that restrictions on bringing legal actions based on the antifraud provisions of section 10 of the Securities Exchange Act and rule 10b–5 apply only to private suits, not to SEC enforcement actions. The legislation was intended to curb strike suits, not SEC enforcement actions, and that is now what it does.

Similarly, the bill has been modified to apply only to implied actions under section 10b, and does not override other sections of the securities laws that provide their own express causes of action. Strike suits are almost always brought under section 10, and actions based on other sections of the securities laws have not been a problem.

The intentional fraud-only standard of H.R. 10 has been modified. H.R. 1058 provides for actions based on misrepresentations or omissions done recklessly, but a defendant found reckless can only be held for the proportionate share of his liability. The definition of recklessness is based, in part, on language taken from the leading case in this area. Intentional fraud will still bring joint and several liability, as well it should. Anyone who intentionally breaks the law should know that he will be responsible for all damages that flow from his actions.

The bill preserves the principle of ''fraud on the market'' by removing the obligation in H.R. 10 to prove reliance in each instance of misrepresentation. Existing case law allowing plaintiffs to meet their obligation of showing reliance by relying on the market price will be codified for the first time. Members who seek to apply fraud on the market to all securities and not just those with liquid markets do not understand the legal principle and economic theories that underly the legislation.

The provision governing fee shifting, ''Loser Pays,'' has been modified significantly under the terms of H.R. 1058. The prevailing party can recover his costs only if he can prove that the losing party's case was without substantial merit, and that imposing those costs on the loser will not be unjust to either side. This entire provision applies to judgments; if a case is settled, it does not apply.

One thing has not changed. H.R. 1058 addresses the same issue as H.R. 10 did, that is, the crying need to reform the process by which securities class actions are litigated. H.R. 1058 is a refinement of H.R. 10, brought about by debate and consultation between many Members on both sides of the aisle. I urge its support by all Members of the House.

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

Mr. MARKEY. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, what I would like to do to help all those who are trying to decide how they are going to vote here today is to perhaps assist them by applying a multiple choice test, so that people can choose themselves, as we go through the test, which they think would be the correct answer.

Let me begin by asking which one of these four categories would be hurt by H.R. 1058: A, insider traders; B, fraudulent derivative brokers; C, wrongdoer accountants; or D, fraud victims.

The correct answer there is D, fraud victims would in fact be harmed, because it is going to essentially cripple the ability of private fraud actions to be brought by individual investors who have in fact had their life savings ripped off by investors, by companies that have misled them in their investment strategy.

Next question: out of the 235,000 suits filed in 1994, how many were securities fraud cases in this country: A, 31,800 out of the 235,000; B, 9,500; C, 18,670; D, 290, 290 out of the 235,000 cases. The correct answer is 290 cases in the securities fraud area.

The next question, by what percentage have securities fraud class actions increased over the last 20 years in our country: A, a 150-percent increase; B, a 100-percent increase; C, a 50-percent increase; D, minus 4.3-percent. The correct answer is D, a 4.3-percent decrease in securities fraud actions brought over the last 20 years.

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Next question, just trying to be helpful:

Out of the 14,000 public companies, how many were sued each year on average in securities fraud class actions over the last several years?

A. 7,000 public companies sued each year.

B. 3,500 public companies sued each year.

C. 1,400 companies in America sued each year.

D. 125 companies sued for fraud each year in the United States.

The correct answer, D, only 125 companies are sued each year in the United States for securities fraud.

Next question:

Which is H.R. 1058's solution to the derivatives crisis facing dozens of municipalities and other counties in the United States?

A. Improve the supervision and regulation of derivatives dealers.

B. Strengthen fraud liability.

C. Increase customer protections.

D. Make it virtually impossible for victims to recover their losses from fraudulent brokers.

The answer, D, make it impossible for all intents and purposes for there to be a recovery when individuals have been injured.

Next question:

Which one do the English not like?

A. Tea.

B. Soccer.

C. Fish and chips.

D. The English rule.

The correct answer is the English rule. they do not like the English rule in England.

Economist, the leading conservative periodical in that country, last month editorialized against the English rule arguing that the American rule is a better rule if ordinary individuals are to be compensated for harm which has befallen them because of fraudulent activity in the financial marketplace.

Next question:

Which is not a defense to securities fraud under H.R. 1058?

A. The plaintiff did not plead specific facts of my state of mind.

B. The plaintiff did not read on line 12 of page 68 of the prospectus where I made my fraudulent misrepresentation.

C. Sorry, I forgot the truth.

D. None of the above.

The answer, D.

H.R. 1058 requires plaintiff's complaints to make specific allegations which, if true, would be sufficient to establish scienter as to each defendant

at the time the alleged violation occurred. In addition, it is expressly made insufficient for this purpose to plead the mere presence of facts inconsistent with a statement or omission alleged to have been misleading.

Next question:

How much will H.R. 1058 reduce the Federal budget?

A. By $100 million.

B. By $50 million.

C. By zero.

D. It will increase it by up to $250 million over the next 5 years.

The answer, D, it will increase the Federal deficit by $250 million according to the Congressional Budget Office because of the needed additional enforcement by the Securities and Exchange Commission out in the financial marketplace.

Finally, under H.R. 1058, who will pay fraud victims the share of the damages caused by the primary wrongdoer who is in jail or bankrupt?

A. The reckless wrongdoers who participated in the fraud.

B. Aiders and abetters in the fraud who helped to make it possible.

C. The accountants who claim they forgot to disclose the fraud.

D. Nobody.

The answer is, D, nobody else would have to pay if somebody lost their life's fortune after being misled into a terrible investment with information which was completely and totally erroneous.

That is the problem we have with this bill. We hope that as we move into the specific amendments that those who are concerned about integrity and honesty in the financial marketplace will support some of the amendments we have to improve the bill.

Mr. BLILEY. Mr. Chairman, for purposes of debate only, I yield 5 minutes to the gentleman from Texas [Mr. FIELDS], chairman of the Subcommittee on Telecommunications and Finance.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Chairman, I begin with a quiz of my own.

Were the remarks of my friend:

A. Inaccurate.

B. Misleading.

C. Entertaining.

D. Good-natured.

I think the answer is ''all of the above,'' and we are going to have plenty of time to debate this.

I rise in support of H.R. 1058, the Securities Litigation Reform Act. This legislation revolutionizes the standard by which all disputes under securities laws will be litigated.

For example, the Securities Litigation Reform Act will introduce the concept of proportional liability into the Federal securities laws for the first time. A defendant may be liable for joint and several damages only if found to have acted knowingly. Defendants found liable for recklessness will be held proportionately liable. A person will be liable for all the damages he causes but only the damages that person causes. The concept is common sense and so simple one must wonder why it was not adopted long ago.

Arguably, the adoption of proportional liability alone is the most significant development in private securities litigation in the 61 years since the Federal securities laws were passed. This provision alone will go a long way toward eliminating strike suits, in that deep-pocket defendants will no longer be subject to the same coercive pressure to settle. By the adoption of this provision, we will eliminate the abuses of the current system that amount to a socialization of the risk. More importantly, Congress should do everything it can to ensure that the constitutional right of wrongly accused defendants, yes, even corporate defendants, to have an opportunity to defend themselves in court is protected. The costs of defending frivolous lawsuits today prevents that from happening. Proportional liability is a reform that will help accomplish this objective.

It is impossible to review the impact of spurious litigation and the abuses possible within the current securities class action system and not realize how important this bill is for the economic welfare of our country.

Critics of this legislation will tell us that private securities litigation is a critical addition to an effective enforcement program at the Securities and Exchange Commission. We agree, but surely frivolous lawsuits are not a necessary part of the Securities and Exchange Commission enforcement mechanism. Lawsuits brought solely for the purpose of coercing settlements out of deep-pocket defendants have no place in our law enforcement mechanism.

The frightening implication of the arguments of opponents of litigation reform is that everything is just fine the way it is. They see strike suit lawyers bringing lawsuits as a regulatory device that should be encouraged to promote market efficiency. We on this side of the aisle could not disagree more. We believe the only justifiable purpose for a lawsuit is to recover damages for people who have been injured. Academic studies of class action strike suits, however, show that even successful plaintiff shareholders recover just pennies on the dollar. The lawyers without clients who bring these suits take home millions of dollars in fees. Strike suits do not contribute to market efficiency. They contribute to affluent lifestyles of strike suit lawyers.

H.R. 1058 is dramatic, it is revolutionary legislation because that is what is necessary. The old ways of doing things are just not working. The bill provides that the losing party, his attorney or both will pay the prevailing party's legal fees if a court enters a final judgment against them. The court has discretion not to award fees if the losing party establishes that its position was substantially justified. The court will require the attorney, the class, or both to post security for costs to ensure that funds are available to pay the legal fees if they are awarded. This section represents a compromise from the original ''loser pays.'' It will be a powerful deterrent to the filing of frivolous suits. It will also ensure that successful plaintiffs receive a full recovery of their damages and that successful defendants do not suffer injury from having been wrongly accused.

Some provisions in this legislation are not revolutionary but just good public policy. For the first time in the securities laws, a standard for reckless conduct is defined. Similarly for the first time the Federal securities laws have been modified to specifically allow proving reliance by demonstrating a fraud on the market, that that has occurred. Finally, the bill creates a safe harbor for forward looking statements issued by companies so that they need not fear litigation if projections they make in good faith do not turn out as expected.

H.R. 1058 is a breakthrough piece of legislation. I urge the support of all my colleagues.

Mr. MARKEY. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana [Mr. TAUZIN].

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

Mr. TAUZIN. Mr. Chairman, a good legal system is not one that is measured by the number of lawsuits that are filed. It is not one measured by the length of those lawsuits, about how many judgments are rendered. Quite the contrary. A good legal system is one that deters bad behavior and, therefore, leads to fewer lawsuits. It is one in fact that encourages settlements of merited cases rather than the massive settlement of all cases regardless of merits.

On that test, this legal system we are trying to reform today is a rotten one. The gentleman from Massachusetts has told you that there were only a few cases filed. Let me give Members the facts.

In 1993, there were 723 of these cases pending, more than any other year except 1974. In fact, in the last 4 years, from 1990 to 1993, there have been 1,180 of these cases filed and that is almost equal to the number filed in the 10 previous years. Many more lawsuits. While Federal lawsuits are generally declining by 30 percent, these lawsuits are up by 10 percent.

Second, these lawsuits are not sailboats sailing on the ocean of litigation. These are massive carriers, massive lawsuits. The 723 cases pending today estimated request $28.9 billion in damages. These are huge lawsuits that clog up the system and that send a message out to everybody across America that the lawsuits are waiting for you the first time your stock prices drop.

The ripple effect of these lawsuits is massive. To businesses sued and those

not sued, the message is simple: ''Don't tell investors anything about your company because anything you say will be held against you in a lawsuit filed by lawyers who xerox the claims, appoint their own clients and get a lawsuit going worth billions of dollars in which most of the parties end up settling at 10 cents on the dollar.''

Let me ask Members something: When 93 percent of these cases never reach a jury, when most of them are settled for 10 cents on the dollar, do you not get the impression I get, that this is a system where merit does not matter, everybody settles all the time?

Why? Because these are massive lawsuits and merit does not count. The liability is so huge, the shotgun effect of the lawsuit against all parties is so dramatic, the damages claimed is so huge that the temptation is to get out of it as fast as you can, 10 cents on the dollar, take care of the lawyer, do not worry about the stockholders, is the way this system works.

This is a bad legal system. And when we are told, as we are told, that only 6 cents on the dollar ends up being recovered for stockholders under this system, you and I ought to be deeply concerned about it. It means that real fraud is not being prosecuted. It means that meritless cases are filed and stockholders get nothing, but a few big law firms in America are doing quite well.

When you have that kind of a system where merit does not matter, where lawsuits are filed on a Xerox machine, where one lawyer in California says, ''I have the best law practice in America, I have no clients,'' he just names whoever he wants to represent the class and files a lawsuit.

When you have professional plaintiffs appearing time after time on these lawsuits and bounties, legal bounties paid in order to get these lawsuits going, when you have got that kind of a system, is not time to reform it?

For 4 years now, I have been asking this Congress to do that and I am delighted today we will have that chance. As we debate amendments over the next 8 hours, let me tell Members that we have tried to accommodate concerns. We have tried to bring this bill this year as close as we can to the Dodd-Domenici bill of last year and to the Tauzin bill of last year that got 182 cosponsors, 67 Democrats to cosponsor it.

We will see when this debate is over an awful lot of Members on both sides of this aisle voting for this measure. We will improve it in the process in the next 8 hours. It will be a better bill, closer to the bill that we offered last year and the year before. I am proud to tell Members the coalition that I have been working with has endorsed this bill and the effort to improve it is still on this floor. We will join with many other Democrats in a bipartisan effort to improve this section of the law.

When we are through, we are going to have a statute that discourages fraud because it counts on real merited cases to be filed, and it counts on them to be brought to fruition and the guilty parties punished. It will be a system that discourages frivolous, shakedown strike lawsuits that benefit no one in this country except the few law firms who make a havoc of our legal system and a ton of money over it.

Mr. FIELDS of Texas. Mr. Chairman, I yield 7 minutes to the gentleman from California [Mr. COX], one of the principal authors of the legislation.

Mr. COX of California. Mr. Chairman, it is frequently said that lawyers are turning America into a nation of victims. Thanks to the trial bar which makes its living fanning these flames, not only real injuries but every imaginable harm is now compensable in court, except one; the one category of injury for which there is seemingly no recompense is injury inflicted by lawyers themselves.

What is the remedy for the ruinous economic losses, the delays, and the sheer misery caused by the fraudulent abuse of our laws, in particular of our securities laws? The answer is none. None. Fraudulent securities litigation may be the most egregious instance of this cure today. It is a legal torture chamber for plaintiffs and defendants alike, more suitable to the pages of Charles Dickens' ''Bleak House'' than a nation dedicated to equal justice under law.

The current system of private securities litigations is an outrage and a disgrace. It cheats both the victims of fraud and innocent parties by lavishly encouraging meritless cases, it has destroyed thousands of jobs, undercut economic growth and American competitiveness and raised the prices every American pays for goods and services.

It mocks the many victims of real fraud who receive pennies on the dollar while the lawyers take millions. The only beneficiaries are the lawyers. Their clients typically get a pittance for their claims.

Who are the victims of these strike suits which are brought to generate settlement value, which are brought in order to generate a nuisance value so that the lawyers can be paid simply to stop their harassment? First and foremost, victims of this kind of system are the victims of real fraud.The current system herds them into powerless classes of plaintiffs who are completely under the thumb of strike suit lawyers. The class members do not even have the chance to participate personally; oftentimes they are not even identified until very late in the proceedings.

Earlier today we heard from a company in Arlington, VA, just across the river from the Capitol, who spent hundreds of thousands of dollars responding to one of these strike suits generated for the purpose of making the company pay the lawyers to go away. The class representative that was selected by these lawyers as the most representative of all of the plaintiffs finally sent a postcard to the company and ended it this way by saying, ''I did not know the lawyer was going to do this; he talked to my wife. He acted against my wishes. I was in the hospital at the time. I like your company.''

That is the degree to which class action lawyers are able to control this kind of litigation. The lead plaintiffs who supposedly represent the victims' interests are not average investors. As often as not the so-called lead plaintiffs are virtually employees of the counsel. As one of the leading attorneys in this area once put it, and as the gentleman from Louisiana [Mr. TAUZIN] so eloquently reminded us, he said, ''I have the greatest practice of law in the world. I have no clients.'' That is the way class action securities strike suit lawyers view their opportunity to harass ordinary investors.

