minute and to revise and extend his remarks.)

Mr. NEUMANN. Mr. Speaker, it is a very special day here in Washington, D.C. I rise to extend a special welcome to a group of students that are out here, about 100 students from the Juneau School. It is a school where parents are actively involved. There are students here from Juneau, Hustisford, and Dodgeland, and we would like to express a special welcome to them this morning.

I think it provides an opportunity to talk about the fact that where parents are involved in the school and where parents are actively involved in their kids' lives, America benefits.

When we look at a school with students like what we have here this morning, where the parents are actively involved in the lives of these kids, we find that there is a dramatic drop in the probability of these students being involved in crime. We find a drop in the drug use rate. We find a drop in teen pregnancies in their future. We find less teen smoking. All the problems do not go away, but we sure recognize and understand that when the parents are actively involved in their kids' lives, like what happens at the school that is out here today, that certainly leads to a better America for all citizens.

JUDICIAL REFORM ACT OF 1998

Mr. GOSS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 408 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 408

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1252) to modify the procedures of the Federal courts in certain matters, and for other purposes. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with section 303(a) of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by striking section 9 (and redesignating succeeding sections accordingly). Each section of that amendment in the nature of a substitute shall be considered as read. Points of order against that amendment in the nature of a substitute for failure to comply with clause 7 of rule XVI or section 303(a) of the Congressional Budget Act of 1974 are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. EWING). The gentleman from Florida (Mr. GOSS) is recognized for 1 hour.

Mr. GOSS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to my friend, the distinguished gentleman from Ohio (Mr. HALL), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purpose of debate on this subject only.

Mr. Speaker, House Resolution 408 is an open rule providing for the consideration of H.R. 1252, the Judicial Reform Act of 1998. The rule provides the customary 1 hour of general debate, equally divided between the chairman and ranking minority member of the Committee on the Judiciary.

The rule waives points of order against the consideration of the bill for failure to comply with section 303(a) of the Congressional Budget Act, which prohibits consideration of legislation providing new budget authority, changes in revenues, or changes in the public debt for a fiscal year until the budget resolution for that year has been agreed to.

The purpose of that section of the Budget Act is a sound one that we generally try to adhere to, keeping the budget process moving forward in a commonsense direction, with the budget resolution coming first and then allowing for subsequent consideration of the legislation that implements the provisions of the budget resolution.

In this case, however, we are technically required to provide this waiver, but our Committee on Rules has also provided a fix for the Budget Act problem. We have done that by making in order under this rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary, modified by striking section 9 of that amendment which caused the 303(a) problem and redesignating succeeding sections accordingly.

Section 9 of the amendment specifically deals with the process by which cost of living adjustments for Federal judges are implemented. The effect of that section would have been to create a new mandatory spending category in the budget, something that we tried not to do outside the normal congressional budget process.

Apart from the substance of that issue relating to pay for judges, the Committee on Rules has attempted in this rule to preserve the integrity of the budget process.

Mr. Speaker, the rule further provides that each section of the amendment in the nature of a substitute shall be considered as read, and it waives points of order against that amendment for failure to comply with clause 7 of rule XVI prohibiting nongermane amendments, or section 303(a) of the Congressional Budget Act, for the reasons I just explained.

The rule accords priority in recognition to Members who have caused their amendments to be preprinted in the CONGRESSIONAL RECORD, assuming those amendments are in accordance with the standing rules of the House.

It further provides that the chairman of the Committee of the Whole may postpone votes during consideration of the bill and reduce the voting time to 5 minutes on a postponed question if the vote follows a 15-minute vote; and, finally, as is the custom, the rule provides for one motion to recommit, with or without instructions. That explains the rule.

Now, Mr. Speaker, with the exception of the technical Budget Act fix, this is a very straightforward rule. It is fair, and it is wide open. It allows all Members the chance to offer germane amendments and conduct thoughtful discussion about a very important subject.

I strongly support the premise behind this bill, that it is time to control judicial activism, the so-called runaway judges on the Federal bench. This statement alone is usually enough to generate controversy in many circles, and this debate is by no means a simple one, as it involves many of the most basic tenets of our democratic system and the separation of powers.

□ 1030

I think we could all come up with anecdotal evidence that there have been problems within the Federal judiciary with judges exceeding their charter and authority. The Committee on the Judiciary has, in my view, put forth a responsible product that deals with these problems by focusing on specific practices within the Federal courts that together constitute a real threat to the rights of citizens and the prerogatives of this Congress.

In my view, this legislation constitutes a measured and carefully justified response to legitimate problems. It is not simply throwing down the gauntlet. It is coming up with responsible solutions, which we will have ample opportunity to debate under an open rule.

I applaud the gentleman from Illinois (Mr. HYDE), and the subcommittee

chairman, the gentleman from North Carolina (Mr. COBLE) for their work on this bill. Still, I know that many Members have concerns about specific provisions of the legislation. Those Members will have their opportunity to air their concerns and propose alterations during the open debate and amendment process established by this rule.

I urge support for the rule and the underlying bill. I look forward to a lively and informative debate.

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

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume. I want to thank my colleague for yielding me the time.

This is an open rule. It will allow for full and fair debate on H.R. 1252, which is the bill that modifies certain procedures of the Federal courts.

As my colleague from Florida described, this rule provides for 1 hour of general debate equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary. The rule allows amendments under the 5-minute rule, which is the normal amending process in the House. All Members on both sides of the aisle will have the opportunity to offer amendments.

Judicial decisions that force government action by their nature are unpopular. If those actions were popular, then the legislature and the administrations would have already taken them. Some of those unpopular decisions have resulted in the protection of our health, safety and civil rights. In recent years, some judges have assumed broad powers traditionally reserved for the legislative and the executive branches of State and local government. There is merit in some of the criticism of these actions when the result is an antigovernment backlash that weakens support for government.

But if this is a real problem, then the answer is really not this bill. I think the bill threatens to undermine the independence of the Federal judiciary and reduce efficiency. The Attorney General will recommend to the President that he veto the bill if it is passed in its current form. Mr. Speaker, even though the bill is flawed, there is nothing wrong with this rule. It is open. It should be supported. I support it.

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

Mr. GOSS. Mr. Speaker, I yield myself such time as I may consume.

May I inquire of my colleague through the Chair if he has any speakers? We have none, and we would just as soon get on with the debate, and yield the balance of the time, if that fits with the pattern from the other side.

Mr. HALL of Ohio. Mr. Speaker, will the gentleman yield?

Mr. GOSS. I yield to the gentleman from Ohio.

Mr. HALL of Ohio. Mr. Speaker, I had expected two speakers, but they have not shown up. Therefore, I will yield back the balance of my time.

Mr. GOSS. Mr. Speaker, I would be very happy to afford the gentleman an extra minute or so if he is aware that those Members are coming.

Mr. HALL of Ohio. I am not aware. I was just asked, before we started, they asked to speak on it. They have not arrived.

Mr. FRANK of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. GOSS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Speaker, I will be managing the bill on our side. I think Members will have general debate. There will be an hour of general debate that is not going to be overfilled with requests for time. I think they can be accommodated.

Mr. GOSS. Reclaiming my time, if it is my time, I understand, and we have no speakers, and we are going to yield back in about a minute, and call for the question. We are not intending to call for a recorded vote. We believe that it is an open rule, and there is no need to do that.

We also agree with the distinguished gentleman from the Commonwealth of Massachusetts that there is ample debate opportunity today because of this very fair open rule that we have crafted. We are certainly looking forward to that debate, and would not want to put any impediment to it. Unfortunately, we are not quite logistically prepared to begin the debate.

Mr. FRANK of Massachusetts. Mr. Speaker, if the gentleman will continue to yield, I thank the gentleman. I thought I would help him because he seems to be in no great hurry. We are not waiting for the Speaker to come back from Florida again, are we, like yesterday?

Mr. GOSS. Reclaiming my time, Mr. Speaker, I am delighted that the gentleman brought the Speaker's trip to Florida up. It shows the outreach that we have in this House to go to the important States in our Nation, Florida being the fourth most populace State, and a place where we will all go sooner or later, which we are very proud to represent, those of us who are there now. I believe the Speaker has returned from Florida, and has done brilliant things there.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I come before you today to speak to you about an important rule on an important piece of legislation. I am pleased that this rule is an open rule and that both Democrats and Republicans are able to come together on the floor of the House and offer reasonable common sense amendments that improve this bill. However, I am disturbed that the judicial pay raise amendments were not made a part of this rule. The Federal Judges do alot more than just come to work. They interpret the law and preserve justice. Increasing Federal judicial compensation is important because the Federal Judiciary is composed of men and women who give up alot of money to work in the public sector. We all know that they give up alot for this special type of public service and they should be justly compensated for it. I have an amendment that was made in order. This amendment would permit a federal court to enter an order restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making a finding of fact that such order would not restrict the disclosure of information which is relevant to the protection of public health and safety. I am glad that this rule includes my amendment but it should have included amendments that improve and increase Federal judicial compensation.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. KNOLLENBERG). Pursuant to House Resolution 408 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. 1252.

The Chair designates the gentleman from California (Mr. RIGGS) as Chairman of the Committee of the Whole, and requests the gentleman from Illinois (Mr. EWING) to assume the chair temporarily.

□ 1042

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. 1252) to modify the procedures of the Federal courts in certain matters, and for other purposes, with Mr. EWING (Chairman pro tempore) in the Chair.

The Clerk read the title of the bill.

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

Under the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Massachusetts (Mr. FRANK), each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

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

H.R. 1252, the Judicial Reform Act of 1998, is a restrained but purposeful effort to combat specific areas of abuse that exist within the Federal judiciary. The gentleman from Illinois (Mr. HYDE), as he spoke to the Committee on Rules yesterday, said this bill perhaps goes too far for some Members, not far enough for others. But that is not unlike much legislation that we consider in this hall.

Before describing what the bill does, however, let me emphasize what it does not do; namely, it will not compromise the independence of the Federal judiciary, which is an indispensable attribute for that branch of the Federal Government, nor is H.R. 1252 an attempt to influence or overturn legal disputes. Above all, we most certainly are not creating a novel, more lenient standard of impeachment to remove particular judges from the Federal

bench without cause or to intimidate them with a threat of doing so. That said, the Judiciary Reform Act of 1998 is largely an amalgam of ideas developed by various Members of Congress that will curtail certain abusive practices within our Federal court system.

Specifically, the bill consists of six procedural changes in furtherance of this end. In addition, the four other reforms that will improve other matters related to article 3, Federal courts. The six core revisions set forth in the bill concern the following matters:

First, a featured component of the bill was initially developed by our colleague and good friend, the late Sonny Bono. It would require three judge panels to hear constitutional challenges of State laws enacted pursuant to voter referenda. Under current law, a single judge possesses the power to invalidate the results of a State-wide referendum.

Second, H.R. 1252 would permit interlocutory or interim appeal of class-action certifications championed by the gentleman from Florida (Mr. CANADY). This provision would enable litigants to a class-action suit to appeal a decision certifying a national class prior to the conclusion of a trial.

Currently, defendants may expend a great deal of financial resources through trial only to find upon appeal that a class was improperly certified at the outset of litigation. Third, the measure infuses greater objectivity in the current process by which citizens may register complaints against Federal judges for misconduct.

Present law on the subject is premised on a peer review system by judges from the same circuit. Pursuant to the change set forth in this bill before us, complaints which do not speak to the merits of a decision, or are not otherwise frivolous will be referred to a different circuit.

□ 1045

This means that truly substantive complaints will be more objectively reviewed by judges who have no personal ties to the judge who is the subject of the complaint. The gentleman from Tennessee (Mr. BRYANT) and the gentleman from Indiana (Mr. PEASE) contributed to this section of the bill.

Fourth, H.R. 1252 would inhibit the ability of Federal courts to require States and local municipalities to raise taxes on the affected citizenry to pay for projects that the States and municipalities are unwilling to fund themselves.

While a Federal court may possess the technical right under certain conditions to devise such a remedy to redress a constitutional harm, we have carefully crafted some parameters that will constrain the practice of judicial taxation. The gentleman from Illinois (Mr. MANZULLO), whose district is home to a city which is subject to a judicial taxation order, contributed to this portion of the bill.

Fifth, the gentleman from Florida (Mr. CANADY) worked with our former colleague Dan Lungren, who presently serves as Attorney General for California, to create a procedural right for a litigant to request one time only that a different judge be assigned to his or her case. Some judges are so possessed of an injudicious temperament or are otherwise biased as to warrant this revision.

Sixth, it is has come to our attention that some Federal judges are unalterably opposed to enforcing the death penalty, even to the point of dragging their feet on expeditious consideration of habeas corpus petitions to forestall execution. Based on comments made by the gentleman from Massachusetts (Mr. DELAHUNT), this section of the bill would prevent the chief justice of a circuit from reserving all such petitions for one judge on an exclusive basis.

Mr. Chairman, there are three other items contained in the Judicial Reform Act that do not otherwise speak to abusive judicial practices but will nonetheless improve the functioning of our Federal courts. They are:

One, the permitted practice of televising proceedings in our Federal appellate courts and, for a 3-year period, in our district or trial courts, suggested to at the discretion of the presiding judge;

Second, the expedited consolidation of cases pertaining to complex, multidistrict disaster litigation;

And, third, the allowance of an additional 30 days, or a total of 60 days, for the Office of Personnel Management to appeal adverse personnel decisions consistent with appellate procedure for other Federal agencies.

Again, Mr. Chairman, these provisions are straightforward and restrained in their application and will assist in promoting equity for litigants and taxpayers within the Federal court system. I urge all Members to support passage of H.R. 1252.

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

Mr. Chairman, I ask unanimous consent that the bill be open for amendment at any point.

The CHAIRMAN. That request by the gentleman may be made after general debate has concluded and the Committee begins the 5-minute rule.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Let me say, I appreciate the gentleman making the request. Because even though it cannot be acted on until the 5-minute rule begins, Members who may be interested should know it is our intention to have amendments be in order at any point so they do not have to worry about a section-by-section reading. I do not believe we have a large number of amendments.

Mr. Chairman, the Subcommittee on Courts and Intellectual Property, on which I am pleased to serve with the gentleman from North Carolina (Mr. COBLE), has a good deal of business which we do in a nonideological way and in a nonpartisan way, and I am very proud of that. The intellectual property jurisdiction we have is an important one, and we have had some judicial reform bills.

This bill does not, however, conform to that pattern. This is an exception in that it is one on which I think we have some fairly sharp division, and the reason we have the division I think frankly stems from some frustration on the part of some of those on the other side.

There are people particularly in the very conservative wing of the Republican party, which I must say has outgrown wing status. It is now at least a wing and a tail and maybe another wing and a couple of beaks. They do not like some of the things that the courts do. I believe that their problem, however, is not so much with the courts as with the Constitution. And there is not a great deal we can do about the Constitution. We try.

We recently have sought on the floor, at least some have sought on the floor, to amend the Constitution with great regularity and with equal lack of success. The Congress has voted down half a dozen or more efforts to change the Constitution. Not being able to change the Constitution, the people in the conservative wing of the Republican party have decided to demonize it instead and to denounce the judges. But there is a great disconnect between the violence of the rhetoric and the actuality of the legislation.

I am going to vote against this bill. I am glad that the President plans to veto it if we pass it as-is, although we could make it passable under some aspects of the bill which I think are very useful. But even if it were to pass, it would have virtually no effect on the kinds of things that people complain of.

In fact, one of the most interesting facts is that, while people on the conservative side complain about this bill because they say it empowers an inappropriate form of judicial activism, it is very clear if we study this that they simply do not like the results. They simply do not like courts finding that this or that statute might not be permissible under the Constitution. Because if we look at the judges who have been judicial activists, what we find, of course, is that the most conservative justices of the Supreme Court, for example, are also the most judicially active.

Justices Scalia and Thomas, the two most conservative justices, strongly supported by the conservatives, have in fact voted to invalidate more statutes, to find more acts of Congress unconstitutional than their more moderate and liberal counterparts. If in fact they think it is a terrible idea for the Supreme Court to strike down statutes, then they would be very critical of Mr. Scalia and Mr. Thomas, the Religious Freedom Restoration Act that they did not like, the Brady Bill, parts of which they did not like. There are a whole series of them. And the conservative justices are in league.

One of the most glaring examples of this came recently with regard to a series of decisions in California where judges in California found referenda unconstitutional. Now, in a couple of cases, at least in one case, a district judge found the referendum unconstitutional under affirmative action. That district judge was promptly overruled. No harm was done to the cause of the people who were against it. We went through the regular procedure.

And if we listen to my Republican friends, we might get the impression that they do not like the idea of a Federal judge invalidating a popular referendum. But if we got that idea, Mr. Chairman, we would be wrong.

Sometimes in an excess of their concern over a particular case, my friends on the other side overstate their allegiance to general principles. Because, in fact, when the people on the Republican Party do not like the result of a referendum, what do they do? Well, in California, they go to court and they ask a single district judge to invalidate it.

Indeed, it seems to me clear that, with regard to judicial activism, my friends on the other side have essentially the same position with regards to States'
rights. They are against it except when they like it. They are prepared to denounce it when it produces a result they do not like. But when it gets in the way of a result they like, then they ignore it. That is where they are on States' rights, and that is a perfectly valid viewpoint.

That is, it is valid to be result-oriented. It is valid to say, I am going to hope for the right decision. What is not intellectually valid, it seems to me, is to assert adherence to a principle to which one does not, in fact, adhere. And when we talk about States' rights but are prepared to disregard States' rights and talk reform and criminal procedure and economic regulation and consumer protection, then we really forfeit our rights to talk about States' rights. And when we denounce judicial activism but Honor Justices Scalia and Thomas, our two most active justices, then it seems to me we undercut our argument.

And with regard to the notion that somehow it is a terrible thing for a district court judge to invalidate a popular referendum, let me read a refutation of that view. I am reading from a legal brief.

> The blanket primary is not valid because it apparently was passed by a majority of Democrats and Republicans who voted in the 1996 election. Voters cannot validly enact a law which conflicts with parties' rules governing the nomination of candidates and infringes their first amendment rights any more than can a legislature.

Let me read that again correctly. ''Voters cannot validly enact a law which conflicts with parties' rules governing the nomination of candidates and infringes their first amendment rights any more anymore than a legislature.''

Let me also now read. ''Even if the electorate could enact statutes to regulate the selection of nominees for partisan offices, it cannot do so in a way that undermines the integrity of the electoral process.''

And then quoting with approval another decision, ''Voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation. A court must undertake the same constitutional analysis of laws passed by initiative as by a legislature. There is little significance to the fact that a law was adopted by a popular vote rather than as an act of the State legislature. Indeed, there are substantial reasons for according deference to legislative enactments that do not exist with respect to proposals adopted by initiative.'' And that is a quote again from another decision.

Now, where do these arguments in favor of allowing a single Federal district judge to invalidate a referendum of the people of California if it was unconstitutional come from? What radical group, what group of anti-public elitists, what sneering left-wingers, unwilling to let the people decide, put this forward? Who says that, in fact, the legislative enactment might even get more deference from a court than the people? Who are these judicial activist encouragers who so sneer at the public? They are the California Republican Party.

I am quoting from the brief filed by the California Republican Party, Michael Schroeder, Shawn Steel, and Donna Shalansky. Not that Shalala. Donna Shalansky. It was filed July 28, 1997. Because the people of California dared to pass a referendum changing the way candidates are nominated for office which the Republican and Democratic Parties of California did not like.

So the Republican Party of California went to court with the Democratic Party of California and said, judge, you make those people stop violating my constitutional rights. And they wrote down here that just because the people did it in a referendum does not mean anything. In fact, it may mean it is even less entitled to respect than when the people do it.

□ 1100

Of course, we have a bill on the floor that does exactly the opposite. We have a bill on the floor that says that, if a referendum is involved, we have to have a three-judge court.

It just seems to me, Mr. Chairman, that there ought to be some limit to the extent to which a gap is allowed to exist between what people say they truly believe and what they do when it is important to them.

So what we have here is a cry of frustration. We have the right wing not liking the fact that the court sometimes enforces constitutional rights. So they talk about all the doctrines which they, it does not seem to me, follow themselves when they are inconvenient.

So they come forward with a bill which is mostly a nuisance and interference and a derogation from the efficiency of our Court system. We will be offering some amendments to try to clear that up. And absent the passage of those amendments, I hope the bill is defeated.

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

Mr. COBLE. Mr. Chairman, I yield 7 minutes to the distinguished gentleman from Illinois (Mr. HYDE), the Chairman of the House Committee on the Judiciary.

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

Mr. HYDE. Mr. Chairman, I will restrain myself from quoting the well-known line about a foolish consistency, because I tend to agree with the gentleman from Massachusetts (Mr. FRANK). I think consistency is a virtue, and I do not have the time to point out inconsistencies on the left.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

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

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman, because my good friend from Illinois and I do not always agree on the definition of virtue, so I am glad we do in this case.

Mr. HYDE. Mr. Chairman, that is right, at least in this instance. But I would like to suggest that I think he proves too much when he refers to this bill as somehow hostile to the vibrancy, the vitality, the importance, the significance of the Federal judiciary. Just the opposite; it is an effort to make the Federal judiciary work better.

We will have amendments here, and we will debate this issue, but I do not think there is anything in the bill that is hostile at all to the notion of the third branch of government and its very important role in the functioning of our democracy.

As to the three-judge panel, somehow the gentleman from Massachusetts views that as a derogation of authority, proper authority that belongs to the courts. I would just simply suggest that the notion of setting aside by injunction a referendum that has passed through a State process where members of the State have voted in the referendum is a topic of some significance and deserves the gravity of a three-judge court rather than just one judge.

I say that because we do this in the context of three-judge courts already deciding appeals from voting rights cases and reapportionment cases. I am sure the gentleman from Massachusetts supports enthusiastically the notion that three-judge courts have to hear voting rights cases. They are important. Three-judge courts ought to hear appeals on reapportionment because they are important.

We feel a State referendum is equally important. So rather than derogating from the importance of the Federal courts deciding these, we are adding some gravatas to the process by saying where an entire State has voted on an issue, that the setting aside of that should be done by a three-judge court rather than one.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

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

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman for yielding to me. I would say, as our friend from North Carolina had reminded us, the original reason for a three-judge court in the voting rights case had to do with the unfortunate history of judges in the South, who did not really believe in it. I do not think that there was need for it any further, and I would not insist on maintaining it.

I would say with regard to the substance of what the gentleman said, I understand his argument that there is something special about a referendum. But the California Republican Party filed a lawsuit directly contradicting that.

I would ask the gentleman, do the California Republicans, who serve on the Committee on the Judiciary, have they talked to the California Republican Party and tried to enlighten them and correct this error, which they have so strongly propagated?

Mr. HYDE. Mr. Chairman, I would say to my friend, the gentleman from Massachusetts, that is the one aspect of this controversy I have not researched. But I can also tell him that I will not research it. But, nonetheless, the purpose of the three-judge court is a recognition of the significance of an entire State voting on a referendum, and giving it the added dignity of a three-judge court to set aside the expressed wish of perhaps millions of people; the same as in voting rights appeals and in reapportionment.

Mr. FRANK of Massachusetts. Mr. Chairman, I ask the gentleman to yield.

Mr. HYDE. Mr. Chairman, this is almost amounting to harassment, but I, nonetheless, in the mood of accommodation, yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I seek no quid pro quo, so I do not think it is harassment.

Mr. COBLE. Mr. Chairman, I did not hear what the gentleman said.

Mr. FRANK of Massachusetts. Mr. Chairman, I seek no quid pro quo, so I do not think it is harassment because I am not the gentleman's supervisor.

I would say to the gentleman that I appreciate his talking about the relevance of respecting the wishes of millions of California voters in a referendum. I hope when the resolution condemning those same voters for voting for medical marijuana comes up that the respect that the gentleman is now showing for those California voters does not evaporate as rapidly as I fear it might.

Mr. HYDE. Mr. Chairman, I yield to the gentleman's superior knowledge on marijuana.

I simply would like to say that the rest of this bill deals with improvements in the Federal court system, abuses that can occur in class-action certifications, questions of judicial misconducts. Some of us feel those are better handled by a committee in another circuit rather than the circuit where the judge practices or sits.

We deal with questions of courts ordering taxing bodies to raise taxes. We feel that is a violation of separation of powers. We like to help avoid getting stuck, if I may use that inelegant term, with a judge who is inappropriate for a particular party or litigant or lawyer by letting us at least change once, which we can do in every circuit court throughout the country. We deal with cameras in the courtroom handling capital punishment appeals.

So this is a good bill. I do not doubt it is controversial. It is not hostile to the courts. We will have a struggle perhaps later on over judicial pay. Some people who just congenitally dislike judges will have their say, but that is for later in the day.

SUMMARY OF H.R. 1252, THE JUDICIARY REFORM ACT OF 1998

This necessary legislation addresses one of the most disturbing problems facing our constitutional system today—the infrequent but intolerable breach of the separation of powers by some members of the Federal judiciary.

THREE-JUDGE PANELS

The first reform contained in this bill was developed originally by a valued member of the Committee on the Judiciary, the late Representative Sonny Bono of California. Recognizing the unjust effect on voting rights created by injunctions issued in California by one judge against the will of the people of the State as reflected in Propositions 187 and 209, H.R. 1252 provides that requests for injunctions in cases challenging the constitutionality of measures passed by a state referendum must be heard by a three-judge court. Like other federal voting rights legislation containing a provision providing for a hearing by a three-judge court, the Judicial Reform Act of 1998 is designed to protect voters in the exercise of their vote and to further protect the results of that vote. It requires that legislation voted upon and approved directly by the citizens of a state be afforded the protection of a three-judge court pursuant to 28 U.S.C. §2284 if an application for an injunction is brought in federal court to arrest the enforcement of the referendum on the premise that the referendum is unconstitutional. This system already applies to Voting Rights Act and reapportionment cases.

In effect, where the entire populace of a state democratically exercises a direct vote on an issue, one federal judge will be able to issue an injunction preventing the enforcement of the will of the people of that state. Rather, three judges, at the trial level, according to procedures already provided by statute, will hear the application for an injunction and determine whether the requested injunction should issue. An appeal is taken directly to the Supreme Court, expediting the enforcement of the referendum if the final decision is that the referendum is constitutional. Such an expedited procedure is already provided for in other voting rights cases. It should be no different in this case, since a state is ''redistricted'' for purposes of a vote on a referendum into one voting block. The Congressional Research Service estimates that these three-judge courts would be required less than 10 times in a decade under this bill, causing a very insubstantial burden on the federal judiciary, while substantially protecting the rights of the voters of a state.

This bill recognizes that state referenda reflect, more than any other process, the one-person/one-vote system, and seeks to protect a fundamental part of our national foundation. This bill will implement a fair and effective policy that preserves a proper balance in federal-state relations.

INTERIM APPEALS OF CLASS ACTION CERTIFICATIONS

The second reform contained in this bill was developed by the Chairman of the Subcommittee on the Constitution, Representative Charles Canady of Florida. It allows immediate (interlocutory) appeals of class action certifications by a federal District judge.

When a District judge determines that an action may be maintained as a class action, the provisions contained in the Judicial Reform Act allow a party to that case to appeal that decision immediately to the proper Court of Appeals without delaying the progress of the underlying case. This prevents ''automatic'' certification of class actions by judges whose decisions to certify may go unchallenged because the parties have invested too many resources into the case before an appeal is allowed.

This bill will also prevent abuses by attorneys who bring class action suits when they are not warranted, and provides protection to defendants who may be forced to expend unnecessary resources at trial, only to find that a class action was improperly brought against them in the first place. As a practical matter, the outcome of a class-action suit is often determined by whether the judge elects to certify a class since certifications may guarantee that a plaintiff's attorney can extract a favorable settlement, irrespective of whether the certification was proper.

COMPLAINTS AGAINST JUDICIAL MISCONDUCT

The third reform contained in this bill was developed by another member of the Committee on the Judiciary, Representative Ed Bryant of Tennessee. It requires that a complaint brought against a federal judge be sent to a circuit other than the one in which the judge who is the object of the complaint sits for review. This will provide for a more objective review of the complaint and improve the efficacy of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, 28 U.S.C. §372 (''The 1980 Act''), which established a mechanism for the filing of complaints against federal judges.

Under those procedures, a complaint alleging that a federal judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts may be filed with the clerk of the U.S. Court of Appeals for the circuit in which the federal judge who is the subject of the complaint sits. Under the Act, a special committee will report to the judicial council of the circuit, which will decide what action, if any, should be taken.

By requiring that complaints filed under the 1980 Act be transferred to a circuit other than the circuit in which the alleged wrongdoer sits, more objectivity and accountability will exist for litigants who find themselves in need of relief from a judge who is

not properly performing his or her functions. In addition, the bill has been amended to limit out-of-circuit referrals to those cases in which a complaint is not dismissed as being incomplete, frivolous, or directly related to the merits of a decision or procedural ruling. This amendment represents an effort to respond to those critics who assert that the revision to existing complaint procedures will generate unnecessary and trivial administrative expenses for out-of-circuit judges. In other words, only ''substantive'' complaints will be referred out of circuit.

JUDICIAL TAXATION

The fourth reform contained in this bill prohibits a federal court from ''expressly directing'' or ''necessarily requiring'' that a state or municipality impose taxes on its citizenry, a function reserved to legislative bodies, for the purpose of enforcing a legal decision. Seizing the power of the public purse by imposing taxes on any community is an egregious example of how some members of the judiciary have breached this nation's founding principle of separation of powers and undermined the concept of self-rule.

In some cases, judges have designed in specific detail local school systems and public housing systems, and then ordered tax increases to finance the spending bills disguised in their judicial rulings. The most conspicuous example illustrating this problem is the ongoing case of *Missouri* v. *Jenkins,* in which the Supreme Court has issued three opinions and the court of appeals more than 20. In Jenkins, the Supreme Court ruled that while it was permissible for the lower court in the Kansas City school system to order the state or municipality to raise taxes to remedy a constitutional deprivation, it remanded and reversed the lower court decision based on the fact that the lower court lacks the authority to impose a tax itself; it must order the state or local municipality to do so. The Jenkins litigation also demonstrates that once a federal court seizes such a ''structural reform'' case, it will constantly reevaluate its progress for years until the ''constitutional deprivation'' has been cured.

State and federal laws leave budget and spending authority to legislative bodies, because only a body which represents the will of the people can decide properly how to spend the people's taxes. While rulings on due process are important to protect the rights of litigants, and remedy which would force the public to pay more in taxes must come from the House of the people and not from the authority of the bench. The judiciary is neither equipped nor given the power to make such decisions. To allow otherwise is to usurp self-rule and replace it with self-appointed authority. As four justices of the United States Supreme Court have stated, the imposition of taxes by courts ''disregards fundamental precepts for the democratic control of public institutions. The power of taxation is one that the federal judiciary does not possess.''

This bill will restore the proper balance defined in the Constitution between the federal branches and federal-state relations by forbidding any U.S. District court from entering an order or approving a settlement that requires a state or one of its subdivisions to impose, increase, levy, or assess any tax for the purpose of enforcing any federal or state common law, statutory, or constitutional right or law.

This reform contains a narrow, multi-part exception to the general prohibition of judicially-imposed taxation. Specifically, a court may not order a state or political subdivision to impose a tax unless the court first determines by clear and convincing evidence that: (1) there are no other means available to remedy the relevant deprivation of rights or laws, and the tax is narrowly tailored and directly related to the specific constitutional deprivation or harm necessitating redress; (2) the tax will not exacerbate the deprivation intended to be remedied; (3) the tax will not result in a revenue loss for the affected subdivision; (4) the tax will not result in a depreciation of property values for the affected taxpayers; (5) plans submitted by state or local authorities will not effectively redress the relevant deprivation; and (6) the interests of state and local authorities in managing their own affairs is not usurped by the proposed tax, consistent with the Constitution.

Finally, the bill specifies that the judicial tax provisions will apply to any action or proceeding pending on, or commenced on or after, the date of enactment. This was done at the behest of Representative Don Manzullo of Illinois, whose district is home to Rockford, a city which is subject to a court taxation order that has devastated local communities.

REASSIGNMENT OF CASES

The fifth reform contained in this bill was also developed by Representative Canady. It allows all parties on one side of a civil case brought in federal District court to agree, after initial assignment to a judge, to bring a motion requiring that the case be reassigned to a different judge. Each side of the case may exercise this option only once. Under the provision, a motion to reassign must be made not later than 20 days after the notice of original assignment of the case is given.

Because some critics believe the reassignment device might encourage forum-shopping and attendant delay, its application will be limited to the 21 largest federal judicial districts (each containing over 10 judges to allow a random reassignment) over a five-year period, thereby allowing Congress to evaluate its effects and to determine whether it ought to be extended to all districts and perpetuated in the future.

This substitution-of-judge, or, as referred to in the bill, ''reassignment-of-case-as-of-right,'' provision mirrors similar state laws and allows litigants on both sides of a case to avoid being subjected to a particular federal judge, appointed for life, in any specific case. It might be used by litigants in a community to avoid ''forum shopping'' by the other side in a case, or to avoid a judge who is known to engage in improper courtroom behavior, who is known to be prejudiced, or who regularly exceeds judicial authority.

This provision is not meant to replace appellate review of trial judges' decisions, but rather to complement appellate review by encouraging judges to fairly administer their oaths of office to uphold the Constitution. Many judges face constant reversals on appeal, but still force litigants to bear extraordinary costs before them and further bear the burden of overcoming standards of review on appeal. This provision allows litigants some freedom in ensuring that due process will be given to their case before they bear the costs associated with litigating in trial court and will encourage the judiciary to be as impartial as required by their charge.

HANDLING OF CAPITAL PUNISHMENT APPEALS

The sixth reform set forth in H.R. 1252 was developed in response to the May 14, 1997, testimony of Charlotte Stout, who participated in an oversight hearing on judicial misconduct, and comments made by Representative William Delahunt of Massachusetts. Ms. Stout's daughter was raped and murdered by a man who sat on death row for 18 years as a result of filing numerous habeas petitions at the state and federal level. His federal petition was handled by a judge who delayed its consideration for four years before ordering a new trial. This same judge handles all habeas petitions in that judicial circuit, and has delayed consideration of all capital cases appealed to that circuit by a minimum of 65 years. All cases on which he has reached a final decision have resulted in an over-turning of a jury verdict to impose execution. In effect, this judge has taken it upon himself to usurp the decision of a jury to impose the death penalty. Pursuant to the bill, the chief judge of a circuit could neither handle all habeas cases by himself or herself, nor delegate the responsibility on an exclusive basis to another judge.

CAMERAS IN THE COURTROOM

A seventh reform would permit a presiding judge, in his or her discretion, to permit the use of cameras during federal appellate proceedings. Based on legislation introduced by Representative Steve Chabot of Ohio, the change mirrors state efforts to provide greater public access to the workings of the judiciary. The Committee on the Judiciary also adopted an amendment offered by Representative Chabot which creates a three-year pilot program allowing televised proceedings in any U.S. District (trial-level) proceeding, subject to the discretion of the presiding judge.

JUDICIAL PAY

An eighth reform includes parts of legislation introduced by Representative Henry Hyde of Illinois, Chairman of the Committee on the Judiciary, that would grant federal judges an annual cost-of-living adjustment unless Congress takes action to the contrary.