The same stable of tame lead plaintiffs appears in case after case. That is why our bill puts a limit on the number of suits that professional plaintiffs can bring to five in every 3 years.

How bad is this problem? Harry Lewis has appeared as lead plaintiff in an estimated 300 to 400 lawsuits. Rodney Shields has been in over 80 cases. William Weinberger has appeared in 90 cases just since 1990. One court recently called one of these professional plaintiffs the unluckiest investor in the world. Obviously, a wry sense of humor, that judge.

With the lawyers in charge of the litigation, it is little wonder they manage to benefit their own interests at the expense of their clients. Many recent studies have shown that the current system encourages strike suits lawyers to ignore even overwhelming cases of fraud. Flagrant cases that should lead to 100 percent recovery are instead settled for cents on the dollar while the lawyers get millions in settlement fees.

Even when the fraud victims get a full recovery the current winner-loses system unique to America still ensures they will never get fully compensated. Their attorneys' fees and costs come right off the top. And because the plaintiffs' lawyers, not the victims, control the litigations, they make sure those attorneys' fees are top dollar no matter how meager their clients' recovery.

The current system ensures that investors will suffer ever more avoidable losses in the future. Even good faith reasonable predictions about the future events of a company's prospects are penalized under the current securities laws. The threat of lawsuits over so-called forward looking information, how is this company going to do in the future, is so serious that many if not most CEO's these days refuse to talk to the press at all about their company's performance and yet that is exactly the kind of information the market needs to operate. How a company has performed in the past is interesting, but everybody wants to know what is going to happen from here forward.

That is the information the market seeks out. Because the market is after that information they are now getting it through the black market and under the table. We would like to make sure that it is quality information, that a reasonable statement made in good faith should be available and should come from the source.

Strike suits claim virtually every American as a victim. Most particularly by this I mean ordinary workers and consumers all are victims of the heavy litigations tax levied by strike suit lawyers. The tens of millions of dollars siphoned off each year by strike suits represents thousands of workers not hired, new products delayed or canceled outright and vital research that will never be done, and price increases imposed on consumers. This tax will fall most heavily on high-tech biotechnology and other growth companies, the very industry most critical to American competitiveness.

One out of every four strike suits targets high-tech companies. High-tech and biotech companies have paid 40 percent of the costs of strike suit settlements handing out some $440 million, however, over the last 2 years alone.

Strike suits claim a last category of victims: tens of millions of Americans who have invested in securities through their labor union pension funds, ESOP's or their individual mutual fund. They suffer twice. They suffer whenever price fluctuation triggers the suit, and they suffer again through the costs of litigating and settling the strike suits that follow.

The current system is not protecting them; our legislation will.

Mr. MARKEY. Mr. Chairman, I yield 2 minuted to the gentlewoman from California [Ms. ESHOO].

Ms. ESHOO. Mr. Chairman, at the first Committee on Commerce hearing on this issue I stated that our final objective must be the Congress must pass and the President should sign into law legislation which provides relief from meritless lawsuits and do it this year. Let me state the plain facts. Meritless lawsuits are crippling our high-technology industry. They cost money, they cut investment and stifle initiative. They must be stopped.

Twenty-six of the 40 largest high-tech companies in Silicon Valley have been sued. In fact I think if you place them all in the room, all of the players in Silicon Valley, the only difference between them is those that have sued and those that will be.

H.R. 1058 attempts to stop these suits and I commend my colleagues for bringing this issue to the floor. We share the same goal of ending frivolous lawsuits.

In my view, in the effort to right the wrongs, many of the reform proposed by H.R. 1058 go too far. By eliminating such protections as the recklessness standard for fraud, this legislation would strip the ability of shareholders with legitimate claims, let me underscore that again, with legitimate claims to go to court.

Just yesterday the White House called H.R. 1058 ''manifestly unfair,'' and the chairman of the SEC, Arthur Levitt, has said the Commission cannot support the bill. That is why it is being debated, that is why it has been brought to the floor, and that is why there are many key amendments that will be offered to improve the bill.

So Mr. Chairman, high technology businesses should not have to wait another year. They need relief now.

Recently I introduced legislation, H.R. 675, along with my colleague, the gentleman from California, Mr. NORM MINETA, who is my next-door neighbor and represents part of the Silicon Valley, which mirrors the broad bipartisan legislation introduced again this year by Senators DODD and DOMENICI. I believe H.R. 675 will put an end to frivolous suits while protecting investors' rights. This bill, I believe, protects investors' rights and is a bill which ultimately I think will break a legislative stalemate which would only delay protection for our high technology community.

We must craft a piece of legislation that stops the frivolousness and yet still protects shareholders and investors, and the bill before us today I think is a step in the right direction.

In my view, the balance of the work still remains to be done. As H.R. 1058 advances through the legislative process, our objective again must be to end meritless lawsuits quickly and efficiently and with fairness, and I think that is an operative word.

Mr. Chairman, my constituents need and deserve relief, and I look forward to working on producing that for them.

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. GILLMOR].

Mr. GILLMOR. Mr. Chairman, I thank the gentleman for yielding time to me, and I rise in support of H.R. 1058, the Securities Litigations Reform Act.

This week we are going to be debating a number of important legal and economic issues, and one of the most critical will be finally addressing the explosion of abusive and speculative litigation known as ''strike suits.'' For too many years American high technology and manufacturing companies have faced the unreasonable risk and threat of litigation at the cost of higher product prices, diminished earnings shareholder returns, reduced capital investment, and a less vibrant American economy.

As a result many people are not willing to serve on the boards of directors of these companies. Many companies, even where there is no fraud and no negligence committed, are faced with the tremendous cost of litigations. It also makes companies far less willing to disclose useful and valuable information to the public. Such abuses simply cannot be allowed to continue unchecked.

Robert Samuelson, a noted economist, pointed out the huge increase in legal costs in our society. Over a 22-year period legal fees as a percent of the gross national product increased nine-tenths of 1 percent to 1.7 percent, nearly double.

When you consider that 3 or 4 percent is considered good growth in the economy, and you drain off 1.7 percent in nonproductive fees of this sort, it is clear the tremendous harm that it does to our economy, the harm it does to jobs and to the standard of living of the average working American.

Let me close by quoting from Jim Kimsey, who represents the American Electronic Association, before the Telecommunications Committee.

Of the explosion in securities litigation he said: "We believe the current securities litigation system promotes meritless litigation, shortchanges investors, and costs jobs. It is a showcase example of the legal system run awry. It is bad law, bad policy, and bad economics."

Mr. Chairman, the time has come to act and pass securities reform litigation.

Mr. MARKEY. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan [Mr. DINGELL] the ranking minority member of the full committee.

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

Mr. DINGELL. Mr. Chairman, I ask unanimous consent to use a modest display.

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

There was no objection.

Mr. DINGELL. Mr. Chairman, there are ways of cleaning up the abuses that exist with regard to citizens' suits regarding securities. But this legislation is not the way that it should be done.

My colleagues on the Republican side would have us believe that the securities industry and the marketplaces of this country are some kind of kindergarten or perhaps a cloistered nunnery where nothing that is good for us is brought out. No, sir, nothing could be further from the truth. The hard fact of the matter is this is the place where rascals and rogues go to plunder the American people, honest investors who invest their life savings and that is all. And this legislation, while it might correct abuses of which the other side complains, will also strip law-abiding citizens of their rights to litigate where wrongdoing has been done to them and where their assets have been stolen by wrongdoing.

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This is not a handout from the trial lawyers. This is a prestigious business publication. It says, ''Can you trust your broker?'' The answer is you may be able to, but you may not. It is inside the publication, and I would commend it to the reading of my colleagues.

Look at some of the things that have had happened recently in the securities industry, and you will understand why

it is that this is bad legislation: a billion-dollar collapse of Barings investment banking firm in England. The lawsuits against the perpetrators of that wrongdoing would have probably been sheltered by this legislation. Similarly, the $2 billion collapse of Orange County investments that led that county to declare bankruptcy probably would be sheltered by this legislation. Limited partnership fraud so far has cost Prudential Securities better than $1 billion. Twelve billion dollars in litigation in a fraud case against Drexel Burnham Lambert; the case was settled for $3 billion, no shakedown by trial lawyers, but action by the Federal Government.

How about the securities fraud and insider trading scandals perpetrated by Ivan Boesky, Dennis Levine, Martin Siegel and others on Wall Street?

What about some other splendid securities frauds which probably would have been sheltered under this legislation? Lincoln Savings and Loan, Charlie Keating and his cohorts; they sold worthless bonds to the elderly in bank lobbies; Washington Public Power Supply System, a massive default of $10 billion and more in bonds, led to a class-action lawsuit which resulted in more than an $800 million settlement, probably would have been proscribed under the legislation that we are addressing. In Salomon Brothers, a group of elite institutions worked together to raid government bonds auctions; probably lawsuits would have been banned under the legislation we are talking about. At Miniscribe, the company shipped bricks in boxes instead of hard disk drives, or at Phar-Mor, where executives maintained two sets of books so that as much as $1 billion could be diverted for personal interests. Those are some of the better.

But you know that in some 35 other communities other than Orange County, some publicly supported institutions also reported massive losses in 9 months, these because of exotic derivatives, and it goes on and on, Kemper Financial Services, which was recently charged by the SEC with illegally diverting stock trades for the benefit of its own profit-sharing plan. Kemper settled a similar charge earlier with the SEC for $10 million. We do not know how much they are going to come up with on this one.

The Wall Street Journal reported the SEC charged more than a dozen individuals and companies with wireless cable fraud bulking 3,000 investors out of $40 million. On February 27, the Journal and the Times reported Hanover, Sterling & Co., a brokerage company, was ordered to cease all operations. Why? Because thousands of investors in the 16 stocks to which the firm was a market-maker suffered massive losses ranging from 57 percent to 80 percent when the shutdown was reported.

Business Week on February 20 said, ''Can you trust your broker?'' The answer, as I have said, was not reassuring. It says a rising wave of cynicism, both inside and outside the industry on widely accepted ways of doing business at the largest and most prestigious firms.

What we are talking about here is legislation that has been offered by my Republican colleagues that shelters wrongdoing. It does not only protect innocent people against strike suits, but it requires, for example, that in pleading, a pleader has to prove what was going on inside the head and the mind of the wrongdoer, and the question then is, what is the representative of the hurt litigant? Is it a lawyer? Is it a psychic or is it a psychiatrist?

This is outrageous legislation and should be rejected.

Mr. FIELDS of Texas. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Colorado [Mr. SCHAEFER].

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

Mr. SCHAEFER. Mr. Chairman, I rise today in support of H.R. 1058, the Securities Litigation Reform Act.

As a member of the Telecom and Finance Subcommittee, I have long supported similar legislation to fix our broken securities litigation system. The system is broken for defrauded investors who recall and recover only a small amount of their losses when part of valid cases. The system is broken for businesses, especially the startup high-tech firms who rely on capital markets for financing. And it is broken for the general public who ultimately must pay the price of frivolous litigation in the form of slower economic growth, fewer jobs, and higher prices.

It is very clear we have a serious problem. I say to my colleagues, strike a blow for our small businesses and startup enterprises. Support H.R. 1058.

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise today in strong support of H.R. 1058.

We must end abuse that is eroding our legal system. As stated by SEC Chairman Arthur Levitt, private actions are intended to compensate defrauded investors and deter securities violations.

If the current system fails to distinguish between strong and weak cases, it serves neither purpose effectively. I could not agree more.

Unfortunately, this is precisely with what we are left today, an ineffective system.

The changes mandated by this legislation would help restore responsibility and respectability to our corporate system. First, the provision that imposes loser-pays rules when the court determines the position of the losing party was not substantially justified are warranted. This would prevent the consummate race to the courthouse. Plaintiffs will have to weigh the merits of the case before filing suit. Opponents claim this will have a chilling effect on plaintiffs' right to sue. This is simply not the case.

The modified loser-pays provision will only result in fee shifting in cases that should not have been brought in the first place. The only thing chilled by this provision would be meritless suits which I believe deserve to be put in the deep freeze.

Second, as for the definition of recklessness, the current law is vague and uncertain. Parties may engage in nearly identical conduct, yet courts reach completely different results. The vagueness and uncertainty of the current standard has led to a great deal of inconsistency, confusion, and unfairness in our judicial system.

I think all of us would agree that by creating consistency we can increase fairness and decrease the probability of injustice in our legal system.

In general, most strike suits under current law do more harm than good. Reform is needed for two main reasons. No. 1, proper plaintiffs must have a place to redress valid grievances.

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

Mr. Chairman, I would just like to point out to my colleagues that there are 435 votes in this House to improve class action security fraud lawsuits.

We want to stop the race to the courthouse. We want to sanction lawyers who bring frivolous cases or bring them in bad faith.

But what we really hear from the other side about the virtues that our antifraud laws bring to our investors and to our market, we rarely hear about the need for a balanced approach to reform. We rarely hear the mention of the terrible frauds that have occurred over the last 10 years, and we never hear assurances from the other side that their legislation will not adversely impact these disastrous situations like Drexel and Milken and Boesky and Lincoln Savings and Keating and Miniscribe and many others.

If the legislation brought here today was meant to shut down these legal firms that take professional plaintiffs and terrorize private corporations across this country, I think we can find a consensus. The truth of the matter is though the legislation we are considering here today shuts down the good suits, the legitimate suits, the suits that have to be brought by individuals in this country against Boesky and against Milken and against Keating and against all of those S&L scam artists that were out there in the 1980's, the scam artists that resulted in the U.S. Congress being forced to vote for 100 to 150 billion dollars' worth of taxpayer dollars in order to insure that those who had put their life savings in the S&L's and banks across this country did not in fact face bankruptcy.

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

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. BLUTE].

Mr. BLUTE. Mr. Chairman, I thank the gentleman, the distinguished chairman of the subcommittee, who wrote this legislation.

Mr. Chairman, the engine of economic growth in this country is under assault from some lawyers who give the term ''gone fishing'' an entirely new meaning.

These strike-suit lawyers are trolling for easy money won from vulnerable companies whose only crime is being subject to a volatile market.

Entrepreneurial high-tech companies in my State such as EMC Corp. based in my district are being hit with strike suits which seek damages for loss in stock value. This is a company that has created thousands of jobs in the State of Massachusetts. Since going public in 1986, it has been the subject of two such suits. One was filed less than 24 hours after the company disclosed quarterly earnings lower than the previous quarter.

This kind of situation is not unusual. Hundreds of suits are filed by lawyers and professional plaintiffs who prey on small high-tech firms because their stocks tend to be more volatile and they are more inclined to settle.

In fact, between 1989 and 1993, 61 percent of all strike suits were brought against companies with less than $500 million in annual sales, and 33 percent against companies with less than $100 million in sales.

Mr. Speaker, the problem is critical, because these high-tech companies are the job-creating innovators, where many of our cutting-edge products originate. These are companies that are leading our export efforts in our economy. Biotechnology companies in my district are developing treatments for cancer and AIDS. These kinds of strike suits are jeopardizing the development of those life-saving products by holding these companies hostage.

These companies are forced to divert resources, energy, talent, and money to fighting these unwarranted strike suits.

Mr. Chairman, I urge my colleagues to support this bill, and let us have a strong growth export economy.

Mr. MARKEY. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. CONYERS], the ranking minority member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Massachusetts for yielding to me and commend him on the excellent job that he has done today and through the years on this very important subject.

Ladies and gentlemen, the committee report explaining why this legislation is needed talks about the typical case of high-growth, high-technology stock which experiences a sudden change in price, thereby giving rise to securities lawsuits and a claim for damages by shareholders.

But that is not the type of lawsuit that would be affected by the one killer amendment by the gentleman from California who will offer it very soon in this debate. By blocking all possibility of civil RICO lawsuits for securities fraud, the Cox amendment would incredibly harm plantiffs such as the elderly bondholders who were cheated out of their life's savings by Charles Keating in the Lincoln Savings and Loan debacle. It would deny any effective remedy for the thousands of depositors of the Bank of Credit and Commerce International, the notorious BCCI, which regulators from 62 countries united to shut down because of the bank's fraudulent practices.

Why an amendment of such a broad sweep that it would prevent lawsuits against some of the biggest white-collar criminals in the Nation's history, even though the sponsors of the amendment may not have intended such a result? The answer is this amendment was hastily put together without the benefit of any hearings or debate in any committee or the possibility of a markup where there could have been important improvements, and now within an 8-hour ambit, we are asked to consider the revocation of the greatest single crime-fighting bill provision, RICO, on the law books today.

☐ 1715

It is a shame for what is going on now.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California [Mr. COX], who is a member of the Committee on the Judiciary, by the way.

Mr. COX of California. Mr. Chairman, I point out that the RICO amendment, which the gentleman is accurate in stating that I will soon offer, was in fact inadvertently left out of the bill when we combined the Commerce and Judiciary portions. It was in the original bill introduced on January 4, also in the original bill of last year and introduced and made public as part of the Contract With America in October. It has always been in the bill.

Mr. CONYERS. Well, may I just respond to the gentleman? Could we inadvertently leave it out when there were no hearings on it? It was mentioned in the bill, but there were a lot of things mentioned in the bill. On this pretext, anything that was not put in the bill could have been accidentally left out.

The problem that we have is that the gentleman's amendment is asking the Congress in broad daylight to believe that the biggest amendment for fighting civil fraud that has ever been put on the books was accidentally left out. I guess we accidentally did not have any hearings. I guess there accidentally were not any witnesses. I guess this was all an accident that needs to be corrected right now.

If it was an accident, let us go back and do it correctly. The provision of this amendment is broader than any attempt at a modification of RICO, and the gentleman knows it.

Mr. FIELDS of Texas. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. I thank the gentleman for yielding to me.

Mr. Chairman, something I learned a long time ago from my father that I think would do us all well and that is his definition of a good lawyer. And a good lawyer is somebody who solves problems rather than creates them.

The legislation that we are considering has in fact addressed an issue before us that is causing and wreaking havoc with a large number of America's most consistent job-providing industries.

I believe the American people are sick and tired of those who feed off of our system and weaken American competitiveness. They are sick of the unscrupulous few who make a mockery of our concept of justice by exploiting the legal system for their own personal gain.

Mr. Chairman, a glitch in the Securities and Exchange Act of 1934, called rule 10 B–5, created a new group of parasites known as professional plaintiffs. These professional plaintiffs are recruited by those who figured out how to exploit our judicial system by filing frivolous lawsuits.

Currently, exploitation of rule 10 B–5 allows these clever few to sue companies through the use of professional plaintiffs for fraud whenever the price of a stock drops. These professional plaintiffs, or parasites, if you will, who hold only a tiny share of stock, launch fishing expeditions and rack up formidable discovery fees to force the defendants to settle out of court rather than to pay the costs of defending themselves. The result has been a threefold explosion of securities fraud suits over the last 5 years. One out of every eight companies on the New York Stock Exchange has been hit with this type of suit. I believe America's economic growth is stifled by such a perversion of our legal system by a small handful of lawyers that file the lion's share of suits, hitting one in every four high-technology firms in our country today. Just nine law firms in this country have accounted for two-thirds of the 1,400 class suits filed between 1988 and 1993.

The threat that exploitation of rule 10 B–5 poses to our time, our peace of mind, and our pocketbooks, the pocketbooks of the average American, is immoral and should be illegal.

I am supporting the Securities Reform Act because it will free American Businesses from the ever-present threat of baseless and expensive lawsuits. This bill will deter the practice of frivolous lawsuits that serve only to line the pockets of those who rob our corporations of investment capital and rob them of the resource for competitive research and development and ultimately rob us of an increased standard of living and high-wage jobs.

I therefore urge passage of H.R. 1058.

Mr. MARKEY. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. KLINK].

Mr. KLINK. I thank the gentleman for yielding this time to me.

You know, proponents of this so-called securities litigation reform are arguing that private securities and class action suits are making it virtually impossible for public companies to raise capital and are preventing these companies from going public.

But they will tell you only anecdotes about their friends in big business who would prefer not to be sued because they really cannot rely on the facts. The facts will show that our markets have been tremendously successful in raising capital for public companies. Every important statistical measure of the success of our securities markets, the number and proceeds of initial public offerings, the volume and value of common stock offerings, the volume of trading, have been at all-time highs. The number of initial public security offerings has risen 9,000 percent in the last 20 years while the proceeds raised have skyrocketed 38,000 percent.

The staff report of the Senate Subcommittee on Securities has found that, ''Despite the claims by critics that securities litigation is hampering capital formation, initial public offerings have proceeded at a record pace in recent years.''

We all know that recently the Dow-Jones Industrial Averages surpassed the 4,000 mark, which is an all-time high. That has to make us all wonder how can it be that there is such a serious problem from the roughly 300 fraud class action cases filed each year.

In light of the facts, claims by companies that they are afraid to go public to raise capital because of fear of litigation are nothing but really self-serving nonsense. If they are really are so concerned about litigation, they would not be restricting the minuscule number of private securities fraud class actions, they would be restricting the huge and increasing numbers of business-versus-business suits.

As the Rand Corp.'s recent study of the litigation patterns of Fortune 1,000 companies demonstrates, by far, is that you are seeing many more firms that are suing other firms. As the Wall Street Journal, in an article of December 3, 1993, entitled ''Suits by Firms Exceed Those by Individuals,'' noted, ''Businesses may be their own worst enemies when it comes to the so-called litigation explosion.''

So why is it that proponents are seeking to limit only private actions and not business suits?

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to our good friend on the other side of the aisle, the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. I thank the gentleman for yielding this time to me.

Mr. Chairman, I do not know if there are others of my colleagues who have been stockbrokers at some time in their life, but I was for 10 years. I have watched what has happened in the securities marketplace. The gentleman from Michigan [Mr. DINGELL] is absolutely right: There are corporate abuses.

Mr. KLINK, the gentleman from Pennsylvania, is also correct that the securities market itself is doing quite well.

But the fact remains that there is an abuse within this industry that does need to be corrected. And it is focused primarily on those firms that provide the highest rate of growth to our economy, those firms that take the greatest risks, in the area of high-technology.

Legent Corp., in Herndon, VA, now in Vienna, actually, they had a slight change in their earnings expectation, the stock dropped. Immediately they were hit with one of those strike lawsuits. They required 200,000 pages of documentation, many, many days of very valuable employee time was spent, and they wound up settling for $2 million in legal fees even though it was acknowledged it was a frivolous lawsuit.

Metrix Corp., same thing happened; A small reduction in their earnings expectation, the stocks began to drop, and they got hit with a strike lawsuit. They had to produce 50,000 documents, 200,000 electronic messages to the plaintiffs' lawyers, 20 employees had to spend full time on this. They wound up settling for $975,000.

Mr. Chairman, I want you to recognize this: The investors, the shareholders got $400 or less. The lawyer got $330,000. That is what this is all about. They are fishing expeditions for lawyers who have found a way to abuse the system. It should not be tolerated in the courts and it should not be tolerated in the Congress.

Mr. MARKEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentleman for yielding this time to me.

Mr. Chairman, I was inspired after hearing my friend, the gentleman from Virginia [Mr. MORAN], for whom I have great respect, enormous respect. After I heard him speak, I want to say that he voices the sentiments by many of us on this side that we ought to make some modifications that deal with the real problems.

But the bill we have before us today is one of a long line of measures that are so extreme, that go so far and that are so, in many respects, absurd as to, I think, astonish anyone who is an observer or a participant in the system of jurisprudence in America today.

If the problem was as it has been described by the majority, surely the Securities and Exchange Commission would have been here saying so. But they came before the committee and did not say that this bill was the solution.

The gentleman from Virginia, [Mr. MORAN] quoted anecdotes. There are many anecdotes; some of them are right on point. But when you get to anecdotes and you look at them carefully, you begin to find that the point one wishes to make by using anecdotes begins to fall apart.

Mr. FIELDS of Texas. Mr. Chairman, I yield 1 minute to the gentleman from New York State [Mr. PAXON].

Mr. PAXON. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in strong support of H.R. 1058. This needed legislation strikes at the very heart of the serious problem, the strike suits and abusive litigation.

As we have heard from previous speakers, our capital markets are the envy of the world, but that position is being seriously threatened. It is threatened by a privileged few, a group of people who are not injured in any way, but have found a system for legal extortion, a system where all you need is to read stock quotes for a falling stock and pair it up with a data base, and there is a comprehensive list of ready plaintiffs.

Mr. Chairman, for far too long this has been going on. It is time to stop it and for Congress to approve this important legislation.

I believe it is a balanced approach that will benefit all Americans.

It will not eliminate the ability of injured Americans to bring claims, but it will stop get-rich attorneys from filing spurious claims against companies.

I am proud of our Committee on Commerce, the work product they have put forth, and particularly the work of the gentleman from California, Mr. COX, the gentleman from Texas, Mr. FIELDS, and the gentleman from Virginia, Chairman BLILEY.

Mr. MARKEY. Mr. Chairman, I yield myself the 2 minutes to conclude.

Mr. Chairman, the cover of News-Week just out tells the story: ''The boy who lost a billion dollars, Nick Leeson, the 28-year-old trader who bankrupted England's oldest investment firm.''

Now, Nick Leeson is an interesting case. It is not directly on point here, except to the extent to which there are Nick Leesons out there and they do prey upon innocent investors, they do engage in practices that risk the life savings of individuals who believe that the holding out, the representation made by the S&L, is in fact accurate.

Now, with the Dow-Jones Industrial Average rising to 4,000 this week, there is unprecedented confidence in the American marketplace, that it is honest and efficient, but honest above all.

That is what our American laws have given assurances to the rest of the world over the last 60 years. If you go to Singapore, if you go to England, if you go to any other place in the world, you go to a country that has lower standards than our country. It is this system of laws which we have put in place which has given the reason for individual investors to look at the thousands of companies which we have, take their savings and put them into these companies that have allowed our

Dow-Jones Industrial Average to rise to 4,000. That is what we should be extremely cautious about as we deal with this issue here today.

Our system works. If we want to deal with rogue lawyers, if we want to deal with frivolous law cases let us deal with them, but let us not also kid ourselves, there are many here who are interested in ensuring that the legitimate cases that have to be brought to protect the public are also excluded as well.

Mr. FIELDS of Texas. Mr. Chairman, I yield myself the remaining minute.

□ 1730

Mr. Chairman, some of the examples we have heard from the other side of the aisle, Milken, Keating, Leeson, they all share something important. Each of these acted with intent. Each of these acted with the intent to defraud.

The legislation that we are considering today would not affect shareholder actions against those people or people like them in the future. Those people would be jointly and severally liable. That has not changed in our legislation, and, Mr. Chairman, I think that is a compelling point in ending this debate.

Mr. HASTINGS of Florida. Mr. Chairman, while H.R. 10 is called the Common Sense Legal Reform Act, the more accurate title would be the Citizens' Rights Reduction Act. For more than 200 years, the citizens of the United States have possessed the right by their own States to hold wrongdoers accountable. Under H.R. 10, such rights would be taken away from the citizens of the States. With an apparent Congress-knows-best attitude, the proponents of this bill want to take away the rights of ordinary Americans to hold wrongdoers accountable and to seek fair and just compensation when they are wronged. This bill is wrong.

Mr. HASTERT. Mr. Chairman, I rise in support of H.R. 1058, the Securities Litigation Reform Act, a bill that will discourage meritless suits.

There is a securities litigation explosion in this country. In 1993 we saw the highest number of pending cases in any year for which data are available except 1974. Since 1990, filings have increased dramatically. The number of cases filed in the 4 years from 1990 to 1993 nearly equals the number filed in the previous 10 years combined.

Some argue that H.R. 1058 will hurt investors, but just the opposite is true. The current litigation explosion punishes investors because companies increasingly fear so called strike suits which are filed each time their stock fluctuates. Thus, companies reveal less and less information to investors that could be used against them in the future. Clearly, investors lose when they do not have access to information when making decisions about where to place their life savings.

Investors are also hurt under current law because they, in reality, are the ones who pay the costs when a company has to go to court to defend itself against a meritless lawsuit. They also pay the high cost of maintaining insurance against these strike suits.

Finally, investors, who have legitimate claims, receive less money than they deserve because it is common practice to simply settle out of court. Companies settle out of court, whether or not the suit has merit, because it costs an average of $692,000 in legal fees and 1,055 hours of management time to successfully defend a strike suit. When meritless suits can be dismissed, the cases of real fraud will be brought to court. Then, investors will get paid the real value of their loss.

That is just not the case today. Today, investors receive between 6 and 14 cents on the dollar lost.

Securities litigation reform will reward investors by removing these punishments. However, in addition, specific provisions are included in the bill to give investors the same authority over their attorney as other clients, in other types of litigation, have. The bill provides for a court-appointed steering committee to make sure that lawsuits are maintained in the client's best interest. It also requires settlement offers to disclose the amount paid to lawyers and class members per share of stock. These significant changes favor those investors who have legitimate and important suits.

But investors are not the only ones punished by meritless strike suits. High-technology and high-growth companies are also punished. One in every eight companies listed on the New York Stock Exchange is hit with a strike suit. Even more startling is that one of every four strike suits targets these high-growth companies. The average settlement, which is over $8.6 million, has, in essence, become a litigation tax on these companies.

Those who have a tangential relationship to these suits, primarily the accountants who certify the books, are also punished. The long arm of the law has sought to include them, even when there is no fraud on their part, just because they have deep pockets.

It's time that we reform our judicial system so that those who commit crimes are the ones who are punished, not those who abide by the law. H.R. 1058 will restore integrity to our system and I urge my colleagues to join me in voting to pass this important bill.

The CHAIRMAN. All time for general debate has expired. Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 1058 is as follows:

H.R. 1058

*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 cited as the ''Securities Litigation Reform Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Prevention of lawyer-driven litigation.
(a) Plaintiff steering committees to ensure client control of lawsuits.
''Sec. 36. Class action steering committees.
''(a) Class action steering committee.
''(b) Membership of plaintiff steering committee.
''(c) Functions of plaintiff steering committee.
''(d) Immunity from civil liability; removal.
''(e) Effect on other law.''
(b) Prohibition on attorneys' fees paid from Commission disgorgement funds.
Sec. 3. Prevention of abusive practices that foment litigation.
(a) Additional provisions applicable to private actions.
''Sec. 20B. Procedures applicable to private actions.
''(a) Elimination of bonus payments to named plaintiffs in class actions.
''(b) Restrictions on professional plaintiffs.
''(c) Awards of fees and expenses.
''(d) Prevention of abusive conflicts of interest.
''(e) Disclosure of settlement terms to class members.
''(f) Encouragement of finality in settlement discharges.
''(g) Contribution from non-parties in interests of fairness.
''(h) Defendant's right to written interrogatories establishing scienter.''
(b) Prohibition of referral fees that foment litigation.
Sec. 4. Prevention of ''fishing expedition'' lawsuits.
''Sec. 10A. Requirements for securities fraud actions.
''(a) Scienter.
''(b) Requirement for explicit pleading of scienter.
''(c) Dismissal for failure to meet pleading requirements; stay of discovery; summary judgment.
''(d) Reliance and causation.
''(e) Allocation of liability.
''(f) Damages.''
Sec. 5. Establishment of ''safe harbor'' for predictive Statements.
''Sec. 37. Application of safe harbor for forward-looking Statements.
''(a) Safe harbor defined.
''(b) Automatic protective order staying discovery; expedited procedure.
''(c) Regulatory authority.''
Sec. 6. Rule of construction.
Sec. 7. Effective date.