COMPLEX DISASTER LITIGATION

With Representative Jim Sensenbrenner of Wisconsin as its chief advocate, a ninth reform consists of language which the House passed in the 101st and 102nd Congress, and which the full Committee on the Judiciary passed in the 103rd Congress. This language is intended to improve the ability of federal courts to handle complex multidistrict litigation arising from a single accident, such as a plane crash.

Briefly, these changes would bestow original jurisdiction on federal District courts in civil actions involving minimal diversity jurisdiction among adverse parties based on a single accident where at least 25 persons have either died or sustained injuries exceeding $50,000 per person. The District court in which such cases are consolidated would retain those cases for purposes of determining liability and punitive damages, and would also determine the substantive law that would apply for findings of liability and damage. Returning individual cases to state and federal courts where they were originally filed for a determination of compensatory money damages (and where all relevant records are located) is fair to the plaintiffs or their estates.

These changes should reduce litigation costs as well as the likelihood of forum-shopping in airline and other accident cases. An effective one-time determination of punitive damages would eliminate multiple or inconsistent awards arising from multiforum litigation.

AGENCY (OPM) APPEALS OF ADVERSE PERSONNEL DECISIONS

The tenth and final reform of H.R. 1252, proposed by Representative Conyers of Michigan, would permit the Office of Personnel Management (OPM) to appeal final decisions of the Merit Systems Protection Board (MSPB) and final arbitral awards dealing with adverse personnel actions to the Federal Circuit within 60 days from the time

final notice of a decision is received. Currently, OPM must file its appellate briefs within 30 days, which is half the time allotted to other federal agencies.

This bill is limited in scope. It reforms the procedures of the federal courts to ensure fairness in the hearing of cases without stripping jurisdiction, or reclaiming any powers granted by Congress to the lower courts. It does assure that litigants in federal courts will be entitled to fair rules of practice and procedure leading to the due process of claims.

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

Mr. COBLE. Mr. Chairman, I yield 5½ minutes to the distinguished gentleman from Texas (Mr. DELAY), the majority whip for the House.

Mr. DELAY. Mr. Chairman, I thank the Chairman for yielding. I want to commend the chairman of the subcommittee and the chairman of the full committee and the Members of the Committee on the Judiciary for their very hard work and effort in what I consider a much needed piece of legislation.

The system of checks and balances so carefully crafted by our Founding Fathers is in serious disrepair and has been for years. This bill takes a very necessary step to bring the courts back into constitutional order.

The Founding Fathers established a system of government in the United States that does not allow one branch to become too powerful at the expense of the other. I contend, quite frankly, if we read the Constitution as it originally was written and intended, the judiciary branch was supposed to be the weakest branch of the three created by the Constitution.

Contrary to the opinion of the liberal legal establishment of this country, judicial power is not limitless. Judicial power does not equal legislative power. Judges apply the law. They are not to make the law. When judges go further and unilaterally impose legislative remedies, they exceed the legitimate limits of power given to them by the Constitution.

When judges legislate, they usurp the power of Congress. When judges stray beyond the Constitution, they usurp the power of the people. For instance, under the Constitution, only Congress can lay and collect taxes. But that did not stop District Judge Russell Clark from ordering tax increases from the bench.

That tax increase, and 2 billion tax dollars, turned the city school district into a spending orgy, complete with editing and animation labs, greenhouses, temperature-controlled art galleries, and a model United Nations that was wired for language translation. If that is not taxation without representation, I do not know what it is.

Another example of a judge tossing aside the Constitution and supplanting his own personal biases was the decision of the District Court Judge, Thelton Henderson, prohibiting the State of California from implementing the California Civil Rights Initiative, the CCRI.

The CCRI simply removed the opportunity for State officials to judge people by their race and their sex, a practice that I think most Americans consider repugnant. In a ruling that turned common sense and our Constitution on its head, Justice Henderson ruled that by adopting the equal protection clause of the 14th amendment, the voters of the State of California had violated that same 14th amendment.

Although judicial taxation and Judge Henderson's circumvention of the Constitution are two extreme examples of judges breaching the separation of powers, there are, of course, many, many others.

Judges have created the right to die. Judges have prohibited States from declaring English as an official language. Judges have extended the right of States to withhold taxpayer-funded services from illegal aliens, all without sound constitutional basis.

Now, some Federal judges have even made themselves the sovereigns of the cell blocks, micromanaging our State prisons, and forcing changes in prison operations that have resulted in the early release each year of literally hundreds of thousands of violent and/or repeat criminals out on our streets and the streets to plague our families.

In 1970, not a single prison system was operating under the sweeping court orders common today. By 1990, some 508 municipalities, and over 1,200 State prisons were operating under some judicial confinement order or some consent decree.

In New York City, judges have forced prison officials to require that only licensed barbers cut the hair of the prisoners; that sweetened coffee may never be served at meals for the prisoners; and a court-appointed monitor must be given a city car within one grade of the prison commissioner's car. If it were not so appalling, it would be funny.

But if that is not enough, the same activist judges have also imposed prison caps, mandating the release of violent felons and drug dealers before they have even served their time.

Later today, the gentleman from Pennsylvania (Mr. MURTHA) and I will offer an amendment that will end this travesty of justice caused by overactive judges. Our amendment will prohibit a Federal judge from ever releasing a felon from prison because of claims of prison overcrowding.

The prisoners claim of overcrowding has become a get-out-of-jail-free card. And we say no longer. No longer will these prisoners plague our families, and our cities, and in our towns.

I urge my colleagues to support the Hyde bill and the DeLay-Murtha amendment. The time has come to reestablish our system of checks and balances and to restore sanity to our criminal justice system.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), the ranking member of the full committee.

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Massachusetts for yielding to me.

Mr. Chairman, I was delighted to hear the majority whip, constitutional expert in his own right, whose opinions I respect very much, and which will become very much in focus today. The gentleman from Texas (Mr. DELAY), majority whip, is the same Member of Congress who claims it is time we impeach judges whose opinions consistently ignore their constitutional role, violate their oath of office, and breach the separation of powers.

□ 1115

That is a quote.

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

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

Mr. DELAY. Does the gentleman believe that a judge should not be impeached that violates his oath of office and violates the Constitution?

Mr. CONYERS. I will get to that later. Right now I am making my own presentation, and I wanted to make sure I am quoting the gentleman correctly.

Mr. DELAY. Will the gentleman yield?

Mr. CONYERS. I yield to the gentleman, yes.

Mr. DELAY. The gentleman from Michigan is absolutely quoting me correctly.

Mr. CONYERS. All right, that is all I need. The majority whip should use his own time.

Now let me ask the majority whip, who is enjoying this as much as I am, "Do you have any judges in mind since you made that statement a few months ago or do you plan to do anything about your pronouncements on that subject?"

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

Mr. CONYERS. With pleasure.

Mr. DELAY. I got a list and it is growing, yes, sir.

Mr. CONYERS. The gentleman from Texas got a list and it is growing.

Well, does the gentleman plan to ever do anything with the list, though? That is the point, and I yield again.

Mr. DELAY. I will be glad to consult with the gentleman when I have a candidate that has violated his oath of office and the Constitution.

Mr. CONYERS. Okay. Then that means up to now the gentleman does not have a candidate but he has got a list.

Mr. DELAY. Will the gentleman yield?

Mr. CONYERS. Yes, sir.

Mr. DELAY. I thought the list of candidates is what I was referring to. I have got plenty of candidates, yes. I am just looking for one that is particularly bad in violating the Constitution and his oath of office, yes.

Mr. CONYERS. I get it. Then the gentleman does not have a candidate right now. He has got a list. And I am not yielding any more. The gentleman from Texas can get time. I got a way for him to get as much time as he wants, but it is on the other side on his own time.

Okay.

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

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

Mr. DELAHUNT. If the gentleman would inquire of the majority whip to give us the names on that particular list.

Mr. CONYERS. No, I am not going to go there. I am not going to go there. He has got a list and he is working on it, but he does not have a name yet so I got to wait. Said just stay tuned and he is going to make his presentation when the time comes.

Mr. DELAHUNT. Will the gentleman continue to yield? Could he reveal to us the number of candidates that are on it?

Mr. CONYERS. I am not going to go there, either. Maybe he will tell us today, maybe he will not. Maybe he will come up with a list next month. Who knows? That is what he is telling me.

Well, now, ''Congressional Republicans yesterday rallied,'' this is the great Washington newspaper, the Washington Times, ''Congressional Republicans yesterday rallied behind House Majority Whip Tom DeLay's announcement that the GOP will pursue impeachment proceedings against activist Federal judges.''

Now I would like to gain the distinguished majority whip's attention again. Excuse me, sir, if I may gain your attention again.

Mr. DELAY. Is the gentleman going to yield to me now?

Mr. CONYERS. Just a moment. I just want to gain the gentleman's attention first. Okay. I thank the gentleman. ''Congressional Republicans yesterday rallied behind House Majority Whip Tom DeLay's announcement that the GOP will pursue impeachment proceedings against activist Federal judges.''

And I will be happy to yield to the gentleman. What generally is his description of activist Federal judges?

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

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

Mr. DELAY. I appreciate the gentleman giving me this opportunity.

Mr. CONYERS. It is a pleasure.

Mr. DELAY. First of all, I did not write that.

Mr. CONYERS. I know the gentleman did not.

Mr. DELAY. I am not looking to impeach activist judges. What I am looking for are judges that violate their oath of office and judges that violate the Constitution of the United States.

Mr. CONYERS. Okay. Then the Washington Times is wrong again, and to the extent that they are incorrect I apologize for bringing it to the gentleman's attention.

Mr. DELAY. Will the gentleman yield again?

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

Mr. DELAY. They just used the wrong word.

Mr. CONYERS. I see. What word should they have used?

Mr. DELAY. Judges that violate the Constitution and their oath of office.

Mr. CONYERS. So this is not about activist judges. Okay. Well we are getting someplace.

Now here is the problem with this bill. There was a section in H.R. 1252 granting parties in the 21 largest Federal districts the right to peremptorily challenge a Federal judge's right to hear a civil action. In effect, listen carefully, Republican Members of this House, in effect this provision permits prejudicial challenges based on the race or gender of the judge.

Now, current law already provides a clear and coherent statutory regime for removing judges in appropriate circumstances, and it has been working pretty well all these years. But now today, 1998, we get a proposal in this bill that goes well beyond removing judges for cause and allows the parties to remove judges for no stated reason whatsoever, no stated reason whatsoever.

This is what the Republican lawyers on the House Committee on the Judiciary propose we do to the Federal courts today, for no reason, any reason. These are lawyers on the Committee on the Judiciary seriously proposing that that is what we do, and I say that is wrong.

In addition, these challenges would not require the exercising party to make any showing or even any allegation of bias on the part of the judge. In other words, ''I don't like that judge, let's get another judge.'' Does the gentleman know what that would do to the judicial process in the Federal system? Every judge that walks into every court where he is assigned, a judge, any party that does not like the judge, they get another one. And they go there and they get another one. They do not like the next one, someone else objects.

And this is a serious proposal, my colleagues. I think we ought to take a good look at this and find out just what is fueling this desire to allow every lawyer that comes into Federal court to forum shop. I do not think it is proper, and I do not think that it ought to be in the law. The judges are not too thrilled about it either. The delay would be incredible, and the Judicial Conference is a little bit exercised, as my colleague can believe.

A preemptive challenge would be devastating of this kind. All the expertise that a judge acquired regarding the cases developed over many months would be lost. New judges would have to educate themselves regarding the attendant cases, with delay and expense.

And so we are asking that this provision be stricken from the bill. We hope that a lot of Members, lawyers and constitutional experts and Members that do not make that claim, will join us in opposing this section of the bill.

Mr. COBLE. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Mrs. BONO).

(Mrs. BONO asked and was given permission to revise and extend her remarks.)

Mrs. BONO. Mr. Chairman, as one of the newest Members of the 105th Congress, I want to express what a privilege it is to arrive at this great institution and participate during these important debates.

As one of my first official acts I am very proud to rise today to support the bill under consideration, the Judicial Reform Act of 1997. This is a very good bill, and among its important provisions is one of special significance to the voters of my district, of my State and to myself. Section 2 of the bill reflects the bill, H.R. 1170, which was my late husband's first piece of legislation in Congress and which passed this House last Congress. This is a simple but long overdue measure that will protect the franchise of democracy.

This provision, as my colleagues already know, establishes a three-judge panel to review the constitutionality of voter-passed initiatives. When a single Federal judge can block the will of the people for years at a time, that is one of the most antidemocratic features of our legal system. For the voters of California and other States that have initiatives, justice is delayed, and thus it is denied.

Quickly I want to spell out three reasons why the three-judge panel provision should be passed by the House today. This is a commonsense idea; it will make the Federal courts more objective in the way they review cases arising from a vote of the people.

This is a mainstream idea. This measure was part of the American legal system for years, and in my view we are bringing back something that has an important role in protecting our democratic system. Every Member knows that the three-judge panels are used today in voting rights and apportionment cases.

And, finally, this is a bipartisan idea. The three-judge panel bill, H.R. 1170, was supported by an overwhelming and bipartisan vote of this body in the last Congress. The bill we are considering today also contains provisions that Republicans and Democrats should unite to support.

In closing, I want to commend the gentleman from Illinois (Mr. HYDE) and the gentleman from North Carolina (Mr. COBLE) for their hard work in bringing this excellent bill to the floor. Again, I ask every Member to support this provision and pass this bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WATERS), a member of the committee.

(Ms. WATERS asked and was given permission to revise and extend her remarks.)

Ms. WATERS. Mr. Chairman, I rise in opposition to this odious bill. This bill may as well be called the anti-Thelton Henderson bill. Republicans got upset with one Federal district judge's decision regarding proposition 209, and now they want to change the whole judicial process. These changes would make it possible to pick and choose with no justification. Thus, black judges, Latino judges, women judges would be challenged simply because of their color.

The changes they propose are outrageous. They want to make it easy for racist and sexist judges to hear cases in civil actions. They want the Reagan-Bush appointed court of appeals judges to control the decisions about the constitutionality of State referenda issues. They want to restrict Federal district courts from enforcing rights laws if there are any fines involved.

Now, after proposing all of that, the Republicans dangle the cameras in the courtroom provision as if to make a concession. Well, I am not falling for it. Now I wholly support the opening up of the judiciary. Cameras would help the public understand the justice system. But I will not sacrifice the integrity of the entire Federal judiciary for one good provision.

This bill is unconscionable and unconstitutional. Tampering with the Federal justice system to get back at one judge's decision is petty and dangerous, and shame on my colleagues for pushing this bill, shame on all of us if we vote for it.

I strongly urge a vote of ''no'' on H.R. 1252.

Mr. COBLE. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee (Mr. BRYANT), a member of the Committee on the Judiciary.

Mr. BRYANT. Mr. Chairman, this legislation before us was created after a number of judges across this country have began taking away rights and liberties in many of the cases before them, and the portion of this bill that I strongly support and actually authored has an impact in this situation when it comes to filing ethical complaints against judges by people who feel that they have been wrongfully treated in those courtrooms. And what it does, it removes the issue of appearance of conflict of interest, possible bias and favoritism in the review of these ethical complaints against the judges now presently done by that judge's own colleagues.

□ 1130

The process is once a complaint is filed, it is given to the clerk of the circuit court, who then passes it on to the chief judge.

My proposal allows this chief judge to ferret out, to eliminate those frivolous claims, and those claims that are based on the judge's ruling itself, which is not proper, or those incomplete complaints. But once he finds there is some merit to a complaint against a judge, rather than allow, as I said before, the judge's own colleagues within that circuit court to determine whether or not that judge is guilty of an ethical violation, I simply ask the courts to allow that to be moved over to another circuit, to other judges, who perhaps do not know that judge as well.

What that simply does is allow the person who filed that complaint, the citizen, to have a fair hearing of that complaint against the judge, without the appearance of a conflict of interest, without the appearance of favoritism by colleagues. Whether that exists or not, at a minimum, the appearance exists.

It is a question of freedom and fairness. This legislation would protect those filing such a grievance, such a complaint, and allow it to be heard by judges who do not have that friendship or who do not have that working relationship with the judge under issue.

Mr. Chairman, I close by simply urging my colleagues to support this bill. It is a very good bill.

Mr. COBLE. Mr. Chairman, I yield 2 minutes to the gentleman from Arkansas (Mr. HUTCHINSON), a member of the Committee on the Judiciary.

Mr. HUTCHINSON. Mr. Chairman, I thank the gentleman for yielding me time. I appreciate the leadership of the gentleman on this important issue.

Mr. Chairman, I rise in support of H.R. 1252, the Judicial Reform Act, and want to speak about two provisions of the bill.

The first one is one long-championed by our former colleague, Sonny Bono, which ensures that the will of millions of voters is not overturned by a single Federal judge. Of course, the illustration was given in the State of California, but that can be duplicated in Arkansas, in which the initiative petition drive alternative of the voters is utilized quite frequently.

Whenever we have a ballot initiative that is passed by the voters, I think it is wrong to have that potentially overturned by one single Federal judge. I believe the three-judge panel is a better procedure because it preserves the right of judicial review, which I believe in. Yet at the same time it ensures it is not going to be passed on the whim of one Federal judge, but would at least require three to review and act upon what the voters of a particular State have done, and it would be a due regard for the Constitution of the United States.

The second thing that I believe is important in this provision is the section that prohibits Federal judges from levying taxes on localities or municipalities as part of a settlement or a court ruling.

Mr. Chairman, I believe that our constituents are probably wondering why we are even debating this, because the Constitution gives Congress the sole authority to impose taxes on the citizens. Because of what has happened in one particular case in Missouri, there is the fear that it could happen again. So this kind of judicial activism is, indeed, considered an outrage by the American public, and this legislation will ensure it does not happen again in our localities.

So I believe that this is appropriate. It is responsible legislation; it has a good balance between the judicial review that is appropriate for judges to maintain, but yet we in this Congress are sworn to uphold the Constitution of the United States as well.

I believe that this legislation is in line with our constitutional authority, and I would ask my colleagues to support it.

Mr. COBLE. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), a member of the Committee on the Judiciary.

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

Mr. Chairman, I rise in support of the Judicial Reform Act. As my colleagues know, this legislation contains language authored by the gentleman from New York (Mr. SCHUMER) and myself that would permit Federal judges in appropriate situations to allow the televising of civil and criminal trials or appeals. Again, it would permit it, but it would not require cameras in the courtroom. It is at the discretion of the trial judge.

Open, public trials have a longstanding tradition in our country. The framers of the Constitution required public trials because they recognized that a thriving democracy depends on a well-informed public. They knew that the public needs to see how an important branch of the Federal Government works, or, in some cases, does not work, and they understood that the dignity of the court comes from the courtroom itself and from the values and beliefs on display.

Those values and beliefs are invigorated, not undercut, as opponents of open government would argue, by giving the people the ability to see our judicial system in action.

Chief Justice Berger, for example, once wrote, ''People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.''

An informed citizenry also is essential to our constitutional system of checks and balances. The Federal courts play a very important part in our government. Federal judges, after all, serve for life. The American people deserve the opportunity to see how they operate. We need to encourage deeper understanding and further national discussion of the proper and properly limited role of the Federal judges.

In an age where new technological breakthroughs are made every day and televisions are present in virtually every American home, it is inconceivable that access to the courts would be

strictly limited to those Americans who have the time and ability to personally visit a courthouse.

Our Founding Fathers over 200 years ago wanted our Federal courts to be open, and they are open. But who has the time nowadays to take off of work or to take away from the time in raising their families to go down to the Federal courts, which are generally downtown? They should have the ability to view what is going on in those courtrooms at home. After all, those courts do not belong to the judges; they belong to the people.

Mr. Chairman, I urge passage of this bill.

Mr. FRANK of Massachusetts. Mr. Chairman, to close for us, I yield the balance of my time to the gentleman from North Carolina (Mr. WATT).

The CHAIRMAN pro tempore (Mr. EWING). The gentleman from North Carolina is recognized for 8 minutes.

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I actually had tried to restrain myself from taking time in general debate on this bill because I had very, very mixed emotions throughout this debate.

I had the pleasure of practicing, sometimes the pain, of practicing law for 22 years before I was elected to Congress. There have been many, many times during that 22 years that I would have longed for the opportunity to be given the right to strike a judge and select another judge.

There have been many times during that 22 years that I was on the verge of losing confidence in a process, and had to step back from it and evaluate the process that was there in our court system, and try to say to myself, how would I do this differently if I were designing a court system?

So, in a sense, I guess I can empathize with my Republican colleagues who would like to make a substantial change in our judicial system because they have a sense of frustration about some aspect of it.

There is probably not another person in this body, if there are, there are probably only a few, who have had a judge look at them or their law partners and call them a ''nigger'' in the courtroom. I would love to have had the opportunity to strike that judge and go on to another judge.

There is probably nobody who has, as much as I, been involved in a system that had a three-judge panel, and recognized the benefits and detriments of having a three-judge panel in litigation.

But when all is said and done, what we have to recognize is that we operate in a system that is unique to our country. I am in the majority a lot in this House, but I cannot start changing every rule that sometimes cuts in my favor and sometimes cuts against me. There has to be a set of rules that govern any kind of organized system, and our court system has a set of rules that govern it.

So while I have experienced that frustration that some of my colleagues have talked about, what I have said to myself over and over and over again is that our system has to be protected. Otherwise, there is no rule of law; there can be no justice. We substantially undercut it when we start selectively trying to take some result and change it by changing the whole process under which we operate.

That is what this bill does in substantial measure. It gives every citizen the opportunity to come in and say, I don't like this judge because I don't like what color he is or what gender she is or what political perspective they have, and therefore I am going to exercise a peremptory challenge, just like we do in a jury pool.

That is an unprecedented change in our system. One, which I would have loved to have had on many occasions, but I have understood would undermine the system of justice that we have substantially in our country.

Yet, my colleagues would come in here and whine and say I don't like the result, therefore I am going to change the whole system and give everybody in America the right to delay trials and subvert the system. This, my friends, is not a good bill.

It may have some superficially appealing aspects to it, some which I can understand and empathize with, but we must protect the system of justice and the rules of the road, and we cannot start making them subject to who is in power in the Congress of the United States and whether it is Conservatives versus Liberals. We must have rules under which we operate.

Once we undermine those rules, as this bill does substantially, then we have undermined our whole system of justice in this country.

So I beg my colleagues on both sides of the aisle to evaluate this bill and see if this really is where they want to be. It may serve some short-term political objective that they have, but what does it do to the confidence of the public in our judiciary and in our judicial system?

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At the end of the day, after my colleagues have made that kind of evaluation, I believe, if they are acting in the interests of justice and the integrity of our system, they will reject this bill so that we can have a reasonable set of rules that have governed our system for years and years and years and do not delay the trial of cases in our system.

I ask my colleagues to vote against this bill, even though it may have some political, superficial benefit to them.

Mr. COBLE. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Mr. Chairman, if there is any phrase that sums up the reason for the existence of this Republic, that phrase is ''no taxation without representation.'' That is not the phrase of DON MANZULLO. It is the phrase of Thomas Jefferson, who, when he wrote the Declaration of Independence, cited King George for three things: that King George, III, refused to pass laws that would allow people the right to be represented in their own legislatures; that he called together legislative bodies at unusual times so nothing could be done; that he imposed taxes on us without our consent.

Taxation without consent gave rise to the Boston Tea Party, and it gave rise to the Constitution that was written in 1787, a document so magnificent that author Flexner has said, never before in history had people gathered together to write a document by which people can govern themselves.

Two of the people who had a tremendous impact on that Constitution were Hamilton and Madison. Hamilton said, in Federalist Paper 78, ''The judiciary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society.''

And Madison said in Federalist Paper 33, ''What is a power but the ability or faculty of doing a thing? What is the power of laying and collecting taxes but a legislative power?''

And so powerful were those words, Mr. Chairman, that they were written into article 1, section 7, that said, ''All bills for raising revenue shall originate in the House of Representatives.'' It is very clear, any Federal attempt to raise taxes must come in the people's House, and it must come by people who have to stand for reelection every 2 years.

But history has not proved that out, because it is not only in Kansas City, Missouri, where the judge has raised $2 billion worth of taxes, but it is in Rockford, Illinois, where an unelected magistrate ordered the members of the school board to either raise taxes or go to jail for the purpose of implementing a desegregation plan.

That is taxation without representation, and that is why we are here today, because Madison compelled it whenever one branch of government would become predominant over the other. In fact, in number 47 he said, ''The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.''

We are here, perhaps for the first time since the Constitution was adopted, perhaps for the first time that the House of Representatives has been here in existence, for the first time in history, to argue Congress should take back from the judges the power to tax.

Mr. BERMAN. Mr. Chairman, I rise in opposition to H.R. 1252. There are many in this chamber who from time to time have disagreed with decisions rendered by federal judges. Count me among them. But I have always felt that our independent life-tenured federal judiciary is one of the glories of the American system of government, and that efforts by

the Congress to retaliate against particular decisions are inimical to our larger stake in the preservation of the American constitutional system.

That is why I am so strongly opposed to H.R. 1252. It is simply wrong to manipulate court jurisdiction and procedure as this bill would do to try to make it more or less likely that the federal courts will reach particular results.

I am particularly concerned that H.R. 1252 seeks to strip the remedial power of the federal courts, to the detriment of all Americans. By prohibiting a federal district court from entering any order or approving any settlement that could require a state or local government to raise taxes—and applying this provision to pending cases, to boot—the bill deprives all Americans of effective recourse for the vindication of their rights under federal law. As critics have noted, *Brown v. Board of Education* required expenditures to desegregate the public schools. Would the proponents of this bill suggest that the authority of the federal courts should have been limited to declaring segregation unconstitutional, and the courts barred from ordering desegregation?

And on the very week that we celebrate Earth Day, please do not tell me that we are going to deprive the federal judiciary of the ability to effectively enforce the nation's environmental laws. For all these reasons, I urge support for the amendment to be offered by our colleagues Mr. DELAHUNT and Mr. BOEHLERT to strike Section 5 of the bill.

I also note with great concern that Section 6 of the bill would grant parties in federal court the right to remove the judge randomly assigned to their case. Because due process guarantees an impartial judge, under current law a party can seek to remove a judge for bias or prejudice. But to go further and allow peremptory strikes is to ''replace the traditional process with a dangerous alternative. * * * We would be wrong to buy into a proposed reform whose basic effect is to influence judges through considerations extrinsic to the merits of a case.'' That is the analysis of the eminent Chief Judge of the 4th Circuit, J. Harvie Wilkinson, widely viewed as a conservative Republican jurist. Why would we seek to introduce strategic judge-shopping based on a judge's race, gender, or experience before taking the bench, into what is now the impeccably random assignment of judges to cases, and in so doing risk chilling decisionmaking in difficult cases?

I am heartened that my neighbor and colleague form California, Mr. ROGAN, will join in seeking to strike Section 6 later today. In light of his experience as a judge, I hope my colleagues will carefully consider the concerns which prompt him to offer his amendment.

I also want to make note of Section 2 of the bill, which would bring back into federal judicial practice a mechanism largely discarded by Congress in 1976 as inefficient and unwieldy, namely three judge panels in the district court. Section 2 would require a three judge court in all cases involving constitutional challenges to state referenda and initiatives. The authority of the federal judiciary to hear and decide constitutional questions, including challenges to state laws, should not turn on whether the challenged law was enacted by a state legislature or by a state's voters. Indeed, Section 2 would create the anomalous result that identical laws adopted by two different states would be treated completely differently by the federal courts. Because appeals of decisions of three judge courts are heard on an expedited basis by the Supreme Court without the benefit of circuit court review, the laws of those states where the referendum and initiative processes do not exist could be placed at a disadvantage. Why would we do that?

In all of these instances, I believe the legislation before us threatens the independence of the federal judiciary and imposes increased delays and costs for our constituents who seek recourse in the federal courts. This legislation endangers the balance among the branches of government so carefully wrought by the Founding Fathers and threatens the vindication of our constitutional rights. I urge its defeat.

Mr. PACKARD. Mr. Chairman, today we will consider the Judicial Reform Act, a piece of legislation that will curb judicial activism by restraining judges who use their authority to advance political agenda rather than uphold the laws set forth in the Constitution. As it stands now, federal, district and circuit court judges yield an enormous amount of power, and yet are accountable to no one. They are not elected, but are appointed for life.

Judicial activism has taken its hold throughout the country. Recently, a federal judge in California declared State proposition 187 unconstitutional, succumbing to political pressures rather than preserving the liberties of law-abiding citizens. Now illegal immigrants will enjoy public benefits at the expense of American taxpayers. Proposition 187 was a ballot initiative that was studied and passed by voters in California. One individual had the power to overturn a statute that was agreed upon by a majority of the electorate. Mr. Speaker, this is not democratic and it is far from constitutional!

The Judicial Reform Act will restrict judges who practice judicial activism, designating a panel of judges to review U.S. district court decisions when they may be perceived as unconstitutional. Establishing new rules is the only way to halt this growing problem. Mr. Speaker, I urge my colleagues to take a closer look at how judicial activism is negatively impacting their constituents and to support the Judicial Reform Act.

Mr. TANNER. Mr. Chairman, I rise today to bring to the attention of my colleagues a particular provision of H.R. 1252—section seven: random assignment of habeas corpus cases.

This section was added to the bill as a result of the testimony of one of my constituents, Mrs. Charlotte Stout of Greenfield, Tennessee. I'd like to submit the testimony of Mrs. Stout for the record since I can't hope to duplicate her eloquent effort.

Before I begin, let me first say that I understand the difficulty facing this House in that judicial independence is a cornerstone of our democracy; but independence does not mean that we as a co-equal branch of government abdicate all responsibility for seeing that justice is done in this country. This House has heard all to often that justice delayed is justice denied. This is yet another unfortunate incident where this valid statement applies. I believe we do have a solemn duty to respond to injustice whenever and wherever we can.

This section is a response to an injustice and I commend Chairman COBLE and his staff for working diligently with me and Mr. DELAHUNT to add this important provision.

The story of Charlotte Stout's daughter, Cary Ann Medlin is one which is too gruesome and too cruel to recount fully and I won't further their suffering by a detailed account—neither would Charlotte want me to. She is not an avenging mother, but a compassionate concerned woman who wants justice for not only herself, but all victims of crime.

On September 1, 1979 her daughter Cary Ann Medlin, age 9, went out to ride her bicycle for a few minutes before dinner. Charlotte never saw her alive again. A man, by his own confession, brutally raped, sodomized, and murdered her small child. This man was brought to trial in 1981 and sentenced to two life sentences and death by electrocution. This case was appealed in all the appropriate state courts.

In 1992 this killer, filed his second petition for habeas corpus relief in the federal court. In December of 1996, after being reprimanded for delay by the chief judge of the district, the judge finally ruled on this case after having it in his court for 4 years and 10 months.

While this one woman's ordeal through the federal court system has made the constituents of my district question our judicial system and rightly so, Charlotte did not come to Washington to testify about an isolated, single case.

This federal judge in the middle district of Tennessee, after very lengthy delays, has overturned 100% of all death penalty cases on which he has reached a final decision. Five to ten years is the norm in this judges court and in my view this is unacceptable. This judge delayed eight capital cases a combined total of over 66 years.

The citizens of Tennessee are concerned that since the reinstatement of the death penalty in 1977, this judge has received almost 100% of the cases prior to 1990. He did not transfer the cases back to the district of origin, nor did he recuse himself in hearing the cases. The lengthy and constant delays in these capital cases has resulted in the victims of crime being denied justice. That is wrong; that is an injustice; and I support this section as a minor response to a grave injustice which if left unchecked could threaten the very credibility of the judiciary.

Again, I thank the Subcommittee for hearing the testimony of Mrs. Charlotte Stout from Greenfield, Tennessee and the mother of Cary Ann Medlin.

HOUSE SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTIES—SUMMARY OF WRITTEN TESTIMONY BY CHARLOTTE STOUT, MAY 15, 1997

I am not here today as an avenging mother. I am not here because a Federal Judge overturned one isolated death penalty case. If that were the case, you could discredit me as an emotional extremist and I would be wasting this committee's and my time. I represent almost 27,000 others who are concerned with and perceive a grave miscarriage of justice in Tennessee. The source of our concern is life-time appointed Federal Judge John Nixon of the Middle Tennessee District.

Judge Nixon has delayed eight counted death penalty cases a compiled total of 65 years and 7 months. He has then overturned 100% of all death penalty cases on which he has reached a final decision. If our concern stemmed from one isolated decision, then I would also call attention to Judge Morton of Middle Tennessee who has also overturned a death penalty case. Our concerns stems from several reasons, not just Judge Nixon's decision on one case. We are concerned with the

consistency with which Judge Nixon makes his decisions. We are concerned about the inordinate delays on death penalty cases in his court. We are concerned because of his misconduct in office by accepting an award from a group who has a previously stated controversial point of view on a legal issue. We are concerned with the amount of financial reimbursement he has authorized in capital cases. We are concerned that since the reinstatement of capital punishment in Tennessee in 1977, Judge Nixon received almost 100% of the cases prior to 1990. He did not transfer the cases back to the district of origin, nor did he recuse himself from hearing the cases. And finally, we are concerned about the system for filing judicial complaints. Twelve (12) complaints were officially filed against Judge Nixon in the 6th Circuit Court. These were reviewed by a judge who is his peer and social acquaintance.

From the Governor, (and past Governor) to the ''blue-collar'' workers, from East Tennessee to West Tennessee, thousands believe that Judge Nixon is opposed to capital punishment and is allowing his personal convictions to obstruct the law of the State of Tennessee. Tennessee Senate Joint Resolution 41 has been proposed by Senator Tommy Burks which is a resolution memorializing the U.S. Congress to initiate impeachment proceedings against U.S. District Court Judge John T. Nixon. We believe, Judge Nixon who is appointed for a life-time term, will continue to overturn death penalty convictions and order new trials, if he is allowed to continue in his historic path. I cannot begin to elaborate on the number of newspaper editorials, TV news segments, and public commentaries that have been expressed against Judge Nixon. A Federal Judge, who is appointed for life is holding the citizens of Tennessee ''hostage'' to his conscientious beliefs. He does have the right to his beliefs. No one disputes that. But when those beliefs interfere with the administration of justice and the performance of his duties as an officer of the court, he should be removed or at the very least restrained. Capital punishment has been ruled to be constitutionally appropriate. How then, can one individual be allowed to hold his beliefs above the law because he is a Federal Judge? He is frustrating the entire legal system in our state. To what purpose do our law enforcement officers, prosecuting attorneys, Judges and courts spend countless hours and taxpayer dollars to bring criminals to swift and sound justice. How can due process be served when delays of 10 years exist in one court? A fair trial after two decades will be impossible for any of these cases. What a tragedy if any one of these men is innocent. What a tragedy if they are guilty and allowed to abuse the system. What a tragedy if a Federal Judge is allowed flagrant misconduct in office and our elected Representatives refuse to act for the sake of protecting the independence of the judiciary. The framers of our Constitution surely never intended for one branch of the government to act completely independent of the other two branches. If that were the case, there would be no true system of checks and balances.