**SEC. 2. PREVENTION OF LAWYER-DRIVEN LITIGATION.**

(a) PLAINTIFF STEERING COMMITTEES TO ENSURE CLIENT CONTROL OF LAWSUITS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

**''SEC. 36. CLASS ACTION STEERING COMMITTEES.**

''(a) CLASS ACTION STEERING COMMITTEE.—In any private action arising under this title seeking to recover damages on behalf of a class, the court shall, at the earliest practicable time, appoint a committee of class members to direct counsel for the class (hereafter in this section referred to as the 'plaintiff steering committee') and to perform such other functions as the court may specify. Court appointment of a plaintiff steering committee shall not be subject to interlocutory review.

''(b) MEMBERSHIP OF PLAINTIFF STEERING COMMITTEE.—

''(1) QUALIFICATIONS.—

''(A) NUMBER.—A plaintiff steering committee shall consist of not fewer than 5 class members, willing to serve, who the court believes will fairly represent the class.

''(B) OWNERSHIP INTERESTS.—Members of the plaintiff steering committee shall have cumulatively held during the class period not less than—

''(i) the lesser of 5 percent of the securities which are the subject matter of the litigation or $10,000,000 in market value of the securities which are the subject matter of the litigation; or

''(ii) such smaller percentage or dollar amount as the court finds appropriate under the circumstances.

''(2) NAMED PLAINTIFFS.—Class plaintiffs serving as the representative parties in the litigation may serve on the plaintiff steering committee, but shall not comprise a majority of the committee.

''(3) NONCOMPENSATION OF MEMBERS.—Members of the plaintiff steering committee shall serve without compensation, except that any member may apply to the court for reimbursement of reasonable out-of-pocket expenses from any common fund established for the class.

''(4) MEETINGS.—The plaintiff steering committee shall conduct its business at one or more previously scheduled meetings of the committee, of which prior notice shall have been given and at which a majority of its members are present in person or by electronic communication. The plaintiff steering committee shall decide all matters within its authority by a majority vote of all members, except that the committee may determine that decisions other than to accept or reject a settlement offer or to employ or dismiss counsel for the class may be delegated to one or more members of the committee, or may be voted upon by committee members seriatim, without a meeting.

''(5) RIGHT OF NONMEMBERS TO BE HEARD.—A class member who is not a member of the plaintiff steering committee may appear and be heard by the court on any issue relating to the organization or actions of the plaintiff steering committee.

''(c) FUNCTIONS OF PLAINTIFF STEERING COMMITTEE.—The authority of the plaintiff steering committee to direct counsel for the class shall include all powers normally permitted to an attorney's client in litigation, including the authority to retain or dismiss counsel and to reject offers of settlement, and the authority to accept an offer of settlement subject to final approval by the court. Dismissal of counsel other than for cause shall not limit the ability of counsel to enforce any contractual fee agreement or to apply to the court for a fee award from any common fund established for the class.

''(d) IMMUNITY FROM CIVIL LIABILITY; REMOVAL.—Any person serving as a member of a plaintiff steering committee shall be immune from any civil liability for any negligence in performing such service, but shall not be immune from liability for intentional misconduct or from the assessment of costs pursuant to section 20B(c). The court may remove a member of a plaintiff steering committee for good cause shown.

''(e) EFFECT ON OTHER LAW.—This section does not affect any other provision of law concerning class actions or the authority of the court to give final approval to any offer of settlement.''.

(b) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

''(4) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court, funds disgorged as the result of an action brought by the Commission, or of any Commission proceeding, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.''.

**SEC. 3. PREVENTION OF ABUSIVE PRACTICES THAT FOMENT LITIGATION.**

(a) ADDITIONAL PROVISIONS APPLICABLE TO PRIVATE ACTIONS.—The Securities Exchange Act of 1934 is amended by inserting after section 20A (15 U.S.C. 78t–1) the following new section:

''PROCEDURES APPLICABLE TO PRIVATE ACTIONS

''SEC. 20B. (a) ELIMINATION OF BONUS PAYMENTS TO NAMED PLAINTIFFS IN CLASS ACTIONS.—In any private action under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the portion of any final judgment or of any settlement that is awarded to class plaintiffs serving as the representative parties shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this subsection shall be construed to limit the award to any representative parties of actual expenses (including lost wages) relating to the representation of the class.

''(b) RESTRICTIONS ON PROFESSIONAL PLAINTIFFS.—Except as the court may otherwise permit for good cause, a person may be a named plaintiff, or an officer, director, or fiduciary of a named plaintiff, in no more than 5 class actions filed during any 3-year period.

''(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 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 title 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 section shall be awarded against the losing party, its attorney, or both; and

''(B) 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 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 private action arising under this title, 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 section 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.

''(d) PREVENTION OF ABUSIVE CONFLICTS OF INTEREST.—In any private action under this title pursuant to a complaint seeking damages on behalf of a class, if the class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall, on motion by any party, make a determination of whether such interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the class.

''(e) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—In any private action under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, any settlement agreement that is published or otherwise disseminated to the class shall include the following statements:

''(1) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(A) AGREEMENT ON AMOUNT OF DAMAGES AND LIKELIHOOD OF PREVAILING.—If the settling parties agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title and the likelihood that the plaintiff would prevail—

''(i) a statement concerning the amount of such potential damages; and

''(ii) a statement concerning the likelihood that the plaintiff would prevail on the claims alleged under this title and a brief explanation of the reasons for that conclusion.

''(B) DISAGREEMENT ON AMOUNT OF DAMAGES OR LIKELIHOOD OF PREVAILING.—If the parties do not agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title or on the likelihood that the plaintiff would prevail on those claims, or both, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(C) INADMISSIBILITY FOR CERTAIN PURPOSES.—Statements made in accordance with subparagraphs (A) and (B) concerning the amount of damages and the likelihood of prevailing shall not be admissible for purposes of any Federal or State judicial action or administrative proceeding.

''(2) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties

or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on a per-share basis, together with the amount of the settlement proposed to be distributed to the parties to suit, determined on a per-share basis), and a brief explanation of the basis for the application. Such information shall be clearly summarized on the cover page of any notice to a party of any settlement agreement.

''(3) IDENTIFICATION OF LAWYERS' REPRESENTATIVES.—The name and address of one or more representatives of counsel for the class who will be reasonably available to answer written questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

''(4) OTHER INFORMATION.—Such other information as may be required by the court, or by any plaintiff steering committee appointed by the court pursuant to section 36.

''(f) ENCOURAGEMENT OF FINALITY IN SETTLEMENT DISCHARGES.—

''(1) DISCHARGE.—A defendant who settles any private action arising under this title at any time before verdict or judgment shall be discharged from all claims for contribution brought by other persons with respect to the matters that are the subject of such action. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution or indemnity arising out of the action—

''(A) by nonsettling persons against the settling defendant; and

''(B) by the settling defendant against any nonsettling defendants.

''(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to verdict or judgment, the verdict or judgment shall be reduced by the greater of—

''(A) an amount that corresponds to the percentage of responsibility of that person; or

''(B) the amount paid to the plaintiff by that person.

''(g) CONTRIBUTION FROM NON-PARTIES IN INTERESTS OF FAIRNESS.—

''(1) RIGHT OF CONTRIBUTION.—A person who becomes liable for damages in any private action under this title (other than an action under section 9(e) or 18(a)) may recover contribution from any other person who, if joined in the original suit, would have been liable for the same damages.

''(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—Once judgment has been entered in any such private action determining liability, an action for contribution must be brought not later than 6 months after the entry of a final, nonappealable judgment in the action.

''(h) DEFENDANT'S RIGHT TO WRITTEN INTERROGATORIES ESTABLISHING SCIENTER.—In any private action under this title in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.''.

(b) PROHIBITION OF REFERRAL FEES THAT FOMENT LITIGATION.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(c)) is amended by adding at the end the following new paragraph:

''(8) RECEIPT OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept remuneration for assisting an attorney in obtaining the representation of any customer in any private action under this title.''.

**SEC. 4. PREVENTION OF "FISHING EXPEDITION" LAWSUITS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10 the following new section:

**"SEC. 10A. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.**

''(a) SCIENTER.—

''(1) IN GENERAL.—In any private action arising under this title based on a fraudulent statement, liability may be established only on proof that—

''(A) the defendant directly or indirectly made a fraudulent statement;

''(B) the defendant possessed the intention to deceive, manipulate, or defraud; and

''(C) the defendant made such fraudulent statement knowingly or recklessly.

''(2) FRAUDULENT STATEMENT.—For purposes of this section, a fraudulent statement is a statement that contains an untrue statement of a material fact, or omits a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading.

''(3) KNOWINGLY.—For purposes of paragraph (1), a defendant makes a fraudulent statement knowingly if the defendant knew that the statement of a material fact was untrue at the time it was made, or knew that an omitted fact was necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading.

''(4) RECKLESSNESS.—For purposes of paragraph (1), a defendant makes a fraudulent statement recklessly if the defendant, in making such statement, is guilty of highly unreasonable conduct that (A) involves not merely simple or even gross negligence, but an extreme departure from standards of ordinary care, and (B) presents a danger of misleading buyers or sellers that was either known to the defendant or so obvious that the defendant must have been consciously aware of it. For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless.

''(b) REQUIREMENT FOR EXPLICIT PLEADING OF SCIENTER.—In any private action to which subsection (a) applies, the complaint shall specify each statement or omission alleged to have been misleading, and the reasons the statement or omission was misleading. The complaint shall also make specific allegations which, if true, would be sufficient to establish scienter as to each defendant at the time the alleged violation occurred. It shall not be sufficient for this purpose to plead the mere presence of facts inconsistent with a statement or omission alleged to have been misleading. If an allegation is made on information and belief, the complaint shall set forth with specificity all information on which that belief is formed.

''(c) DISMISSAL FOR FAILURE TO MEET PLEADING REQUIREMENTS; STAY OF DISCOVERY; SUMMARY JUDGMENT.—In any private action to which subsection (a) applies, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of subsection (b) are not met, except that the court may, in its discretion, permit a single amended complaint to be filed. During the pendency of any such motion to dismiss, all discovery and other proceedings shall be stayed unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. If a complaint satisfies the requirements of subsection (b), the plaintiff shall be entitled to conduct discovery limited to the facts concerning the allegedly misleading statement or omission. Upon completion of such discovery, the parties may move for summary judgment.

''(d) RELIANCE AND CAUSATION.—

''(1) IN GENERAL.—In any private action to which subsection (a) applies, the plaintiff shall prove that—

''(A) he or she had knowledge of, and relied (in connection with the purchase or sale of a security) on, the statement that contained the misstatement or omission described in subsection (a)(1); and

''(B) that the statement containing such misstatement or omission proximately caused (through both transaction causation and loss causation) any loss incurred by the plaintiff.

''(2) FRAUD ON THE MARKET.—For purposes of paragraph (1), reliance may be proven by establishing that the market as a whole considered the fraudulent statement, that the price at which the security was purchased or sold reflected the market's estimation of the fraudulent statement, and that the plaintiff relied on that market price. Proof that the market as a whole considered the fraudulent statement may consist of evidence that the statement—

''(A) was published in publicly available research reports by analysts of such security;

''(B) was the subject of news articles;

''(C) was delivered orally at public meetings by officers of the issuer, or its agents;

''(D) was specifically considered by rating agencies in their published reports; or

''(E) was otherwise made publicly available to the market in a manner that was likely to bring it to the attention of, and to be considered as credible by, other active participants in the market for such security.

Nonpublic information may not be used as proof that the market as a whole considered the fraudulent statement.

''(3) PRESUMPTION OF RELIANCE.—Upon proof that the market as a whole considered the fraudulent statement pursuant to paragraph (2), the plaintiff is entitled to a rebuttable presumption that the price at which the security was purchased or sold reflected the market's estimation of the fraudulent statement and that the plaintiff relied on such market price. This presumption may be rebutted by evidence that—

''(A) the market as a whole considered other information that corrected the allegedly fraudulent statement; or

''(B) the plaintiff possessed such corrective information prior to the purchase or sale of the security.

''(4) REASONABLE EXPECTATION OF INTEGRITY OF MARKET PRICE.—A plaintiff who buys or sells a security for which it is unreasonable to rely on market price to reflect all current information may not establish reliance pursuant to paragraph (2). For purposes of paragraph (2), the following factors shall be considered in determining whether it was reasonable for a party to expect the market price of the security to reflect substantially all publicly available information regarding the issuer of the security:

''(A) The weekly trading volume of any class of securities of the issuer of the security.

''(B) The existence of public reports by securities analysts concerning any class of securities of the issuer of the security.

''(C) The eligibility of the issuer of the security, under the rules and regulations of the Commission, to incorporate by reference its reports made pursuant to section 13 of this title in a registration statement filed under the Securities Act of 1933 in connection with the sale of equity securities.

''(D) A history of immediate movement of the price of any class of securities of the issuer of the security caused by the public dissemination of information regarding unexpected corporate events or financial releases.

In no event shall it be considered reasonable for a party to expect the market price of the security to reflect substantially all publicly available information regarding the issuer of the security unless the issuer of the security has a class of securities listed and registered on a national securities exchange or quoted on the automated quotation system of a national securities association.

''(e) ALLOCATION OF LIABILITY.—

''(1) JOINT AND SEVERAL LIABILITY FOR KNOWING FRAUD.—A defendant who is found liable for damages in a private action to which subsection (a) applies may be liable jointly and severally only if the trier of fact specifically determines that the defendant acted knowingly (as defined in subsection (a)(3)).

''(2) PROPORTIONATE LIABILITY FOR RECKLESSNESS.—If the trier of fact does not make the findings required by paragraph (1) for joint and several liability, a defendant's liability in a private action to which subsection (a) applies shall be determined under paragraph (3) of this subsection only if the trier of fact specifically determines that the defendant acted recklessly (as defined in subsection (a)(4)).

''(3) DETERMINATION OF PROPORTIONATE LIABILITY.—If the trier of fact makes the findings required by paragraph (2), the defendant's liability shall be determined as follows:

''(A) The trier of fact shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons or entities alleged by the parties to have caused or contributed to the harm alleged by the plaintiff. In determining the percentages of responsibility, the trier of fact shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.

''(B) For each defendant, the trier of fact shall then multiply the defendant's percentage of responsibility by the total amount of damage suffered by the plaintiff that was caused in whole or in part by that defendant and the court shall enter a verdict or judgment against the defendant in that amount. No defendant whose liability is determined under this subsection shall be jointly liable on any judgment entered against any other party to the action.

''(C) Except where contractual relationship permits, no defendant whose liability is determined under this paragraph shall have a right to recover any portion of the judgment entered against such defendant from another defendant.

''(4) EFFECT OF PROVISION.—This subsection relates only to the allocation of damages among defendants. Nothing in this subsection shall affect the standards for liability under any private action arising under this title.

''(f) DAMAGES.—In any private action to which subsection (a) applies, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff's damages shall not exceed the lesser of—

''(1) the difference between the price paid by the plaintiff for the security and the market value of the security immediately after dissemination to the market of information which corrects the fraudulent statement; and

''(2) the difference between the price paid by the plaintiff for the security and the price at which the plaintiff sold the security after dissemination of information correcting the fraudulent statement.''.