We realize that only 15 judges have ever been brought up on impeachment charges and only seven of them have been convicted and removed from the bench. We realize the grounds for impeachment are complex. The Constitution sets the framework for impeachment and defines an impeachable offense as ''High crimes or misdemeanors'' but also states that judges who have lifetime appointments must be of ''good behavior''. Our elected Representatives can define the parameters of good behavior. On April 9, 1996, Chief Justice of the U.S. Supreme Court William Rehnquist said to the Washington College of Law, ''It would be a mistake to think that just because a certain kind of judicial business has always been conducted in a particular way in the past, it therefore ought to be conducted that way in the future.''

We, the people, have only one voice, the voice of our elected Representatives.

The CHAIRMAN. All time has expired.

The amendment in the nature of a substitute printed in the bill, modified by striking section 9 and redesignating each succeeding section accordingly, shall be considered by sections as an original bill for the purpose of amendment. Pursuant to the rule, each section is considered as read.

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

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment, and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

The Clerk will designate section 1.

The text of section 1 is as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Judicial Reform Act of 1998''.

The CHAIRMAN. Are there any amendments to section 1?

Mr. COBLE. Mr. Chairman, I ask unanimous consent that the remainder of the amendment in the nature of a substitute, as modified, be printed in the RECORD and open to amendment at any point.

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

There was no objection.

The text of the remainder of the amendment in the nature of a substitute, as modified, is as follows:

SEC. 2. 3-JUDGE COURT FOR ANTICIPATORY RELIEF.

(a) REQUIREMENT OF 3-JUDGE COURT.—Any application for anticipatory relief against the enforcement, operation, or execution of a State law adopted by referendum shall not be granted by a United States district court or judge thereof upon the ground that the State law is repugnant to the Constitution, treaties, or laws of the United States unless the application for anticipatory relief is heard and determined by a court of 3 judges in accordance with section 2284 of title 28, United States Code. Any appeal of a determination on such application shall be to the Supreme Court. In any case to which this section applies, the additional judges who will serve on the 3-judge court shall be designated under section 2284(b)(1) of title 28, United States Code, as soon as practicable, and the court shall expedite the consideration of the application for anticipatory relief.

(b) DEFINITIONS.—As used in this section—

(1) the term ''State'' means each of the several States and the District of Columbia;

(2) the term ''State law'' means the constitution of a State, or any statute, rule, regulation, or other measure of a State that has the force of law, and any amendment thereto;

(3) the term ''referendum'' means the submission to popular vote, by the voters of the State, of a measure passed upon or proposed by a legislative body or by popular initiative; and

(4) the term ''anticipatory relief'' means an interlocutory or permanent injunction or a declaratory judgment.

(c) EFFECTIVE DATE.—This section applies to any application for anticipatory relief that is filed on or after the date of the enactment of this Act.

SEC. 3. INTERLOCUTORY APPEALS OF COURT ORDERS RELATING TO CLASS ACTIONS.

(a) INTERLOCUTORY APPEALS.—Section 1292(b) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2) A party to an action in which the district court has made a determination of whether the action may be maintained as a class action may make application for appeal of that determination to the court of appeals which would have jurisdiction of an appeal of that action. The court of appeals may, in its discretion, permit the appeal to be taken from such determination if the application is made within 10 days after the entry of the court's determination relating to the class action. Application for an appeal under this paragraph shall not stay proceedings in the district court unless the district judge or the court of appeals or a judge thereof shall so order.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to any action commenced on or after the date of the enactment of this Act.

SEC. 4. PROCEEDINGS ON COMPLAINTS AGAINST JUDICIAL CONDUCT.

(a) REFERRAL OF PROCEEDINGS TO ANOTHER JUDICIAL CIRCUIT OR COURT.—Section 372(c) of title 28, United States Code, is amended—

(1) in paragraph (1) by adding at the end the following: ''In the case of a complaint so identified, the chief judge shall notify the clerk of the court of appeals of the complaint, together with a brief statement of the facts underlying the complaint.'';

(2) in paragraph (2) in the second sentence by inserting ''or statement of facts underlying the complaint (as the case may be)'' after ''copy of the complaint'';

(3) in paragraph (3)—

(A) by inserting ''(A)'' after ''(3)'';

(B) by striking ''may—'' and all that follows through the end of subparagraph (B) and inserting the following: ''may dismiss the complaint if the chief judge finds it to be—

''(i) not in conformity with paragraph (1);

''(ii) directly related to the merits of a decision or procedural ruling; or

''(iii) frivolous.''; and

(C) by adding at the end the following:

''(B) If the chief judge does not enter an order under subparagraph (A), then the complaint or (in the case of a complaint identified under paragraph (1)) the statement of facts underlying the complaint shall be referred to the chief judge of another judicial circuit for proceedings under this subsection (hereafter in this subsection referred to as the 'chief judge'), in accordance with a system established by rule by the Judicial Conference, which prescribes the circuits to which the complaints will be referred. The Judicial Conference shall establish and submit to the Congress the system described in the preceding sentence not later than 180 days after the date of the enactment of the Judicial Reform Act of 1998.

''(C) After expeditiously reviewing the complaint, the chief judge may, by written order explaining the chief judge's reasons, conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.'';

(4) in paragraph (4)—

(A) by striking ''paragraph (3)'' and inserting ''paragraph (3)(C)''; and

(B) in subparagraph (A) by inserting ''(to which the complaint or statement of facts underlying the complaint is referred)'' after ''the circuit'';

(5) in paragraph (5)—

(A) in the first sentence by inserting ''to which the complaint or statement of facts underlying the complaint is referred'' after ''the circuit''; and

(B) in the second sentence by striking ''the circuit'' and inserting ''that circuit'';

(6) in the first sentence of paragraph (15) by inserting before the period at the end the following: ''in which the complaint was filed or identified under paragraph (1)''; and

(7) by amending paragraph (18) to read as follows:

''(18) The Judicial Conference shall prescribe rules, consistent with the preceding provisions of this subsection—

''(A) establishing procedures for the filing of complaints with respect to the conduct of any judge of the United States Court of Federal Claims, the Court of International Trade, or the Court of Appeals for the Federal Circuit, and for the investigation and resolution of such complaints; and

''(B) establishing a system for referring complaints filed with respect to the conduct of a judge of any such court to any of the first eleven judicial circuits or to another court for investigation and resolution.

The Judicial Conference shall establish and submit to the Congress the system described in subparagraph (B) not later than 180 days after the date of the enactment of the Judicial Reform Act of 1998.''.

(b) DISCLOSURE OF INFORMATION.—Section 372(c)(14) of title 28, United States Code, is amended—

(1) in subparagraph (B) by striking ''or'' after the semicolon;

(2) in subparagraph (C) by striking the period at the end and inserting ''; or''; and

(3) by adding after subparagraph (C) the following:

''(D) such disclosure is made to another agency or instrumentality of any governmental jurisdiction within or under the control the United States for a civil or criminal law enforcement activity authorized by law.''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) apply to complaints filed on or after the 180th day after the date of the enactment of this Act.

SEC. 5. LIMITATION ON COURT-IMPOSED TAXES.

(a) LIMITATION.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1369. Limitation on Federal court remedies

''(a) LIMITATION ON COURT-IMPOSED TAXES.—(1) No district court may enter any order or approve any settlement that requires any State, or political subdivision of a State, to impose, increase, levy, or assess any tax, unless the court finds by clear and convincing evidence, that—

''(A) there are no other means available to remedy the deprivation of a right under the Constitution of the United States;

''(B) the proposed imposition, increase, levying, or assessment is narrowly tailored to remedy the specific deprivation at issue so that the remedy imposed is directly related to the harm caused by the deprivation;

''(C) the tax will not contribute to or exacerbate the deprivation intended to be remedied;

''(D) plans submitted to the court by State and local authorities will not effectively redress the deprivations at issue;

''(E) the interests of State and local authorities in managing their affairs are not usurped, in violation of the Constitution, by the proposed imposition, increase, levying, or assessment; and

''(F) the proposed tax will not result in the loss or depreciation of property values of the taxpayers who are affected.

''(2) The limitation contained in paragraph (1) shall apply only to any order or settlement which—

''(A) expressly directs any State, or political subdivision of a State, to impose, increase, levy, or assess any tax; or

''(B) will necessarily require a State, or political subdivision of a State, to impose, increase, levy, or assess any tax.

''(3) If the court finds that the conditions set forth in paragraph (1) have been satisfied, it shall enter an order incorporating that finding, and that order shall be subject to immediate interlocutory de novo review.

''(4) A remedy permitted under paragraph (1) shall not extend beyond the case or controversy before the court.

''(5)(A) Notwithstanding any law or rule of procedure, any person or entity whose tax liability would be directly affected by the imposition of a tax under paragraph (1) shall have the right to intervene in any proceeding concerning the imposition of the tax, except that the court may deny intervention if it finds that the interest of that person or entity is adequately represented by existing parties.

''(B) A person or entity that intervenes pursuant to subparagraph (A) shall have the right to—

''(i) present evidence and appear before the court to present oral and written testimony; and

''(ii) appeal any finding required to be made by this section, or any other related action taken to impose, increase, levy, or assess the tax that is the subject of the intervention.

''(b) TERMINATION OF ORDERS.—Notwithstanding any law or rule of procedure, any order of, or settlement approved by, a district court requiring the imposition, increase, levy, or assessment of a tax pursuant to subsection (a)(1) shall automatically terminate or expire on the date that is—

''(1) 1 year after the date of the imposition of the tax; or

''(2) an earlier date, if the court determines that the deprivation of rights that is addressed by the order or settlement has been cured to the extent practicable.

Any new such order or settlement relating to the same issue is subject to all the requirements of this section.

''(c) PREEMPTION.—This section shall not be construed to preempt any law of a State or political subdivision thereof that imposes limitations on, or otherwise restricts the imposition of, a tax, levy, or assessment that is imposed in response to a court order or settlement referred to in subsection (b).

''(d) ADDITIONAL RESTRICTIONS ON COURT ACTION.—(1) Except as provided in paragraph (2), nothing in this section may be construed to allow a Federal court to, for the purpose of funding the administration of an order or settlement referred to in subsection (b), use funds acquired by a State or political subdivision thereof from a tax imposed by the State or political subdivision thereof.

''(2) Paragraph (1) does not apply to any tax, levy, or assessment that may, in accordance with applicable State or local law, be used to fund the actions of a State or political subdivision thereof in meeting the requirements of an order or settlement referred to in subsection (b).

''(e) NOTICE TO STATES.—The court shall provide written notice to a State or political subdivision thereof subject to an order or settlement referred to in subsection (b) with respect to any finding required to be made by the court under subsection (a). Such notice shall be provided before the beginning of the next fiscal year of that State or political subdivision occurring after the order or settlement is issued.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) the District of Columbia shall be considered to be a State; and

''(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.''.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 85 of title 28, United States Code, is amended by adding after the item relating to section 1368 the following new item:

''1369. Limitation on Federal court remedies.''.

(c) STATUTORY CONSTRUCTION.—Nothing contained in this section or the amendments made by this section shall be construed to make legal, validate, or approve the imposition of a tax, levy, or assessment by a United States district court or a spending measure required by a United States district court.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall apply with respect to any action or other proceeding in a Federal court that is pending on, or commenced on or after, the date of the enactment of this Act, and the 1-year limitation set forth in subsection (b) of section 1369 of title 28, United States Code, as added by this section, shall apply to any court order or settlement described in subsection (a)(1) of such section 1369, that is in effect on the date of the enactment of this Act.

SEC. 6. REASSIGNMENT OF CASE AS OF RIGHT.

(a) IN GENERAL.—Chapter 21 of title 28, United States Code, is amended by adding at the end the following:

''§ 464. Reassignment of cases upon motion by a party

''(a) UPON MOTION.—(1) If all parties on one side of a civil case to be tried in a United States district court described in subsection (e) bring a motion to reassign the case, the case shall be reassigned to another appropriate judicial officer. Each side shall be entitled to one reassignment without cause as a matter of right.

''(2) If any question arises as to which parties should be grouped together as a side for purposes of this section, the chief judge of the court of appeals for the circuit in which the case is to be tried, or another judge of the court of appeals designated by the chief judge, shall determine that question.

''(b) REQUIREMENTS FOR BRINGING MOTION.—(1) Subject to paragraph (2), a motion to reassign under this section shall not be entertained unless it is brought, not later than 20 days after notice of the original assignment of the case, to the judicial officer to whom the case is assigned for the purpose of hearing or deciding any matter. Such motion shall be granted if—

''(A) it is presented before trial or hearing begins and before the judicial officer to whom it is presented has ruled on any substantial issue in the case, or

''(B) it is presented by consent of the parties on all sides.

''(2) Notwithstanding paragraph (1)—

''(A) a party joined in a civil action after the initial filing may, with the concurrence of the other parties on the same side, bring a motion under this section within 20 days after the service of the complaint on that party;

''(B) a party served with a supplemental or amended complaint or a third-party complaint in a civil action may, with the concurrence of the other parties on the same side, bring a motion under this section within 20 days after service on that party of the supplemental, amended, or third-party complaint; and

''(C) rulings in a case by the judicial officer on any substantial issue before a party who has not been found in default enters an appearance in the case shall not be grounds for denying an otherwise timely and appropriate motion brought by that party under this section.

''(3) No motion under this section may be brought by the party or parties on a side in a case if any party or parties on that side have previously brought a motion to reassign under this section in that case.

''(c) COSTS OF TRAVEL TO NEW LOCATION.—(1) If a motion to reassign brought under this section requires a change in location for purposes

of appearing before a newly assigned judicial officer, the party or parties bringing the motion shall pay the reasonable costs incurred by the parties on different sides of the case in travelling to the new location for all matters associated with the case requiring an appearance at the new location. In a case in which both sides bring a motion to reassign under this section that requires a change in location, the party or parties bringing the motions on both sides shall split the travelling costs referred to in the preceding sentence.

''(2) For parties financially unable to obtain adequate representation, the Government shall pay the reasonable costs under paragraph (1).

''(d) DEFINITION.—As used in this section, the term 'appropriate judicial officer' means—

''(1) a United States magistrate judge in a case referred to such a magistrate judge; and

''(2) a United States district court judge in any other case before a United States district court.

''(e) DISTRICT COURTS THAT MAY AUTHORIZE REASSIGNMENT.—The district courts referred to in subsection (a) are the district courts for the 21 judicial districts for which the President is directed to appoint the largest numbers of permanent judges.

''(f) 3-JUDGE COURT CASES EXCLUDED.—This section shall not apply to any civil action required to be heard and determined by a district court of 3 judges.''.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 21 of title 28, United States Code, is amended by adding at the end the following new item:

''464. Reassignment of cases upon motion by a party.''.

(c) MONITORING.—The Federal Judicial Center shall monitor the use of the right to bring a motion to reassign a case under section 464 of title 28, United States Code, as added by subsection (a) of this section, and shall report annually to the Congress its findings on the basis of such monitoring.

(d) SUNSET.—Effective 5 years after the date of the enactment of this Act, section 464 of title 28, United States Code, and the item relating to that section in the table of contents for chapter 21 of such title, are repealed, except that such repeal shall not affect civil cases reassigned under such section 464 before the date of repeal.

SEC. 7. RANDOM ASSIGNMENT OF HABEAS CORPUS CASES.

Section 2241 of title 28, United States Code, is amended by adding at the end the following:

''(e) Applications for writs of habeas corpus received in or transferred to a district court shall be randomly assigned to the judges of that court.''.

SEC. 8. AUTHORITY OF PRESIDING JUDGE TO ALLOW MEDIA COVERAGE OF APPELLATE COURT PROCEEDINGS.

(a) AUTHORITY OF APPELLATE COURTS.—Notwithstanding any other provision of law, the presiding judge of an appellate court of the United States may, in his or her discretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides.

(b) AUTHORITY OF DISTRICT COURTS.—Notwithstanding any other provision of law, any presiding judge of a district court of the United States may, in his or her discretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides.

(c) ADVISORY GUIDELINES.—The Judicial Conference of the United States is authorized to promulgate advisory guidelines to which a presiding judge, in his or her discretion, may refer in making decisions with respect to the management and administration of photographing, recording, broadcasting, or televising described in subsections (a) and (b).

(d) DEFINITIONS.—As used in this section:

(1) PRESIDING JUDGE.—The term ''presiding judge'' means the judge presiding over the court proceeding concerned. In proceedings in which more than one judge participates, the presiding judge shall be the senior active judge so participating or, in the case of a circuit court of appeals, the senior active circuit judge so participating, except that—

(A) in en banc sittings of any United States circuit court of appeals, the presiding judge shall be the chief judge of the circuit whenever the chief judge participates; and

(B) in en banc sittings of the Supreme Court of the United States, the presiding judge shall be the Chief Justice whenever the Chief Justice participates.

(2) APPELLATE COURT OF THE UNITED STATES.—The term ''appellate court of the United States'' means any United States circuit court of appeals and the Supreme Court of the United States.

(e) SUNSET.—The authority under subsection (b) shall terminate on the date that is 3 years after the date of the enactment of this Act.

SEC. 9. MULTIPARTY, MULTIFORUM JURISDICTION OF DISTRICT COURTS.

(a) BASIS OF JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1370. Multiparty, multiforum jurisdiction

''(a) IN GENERAL.—The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 25 natural persons have either died or incurred injury in the accident at a discrete location and, in the case of injury, the injury has resulted in damages which exceed $50,000 per person, exclusive of interest and costs, if—

''(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

''(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

''(3) substantial parts of the accident took place in different States.

''(b) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

''(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

''(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

''(3) the term 'injury' means—

''(A) physical harm to a natural person; and

''(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

''(4) the term 'accident' means a sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 25 natural persons; and

''(5) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

''(c) INTERVENING PARTIES.—In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.

''(d) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.—A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action.''.

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following new item:

''1370. Multiparty, multiforum jurisdiction.''.

(b) VENUE.—Section 1391 of title 28, United States Code, is amended by adding at the end the following:

''(g) A civil action in which jurisdiction of the district court is based upon section 1370 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.''.

(c) MULTIDISTRICT LITIGATION.—Section 1407 of title 28, United States Code, is amended by adding at the end the following:

''(i)(1) In actions transferred under this section when jurisdiction is or could have been based, in whole or in part, on section 1370 of this title, the transferee district court may, notwithstanding any other provision of this section, retain actions so transferred for the determination of liability and punitive damages. An action retained for the determination of liability shall be remanded to the district court from which the action was transferred, or to the State court from which the action was removed, for the determination of damages, other than punitive damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

''(2) Any remand under paragraph (1) shall not be effective until 60 days after the transferee court has issued an order determining liability and has certified its intention to remand some or all of the transferred actions for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the transferee court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the transferee court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

''(3) An appeal with respect to determination of punitive damages by the transferee court may be taken, during the 60-day period beginning on the date the order making the determination is issued, to the court of appeals with jurisdiction over the transferee court.

''(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

''(5) Nothing in this subsection shall restrict the authority of the transferee court to transfer or dismiss an action on the ground of inconvenient forum.''.

(d) REMOVAL OF ACTIONS.—Section 1441 of title 28, United States Code, is amended—

(1) in subsection (e) by striking ''(e) The court to which such civil action is removed'' and inserting ''(f) The court to which a civil action is removed under this section''; and

(2) by inserting after subsection (d) the following new subsection:

''(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

''(A) the action could have been brought in a United States district court under section 1370 of this title, or

''(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1370 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1370 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

''(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(i) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

''(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

''(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

''(5) An action removed under this subsection shall be deemed to be an action under section 1370 and an action in which jurisdiction is based on section 1368 of this title for purposes of this section and sections 1407, 1660, 1697, and 1785 of this title.

''(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.''.

(e) CHOICE OF LAW.—

(1) DETERMINATION BY THE COURT.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1660. Choice of law in multiparty, multiforum actions

''(a) FACTORS.—In an action which is or could have been brought, in whole or in part, under section 1370 of this title, the district court in which the action is brought or to which it is removed shall determine the source of the applicable substantive law, except that if an action is transferred to another district court, the transferee court shall determine the source of the applicable substantive law. In making this determination, a district court shall not be bound by the choice of law rules of any State, and the factors that the court may consider in choosing the applicable law include—

''(1) the place of the injury;

''(2) the place of the conduct causing the injury;

''(3) the principal places of business or domiciles of the parties;

''(4) the danger of creating unnecessary incentives for forum shopping; and

''(5) whether the choice of law would be reasonably foreseeable to the parties.

The factors set forth in paragraphs (1) through (5) shall be evaluated according to their relative importance with respect to the particular action. If good cause is shown in exceptional cases, including constitutional reasons, the court may allow the law of more than one State to be applied with respect to a party, claim, or other element of an action.

''(b) ORDER DESIGNATING CHOICE OF LAW.—The district court making the determination under subsection (a) shall enter an order designating the single jurisdiction whose substantive law is to be applied in all other actions under section 1370 arising from the same accident as that giving rise to the action in which the determination is made. The substantive law of the designated jurisdiction shall be applied to the parties and claims in all such actions before the court, and to all other elements of each action, except where Federal law applies or the order specifically provides for the application of the law of another jurisdiction with respect to a party, claim, or other element of an action.

''(c) CONTINUATION OF CHOICE OF LAW AFTER REMAND.—In an action remanded to another district court or a State court under section 1407(i)(1) or 1441(e)(2) of this title, the district court's choice of law under subsection (b) shall continue to apply.''.

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end the following new item:

''1660. Choice of law in multiparty, multiforum actions.''.

(f) SERVICE OF PROCESS.—

(1) OTHER THAN SUBPOENAS.—(A) Chapter 113 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1697. Service in multiparty, multiforum actions

''When the jurisdiction of the district court is based in whole or in part upon section 1370 of this title, process, other than subpoenas, may be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.''.

(B) The table of sections at the beginning of chapter 113 of title 28, United States Code, is amended by adding at the end the following new item:

''1697. Service in multiparty, multiforum actions.''.

(2) SERVICE OF SUBPOENAS.—(A) Chapter 117 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1785. Subpoenas in multiparty, multiforum actions

''When the jurisdiction of the district court is based in whole or in part upon section 1370 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.''.

(B) The table of sections at the beginning of chapter 117 of title 28, United States Code, is amended by adding at the end the following new item:

''1785. Subpoenas in multiparty, multiforum actions.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of the enactment of this Act.

SEC. 10. APPEALS OF MERIT SYSTEMS PROTECTION BOARD.

(a) APPEALS.—Section 7703 of title 5, United States Code, is amended—

(1) in subsection (b)(1), by striking ''30'' and inserting ''60''; and

(2) in the first sentence of subsection (d), by inserting after ''filing'' the following: '', within 60 days after the date the Director received notice of the final order or decision of the Board,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act and apply to any administrative or judicial proceeding pending on that date or commenced on or after that date.

The CHAIRMAN. Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. COBLE

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

The Clerk read as follows:

Amendment offered by Mr. COBLE:

Add the following at the end:

SEC. 11. EXTENSION OF JUDICIARY INFORMATION TECHNOLOGY FUND.

Section 612 of title 28, United States Code, is amended—

(1) by striking ''equipment'' each place it appears and inserting ''resources'';

(2) by striking subsection (f) and redesignating subsequent subsections accordingly;

(3) in subsection (g), as so redesignated, by striking paragraph (3); and

(4) in subsection (i), as so redesignated—

(A) by striking ''Judiciary'' each place it appears and inserting ''judiciary'';

(B) by striking ''subparagraph (c)(1)(B)'' and inserting ''subsection (c)(1)(B)''; and

(C) by striking ''under (c)(1)(B)'' and inserting ''under subsection (c)(1)(B)''.

SEC. 12. OFFSETTING RECEIPTS.

For fiscal year 1999 and thereafter, any portion of miscellaneous fees collected as prescribed by the Judicial Conference of the United States pursuant to sections 1913, 1914(b), 1926(a), 1930(b), and 1932 of title 28, United States Code, exceeding the amount of such fees in effect on September 30, 1998, shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

SEC. 13. MEMBERSHIP IN CIRCUIT JUDICIAL COUNCILS.

Section 332(a) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) The chief judge of each judicial circuit shall call and preside at a meeting of the judicial council of the circuit at least twice in each year and at such places as he or she may designate. The council shall consist of an equal number of circuit judges (including the chief judge of the circuit) and district judges, as such number is determined by majority vote of all such judges of the circuit in regular active service.'';

(2) by striking paragraph (3) and inserting the following:

''(3) Except for the chief judge of the circuit, either judges in regular active service or judges retired from regular active service under section 371(b) of this title may serve as members of the council.''; and

(3) by striking ''retirement,'' in paragraph (5) and inserting ''retirement under section 371(a) or section 372(a) of this title,''.

SEC. 14. SUNSET OF CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.

Section 103(b)(2)(A) of the Civil Justice Reform Act of 1990 (Public Law 101–650; 104 Stat. 5096; 28 U.S.C. 471 note), as amended by Public Law 105–53 (111 Stat. 1173), is amended by inserting ''471,'' after ''sections''.

SEC. 15. CREATION OF CERTIFYING OFFICERS IN THE JUDICIAL BRANCH.

(a) APPOINTMENT OF DISBURSING AND CERTIFYING OFFICERS.—Chapter 41 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 613. Disbursing and certifying officers

''(a) DISBURSING OFFICERS.—The Director may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to be

disbursing officers in such numbers and locations as the Director considers necessary. Such disbursing officers shall—

''(1) disburse moneys appropriated to the judicial branch and other funds only in strict accordance with payment requests certified by the Director or in accordance with subsection (b);

''(2) examine payment requests as necessary to ascertain whether they are in proper form, certified, and approved; and

''(3) be held accountable for their actions as provided by law, except that such a disbursing officer shall not be held accountable or responsible for any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate for which a certifying officer is responsible under subsection (b).

''(b) CERTIFYING OFFICERS.—(1) The Director may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to certify payment requests payable from appropriations and funds. Such certifying officers shall be responsible and accountable for—

''(A) the existence and correctness of the facts recited in the certificate or other request for payment or its supporting papers;

''(B) the legality of the proposed payment under the appropriation or fund involved; and

''(C) the correctness of the computations of certified payment requests.

''(2) The liability of a certifying officer shall be enforced in the same manner and to the same extent as provided by law with respect to the enforcement of the liability of disbursing and other accountable officers. A certifying officer shall be required to make restitution to the United States for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificates made by the certifying officer, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

''(c) RIGHTS.—A certifying or disbursing officer—

''(1) has the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment request presented for certification; and

''(2) is entitled to relief from liability arising under this section in accordance with title 31.

''(d) OTHER AUTHORITY NOT AFFECTED.—Nothing in this section affects the authority of the courts with respect to moneys deposited with the courts under chapter 129 of this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 28, United States Code, is amended by adding at the end the following item:

''613. Disbursing and certifying officers.''.

(c) DUTIES OF DIRECTOR.—Paragraph (8) of subsection (a) of section 604 of title 28, United States Code, is amended to read as follows:

''(8) Disburse appropriations and other funds for the maintenance and operation of the courts;''.

Page 17, line 12, strike ''**appellate**''.

Mr. COBLE (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 North Carolina?

There was no objection.

Mr. COBLE. Mr. Chairman, this is a technical amendment that contains no controversial provisions, but which will aid in making the judiciary function more efficiently, and will clarify certain provisions of the law as they pertain to the third branch.

In short, the amendment will extend the Judiciary Information Technology Fund, allow the judiciary to retain any additional offsetting receipts derived from increases in miscellaneous fees charged in the Federal courts, enhance membership in Circuit Judicial Councils, sunset the Civil Justice Expense Plan, and create certifying officers in the judicial branch.

I urge my colleagues to support this technical amendment, which I believe contains no controversial matter.

Summary follows for purposes of questions or explanation

Extension of the Judiciary Information Technology Fund: This amendment eliminates the provision in the statute authorizing the Judiciary Information Technology Fund, which subjects the activities of this Fund to the management process of the executive branch.

Offsetting Receipts: This provision would allow the judiciary to retain any additional offsetting receipts derived from increases in miscellaneous fees charged in the federal courts of appeals, district courts, bankruptcy courts, the Court of Federal Claims, and the Judicial Panel on Multi-district Litigation. This provision responds to a directive from congressional appropriations committees that the Judiciary identify ways to increase offsetting receipts.

Membership in Circuit Judicial Councils: This section amends 28 U.S.C. §332(a) to enhance judge participation in the federal judiciary's internal governance process by equalizing the representation of circuit judges and district judges on circuit judicial councils and establishing the eligibility of senior circuit and district judges to serve as members of those councils.

Sunset of Civil Justice Expense and Delay Reduction Plans: This provision would clarify that section 103(b)(2)(A) of the Civil Justice Reform Act is not to be extended. Provisions of the Civil Justice Reform Act have lapsed. An amendment to last year's Appropriations Act extended the reporting of old cases, but unintentionally also extended this section of the Act. This section was intended to sunset, but a technical change is needed to clarify that intent. This simply accomplishes that purpose.

Creation of Certifying Officers in the Judicial Branch: This section would enable the Director of the Administrative Office of the United States Courts to appoint certifying officials in the various court units who would be responsible for the propriety of payments they request. It would also enable the Director of the AO to appoint disbursing officials in the various court units who would be responsible for ensuring that payment requests are proper, certified and approved.

Mr. FRANK of Massachusetts. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I agree with the gentleman from North Carolina (Mr. COBLE).

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina (Mr. COBLE).

The amendment was agreed to.

The CHAIRMAN. Are there other amendments?

AMENDMENT NO. 3 OFFERED BY MR. DELAHUNT

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 Offered by Mr. DELAHUNT:

Page 9, strike lines 13 through 20 and insert the following:

''(2) The limitation contained in paragraph (1) shall apply only to any order or settlement which expressly directs any State, or political subdivision of a State, to impose, increase, levy, or assess any tax.

Redesignate succeeding paragraphs accordingly.

Mr. DELAHUNT. Mr. Chairman, some context is needed to understand this amendment. Reference was made earlier to the Missouri versus Jenkins case.

Back in 1990, the Supreme Court rendered a decision involving the State of Missouri; and it held clearly that the Federal courts could not directly impose a tax levy on State or local governments. As far as I can tell, every member of the Committee on the Judiciary, on a bipartisan basis, understands and supports that concept. That is a principle everyone embraced.

This amendment which I have filed with my colleague, the gentleman from New York (Mr. BOEHLERT), would simply do just that. Let me repeat, the amendment would prohibit a court from directly imposing a tax increase on State or local government, or any other political subdivision, for that matter, as a remedy for an illegal or wrongful action by that particular State or local government.

This amendment, the Delahunt-Boehlert amendment, makes clear that the levying of taxes is not an appropriate judicial function. It leaves it to State and local governments to decide how to fund a judicial remedy to some illegal or wrongful action that they themselves are responsible for.

It may involve spending cuts. It may involve borrowing. It may even involve raising taxes. But it is the State or local government's decision, not the court's decision, how to fund that particular remedy. That is what this amendment is all about. In fact, when I offered this amendment at the subcommittee it was agreed to.

I might add, there was considerable discussion at that point in time. It was voted unanimously, on a voice vote. However, the bill came out of the full committee dramatically changed, changed to the point that it is now considered unconstitutional by hundreds of legal scholars.

The Department of Justice also agrees, as it is presently drafted, it is of dubious constitutionality, and that based on these and other concerns with the bill, the Attorney General will absolutely recommend a veto unless amended.

As presently written, a court could not even issue an order which would require a State or local government to

impose a tax. That is absurd. It is the end of an independent judiciary, because it is utterly meaningless for the courts to order a remedy without the ability to compel the wrongdoer to implement that remedy.

Just imagine how State and local governments could flout court orders by simply claiming they did not have sufficient cash on hand to comply with the remedy. It is no exaggeration to say that a State or local government could very well avoid responsibility for its malfeasance in the operation of a sewage treatment plant that polluted our constituents' drinking water if this amendment fails. That is one of the reasons that every major environmental group in the country opposes the underlying bill.

The bill as it now stands is worse than the perceived abuses it was meant to cure. Speaking to that issue of perceived abuses, let us be honest. Despite what we hear, there is no outbreak of judicial taxation cases in this country today. They simply do not exist.

The truth is clear. It is very simple. The Federal courts have not directly imposed a tax, except for the single school desegregation case, Missouri versus Jenkins, which I referenced earlier and the gentleman from Illinois alluded to. That case was overturned in 1995 by a unanimous Supreme Court that rejected the concept of direct imposition of taxes by a Federal court.

Adoption of the Delahunt-Boehlert amendment would accomplish the goals articulated by many of those who advocate judicial restraint. Let us exercise some common sense and support the Delahunt-Boehlert amendment.

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

Mr. Chairman, my good friend, the gentleman from Massachusetts and I generally agree on this matter. I am not in agreement with him. I appreciate his comments, but the amendment was defeated in full committee during markup.

I think, Mr. Chairman, this probably would gut the judicial taxation provision of the bill. The amendment would allow a Federal judge to, in my opinion, circumvent section 5 of the bill in the following manner. The provisions constraining the ability of a judge to order a State or municipality to impose taxes on affected citizens would apply only if a judge expressly directed a tax.

□ 1200

To avoid the restrictions set forth in section 5, a judge, it seems to me, could simply order a State or municipality to construct a new school building, for example, according to particular specifications, without specifying how the project would be funded.

The practical effect of this result, however, would be to compel the State or the municipality or whatever political subdivision to impose a tax if no other revenues were available. And I believe that the bill as written cures such a problem by applying section 5 to orders which expressly direct a tax or which necessarily require a tax. And for those reasons, Mr. Chairman, I oppose the amendment.

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

Mr. Chairman, I rise in strong support of the Delahunt-Boehlert amendment. What is at stake here is nothing less than whether we are going to exempt State and local governments from complying with a wide range of environmental and other laws. I do not think that Congress ought to be providing that sort of blanket exemption.

I want to emphasize again that the issue here is whether we believe that States and localities ought to comply with the laws we pass. This is not about judicial activism or tax rates. Our amendment blocks judicial activism by keeping intact all of the provisions of section 5 that prevent judges from imposing or raising taxes. Let me repeat that. Our amendment blocks judicial activism by keeping intact all of the provisions of section 5 that prevent judges from imposing or raising taxes.

Courts ought not to be levying taxes and our amendment keeps them from doing so. But the language we are removing from the bill would do far more than prevent judges from overreaching. It would prevent judges from doing their jobs. It would prevent judges from taking actions that are required by law.

For example, let us say a municipal waste treatment plant upstream from our town is discharging pollutants into a river, closing beaches in our town. We sue to get the sewage treatment plant to comply with the standards in the Clean Water Act. Under H.R. 1252, a judge could be unable to issue an order requiring compliance with the Clean Water Act, because doing so might lead the town to raise taxes.

Even worse, if we and the town agreed to settle the case by the town agreeing voluntarily to fix the sewage treatment plant, H.R. 1252 could forbid the judge from approving the voluntary settlement. Yet, if an industry were discharging the same pollutants into the same river, a judge would be able to force the industry to comply.

That is bad law. That is bad policy. And, quite simply, it is unfair.

Virtually every environmental group, as well as the Judicial Conference of the United States, chaired by Chief Justice Rehnquist, oppose section 5 because of its perverse consequences such as the ones I have just outlined. And environmental laws are not the only ones that could become dead letters under this bill. The Americans with Disabilities Act, the Individuals with Disabilities Education Act, other civil rights statutes and worker protection statutes would also be affected. Indeed, one judge has noted that even the Brown v. Board of Education decision would have been difficult to enforce if H.R. 1252 had been in effect.