**SEC. 5. ESTABLISHMENT OF "SAFE HARBOR" FOR PREDICTIVE STATEMENTS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

**"SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.**

''(a) SAFE HARBOR DEFINED.—In any action arising under this title based on a fraudulent statement (within the meaning of section 10A), a person shall not be liable for the publication of any projection if—

''(1) the basis for such projection is briefly described therein, with citations (which may be general) to representative sources or authority, and a disclaimer is made to alert persons for whom such information is intended that the projections should not be given any more weight than the described basis therefor would reasonably justify; and

''(2) the basis for such projection is not inaccurate as of the date of publication, determined without benefit of subsequently available information or information not known to such person at such date.

''(b) AUTOMATIC PROTECTIVE ORDER STAYING DISCOVERY; EXPEDITED PROCEDURE.—In any action arising under this title based on a fraudulent statement (within the meaning of section 10A) by any person, such person may, at any time beginning after the filing of the complaint and ending 10 days after the filing of such person's answer to the complaint, move to obtain an automatic protective order under the safe harbor procedures of this section. Upon such motion, the protective order shall issue forthwith to stay all discovery as to the moving party, 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 such protective order. At the conclusion of the hearing, the court shall either (1) dismiss the portion of the action based upon the use of a projection to which the safe harbor applies, or (2) determine that the safe harbor is unavailable in the circumstances.

''(c) REGULATORY AUTHORITY.—In consultation with investors and issuers of securities, the Commission shall adopt rules and regulations to facilitate the safe harbor provisions of this section. 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 projections 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 section 10(b) of this title.''.

**SEC. 6. RULE OF CONSTRUCTION.**

Nothing in the amendments made by this Act shall be deemed to create or ratify any implied private right of action, or to prevent the Commission by rule from restricting or otherwise regulating private actions under the Securities Exchange Act of 1934.

**SEC. 7. EFFECTIVE DATE.**

This Act and the amendments made by this Act are effective on the date of enactment of this Act and shall apply to cases commenced after such date of enactment.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 8 hours.

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

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. 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. COX of California: 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.

Mr. COX of California. Mr. Chairman, I offer an amendment that would prevent plaintiffs' attorneys from bringing actions alleging securities law violations under the Racketeer Influence and Corrupt Organizations Act which we know as RICO.

Today we are fulfilling our Contract With America by curbing frivolous securities litigation. For many years now shrewd plaintiffs' attorneys have been using RICO to evade the requirements that Congress has established in the Federal securities laws. Supreme Court Justice Thurgood Marshall called our attention to this problem as far back as 1985 when he explained that the civil RICO statute, quote, ''virtually eliminates decades of legislative and judicial development of private civil remedies under the Federal securities laws.'' Today's amendment seeks only to reform RICO in the area of securities legislation, but I should point out that this House under its previous control by today's minority, the Democrats, have previously passed wholesale RICO reform by an overwhelming margin. This reform measure, authored by the gentleman from Virginia [Mr. BOUCHER] and the gentleman from Florida [Mr. MCCOLLUM], now the chairman of the Judiciary Subcommittee on Crime, enjoyed overwhelming bipartisan support. My amendment is fully consistent with this effort, if more limited.

The provision originally in the Contract With America that addressed the problem of civil RICO actions in the securities area, as I explained in my colloquy a moment ago with the gentleman from Michigan, was omitted from the bill as reported out of committee inadvertently. It was not opposed in committee. If we do not reinsert this provision by adopting my

amendment, we will fail to address a significant number of frivolous actions based on alleged securities law violations, but brought under the RICO statute. When Congress enacted RICO back in 1970, we intended that it be used as a weapon against organized criminals, not as a weapon against ordinary investors and the business community.

The problem posed by the widespread use of civil RICO is one recognized by legal experts across the spectrum. In the Supreme Court case from which I just quoted, in 1985 Justice Marshall, along with Justice Powell, was in the dissent but the majority who said that the law needs to be changed still agreed that the abuse of RICO is very real.

Let me quote from the majority opinion:

> In its private civil version RICO is evolving into something quite different from the original conception of its enactors; in other words, Congress. The extraordinary uses to which civil RICO has been put appear to be primarily the result of the failure of Congress.

That from the majority of the Supreme Court, so the majority and the minority of the Supreme Court agreed that RICO is being abused by its application in the securities area.

Plaintiffs' attorneys' inappropriate and abusive use of RICO has also been recognized by the current White House counsel, Abner Mikva. While still a judge for the U.S. Circuit Court of Appeals for the District of Columbia, Mr. Mikva detailed his observations of RICO abuse when testifying before the House Committee on Criminal Justice in 1985. Mr. Mikva, of course, has been a Member of Congress in 1970, and he had warned back then that RICO might be stretched and abused in a way. Here is his testimony in 1985 before the House Subcommittee on Criminal Justice:

> I stand amazed to realize that my hyperbolic horrible examples of how far the law would reach pale into insignificance when compared to what actually has happened. What started out as a small cottage industry for Federal prosecutors has become a commonplace weapon in the civil litigation arsenal.

Most significantly, those that have the responsibility of regulating our securities markets support my amendment. For the past 10 years the chairman of the Securities and Exchange Commission, the SEC, have all supported civil RICO reform. Beginning in 1985, former SEC Chairman John Shad testified before Congress in support of legislation to amend RICO in this way. In 1986, Mr. Chairman, the SEC even submitted draft legislation for civil RICO reform. In 1989, the SEC General Counsel, Dan Goelzer, testified before Congress in favor of this civil RICO reform, and today the SEC continues to support civil RICO reform.

In testimony before our committee, Mr. Chairman, the chairman of the SEC, Arthur Levitt, stated that H.R. 10, as originally drafted, contained the kind of civil RICO reform that is necessary. He recently wrote a letter to our Committee on Commerce chairman, the gentleman from Virginia [Mr. BLILEY], stating that the SEC fully supports this provision that I am offering today.

The reason this area is one of such wide-ranging consensus is because almost everyone who studied the issue recognizes that the civil RICO statute has been abused in securities fraud legislation to distort the incentives and remedies that the Federal securities laws are supposed to provide. They have done this by taking advantage of a loophole in RICO that has permitted inclusion of securities laws violations as a predicate act for which the defendant may be tagged as a racketeer and held liable for treble damages and attorney fees.

Additionally, because many claims that could be asserted as securities laws claims can also be characterized as mail or wire fraud——

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

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

Mr. COX of California. Because many claims that could be asserted as securities laws claims can also be characterized as mail or wire fraud, and because mail and wire fraud are also predicates for civil RICO liability, Plaintiffs' attorneys have a devastating, potent, and readily available alternative for bringing actions under RICO instead of under our securities laws. As the SEC general counsel stated in his 1989 testimony before the House Committee on the Judiciary, and I quote now,

> The commission is concerned that the civil liability provisions of RICO can, in many cases, convert private securities law fraud claims into RICO claims. Successful plaintiffs in such cases are entitled to treble damages, despite the express limitations on recovery under the securities laws to actual damages. Private plaintiffs may be able to bypass the carefully crafted liability provisions of the securities laws and thereby recover damages in cases in which Congress or the courts have determined that no recovery should be available.

Congress initially passed securities laws in order to impose a uniform system of duties and liabilities upon the securities industry and to protect investors. Each time we have acted to amend the securities laws we have balanced the need to provide the maximum amount of consumer protection against the need to maintain fluid, stable and reliable markets. Today we are seeking to enact litigation reforms because we have identified significant problems and abuses in the current system that are hurting investors, consumers, and the Nation as a whole.

Mr. Chairman, the failure to adopt this amendment would undermine the reforms we are hoping to achieve because attorneys could then do an end run around all of the reform by simply using the RICO statute. In evading the reforms that we are seeking to achieve today enterprising lawyers will have the continuing ability to extort settlements from innocent defendants based on claims that will allow them no chance of recovery under the reforms that we have today. Lest we have any doubt about the ability of plaintiffs' attorneys to leverage settlements from defendants under civil RICO, we need only listen again to Justice Thurgood Marshall who explained that, quote,

> Many a prudent defendant, facing ruinous exposure, will decide to settle a case even with no merit. It is, thus, not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils it was designed to combat.

Mr. Chairman, unless we adopt my amendment, a plaintiff's attorney alleging a single violation of the securities laws will be able to bring an action under civil RICO and leverage a hefty settlement from an innocent victim. Because an element of RICO is a pattern, plaintiffs would have the latitude to conduct discovery of records dating as far back as 10 years. Discovery costs like that run up a tab of millions of dollars. Often, faced with the cost of these multimillion-dollar discovery fees, the prospect of being labeled a racketeer and the prospect of being held liable for treble damages and attorney fees, defendants, as Thurgood Marshall has said, are forced to settle meritless cases brought under RICO.

Mr. Chairman, our economy's health depends on the efficient operation of America's capital markets. We must continue to balance the provisions of adequate remedies for injured investors and the imposition of excessive penalties on all participants in our capital markets. The treble damage blunderbuss of RICO undermines this balance and imposes exorbitant litigation costs, impedes the raising of capital, and

Mr BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I just took note of the fact that the gentleman said a moment ago that for some kind of a loophole in the RICO statute that allows people to sue securities dealers who they believe are guilty of a pattern of fraudulent activity, but I am looking here at the language from the statute: 18 U.S.C. says that actually racketeering; that is, predicate action with the RICO statue, include, quote, any fees involving fraud and the sales of securities. I ask, ''In view of that, how can you describe this as a loophole?''

Mr. COX of California. As I mentioned, the Supreme Court, all of the Justices, both in the majority and minority of this RICO case, viewed this as an area where congressional action is richly needed because RICO, although technically being exploited within the letter of the law, was never intended to apply to securities cases.

Mr. BRYANT of Texas. Well, I just read the statute to the gentleman which specifically related to——

Mr. COX of California. Well, reclaiming my time——

Mr. BRYANT of Texas. Fraud and the sale of securities——

Mr. COX of California. So I can fully and adequately respond to the gentleman——

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

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

Mr. COX of California. The SEC chairman came and testified before our Committee on Commerce, and here is what he said. It is very brief, and I will just share it with the gentleman:

For many years the Commission has supported legislation to eliminate the overlap between the private remedies under RICO and under the Federal securities laws. The securities laws generally provide adequate remedies for those injured by security fraud. It is both unnecessary and unfair to expose defendants in securities cases to the threat of treble damages and other extraordinary remedies provided by RICO.

Mr. BRYANT of Texas. Mr. Chairman, would the gentleman yield further?

Mr. COX of California. This is according to the Clinton appointment to head up the Securities and Exchange Commission.

Mr. BRYANT of Texas. If the gentleman would yield further just to point out the gentleman said it was a loophole, and I read to the gentleman the law indicating it is not a loophole. Now the gentleman is reading to me testimony, or something, from the SEC, but we never had hearings on the issue of RICO in the committee that the gentleman and I are members of. We never had any hearings——

Mr. COX of California. Reclaiming my time, we did, of course, have hearings on this testimony that was given at that hearing——

Mr. BRYANT of Texas. There were no hearings on RICO——

Mr. COX of California. The SEC.

Mr. BRYANT of Texas. The gentleman will have to acknowledge we had no hearings on RICO.

Mr. COX of California. Mr. Chairman, I think my 60 seconds have expired.

Mr. Chairman, I offer an amendment that would prevent plaintiffs' attorneys from bringing actions alleging securities law violations under the Racketeer Influenced and Corrupt Organizations Act [RICO]. Today we are fulfilling our Contract With America by curbing frivolous securities litigation. For many years now, shrewd plaintiffs' attorneys have been using RICO to evade the requirements we have established in the Federal securities laws. Supreme Court Justice Thurgood Marshall called our attention to this problem as far back as 1985 when he explained that the civil RICO statute ''virtually eliminates decades of legislative and judicial development of private civil remedies under the Federal securities laws.'' *Sedima, S.P.R.I.* v. *Imrex Company, Inc.,* 105 S.Ct. 3292, 3294 (1985) (dissenting). Indeed, while today's amendment seeks only to reform RICO in the area of securities litigation, the House—Democrats in control—has previously passed wholesale RICO reform by an overwhelming margin. This reform measure, authored by the gentlemen from Virginia [Mr. BOUCHER] and Mr. MCCOLLUM, the chairman of the Judiciary Subcommittee on Crime, enjoyed overwhelming bipartisan support. My amendment, I believe is fully consistent with this effort.

This provision originally in the Contract With America that addressed the problem of civil RICO actions in the securities area (H.R. 10, Title I §107) was omitted from the bills reported out of committee. If we do not reinsert this provision by adopting my amendment, we will fail to address a significant number of frivolous actions based on alleged securities law violations, but brought under the RICO statute. When we enacted RICO back in 1970, we intended that it be used as a weapon against organized criminals, not as a weapon against ordinary investors and the business community.

The problem posed by the widespread use of civil RICO is one recognized by legal experts across the spectrum. In addition to Justice Marshall, Chief Justice Rehnquist has observed:

> Virtually everyone who has addressed the question agrees that civil RICO is now being used in ways that Congress never intended when it enacted the statute in 1970. Most of the civil suits filed under the statute have nothing to do with organized crime.

(Rehnquist, Reforming Diversity Jurisdiction and Civil RICO, St. Mary's L.J. 5, 9 (1989) (originally presented at the Brookings Institution's Eleventh Seminar on the Administration of Justice, April 7, 1989). Plaintiffs' attorneys' inappropriate and abusive use of RICO has also been recognized by current White House Counsel Abner Mikva. While still a judge for the U.S. Circuit Court of Appeals for the District of Columbia, Mr. Mikva detailed his observations of RICO abuse when testifying before the House Subcommittee on Criminal Justice in 1985. While a Member of Congress in 1970, Mr. Mikva had warned his colleagues about RICO's overbreadth. In 1985, in testifying before the House Subcommittee on Criminal Justice, he noted the following about his comparison of his initial thoughts on RICO back in 1970 with the subsequent reality:

> I stand amazed * * * to realize that my hyperbolic horrible examples of how far the law would reach pale into insignificance when compared to what has actually happened * * * What started out as a small cottage industry for federal prosecutors has become a commonplace weapon in the civil litigation arsenal.

As we learned yesterday, Mr. Mikva and the Administration have a number of problems with the legislation before us today. However, as observed above, my amendment is one provision upon which we all agree.

Also, most significantly, those that have the responsibility of regulating our securities markets similarly support my amendment. For the past 10 years, the Chairmen of the Securities and Exchange Commission [SEC] have all supported civil RICO reform. Beginning in 1985, former SEC Chairman John Shad testified before Congress in support of legislation to amend RICO. In 1986, the SEC even submitted draft legislation to Congress that would have significantly limited civil RICO claims based on alleged securities law violations. In 1989, SEC General Counsel Dan Goelzer testified before Congress in favor of civil RICO reform. And today, the SEC continues to support civil RICO reform. In a recent letter to Commerce Committee Chairman BLILEY, SEC Chairman Arthur Levitt stated that the SEC fully supports this provision I am offering today.