Section 5 as written would simply undermine the enforcement of our laws. If Congress does not like the laws, like the Clean Water Act, then we ought to rewrite them. But we will not do that because the laws have proven so successful and so immensely popular.

If we think localities ought to get more Federal aid to comply with these laws, let us provide the money. I am fighting with the administration right now to increase the funding available for municipal sewage treatment plants.

Those are all reasonable remedies. Preventing enforcement of statutes that are on the books is not a reasonable way to change the law. In fact, the approach in this bill is to offset, offer massive congressional overreaching to counteract an occasional and rare judicial overreaching. It is like hearing that one of our kids has misbehaved at school and responding by never sending any of our kids to school again.

Mr. Chairman, I urge support for the Delahunt-Boehlert amendment. It will prevent judges from raising taxes while allowing the proper enforcement of legitimate laws to continue.

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

Mr. Chairman, the Delahunt-Boehlert amendment would gut section 5. There is a legal fiction as to whether or not a court can order the increase of tax or a court can order a municipality to increase tax.

Our bill provides in both situations a court will be prevented from directly or indirectly raising taxes. What the amendment does, it prevents a court from directly raising taxes, but all the courts have to do is to read Missouri versus Jenkins and instead of the court directly raising the tax, it says ''I am ordering you to raise the tax.''

The Delahunt-Boehlert amendment would allow a Federal judge, as the judge in Rockford, Illinois, has done, to point to a duly elected school board and say, ''Either you raise taxes or you are going to jail.'' That is the purpose of section 5.

If the amendment is adopted, the Delahunt-Boehlert amendment, it will not affect the situation. The judge can still do the same thing. And it is legal fiction which they are presenting before this body today to allow them to have all of the congressional mandates come before the Federal courts and for the Federal courts to say, local municipalities to comply, either raise taxes or go to jail. That is what this amendment is about.

Mr. Chairman, I have letters here from people in Rockford, Illinois. Mr. DELAHUNT said he knew of no area in the country that is affected similarly to Kansas City, Missouri. Well, the same master in Kansas City, Missouri is now the master in Rockford, Illinois. Listen to this letter from Adam Lamarre:

> Dear Representative Manzullo, Thank you for the support you gave limiting the powers of judges to impose taxes. My family is considering moving out of Rockford because we can no longer afford to pay high taxes.

This is from Earl and Ann Young in Rockford:

Dear Mr. Manzullo, we are very affected by Magistrate Mahoney's rulings. We are senior citizen property owners in Rockford School District 205, living on a fixed income, who are being taxed out of our home!

To add insult to injury, we did not live in Rockford when the alleged discrimination took place, have never had children in the Illinois school system, but we are judged guilty because our House is in district 205.

We would like you to tell us how can this one man,'' the unelected magistrate responsible to no one, ''assume to have all this power, and what action you are pursuing in Washington.

And a letter from Carol Angelico:

I'm writing to you because of my saddened frustration that no one can 'fairly' resolve the unnecessary and overburdening taxation problem in our City of Rockford.

Oh, yes, the City of Rockford, with over 2,200 homes for sale in a city of less than 150,000 people. The City of Rockford, where the property values keep going down. The City of Rockford, where people are being taxed unmercifully and senior citizens come to my office with tears in their eyes and say, ''Congressman, we cannot afford to pay our taxes because the Federal magistrate raised our taxes. You represent us. You should be the one responsible, because if you raise taxes, I will remove you from office.''

What we are doing today is historic, perhaps the first time in the history of this Republic in which Congress is trying to reclaim the ground where only we have the power in Federal situations to raise taxes, and to take it back from the courts and say that they do not have the power to raise taxes. That was not given to them.

Hamilton expressly said, ''You shall not have it.'' Madison said, ''You shall not have it.'' And Jefferson said, when writing about King George III, said, ''He has taxed us without representation.''

This is what this Republic is about. Who is in control of raising taxes in this Republic? Is it the unelected judges appointed for life, or is it Members of the United States Congress who have to stand for reelection every 2 years?

Delahunt-Boehlert guts section 5. It makes it meaningless, and I would urge my colleagues, especially those who voted yesterday that said this body can only raise taxes by having two-thirds of the vote, to say only this body can raise taxes and not the judiciary, and to vote against Delahunt-Boehlert.

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

APRIL 12, 1997.

Congressman DON MANZULLO,
Cannon House Office Bldg., Washington, DC.

CONGRESSMAN MANZULLO: I'm writing to you because of my saddened frustration that no one can ''Fairly'' resolve the unnecessary and over-burdening taxation problem in our city of Rockford.

I'll clarify my above statement by getting to the point as briefly as I can. A federal judge ''Mahoney'' ordered real estate tax increases to pay for three (3) new schools (we have closed schools in some areas and have been busing our school children), this ruling was the result of a lawsuit because a small group of people didn't like their school being closed and it accelerated into a state of ''ridiculous'' with an end result of lawyers fees, court fees, and consultant fees already costing $100 million dollars taken from a Tort Fund which was the money to be used for the schools. This is not right!

1st—A judge taxes us without any representation (our forefathers started this country because of that reason).

2nd—$100 million dollars spent not for our school children, or schools but for lawyers, and consultants. That money would have been better spent improving the education of our children.

My husband and I have filed a joint tax protest with other people in town to no avail, and have spoken to our State Rep's before only to hear a lot of rhetoric but no action to back them up and change the laws regarding federal judges rulings with no regard to the negative effect financially on the community, nor allowing the majority of the people to have their voice heard and vote on instead of just giving the minority a voice. I thought this country was a democracy in which the majority vote was the law/rule, at least that's what I was taught in history classes in school. Have our governing bodies forgotten that! A federal judge wielding such a ruling not only here but anywhere in the U.S. is wrong!!! We are paying so much in taxes already, not only Real Estate but other areas of our now structured government.

So I'm asking you Congressman, to continue to take the initiative and act on the behalf of the hard working people who pay all these taxes by doing without and tightening the belt, but the belt is becoming so tight we are all strangling. We want our schools to produce educated people but that's not what our money is being used for. It has not gone to the schools or for our children's education. New schools do not educate; teachers, books, computers, etc. do!! Changes need to be made regarding this matter. Two incomes are already necessary today so we can give our families the necessities of life because the taxation has gotten out of hand, literally, from our hands to government hands. Then we have the additional burden of our school districts court order. People can't keep their homes for their children who would be going to our school, not to mention our elderly homeowners. My husband and I are paying monthly real estate payments almost equal to our mortgage payment, this is really getting scary because we were reassessed on our property again last year and our tax bill will be higher again for 1996.

Please express to your fellow congressmen and congresswomen that it's their responsibility, which was given to them by us the the voter, that they are in the political office they now hold, to work for and with the majority of us not against us. That's how they won their office, by the majority not the minority. I hear to many people say why write to express your dissatisfaction, nothing gets done about, only the minority get catered to and politicians are only self-interested in matter to better themselves and not the general public—PROVE THEM WRONG!!!

Respectfully,

CAROL A. ANGELICO.

DECEMBER 26, 1997.

Representative DONALD MANZULLO,
Broadway, Suite 1, Rockford, IL.

DEAR MR. MANZULLO: The enclosed article is from the December 26, 1997 issue of the Rockford Register Star. It reflects a major concern of ours. How does an appointed official of the Judiciary Branch of our Government obtain such power, and what can be done to eliminate the power, and/or remove Mahoney from office?

Mr. Nelson, the writer of the article, claims to be ''a citizen not directly affected by the decision.'' We, on the other hand, are very affected by Mahoney's rulings. We are Senior Citizen property owners in School District 205, living on a fixed income, who are being taxed out of our home!

To add insult to injury, we did not live in Rockford when the alleged discrimination took place, have never had children in the Illinois school system, but we are judged guilty because our house is in district 205.

We would like you to tell us how this one man can assume to have all this power, and what action YOU are pursuing in Washington to restrict and/or eliminate such misuse of assumed judicial power!

Sincerely Yours,

EARL AND ANN YOUNG.

TIME TO CLIP JUDICIAL WINGS

Magistrate P. Michael Mahoney should be given a Nobel Prize for coming up with a solution to our most vexing problem, how to lower taxes. Since he has established that elected legislative bodies must vote according to the wishes of the judiciary, we can save enormous sums of money by eliminating all such bodies and just let the judiciary run the country. Think of the savings: No senators, no congressmen, no aldermen, no county boards, and most importantly the elimination of the bureaucracies that support these institutions. In fact we can take it one step further and eliminate the executive branch and let judges appoint masters.

To those of you who support Magistrate Mahoney's decision, would you support him if he ordered the state legislature to raise the state income tax 30 percent to pay for increases in school funding or raises for judges?

Would you support him if he ordered you to vote for a specific candidate in the next election?

To our elected representatives: It is up to you to assert your constitutional right to the separation of powers.

The judiciary has been allowed to slowly undermine the very constitution that they are sworn to protect.

If this nation is to continue to exist as a democratic republic, it is up to those legislators elected by the people to reassert their constitutional right to vote their conscience.

I am aware that this is not the first time the judiciary has directed an action by elected officials, but I am not aware of any other time that a member of the judiciary has determined how to fund said action. As a citizen not directly affected by the decision, I besiege our state and federal legislators to clip the wings of the judiciary before they make voters totally irrelevant.

I realize that this particular case involves a lowly little school board, but remember, this is an elected legislative body being ordered to vote a specific way by a lowly federal magistrate acting on behalf of one semi-retired judge.—Roger T. Nelson, Loves Park

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ROCKFORD, IL,
July 3, 1997.

DEAR REP MANZULLO: Thank you for the support you gave limiting judge's ability to impose taxes. My family is considering moving out of Rockford because we can no longer afford to pay the big property taxes.

Sincerely,

ADAM LAMARRE.

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

Mr. Chairman, I would ask the gentleman from Illinois (Mr. MANZULLO)

whether he has ever heard of the Supreme Court case, Missouri v. Jenkins.

Mr. MANZULLO. Yes, I quoted from that.

Mr. CONYERS. Well, did the gentleman not read in there that the courts cannot impose taxes?

Mr. MANZULLO. It is very simple——

Mr. CONYERS. Mr. Chairman, I just asked the gentleman a question.

Mr. MANZULLO. If I am given the opportunity to respond——

Mr. CONYERS. Yes or no?

Mr. MANZULLO. What is the question again?

Mr. CONYERS. Forget it.

Mr. MANZULLO. No, I do not want to forget it. I want to make this clear.

Mr. CONYERS. Well, I want to forget it on my time.

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) controls the time.

Mr. CONYERS. Mr. Chairman, before we vote, the Supreme Court said, in the case that the gentleman read so clearly, and the question when he could not remember what I asked, said that the court cannot impose taxes. Repeat. The court cannot impose taxes. They can enforce an order for taxes. That is the case.

So I urge the gentleman to read it again.

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

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

Mr. DELAHUNT. Mr. Chairman, I would just reiterate what the gentleman from Michigan (Mr. CONYERS) said in terms of the holding in the Missouri v. Jenkins case, and the gentleman from Illinois indicated that he was quoting from Missouri v. Jenkins. He quoted earlier from Thomas Jefferson, or at least he credited Thomas Jefferson the quote that taxation without representation is tyranny.

Mr. Chairman, I would correct the gentleman, because I come from that part of the country where the gentleman was born and raised who had made that quote. His name is James Otis and he lived on Cape Cod.

Mr. Chairman, I do not know whether the gentleman misquoted or misread the Missouri v. Jenkins decision, but it clearly stated that Federal courts could not impose a tax levy on a State or local government. In the Federal district court which had earlier issued an order that did impose a tax levy in that tax case, it was overturned by a unanimous decision of the Supreme Court.

The Boehlert-Delahunt amendment simply codifies the Missouri case. It prohibits a court from directly imposing a tax increase on State and local government or any other.

Mr. CONYERS. Mr. Chairman, reclaiming my time, let us all go to law school. All right? The Supreme Court case. Outside the context of a few 19th century municipal bond cases, the Federal courts have not directly imposed a tax except for a single school desegregation case, Missouri v. Jenkins. And even this isolated case was overturned by the Supreme Court in 1995 when the Justices unanimously rejected the concept of a direct Federal court imposition of taxes. Now, is that clear or is it not?

Mr. Chairman, I did not ask the gentleman anything. I just wanted to get his attention to read simple English to him of what the Supreme Court said.

□ 1215

The gentleman may get his own time.

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

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

Mr. DELAHUNT. Mr. Chairman, I think what is most interesting is that upon a careful and thorough analysis of the language that presently exists in title V, that there has been a conclusion by many legal scholars that that language is patently unconstitutional as a result of the decision in Missouri v. Jenkins. It is also clear that the Department of Justice will recommend a veto of this bill if it should pass, if this language is not deleted and the Boehlert-Delahunt amendment does not pass.

Mr. CONYERS. Mr. Chairman, reclaiming my time, I am going to read this one more time. I am going to read it slowly.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. CONYERS) has expired.

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

Mr. CONYERS. Mr. Chairman, I am going to read this one more time.

Outside the context of a few 19th century municipal bond cases, the Federal courts have not directly imposed a tax except for a single school desegregation case, Missouri v. Jenkins. And even this isolated case was overturned by the Supreme Court in 1995, when the Justices unanimously rejected the concept of direct Federal court imposition of taxes.

End of sentence.

Mr. CAMPBELL. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Mr. Chairman, the Missouri versus Jenkins case is very simple. Five justices against four justices ruled that a court can indirectly raise taxes by applying this legal fiction. The difference is between the judge saying from the bench, I raise your taxes, and the judge saying, I order you to raise your taxes.

The Delahunt-Boehlert amendment would still allow a judge to say, I order you to raise your taxes. In fact, the majority decision was so feeble that four justices in the minority said that the majority opinion ''is an expansion of power in the Federal judiciary beyond all precedent,'' and Delahunt-Boehlert, therefore, if they are saying it would codify Missouri versus Jenkins, would therefore be, quote, ''an expansion of power in the Federal judiciary beyond all precedent.''

It is just that simple. A vote on that amendment would gut section 5. It would still allow judicial taxation to take place. And for my friend from Massachusetts, I would say, if he would make reference to the Declaration of Independence, that is where Mr. Jefferson says and accuses King George III of taxing the people without representation. I like to quote from Jefferson. He is the most credible.

Mr. CAMPBELL. Reclaiming my time, Mr. Chairman, Missouri versus Jenkins, I believe, is correctly described both by my friend from Illinois and my friend from Massachusetts. Accordingly, at least as I read it, if the Boehlert-Delahunt amendment passes, the bill will have no effect beyond Missouri versus Jenkins, and Missouri versus Jenkins does say that a court may not directly impose a tax. So both gentlemen are right, Mr. Chairman, which is to say that if this amendment passed, the purpose of this bill will be defeated.

I would like that result—if the bill's managers has not agreed to my amendment. The problem is, my amendment comes up next, it is not up now. So I would like to take a moment and explain what my amendment would do because I think it takes the most dangerous part of this bill away.

The most dangerous part of this bill to me is section F of section 5. The whole idea of this bill is to make it hard for courts to impose taxes; fine. Since Missouri versus Jenkins says a court cannot directly impose a tax, this bill says let us also make it hard for courts effectively to impose a tax by leaving no other options. Okay, fine, let us make it hard.

But—do not make it impossible. Where the Constitution requires it; it should be done. Accordingly, what I would like to do is to go through the provisions that are left in the bill, because if my amendment is taken, which strikes F, then the remaining restrictions, I think, are very reasonable; namely, that a court cannot effectively impose a tax unless it is constitutional to do so, it is narrowly imposed, it will help as opposed to make worse the problem being addressed by the court suit in the first place, there is no adequate alternative remedy under the State and local government, and the interests of the State are not unconstitutionally usurped. That is the exact phrase used.

Accordingly, if you get rid of F, there is nothing, at least in my mind, that is difficult in this proposal (or, surely, that is unconstitutional) in this proposal. What was F? ''F'' was that the court would have to be assured that the proposed tax would not result in a depreciation of property values. That is an impossible standard, because any property tax is going to result in a depreciation of property values.

Suppose, for example, a school desegregation order said a school district had to allow in blacks. The school district's revenues come from property tax. Say the school district now must allow in 20 to 30 percent more children; the taxes then have to go up to pay for them. There go the property values.

My good friends on this side of the aisle are willing to drop section F, and I only hope that my amendment had come up first. It has not, but under the assurance that it will, I would simply wish to point out that the unconstitutional aspects of this provision are now gone.

With that, Mr. Chairman, I yield to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the gentleman from California for yielding to me. I hope he teaches a law school course for Members of Congress in the evenings with or without credit because I completely agree with him.

PARLIAMENTARY INQUIRY

Mr. CAMPBELL. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. CAMPBELL. Is it in order, Mr. Chairman, to ask unanimous consent to consider my amendment ahead of this or to consider it at this time? Is there a procedural provision allowing that or not?

The CHAIRMAN. In response to the gentleman's query of the Chair, the pending amendment would have to be first withdrawn by unanimous consent of the Committee of the Whole.

Mr. CAMPBELL. Then I cannot proceed as I would have liked to. I thank the Chair.

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

I rise to support the Boehlert-Delahunt amendment. I would like to say very clearly first that the gentleman from Illinois has a good argument in that we are taxed very heavily now, so I want to commend him on his effort to streamline the whole complex tax system. It is just that I fear that his method, which we agree with basically, would go a little bit too far and have consequences that the gentleman from Massachusetts does not foresee. This bill and this amendment would not give the courts any extra power to raise taxes. It does not change anything in my understanding in that area at all.