The reason why this is one area where there is such wide-ranging consensus is because almost everyone who has studied this issue recognizes that plaintiffs' attorneys have used the civil RICO statute to distort the incentives and remedies that the federal securities laws provide. They have done this by taking advantage of a loophole in RICO that has permitted inclusion of securities law violations as a predicate act for which a defendant may be tagged as a racketeer and held liable for treble damages and attorneys' fees. Additionally, because many claims that could be asserted as securities law claims can also be characterized as mail or wire fraud, and because mail and wire fraud are also predicates for civil RICO liability, plaintiffs' attorneys have a devastating potent and readily available alternative for bringing actions under RICO rather than under our securities laws. As SEC General Counsel Goelzer stated in 1989 testimony before the House Judiciary Committee:

> The Commission is concerned, however, that the civil liability provisions of RICO can in many cases convert private securities law fraud claims into RICO claims. Successful plaintiffs in such cases are entitled to treble damages, despite the express limitations on recovery under the securities laws to actual damages. Private plaintiffs may be able to bypass the carefully crafted liability provisions of the securities laws, and thereby recover damages in cases in which Congress or the courts have determined that no recovery should be available under those laws. As a result, civil RICO places increased and unwarranted financial burdens on commercial defendants, including securities industry defendants.

Congress initially passed securities laws in order to impose a uniform system of duties and liabilities upon the securities industry, and to protect investors. Each time that we have amended the securities laws, we have balanced the need to provide the maximum amount of consumer protection possible against the need to maintain fluid, stable, and reliable markets. Today, we are seeking to enact litigation reforms because we have identified significant problems and abuses in the current system that are hurting investors, consumers, and the nation as a whole. We are seeking to enact changes to our federal securities laws in those areas where we have identified reforms are needed. We are seeking a losers pay provision to punish plaintiffs for bringing frivolous actions. In addition, we are seeking a limitation on joint and several liability to restore fairness to the federal securities laws. The failure to adopt my amendment would undermine the reforms we are hoping to achieve today without any award, unscrupulous attorneys could do an end run around the reforms by using the RICO statute. Through the use of civil RICO, plaintiffs will be able to initiate law suits based on alleged securities law violations, and will be entitled to seek treble damages and attorneys' fees.

In evading the reforms we are seeking to achieve today, enterprising plaintiffs' attorneys will have the continuing ability to extort settlements from innocent defendants based on claims that would allow them no chance of recovery under the reforms before us today. Lest we have any doubt about the ability of plaintiffs' attorneys to leverage settlements from defendants under civil RICO, we need only listen again to Justice Marshall, who explained that ''[m]any a prudent defendant, facing ruinous exposure, will decide to settle even a case with no merit. It is thus not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils it was designed to combat.'' *Sedima,* 105 S.Ct. at 3295. Unless we adopt my amendment, a plaintiff's attorney, alleging a single violation of the securities laws, will be able to bring an action under civil RICO and leverage a hefty settlement from an innocent victim. Because an element of a RICO action is a ''pattern,'' plaintiffs have the latitude to conduct discovery of records dating back 10 years or more. Such discovery costs defendants millions of dollars. Often, faced with the cost of these multi-million dollar discovery fees, and the prospect of being labeled a racketeer, and being held liable for treble damages and attorneys' fees, defendants are forced to settle meritless cases.

Our economy's health depends on the efficient operation of its country's capital markets. We must continue to balance the provision of adequate remedies for injured investors and the imposition of excessive penalties on all participants in our capital markets. The treble damage blunderbuss of RICO undermines this balance and imposes exorbitant litigation costs, impedes the raising of capital and ultimately puts these costs on the shoulders of consumers and emerging innovative companies.

Mr. Chairman, at this point I would like to read several comments from judges across the country who have commented on the abuses prevalent in civil RICO litigation. If there is one message we should extract from these opinions, it is that we must reform RICO to prevent plaintiffs' attorneys from bringing actions more appropriately brought under our securities laws.

''It is true that private civil actions under the statute are being brought almost solely against such defendants [respected and legitimate businesses], rather than against the archetypal, intimidating mobster. Yet this defect—if defect it is—is inherent in the statute as written, and its correction must lie with Congress.'' The Supreme Court, *Sedima,* 105 S. Ct. at 3286–87.

''I have a feeling about RICO in the civil world * * * as being the most conspicuous case I know of legislation requiring Congressional attention to revision.''—Former U.S. District Court Judge Simon Rifkind of the Southern District of New York.

''An imaginative plaintiff could take virtually any illegal occurrence and point to acts preparatory to the occurrence, usually the use of the telephone or mails, as meeting the requirement of pattern.''—U.S. Circuit Court of Appeals for the 5th Circuit Judges Higginbotham, Politz, and Jolly (*Montesano* v. *Seafirst Commercial Corp.,* 818 F.2d 423, 424 (5th Cir. 1987)).

''Congress * * * may well have created a runaway treble damage bonanza for the already excessively litigious.''—Federal Circuit Court of Appeals for the 7th Circuit Judges Wood, Cummings, and Hoffman (*Schacht* v. *Brown,* 711 F2d, 1343, 1361 (7th Cir. 1983)).

''[O]ne of the proliferating developments in civil litigation has been the use of RICO * * * in civil claims, in routine commercial disputes, including those arising under the federal securities laws. I think that the proliferation of these claims and the use of a law that was designed to eliminate organized crime is a very bad influence on the commercial community.''—U.S. District Court Judge Milton Pollack of the Southern District of New York.

''McCarthy, though armed with substantial damage claims, with a requested ad damnum of $312,220 in compensatory and $1 million in punitive damages, obviously cannot resist the treble damages and attorneys' fees lure of RICO.''—Judge Shadur, U.S. District Court for the Northern District of Illinois (*McCarthy Cattle Co.* v. *Paine Webber, Inc.,* 1985 WL 631 (N.D. Ill., April 11, 1985).

''[The plaintiff's complaint] demonstrates at least two facts of life in an urban district court in a litigation-prone society: * * * RICO's lure of treble damages and attorneys' fees draws litigants and lawyers * * * like lemmings to the sea.''—Judge Shadur (*Wolin* v. *Hanley Dawson Cadillac, Inc.,* 636 F. Supp. 890, 891 (N.D. Ill. 1986).

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from California [Mr. COX].

Mr. Chairman and members of the committee, this amendment, we must never forget, has arrived here by extraordinary means. It was accidentally, like when you sweep up trash at night in the Committee on the Judiciary. This little slip of paper called RICO fell to the ground in a corner. Nobody noticed it, and, therefore, we have a whole securities bill that went to the Committee on Rules, was dealt with, and then the Committee on Rules came back again and said, ''Oh, we overlooked civil RICO, and we have an amendment, not to modify it as applies to securities, which has been the main use of civil RICO in securities ever since RICO was started. We said we will not pare it down, we will not deal with the other amendments that have always applied to RICO before in the Committee on the Judiciary without so much as mentioning this name RICO. We now have a measure in one sentence that will remove it from all securities legislation from this point on.

□ 1745

Are you aware of the magnitude of what it is we are proposing to do here as the first amendment to this legislation on the floor? We are now saying that the fact that RICO was used in all of the major fraud cases, that we have now reached the point on the basis of a Supreme court case that goes back 10 years to say that now RICO is so abused we must now get rid of it.

Remember, the last time I saw an idea about RICO was when the former gentleman from New Jersey [Mr. HUGHES] developed a gatekeeper concept, in which we would filter through under a very strict set of principles which cases might make it to a RICO suit.

But now—and I disagreed with that. But the gatekeeper concept was a very modest one. It kept RICO alive in terms of civil litigation. It was much more carefully crafted than a blanket exemption from RICO in all securities cases.

What we are saying is that all of the major fraud cases in which RICO busted people who were bilking millions of dollars, sometimes billions of dollars, is now going to be thrown in the trash heap, and we will not need it anymore.

That is why those who want to preserve RICO includes the Association of Attorneys General, the National Association of Insurance Commissioners, the U.S. Conference of Mayors, the North American Securities Administration associations. It is very clear that public prosecutors and regulators are aghast at the Cox amendment and the implications of what it has in store in us trying to police this very tricky, complex area of money crimes that is now still as much a problem has it has always been.

Civil RICO, with their treble damages, which frequently are used for great leverage purposes, can recover money which pay attorney fees and are a vital remedy that should not be diminished in any way. RICO is critical in the fight against savings and loan fraud, bank and insurance and financial crimes. Using civil RICO, the victims of white collar crime can sue these malfeasors for triple their losses, and it is frequently the only effective means for victims.

Do not throw the baby out with the bath water. There has never been a minute's hearing in any of the committees of jurisdiction, certainly not Judiciary, and I really must say that this is the most outrageous proposal in terms of securities regulation that I have ever heard. Vote down the Cox amendment.

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

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

Mr. MCCOLLUM. Mr. Chairman. I rise in support of the amendment offered by the gentleman from California. In the last several Congresses the subject of RICO reform and, in particular, the use of the RICO statute in civil business disputes, has received significant attention. Hearings have been held; bills have been introduced; but in the end, nothing has happened. A law that was originally intended to strike a major blow to organized crime and racketeering, has continued to be used as a hammer in routine civil cases.

Today, we take a step toward meaningful civil RICO reform. This amendment will end inappropriate use of the civil RICO statute in an area of the law where it has been most abused—the securities law area. Congress never intended for the RICO statute to be used as the principal means of litigating disputes over securities transactions. The

securities laws themselves provide aggrieved buyers and sellers with private causes of action so that they may seek compensation for their losses. The increases in the use of the racketeering statue for this purpose, however, has produced consequences that Congress never intended. The threat of RICO sanctions has had a chilling effect on entrepreneurship and ultimately economic growth.

Mr. Chairman, the civil RICO statute is tough, and it should be. The statute's provision for treble damaged and attorneys fees awards were designed to help private citizens strike back against criminal enterprises and other corrupt organizations. But they were never intended to be used as a means to litigate disputes between parties to bona fide securities transactions.

The amendment offered by the gentleman from California will begin the process of restoring the civil RICO statute to the uses that Congress intended. This amendment will put an immediate stop to one of the greatest abuses of the civil RICO statute.

It must be noted, however, Mr. Chairman, that adopting this amendment will not remedy all of the problems with the way the civil RICO statute is being misused. As Chairman of the Subcommittee on Crime, where jurisdiction over this issue resides, I intend to introduce RICO reform. It is my hope that the subcommittee will bring forward legislation to help ensure that the RICO statutes are used in the manner that Congress originally intended.

In the interim, however, this amendment will stop some of the most egregious abuses of the civil RICO statute. This amendment is an important first step in the RICO reform process. I urge my colleagues to support it.

Mr. Chairman, I also want to commend the gentleman from Virginia [Mr. BOUCHER] for his work on the other side of the aisle in trying to get civil RICO reform over the past sessions of Congress. Many hearings were held in this past decade. Where there might not have been one this session of Congress, we have certainly had plenty on the subject in the past.

The truth of the matter is the House once even passed a reform of RICO that did not go through the Senate, which would have required a prior criminal conviction before you could get civil RICO. I dare say, to allay the gentleman from Michigan's concerns, there are plenty of remedies for those bad apples that commit serious fraud out there without going and using the civil RICO statute for the kind of abusive purposes that have been happening in the securities area and in many others.

So I commend the gentleman from California for offering the amendment, I urge my colleagues to support it, and I appreciate the time.

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

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

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

Mr. Chairman, this is a most extraordinary day. When we considered the bill in the committee, this is the headline we got in the Wall Street Journal, a well-known bastion of left wing liberalism and excessive regulation said this: ''Fraud Shields for Companies Gain in House.''

I do not know whether we ought to amend RICO or not. There is not one scintilla of evidence in the record of the Committee on Commerce whether we should or we should not. And there is nothing there which says that we ought to take away the right of a person to sue civilly under RICO where there is interstate trafficking in stolen securities. RICO had securities violations as the subject of civil suits from the very first day that it was enacted into law.

Now, we have a market which is the most trusted in the world. It is for two reasons: One, because we have good enforcement at the SEC. The other is because we have an extraordinarily good system of private enforcement, enforcement by private citizens suing wrongdoers to collect for wrongdoing. And millions and millions of dollars are collected for this reason.

My colleagues never saw this language in the committee. We never knew it was coming until late last night, when the Committee on Rules decided that something should be done about this matter. No discussion was offered in the committee. The author of the legislation had nothing to say on this subject. No one on the Republican side had anything to say about the need to address the wrongdoing under RICO.

It is interesting to note that in Russia they are now saying, and this is what the chairman of the Russian Securities Fund had to say, ''Each scandal chips away at investors' trust, and trust is the only thing we can rely on to get more business.''

I have told the securities industry time after time, people think that the securities industry and the markets in this country run on money. They do not. They run on public confidence. And if there is public confidence, then everyone will make lots of money. What we are doing here is sneaking out of the Committee on Rules a proposal to repeal RICO, and it is not going to contribute to the trust of the American people in the securities market or in the marketplace.

The only confidence that is going to be boosted by this amendment is going to be the confidence of rascals and scoundrels, who will then be secure in the knowledge that if they engage in theft of resources belonging to others, that they are not going to get sued. That is all.

This legislation comes to the floor with abbreviated hearings and not adequate opportunity for amendments to be offered. The legislation is controlled by the Committee on Rules, which has said we will add RICO, which is not germane to the bill, and which is not even in the Committee on Energy and Commerce.

We are amending a statute which is not even under the jurisdiction of the Committee on Energy and Commerce, and we are amending it without ever having a word of hearings or a bit of evidence or testimony taken on the subject. Why is RICO taken up now when it could be addressed in another committee in proper fashion after appropriate hearings? I have no explanation. Perhaps the gentleman from California who offers the amendment has, but I seriously doubt if he does or will.

Many Americans had hoped that the Contract on America would be an engine for progress by making needed and targeted reforms. This amendment is just another demonstration that the contract instead has become a gravy train for any special interest with enough money and resources that they can get aboard and go where they want to go at the expense of the ordinary American.

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

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I would just point out, we just saw an exhibit on the floor and, as is so often the case when one reads the headlines, you miss the story. In the fine print the gentleman from Michigan forgot to tell us the last sentence of that happens to be a concise statement of the purpose of the bill. It says, ''The purpose of the bill,'' and this was actually on what he presented to us, but you could not read it, only the headline, ''The purpose of this bill remains to reduce litigation to cut down on fraud committed by unscrupulous lawyers and professional plaintiffs.''

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, today we are seeking to enact fundamental reforms of the manner in which securities actions are litigated. In order to ensure that our reforms are comprehensive, we must make every effort to identify oversights or omissions in our legislation that could potentially hamper the effectiveness of H.R. 1058.

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

Mr. FIELDS of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. I was much impressed by the comments of the gentleman from California. The quote that he gave is an excellent one: ''The purpose of the bill is to cut down on litigation and to cut down on fraud committed by

unscrupulous lawyers and professional plaintiffs.'' And the authority that is quoted in the article is, guess who? The gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, if the gentleman will yield further, I think that the gentleman from Michigan earlier pointed out that the Wall Street Journal usually understands where to get their information, and there is not much question but that that is what the bill does, and in particular this amendment will help us to achieve that objective.

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, as I was pointing out, there have been oversights, and this amendment seeks to address an oversight of the drafting. In the current bill we have failed to prescribe civil RICO actions based on conduct that is actionable in fraud and the purchase or sale of securities. Left uncorrected, this omission would seriously undermine our efforts today.

The original drafters of H.R. 10 recognized this fact and included this identical provision in title I, section 107. As a result of sheer error, section 107 was not included in any of the versions reported out of committee. By offering this amendment, the gentleman from California [Mr. COX] is seeking to do no more than reinsert this provision back into the Contract With America.

Mr. Chairman, it is particularly important to note that this amendment has the support of the U.S. Securities and Exchange Commission. In providing the views of the Commission to the Committee on Commerce on title II of H.R. 10 on February 23, 1995, this year, Chairman Levitt stated the Commission supports the elimination of civil RICO liability predicated on security law violations.

□ 1800

The enactment of this legislation will provide much needed reform by helping curb frivolous securities actions. This amendment will go a long way toward guaranteeing meaningful reform because civil RICO actions are well-recognized vehicles for bringing frivolous lawsuits. If we do not adopt this amendment, plaintiffs' attorneys will be free to evade our reforms by merely bringing securities actions under RICO, thereby frustrating the efforts of this legislation.

We should have no doubt that if we fail to adopt this amendment, plaintiffs' attorneys will take full advantage of our omission. Almost every claim that a plaintiff alleges as a violation of securities laws may also be pled as a RICO violation. Plaintiffs' attorneys can easily allege both the enterprise and the pattern elements necessary to turn a securities action into a RICO claim, because most security law violations are committed in the course of conducting the affairs of a business or an enterprise.

Moreover, virtually all securities transactions involve the use of the mail or telephone.

Further demonstrating the need to enact this amendment is the significant number of securities fraud cases brought as RICO claims. As early as 1985, the American Bar Association found that 40 percent of all civil RICO cases filed in Federal courts were based on securities fraud. If we fail to pass this amendment, we will continue to leave this avenue wide open for the plaintiffs' bar. The failure to amend RICO to exclude issues for conduct that is actionable as a securities law violation would enable plaintiffs' attorneys to continue to seek treble damages and to evade the most important elements of the types of reform we hope to accomplish.

We need only compare the provisions of this legislation with those of the RICO——

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

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

Mr. FIELDS of Texas. Mr. Chairman, we need only compare the provisions of this legislation with those of the RICO statute in order to identify those reforms that plaintiffs' attorneys will be able to avoid. H.R. 1058, this legislation, has a losers pay provision. RICO does not. H.R. 1058 preserves a one year statute of limitation. The RICO statute of limitations is longer. H.R. 1058 limits joint and several liability to knowing securities fraud; RICO does not. The list continues.

But the point is clear, unless we eliminate the RICO alternative, our reforms under this legislation will be undermined.

The U.S. Supreme Court Justice, Chief Justice Rehnquist, Justice Marshall, and the Judicial Conference have all recognized the ability of plaintiffs' attorneys to bring meritless actions under RICO and leverage substantial payments for defendants through such actions. As Justice Marshall explained about civil RICO actions in 1985, and I quote:

> Many a prudent defendant, facing a ruinous exposure, will decide to settle even a case with no merit. It is thus not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils that it was designed to combat.

Mr. Chairman, we enacted civil RICO many years ago to provide private citizens with a weapon against organized crime and racketeering. We did not intend RICO to be a supplement to the Federal securities laws. We never intended to give trial lawyers treble damages in these types of civil lawsuits.

Nonetheless, unless we adopt this amendment, plaintiffs' attorneys will use RICO to evade our efforts of reform.

I urge all of my colleagues to support the Cox amendment and follow through with our promise to the American people to provide common sense and comprehensive legal reform.

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

Mr. Chairman, the whole purpose of this debate, the whole purpose of this multi-year effort to bring this issue to the floor and eventually hopefully to pass this bill, is to change the incentives in this system, in this legal system, to change them in a very positive way, to create an incentive system that says, if you find knowing fraud, prosecute it. You will have, under knowing fraud, under the examples illustrated by several of my colleagues on this side, you will have the full recourse of 10(b)(5) litigation remedies at your disposal. You will have full joint and several liability available to you. You sue all the parties. They are all 100 percent responsible. It is up to them to figure out who is going to contribute to each other in a knowing fraud case.

It says where there is not knowing fraud—and by the way, the original statute we are amending never talked about anything but knowing fraud. Courts have invented another standard of violations of the statutes. Courts have invented something that they said was called recklessness, something close to knowing. It was so close to knowing they said that you almost had to be believed to have known that you were committing a fraud or you were so reckless, you were so in fact in violation of common standards of what we perceive to be good behavior that you literally will be presumed to have known.

In those cases where it is a reckless behavior, not a knowing behavior, this statute creates a new liability structure. It says, in those cases that you identify the persons who were reckless. You identify their percentage liability or the court does eventually in the judgment, and each is proportionately liable for their share of the recklessness, as opposed to the joint and several liability that attaches to knowing fraud, the guys that intend to harm you and, in fact, do harm you.

It is the purpose of this statute to create these two liabilities for one simple reason: Without a change in the law, as this bill suggests, plaintiffs will, plaintiffs' lawyers will continue to file these shakedown lawsuits, scattershot everybody connected with the company, everybody associated with it, officers, board members, accountants, lawyers, everybody connected with a company, and then sit back and do discovery and continue the litigation until somebody says, wait a minute, we have had enough, here is 10 cents on the dollar. We are out of here. That has been the practice.

If you want to discourage that, you need to make this important change in the way these kinds of lawsuits are brought. Remember we are talking about civil lawsuits. This bill does nothing, nothing to change the authority nor the responsibility of the SEC to

prosecute claims of fraud under its enforcement authority already guaranteed in law and preserved in this statute.

What this amendment does, and it is supported by the SEC, is to say that plaintiff lawyers who do not like these reforms, who want to continue bringing these massive lawsuits to shake people down, will not be able to use the civil processes of RICO to do that. They are going to use this reform statute. Without this amendment, this reform is meaningless. Lawyers can simply continue to do, as some have suggested they will do, and that is use the treble damage approach of the RICO statute to avoid the reforms of this legislation and, therefore, continue to wreak havoc upon a legal system that is creating some awful problems for us in the marketplace.

We have heard through witnesses before our committee in the last Congress and this Congress what some of those awful problems are, problems in which small companies, particularly growth companies, who are doing their best with a new invention to get it going and to produce it and sell it to the marketplace find that their stock may jump up one day, jump down the next. And all of a sudden they are in a massive lawsuit, they and everybody connected with them

Problems that we have found in companies across the board where they have said, we would like to tell you more about our company, if you want to invest in it, but we are afraid to tell you anything because whatever we say somebody is going to say we misled you in a lawsuit next week. And we are going to find ourselves involved in another massive litigation with a lot of court costs and legal fees.

If we do not cure those problems soon, this legal mess created under 10(b)(5) will continue to erode the productivity of small growth companies who are desperately trying to employ Americans and to produce more products not only for our marketplace but for the marketplaces of the world. It is that simple.

Lawyers who actually use this system today and who want to fight these reforms would love to have somewhere else to go, some other system, and using the civil RICO is the way they might go. This amendment needs to be passed.

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

Mr. Chairman, I will not take 5 minutes because this is really a very simple argument. If Members do not want to reform the securities laws, then they do not want to vote for this amendment. But if they do want to reform the securities laws, this amendment is absolutely essential. Why? Because the RICO statute which this amendment would take away from applying to securities laws has become the stealth bomber of civil litigation in our society.

This is a statute that is so poorly drafted by this body that plaintiffs' lawyers can apply it to everything but the kitchen sink. And anybody who has practiced law knows that the way around an established regime in the statutory framework is to file a civil RICO suit because then none of the laws apply.

That is why a statute designed to apply to racketeering and organized crime in 40 percent of the cases now applies to securities lawsuits. This is a statute that is out of control. If we do not exempt this litigation from this statute, we will never get this job done.

Mr. Chairman, we are trying to reform the securities laws. Reform is desperately needed. I think almost all of us acknowledge that. But if we do not eliminate RICO, we are not going to get this reform done.

RICO is a loophole large enough for any plaintiff's lawyer to drive the largest Mercedes Benz through. We have to exempt it from this statute. I urge every single one of my colleagues who believe in securities law reform to vote for this amendment.

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

Mr. Chairman, I would like to start by saying, I really think that the offering of this amendment today is a low point in the operation of this House this year. This is an amendment that has a sweeping impact, yet we never had any hearings on this matter. Why? Because the committee with jurisdiction over this bill, which the gentleman from Texas, [Mr. FIELDS] presides over, at least the subcommittee, does not even have jurisdiction over RICO.

The result of that is that we are going to hear in this debate today, we have already heard, we are going to continue to hear a whole series of misstatements and a lot of remarks that are going to be read that somebody else wrote. Why? Because nobody in the debate on either side knows very much about RICO.

I used to be the cosponsor in previous Congresses of a bill, along with a number of my colleagues on this side of aisle and that side of the aisle, to reform the RICO statute. There are problems with it. But I dare say, nobody who has spoken so far on that side of aisle or on this side of the aisle knows what they are. The fact of the matter is, we never saw this amendment until late last night. We never had any hearings on it. I just have to say that bringing a sweeping proposal like that to the House that has such an enormous impact without anybody really knowing what it is is, in my view, not the way to legislate. I urge Members to look at it in that light.

We have heard a number of interesting statements. The last speaker a moment ago, the gentleman from California [Mr. COX], has gotten up and said, we have got to get rid of RICO. It is a loophole in the law. You probably believe that it is loophole in the law. Somebody our staff told you that. Maybe a lobbyist told you that.

But I read to the gentleman from California [Mr. COX] just a moment ago and I will read for the benefit of this gentleman as well, 18 United States Code which says, ''Any offense involving fraud in the sale of securities is one of the predicate acts of racketeering.'' It has been there in there from the very beginning. It is not a loophole. It has always been in there. Surely the gentleman would not wish to mislead the House. I am not sure he did not intend to. We have all made mistakes.

The fact is, when you do not have any hearings on a proposal, when it has not been seen by anybody until the night before the bill comes up, there are going to be mistakes made. And that is one of them.

We heard the gentleman from California [Mr. COX] and others stand up and praise the SEC and say the SEC wants this. We do not know if the SEC wants it or not. There was language that was sort of a side bar language in their testimony with regard to the underlying bill that made some statements with regard to the need to reform RICO. I agree that there is a need to reform RICO. But the fact is, the SEC did not testify on RICO. Why? There have not been any hearings on RICO before the House of Representatives or any of its committees this year. So we do not know what their clear view is of RICO.

Also they invoked the SEC. They say we should look at these casual remarks that they have made and apply them to our own judgment of RICO. What about the SEC's opinion of the loser-pays bill that you brought up here? They think it is a bad idea. What about their opinion of your standard of recklessness? They think it is a bad idea. What about the SEC's opinion of your definition of fraud on the market? They think it is a bad idea. And what about the SEC's opinion of the pleading requirements which you have put in the bill? They think those are a bad idea as well.

□ 1815

I note that the gentleman repeatedly gets up and says, ''It is a shame that plaintiff just does not recover enough in these cases.'' This is a RICO statute that provides treble damages. That is the one you want to repeal with this amendment. You might not have even realized that, inasmuch as there were no hearings, and very few people in this debate today are going to know very much about what the RICO statute even says.

Finally, I think it is perhaps maybe a symbol of this whole debate, but after the gentleman from Michigan, Mr. DINGELL, made a stirring speech condemning this whole effort, the gentleman from California, Mr. COX, gets up and referred to Mr. DINGELL's clipping, and reads to him from the last line of the

clipping, making it appear that somehow the Wall Street Journal has said the opposite of what Mr. DINGELL says.

Then Mr. DINGELL gets up and realizes who Mr. COX is quoting; he is quoting himself. Why? Because he did not have any hearings, and he does not have anybody else to quote. This amendment is not based upon any hearings, it is not based upon any jurisprudential, it is not based upon any data, any economic study, it is based upon an idea those guys had late last night.

I urge Members to vote this amendment down and restore some dignity to the proceedings of this House.

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

Mr. Chairman, I happen to have heard my colleague, the gentleman from Michigan, mention in not too glowing terms the concept of rascals and rogues who had capitalized off of certain situations in our society. My question is as to who are the rascals and who are the rogues.

Frankly, when we have 40 percent of the cases under the RICO being identified as being not as the original intention to the depth of what the original intention was supposed to come out, Mr. Chairman, there are rascals and rogues who would manipulate the law for their own personal gains. This amendment would try to rectify that problem.

I do not think anybody who voted for the original intention expected it to be a free ride for those in the legal profession, to be able to dig deep into other people's pockets, or to be able to have procedures that they could not use in any other civil cases.

However, to take advantage of a law that was meant to stop racketeering, to take advantage of legislation that was meant to protect the people of this country from organized crime, truly is immoral. Frankly, I think that this abuse that has been recognized by the Supreme Court is probably a good example of why the bar associations of this country probably are not doing their job, and because of that, we need to do our job here to straighten out abuses that have become obvious, obvious to the point to where we have to correct the well-intentioned RICO regulations.

Mr. Chairman, I think that we do have rascals and rogues out there, a segment of our society that refuses to live by the rulings and the good intentions that the rest of us take for granted. There are those that take a look at legislation and say what a great opportunity not to have to play by the rules.

I think this amendment, Mr. Chairman, will help to straighten it out and say we will live by the rules, and I think that the amendment will say that the rules will be set the same for these cases.

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

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

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

Mr. Chairman, about the gentleman's concern, does he know that alleged Mafia links in securities cases would not be prosecutable under RICO? Is that part of his intention in repealing RICO, as applies to securities?

Mr. BILBRAY. Of course not, Mr. Chairman. There are 40 percent of the cases being used under this. Is the gentleman saying that 40 percent of the cases under RICO are all racketeering?

Mr. CONYERS. No, I have no idea.

Mr. BILBRAY. Here is the point: RICO is meant to go after racketeering. It is being misused by attorneys, because it means they do not have to play by the other rules.

Mr. CONYERS. If I could remind the gentleman, we have already read the statute on the floor. It includes as a predicate offense securities violations. It is in plain English, and it was there from the first day that RICO was enacted into law, having passed this Congress.

However, my point is, would the gentleman preclude Mafia activities with securities from being a prosecutable offense under RICO? Because when we take RICO away, we are taking away the opportunity to prosecute Mafia involvement with securities.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

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

Mr. FIELDS of Texas. Mr. Chairman, I apologize to the gentleman on the other side of the aisle that I do not have the statute book with me, but as the gentleman knows, the civil part of RICO is just one or two sentences, and that is that one or two sentences that has made a number of civil actions to be brought under RICO. That is not what our intent is.

Mr. BILBRAY. It does not constitute 40 percent of the legislation.

Mr. FIELDS of Texas. If someone is breaking the law, as the gentleman alleges, as a Mafia mobster, that person would still be penalized under the criminal sections of RICO.

Mr. BILBRAY. Mr. Chairman, what we are talking about, those one or two sentences, are being manipulated for 40 percent of the actions. I do not think the legislation, and the gentleman was here, probably, I was not, I cannot believe the gentleman meant for 40 percent of this law to be used in this manner. I cannot believe that was his intention.

Mr. CONYERS. If the gentleman will yield, we did not mean any percentages, Mr. Chairman. Nobody had any percentages in mind. The fact of the matter is if the law can apply in a case being prosecuted civilly, it ought to apply.

Treble damages under RICO is an incredibly important tool, without which we are going to be at a loss for a lot of violations, including Mafia violations that are being reported in the Wall Street Journal.

Mr. BILBRAY. I think that what the gentleman is saying, see, the gentleman is trying to use that. This law was meant to go after the Mafia. The fact is it is being abused.

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

Mr. Chairman, I rise in opposition to this amendment. This is Congress operating at its worst. The amendment that we have here on the floor was never considered before our committee. There were no hearings that were called on this issue. In fact, the statute that we are amending right now is a separate statute altogether, the RICO statute. It has nothing to do with the jurisdiction of this committee.

In fact, Mr. Chairman, this subject was never referred to our committee for consideration. Moreover, the Committee on the Judiciary, which does have jurisdiction over this issue, did not consider it, and had no witnesses on this subject as part of the process of bringing this bill out onto the floor.

Mr. Chairman, we can all have a debate about whether or not racketeering should be considered to cover this, that, or another category, or potential defendants in suits, but let us not kid ourselves. When our subcommittee held hearings on penny stock fraud in 1989 and 1990, we had to have our witnesses testify with bags over their heads because of the fear of retaliation by organized crime in the penny stock market of this country.

Mr. Chairman, for any of the Members who think that as we talk about racketeering, that somehow or other it is exclusive of the securities marketplace, believe me, the penny stock market was rife with organized crime, so much so that there were life-threatening circumstances that many of our witnesses felt they were going to encounter.

Mr. Chairman, that is even apart from the central question, though, that we have to answer tonight: Is it proper for this Congress to take up an issue of such a magnitude with no hearings, in fact, with markups before our committee, that is, a process by which we could make amendments to the legislation, that resulted in both subcommittee and full committee markups being truncated down to a point where there was no more than 2 or 3 hours on each occasion, even to consider amendments to the subject which was before us, much less this, which was not before us?

To then come out here with a historic amendment to a separate piece of legislation with the Committee on Rules having a special hearing last night to put in order a nongermane amendment to a piece of legislation that has nothing to do with the business, and then asking our Members to rush out here at 6:30 and cast a vote on that, it is unfair. It is wrong. Congress

should not operate this way. It is completely unnecessary.

The Committee on the Judiciary, chaired by the gentleman from Illinois, is fully capable of having a hearing on RICO that considers all aspects of it, that has witnesses coming in from the Justice Department, from the States, from the private bar, and from all others to give testimony.

Congress tonight is being asked to cast a historic vote on a subject with no information before us except the opinions of a few Members who have been able to get a nongermane amendment put in order. It is Congress at its worst.

I recommend to all Members to vote ''no'' on such an important subject, and send that signal that this subject should be sent back to the Committee on the Judiciary so that they have hearings on the issue, and send us out a bill that deals with that relevant subject in a way that dignifies this most important of all legislative bodies in the country.

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

Mr. MARKEY. I am glad to yield to the gentleman from Michigan.

Mr. DINGELL. I would like to address, if the gentleman would permit, the substance of the amendment, Mr. Chairman. The amendment says ''Except no person may bring an action under this provision if the racketeering activity as defined in section 1961,'' and so forth, ''involves conduct actionable as fraud in the purchase or sale of securities'' before the period.

What this means is if fraud involving securities is involved in the question that is involved in the lawsuit——

Mr. DINGELL. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for 4 additional minutes.

Mr. COX of California. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. DINGELL. What this says, Mr. Chairman, because the language of the amendment reads as it does, is that if you are charged in a civil suit with violation of wire laws, of narcotics, or any of the other things which are prohibited under RICO, you had better make darned sure that you have been involved in some way with securities, because then you get a wash.

This amendment guts RICO. It guts civil suits under RICO. It should be rejected.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. MARKEY was allowed to proceed for 3 additional minutes.)

Mr. MARKEY. Mr. Chairman, I yield to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, just so that we understand, because of the redundant way in which the amendment is drawn, it says that if the suit by a citizen involves securities, you cannot sue under RICO, so you would not be able to sue under RICO for any of the other things which are prohibited under RICO: for example, murder; for example, violation of narcotics laws; for example, participating in a criminal enterprise of any kind, or for any kind of interstate fraud, gambling, narcotics, or whatever it might happen to be.

Mr. Chairman, if we are going to deal with the question of RICO reform, then good sense says that we should deal with it well. We ought not offer, simply because the individual can rush into court and say ''But you cannot sue me under RICO for gambling or narcotics because I was involved in securities, and the language of the Cox amendment says that I can't be sued if securities were involved.''

I do not blame the gentleman from California for objecting, because I would not want anybody to say these things about me on the floor, but the hard fact is the legislation is poorly drawn, it is hurried to the floor without proper hearings, without any intelligent consideration, and it has results far different, far broader, far worse from the standpoint of RICO, law enforcement, and getting at criminals generally. That is what is involved here.

The amendment ought to be rejected, if for no other reason than it is sloppy work. It is an embarrassment to the House. It may not embarrass the author of the amendment, but it assuredly embarrasses me, because I believe that this body should legislate well and efficiently. It should legislate wisely, so we do not surprise ourselves with the stupid consequences of irresponsible, unwise, and careless work. I urge that the amendment be rejected.

□ 1830

Mr. LEWIS of California. Mr. Chairman, I move to strike the requisite number of words, and I yield to my colleague the gentleman from California [Mr. COX].

Mr. COX of California. I thank the gentleman for yielding.

I am disappointed with the intemperate remarks of the gentleman from Michigan who certainly knows that we have had ample testimony on the subject of RICO in many, many committees in this Congress over years and years and years which I recounted when the gentleman apparently was not on the floor commencing in 1985, dating all the way up to this year when just a few weeks ago, the current Commissioner of the Securities and Exchange Commission came before our Committee on Commerce and supported this amendment. He also has sent a letter to the current chairman of the Committee on Commerce supporting this amendment.

I mentioned that Abner Mikva has testified before Congress in support of this amendment, in support of RICO reform. I mentioned that the Supreme Court of the United States when it examined this issue 10 years ago found that it is up to Congress to fix this problem and both the majority and the minority in that Supreme Court decision said that RICO is being stretched beyond what Congress originally intended in the securities area.

I even quoted from Justice Thurgood Marshall. Thurgood Marshall was in the dissent, in the minority in that case, and it was Thurgood Marshall and Justice Powell who would have voted to limit RICO in the Supreme Court, but we are doing it here in Congress because majority said it is really Congress' mistake, Congress should fix it. The SEC's general counsel has testified in favor of this and we quoted from his testimony. I have submitted for the RECORD comments from judges across America who have said that this is an abuse. Almost all of the examples that we just recently heard were examples where criminal RICO, which is the whole bulk of the statute, civil RICO is only a few sentences, where criminal RICO should be used.

It is certainly important that criminals be prosecuted and that is exactly what will happen before and after this amendment. But what we do not want to see is for our carefully crafted Federal securities laws to be shunted aside and instead for people to be able to use a statute never intended to apply in these civil cases in this way so that they can get treble damages, something not provided for in our securities laws, so that they can get discovery going all the way back 10 years to show a pattern which is part of RICO, not part of the securities laws, and in short so they can gin up settlements where a settlement is not in order.

This is exactly the kind of securities litigation fraud that we are here to punish and we certainly should not do anything that would permit it to continue.

I urge my colleagues very strongly to support his amendment. If there are no further comments, I would ask for a vote.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. COX].

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

RECORDED VOTE

Mr. FIELDS of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 292, noes 124, answered ''present'' 1, not voting 17, as follows:

[Roll No. 209]

AYES—292

| | | |
|---|---|---|
| Ackerman | Ballenger | Bilirakis |
| Allard | Barcia | Bishop |
| Andrews | Barr | Bliley |
| Archer | Barrett (NE) | Blute |
| Armey | Bartlett | Boehlert |
| Bachus | Barton | Bonilla |
| Baesler | Bass | Bono |
| Baker (CA) | Bateman | Boucher |
| Baker (LA) | Bereuter | Brewster |
| Baldacci | Bilbray | Browder |

Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Clyburn
Coble
Coburn
Collins (GA)
Combest
Cooley
Costello
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lucas
Maloney
Manzullo
Martini
Mascara
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vento
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—124

Abercrombie
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
Cramer
DeFazio
Dellums
Dicks
Dingell
Dixon
Doggett
Engel
Fattah
Fields (LA)
Filner
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Luther
Manton
Markey
Martinez
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Nadler
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Schroeder
Scott
Serrano
Skaggs
Slaughter
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Torres
Towns
Tucker
Velazquez
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—17

Boehner
Condit
Flake
Gibbons
Greenwood
Hansen
Jefferson
Largent
McDade
McKinney
Meek
Murtha
Norwood
Rangel
Rose
Roth
Yates

□ 1851

The Clerk announced the following pairs:

On this vote:

Mr. Largent for, with Mr. Flake against.

Mr. Roth for, with Mr. Jefferson against.

Messrs. JOHNSON of South Dakota, GENE GREEN of Texas, and LEVIN changed their vote from ''aye'' to ''no.''

Ms. LOFGREN and Messrs. PETERSON of Florida, THORNTON, and MOAKLEY 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. LARGENT. Mr. Speaker, had I been present for the following votes on Tuesday, March 7, 1995, I would have voted as follows:

On House Resolution 105, agreeing to the resolution—''yea.''

On the Cox amendment to H.R. 1058, to prohibit claimants from bringing securities lawsuits under Racketeer Influenced and Corrupt Organizations [RICO] Act—''yea.''

AMENDMENT OFFERED BY MR. FIELDS OF TEXAS

Mr. FIELDS of Texas. Mr. Chairman, I offer a technical amendment.

The Clerk read as follows:

Amendment offered by Mr. FIELDS of Texas: Page 9, line 5, strike ''verifies'' and insert ''certifies''.

Page 11, line 21, and page 13, line 20, strike ''any settlement'' and insert ''any proposed or final settlement''.

Page 12, line 9, insert ''per share'' after ''potential damages''.

Page 14, beginning on line 18, strike ''The order shall bar'' and all that follows through line 23, and insert the following:

The order shall bar all future claims for contribution arising out of the action—

''(A) by any person against the settling defendant; and

''(B) by the settling defendant against any person older than a person whose liability has been extinguished by the settling defendant's settlement.

Page 16, line 20, insert ''section 10(b) of'' after ''under''.

Page 17, line 6, insert ''to state'' after ''or omits''.

Page 17, line 25, strike ''or sellers'' and insert '', sellers, or security holders''.

Page 18, line 2, strike ''consciously''.

Page 19, line 25, insert ''knowledge and'' after ''paragraph (1),''.

Mr. FIELDS of Texas (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 Texas?

There was no objection.

Mr. FIELDS of Texas. Mr. Chairman, this amendment contains only technical and conforming changes that have been agreed to by the majority and minority.

The amendments clarify that disclosure is required for both proposed and final settlements, and that such disclosures includes a statement of potential damages per share. They also prevent settlement discharge bar orders from prohibiting a defendant from using an indemnification agreement or suing a subordinate. The amendments clarify that the new section 10A applies only to actions under old section 10(b) and make certain other technical and conforming changes.

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

Mr. FIELDS of Texas. I yield to my friend, the gentleman from Massachusetts.

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

Indeed this amendment does include several technical changes which have been agreed upon between the majority and the minority, and we would recommend them to the full committee.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. FIELDS].

The amendment was agreed to.

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

Mr. Chairman, I am about to make a motion that the committee do rise, but before doing so I would like to announce that when the Committee returns to this measure tomorrow, the first order of business will be the amendment of the gentlewoman from California [Ms. ESHOO].

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. VUCANOVICH) having assumed the chair, Mr. COMBEST, 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. 1058) to reform Federal

securities litigation, and for other purposes, had come to no resolution thereon.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–69) on the resolution (H. Res. 108) providing for consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## PERMISSION FOR SUNDRY COMMITTEES AND THEIR SUBCOMMITTEES TO SIT TOMORROW DURING THE 5-MINUTE RULE

Mr. HASTERT. 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 5-minute rule. The Committee on Banking and Financial Services; the Committee on Economic and Educational Opportunities; the Committee on Government Reform and Oversight; the Committee on House Oversight; the Committee on International Relations; the Committee on National Security; and the Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. DOGGETT. Mr. Speaker, reserving the right to object, we have consulted with the ranking minority member of each of those committees and have no objection to their meeting while the House is in session.

Madam Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

□ 1900

## SPECIAL ORDERS

The SPEAKER pro tempore (Mrs. VUCANOVICH). 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.

## WE NEED A NEW ECONOMIC NATIONALISM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. GEPHARDT] is recognized for 5 minutes.

Mr. GEPHARDT. Madam Speaker, I rise today to call my colleagues' attention to an important finding in last week's issue of Business Week.

I am speaking of an economic reality which may be new to the business press in the United States—but has been plaguing millions of hard-working middle-class families for more than 16 years.

The simple fact is corporate profits are surging, but the working people who stand behind those profits are seeing their incomes fall.

That is why Business Week concluded in an editorial, and I quote,

> The middle class has shouldered much of the pain * * * that has made Corporate America so productive and competitive in global markets. Now is the time for the middle class to share in the fruits of higher productivity.

When you look at the facts, it is clear that we are in the midst of a powerful business boom. Business Week reports that, despite the Federal Reserve's efforts to halt our economy, corporate profits among 900 leading companies grew by an astonishing 71 percent in the fourth quarter of 1994.

Profits grew by a whopping 41 percent for all of 1994, the biggest increase since Business Week began keeping these statistics back in 1973.

But while business has never been better, for middle-income families, the economic crunch continues.

Business Week reports that American household wealth has actually fallen by about half of 1 percent—only the eighth time it has dropped in 30 years.

This is something to which attention must be paid, especially by those who talk about family values.

Look at what is happening to the families that have given up every minute of family time while parents work two, three, even four jobs. How can you build a strong family when you are working day and night just to pay the bills?

When I was growing up in the 1950's, America brought a higher standard of living to a growing number of our people.

As profits flourished, the people behind those profits saw their real wages rise.

But today, working people cannot even expect to share in the fruits of their own labor.

The statistics are as plain as day. From 1947 to 1973, American workers gave their companies an almost 90 percent increase in productivity, and in return, their real wages increased by nearly 99 percent. They got as much as they gave.

But from 1973 to 1982, workers got only half as much of an increase in real wages as they gave in new productivity. And from 1982 through last year, they got only a third as much as they gave in real productivity.

For Democrats, the single, simple, fundamental task of our party—in this Congress, in this decade, in this generation—is to fight for the standard of living of working families and the middle class. We must heed the words of Business Week, and help the middle class to share in the profits and fruits of higher productivity.

That means that we must question a boom in which Wall Street is strong, but Main Street is still weak.

It means we must challenge an economy in which the Dow Jones keeps rising through the roof, but family fortunes keep falling through the floor.

And it means that the American people have to decide which political party is willing to stand up and fight for them—and which political party is standing in their way.

Democrats believe in a substantial minimum wage increase—because you cannot support a strong economy, let alone your own family, on $8,500 a year. People ought to be paid more if they are working than if they are on welfare, and too often, we know that is not the case today.

Republicans not only oppose a minimum wage increase, House Republican Leader DICK ARMEY wants to abolish the minimum wage altogether. I ask Mr. ARMEY or those who agree with him, could you raise a family on $8,500 a year?

Democrats believe that a capital gains tax cut is not the first priority, that we need a middle-class tax cut, to build up the community of consumers who buy America's products.

Republicans not only oppose a middle-class tax cut, they want to give that tax break to the wealthiest investors, forcing deep cuts in the programs working Americans need most; school lunches for children, food stamps, Social Security, Medicare.

Democrats believes that globalization of our economy should not mean the pauperization of our middle class. It should not mean throwing our workers into roller-coaster competition with third-world workers who earn as little as a dollar a day.

And it does not have to mean that, if we change the way we do business, both home and abroad.

We need a new economic internationalism, to bring the third world into the global economy, without submerging developed nations into the third world, to lift them up, without dragging ourselves down.

We need a new economic nationalism. Not an effort to isolate ourselves, but a commitment by business, labor, and government to hard-working, middle class families here at home.

We need a commitment to the notion of ''Pay for Performance''—ensuring that productivity, quality, and creativity profit the people who are actually providing it. A powerful study by Laura Tyson and David Levine shows that if you reward workers' good results, you get even more progress. In the coming months, I will offer legislation to encourage companies to embrace such financial fairness.

Republicans, on the other hand, actually like the rampant globalization of