The gentleman from Illinois quoted Jefferson. He quoted Madison and he quoted Hamilton. Jefferson and Hamilton certainly did not want taxation without representation. This amendment does not tax people without representation. People continue to have representation. Jefferson, Hamilton, Madison would want people to have clean water, and they would want the collective community to be responsible for clean water.

Let me give my colleagues an example. In my district, the Chesapeake Bay, over the last year or so, we have been having a problem with a microorganism called pfiesteria. It is scientific conclusion that pfiesteria is stimulated in part by extra nitrogen and phosphorous going into the waterways. The courts and the community, the public sector can impose fines and cause farmers to have to pay for the improvement of their practices to reduce phosphorous and nitrogen getting into the water.

If the gentleman from Illinois does not, if the gentleman from New York does not have his amendment passed, the farmer would have to pay to clean up his act, but the local sewage treatment plant, which has also caused phosphorous and nitrogen into the waterway, which is called Pokomoke, would not.

So the farmer would go to all these expenses and the local sewage treatment plant and everybody has a little problem with money, even people have problems with whether or not there really is a problem. And sometimes there are problems with competency, and the court is there to say yes, you also have to clean up your act.

I will give you an example in Baltimore City. The sewage treatment plant right now is under order from the EPA to clean up their act. The EPA is going to fine, with the help of the courts, Baltimore not to put more nitrogen and phosphorous into the water.

The local ARCO plant, the local CONOCO plant, they have to clean up. They have to pay. The private sector has to pay. The farmer has to pay. But unless this amendment passes, the city of Baltimore does not have to do anything. They can continue to put the phosphorous and the nitrogen in the water that is causing to a great extent this microorganism that is decimating the fish population of the Chesapeake Bay.

The Boehlert amendment does not give the court system any iota of more power to raise taxes, but unless the Boehlert amendment passes, your local farmer is going to be more responsible for cleaning up the waterways than the public facilities. I am sure Jefferson and Hamilton wanted us to drink clean water, and I think this amendment is perfectly balanced.

Mr. Chairman, I yield to the gentleman from New York (Mr. BOEHLERT).

Mr. BOEHLERT. Mr. Chairman, I thank the gentleman from Maryland for yielding to me. The examples he cited are perfect and the illustration he presented is right on target.

Courts cannot impose taxes. But courts are charged with the responsibility of dealing with the laws we, the House of Representatives, and the Senate, and the Congress of the United States, pass. And when we are dealing with sensitive issues like clean water, which we all depend on, and which the American people want us to protect, we have to make certain that the laws we pass are dealt with in a responsible manner by the courts.

The courts are not going to impose a tax, but the courts are going to say to a given community, for example, you have to stop polluting. And the community is going to decide how it has to stop polluting. I thank the gentleman for the example.

The gutting would occur, the gutting would occur, I would suggest, if we failed to amend section 5.

Mr. YOUNG of Alaska. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Mr. Chairman, the proponents of the Delahunt-Boehlert amendment are trying to draw a fine line between a direct tax and an indirect tax. The effect is the same. The elected representatives still have to raise taxes and is it not interesting, they say, well, this will protect, this will stop courts from raising taxes. In Rockford, Illinois, the judge, the unelected magistrate has ordered the school board to either raise taxes or go to jail.

□ 1230

There is no difference between that and the judge saying, ''I am going to order raising of taxes on my own.'' The original language of section 5 allows both scenarios.

However, the Delahunt-Boehlert amendment removes the second scenario and not only says that the judge cannot directly raise taxes but it still allows the judge to indirectly raise taxes. And as to all the environmental issues and everything else, what our bill says simply is this, to live within our means, to allow remedial plans to come about.

Maryland already has a State law with regard to cleaning up the environment, to cleaning up the waters. All these scare tactics that this will gut environmental laws, this will gut ADA laws, that is not the case. We are simply saying that local communities and elected representatives should not be ordered to go to jail unless they raise taxes. Because the only constitutional function for the Federal raising of tax is the United States Congress and not the Federal judiciary. And that is why it is absolutely important, it is compelling that to make this law have any teeth, we must defeat Delahunt-Boehlert.

Mr. YOUNG of Alaska. Mr. Chairman, I would say just one thing. I was not going to get involved in this argument. But the concept that a judge can raise taxes on the public without due representation is inappropriate.

Secondly, when we hear these scare tactics about clean water and clean air and all these good things in this bill, that is pure nonsense. States have the authority to do this to begin with. The States have the right to do it, and they should do it.

I am going to suggest, I have seen small communities that EPA and other agencies have required to do certain

things and they have gone broke. They have lost their schools, they lost other facilities in the infrastructure because of the agency saying they had to raise certain amounts of money to put in certain standards in that area.

I am suggesting, respectfully, that this amendment is a mischievous amendment that will give back the authority for judges. And I do not particularly like judges to begin with. I want to tell my colleagues right now, especially those that are appointed and have a life expectancy. I think it is also time to let them recognize that the people should be represented in this Congress.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. DELAHUNT).

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 230, noes 181, not voting 21, as follows:

[Roll No. 103]

AYES—230

Abercrombie
Ackerman
Allen
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Bass
Bentsen
Berman
Berry
Bilbray
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boswell
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Burr
Camp
Capps
Cardin
Carson
Castle
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Ehlers
Engel
Eshoo
Etheridge
Evans
Ewing
Farr
Fattah
Fawell
Fazio
Filner
Forbes
Ford
Fox
Frank (MA)
Franks (NJ)
Frost
Furse
Ganske
Gejdenson
Gephardt
Gilchrest
Gilman
Gordon
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hamilton
Harman
Hefner
Hinchey
Hinojosa
Hobson
Holden
Hooley
Horn
Houghton
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Klug
Kucinich
LaFalce
LaHood
Lampson
Lantos
LaTourette
Lazio
Leach
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
McCarthy (MO)
McCarthy (NY)
McDade
McDermott
McGovern
McHale
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Minge
Mink
Moakley
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Neal
Ney
Oberstar
Obey
Ortiz
Owens
Pallone
Pappas
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Porter
Poshard
Price (NC)
Pryce (OH)
Quinn
Rahall
Ramstad
Rangel
Regula
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schumer
Scott
Serrano
Shays
Sherman
Skaggs
Skelton
Slaughter
Smith (NJ)
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Sununu
Tauscher
Thompson
Thurman
Tierney
Torres
Towns
Upton
Velazquez
Vento
Visclosky
Walsh
Waters
Watt (NC)
Waxman
Weller
Wexler
Weygand
White
Whitfield
Wise
Woolsey
Wynn
Yates

NOES—181

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barrett (NE)
Bartlett
Barton
Bereuter
Bilirakis
Bliley
Blunt
Boehner
Bonilla
Bono
Brady
Bryant
Burton
Buyer
Callahan
Calvert
Campbell
Canady
Cannon
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehrlich
Emerson
English
Ensign
Everett
Foley
Fossella
Fowler
Frelinghuysen
Gallegly
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hoekstra
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jenkins
Johnson, Sam
Jones
Kasich
Kim
King (NY)
Kingston
Knollenberg
Kolbe
Largent
Latham
Lewis (CA)
Lewis (KY)
Linder
Livingston
Lucas
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Moran (KS)
Myrick
Nethercutt
Neumann
Northup
Norwood
Nussle
Oxley
Packard
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Pombo
Portman
Redmond
Riggs
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Royce
Ryun
Salmon
Sanford
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shimkus
Shuster
Sisisky
Skeen
Smith (MI)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Wamp
Watts (OK)
Weldon (FL)
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—21

Barr
Bateman
Becerra
Boyd
Bunning
Clay
Cook
Cooksey
Dixon
Gonzalez
Hastings (FL)
Istook
Matsui
Miller (CA)
Olver
Paxon
Petri
Radanovich
Tanner
Watkins
Weldon (PA)

□ 1255

Messrs. CONDIT, DICKEY, KIM, SAM JOHNSON of Texas, and MCKEON changed their vote from ''aye'' to ''no.''

Messrs. COYNE, GUTKNECHT, and EWING changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. MANZULLO. Mr. Chairman, I ask unanimous consent to strike section 5 of the pending bill.

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

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, not having been consulted on something of this importance, we are constrained to object, and so I do now object.

The CHAIRMAN. Objection is heard.

AMENDMENT OFFERED BY MR. CAMPBELL

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

The Clerk read as follows:

Amendment offered by Mr. CAMPBELL:

Page 9, line 5, and ''and'' after the semicolon.

Page 9, line 9, strike ''; and'' and insert a period.

Page 9, strike lines 10 through 12.

Page 9, line 2, insert after ''remedied'' the following: '', including through its effect on property values or otherwise''.

Mr. CAMPBELL. Mr. Chairman, the passage of the Boehlert-Delahunt amendment makes this amendment less important. But I believe it is still an improvement in the bill.

I am authorized to say that this amendment is agreeable to the majority, agreeable to the chairman of the committee, and agreeable to the author of this provision of the bill.

So in the interest of time, I would be prepared to yield back, unless this is controversial, in which case I will take additional time to explain it. But I have already tried my best to explain it to both sides, and I believe it is not controversial. So in the interest of time, I would yield back.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I think it is a very good idea. I have nothing absolutely to add to this debate.

The CHAIRMAN. Are there any other Members seeking recognition on the amendment by the gentleman from California (Mr. CAMPBELL)?

If not, the question is on the amendment offered by the gentleman from California (Mr. CAMPBELL).

The amendment was agreed to.

AMENDMENT NO. 5 OFFERED BY MR. ROGAN

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. ROGAN:

Strike section 6 and redesignate succeeding sections, and references thereto, accordingly.

Mr. ROGAN. Mr. Chairman, this amendment would involve deleting section 6 from the bill that is before us. Section 6 as proposed would allow parties as a matter of right in a civil case to peremptorily challenge a judge, without any showing of cause, for bias or prejudice. Under current law, a judge may be challenged for cause or for bias, but there must be an actual showing.

□ 1300

My concern, Mr. Chairman, with respect to the proposal that is set forth, is that it would do a couple of things. First, it would increase the likelihood that attorneys will use the new procedure for ''forum shopping''; secondly, it would allow lawyers to put judges in the position where retail justice is being served.

Mr. Chairman, in California, my home State, we have a similar provision already on the books that is being proposed by this current legislation under section 6. Unfortunately it is often used for all the wrong reasons. We have a number of examples in California where judges have been challenged not because of their ability to be fair or to hear a case; they are challenged because of their race, sex, age, political affiliation, or some other factor unrelated to their ability to sit in judgment.

Mr. Chairman, in California when I was a judge, I was present at judicial conferences where judges sat around and polled each other as to what the ''going rate'' was for sentencing in a particular case. Judges knew that if they deviated from the going rate, then attorneys who had the ability to come into court and file a blanket affidavit of prejudice against them would do so, thereby precluding them from hearing either a case, or a class of cases.

I think that we ought to retain the current system where judges may be challenged in cases of actual bias or prejudice. Although I respect the fact that my dear friend, our former colleague from California, Dan Lungren, is in support of the bill in an unamended fashion, I rise because I oppose this one particular provision.

Mr. CANADY of Florida. Madam Chairman, I move to strike the last word.

Madam Chairman, I am not going to oppose the gentleman's amendment although I believe that there is a problem with the current system that needs to be rectified. Under the current system in many cases I believe that litigants who have a reasonable basis for believing that they are not going to be treated fairly by a particular judge do not really have any realistic recourse to have the case moved to be considered by another judge. I do not think the current system is working.

I am not going to oppose this amendment at this time because the version of preemptory challenge to judges that is contained in the bill is a much truncated version of my original bill which I introduced, which followed in a tradition that was started by Representative Drinan many Congresses ago when he introduced a bill to allow for preemptory challenges of judges in criminal cases.

It is my belief that we should have a provision that covers criminal cases, civil cases in districts throughout the country. What is in the bill now, as a result of the work of the Committee on the Judiciary which I respect, is a version that only covers civil cases, it covers certain districts in the country, and I am not very enthusiastic about this version of the bill.

What I would ask the gentleman from California to do is to consider the problems with the current system and to work with those of us on the Committee on the Judiciary who are concerned about those problems for a realistic way of helping ensure that litigants can have confidence that they are going to be treated fairly and not be trapped in the courtroom of a judge who has a bias or who otherwise is not going to treat the particular litigant fairly. I think that is important to everyone.

In the past the American Bar Association has supported efforts along these lines of preemptory challenge. Preemptory challenge may not be the right way to do it, but I am convinced that the current system is fundamentally flawed. At least the way it operates is flawed in many cases, and we need to do something to address that.

Having explained that background, I will not oppose the gentleman's amendment, but I will hope that the gentleman, the gentleman from California (Mr. ROGAN), will be willing to work with us in coming up with ways of addressing the real problems that do exist because what we are looking for is a system that will protect all litigants, a system that will allow everyone going into court to believe that they are going to get a fair shake, not that they are going to get any advantage but that they will not be treated unfairly.

And that is my objection, and I believe that that is the objective of the gentleman from California and all the others who have been engaged on this issue.

Mr. ROGAN. Madam Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from California.

Mr. ROGAN. Madam Chairman, first I want to thank my distinguished colleague, the subcommittee chairman, for his comments. And I think that the chairman has hit the nail on the head: there are some procedural defects in what is currently on the books.

I agree that the procedure that was being proposed, a blanket preemptory challenge, is not the best way to deal with this. I would be the first to concede that there are problems with the current system. These problems are as diverse as the personalities of those judges who might be inclined to hear a case. I would be honored to work with my colleague in this particular area to fashion a more appropriate remedy.

So I want to thank the gentleman for his comments and for all the work he has done on this bill.

Mr. CANADY of Florida. Madam Chairman, I thank the gentleman for his comments, and I would extend the same offer to work together to the Democratic members of the Committee on the Judiciary who have opposed the provisions of the bill but who I also believe are concerned about helping ensure that all litigants are treated fairly in cases that are brought in the Federal courts.

Mr. FRANK of Massachusetts. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I want to, as did the gentleman from California, express my appreciation for the spirit of cooperation that the gentleman from Florida, to say yes. I think this is something we could work on in a cooperative way. I would just like to express my appreciation to the gentleman from California, the gentleman from South Carolina, who joined in this bipartisan effort, and I think it is very likely in the spirit that is developing here we will be able to address these issues. So I welcome this support, I thank my colleagues for the cooperation, and I shut up.

The CHAIRMAN pro tempore (Mrs. EMERSON). The question is on the amendment offered by the gentleman from California (Mr. ROGAN).

The amendment was agreed to.

AMENDMENT OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. JACKSON-LEE of Texas:

Add the following at the end of the bill:

SEC. 12. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

''§ 1660. Protective orders and sealing of cases and settlements relating to public health or safety

''(a) FINDINGS OF FACT REGARDING PUBLIC HEALTH AND SAFETY.—No order entered in accordance with the provisions of rule 26(c) of the Federal Rules of Civil Procedure shall continue in effect after the entry of final judgment in that case, unless at or after such entry the court makes a separate finding of fact that such order would not prevent the disclosure of information which would adversely affect public health or safety.

''(b) RESTRICTION ON AGREEMENTS AMONG PARTIES.—(1) No agreement between or among parties in a civil action filed in a court of the United States may prohibit or otherwise restrict a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information, unless the court makes a separate finding of fact that such agreement would not adversely affect public health or safety.

''(2) Any disclosure of information described in paragraph (1) to a Federal or State

agency shall be confidential to the extent provided by law.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding at the end the following:

''1660. Protective orders and sealing of cases and settlements relating to public health or safety.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of the enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

Ms. JACKSON-LEE of Texas. Madam Chairman, I appreciate very much the detailing of my amendment because I think if we listen acutely and carefully, we will find that my amendment does represent judicial reform, and the reason is that I am not seeking to take away the discretion of the judiciary or the judge. I am simply saying that I think in support of the right to know of the American people, even if one would argue that we have not determined that secrecy prevails and that judges may assess in their own determination at some time and can be cited sometime that they had determined that in a settlement they would, in fact, allow the facts to be detailed.

We have found that most often secrecy, once it is requested, remains. That creates a dangerous and hazardous set of circumstances for American consumers, American business persons, and generally it interferes with the fairness of having knowledge about anything that can impact negatively on the community.

I want to focus in particular on the language of this amendment. It indicates that a judge is required to make an assessment of whether or not secrecy must be maintained. That means that it allows the judge to go in specifically and assess the facts and decidedly make a determination: Yes, this must remain secret; no, it must not. In that ruling we would hope that the judge would take into consideration the terrible devastation or the blight that would come about by way of not allowing this information to come out.

Let me share with my colleagues an example that bears on health and safety. A case in the United States Court of Appeals for the Fifth Circuit involved litigation of a manufacturer of an artificial heart valve. This manufacturer of heart valves was allowed to keep secret through a court order life threatening defects, even as more of these valves were implanted in patients. None of us want to tolerate that sense of a lack of responsibility. We realize there was a settlement, but in this instance if we take the scales of justice, the weight of the public right to know is a more important right and responsibility than the secrecy of litigation.

I would argue I do think that if we weigh the scales of justice we will find that the higher right and the higher moral ground, along with the balance of the scales of justice, requires that we have a situation where we have an oversight over the overall point of perspective of settlement secrecy.

Let me add one other case. There was a case in the Third Circuit where the manufacturer of a drug that caused internal bleeding, they secured a secrecy order barring the injured consumer's attorney from disclosing this information to a government agency.

I am saying to all of my colleagues, this impacts our quality of life. In 1984 studies indicating the hazards of silicon breast implants were being uncovered. However, because of a protective order, this critical information was hidden from public view and from the FDA until 1992, more than 7 years and literally tens of thousands of victims later. Secrecy in our State and Federal courts undermines the right to know of every American citizen.

Let me now intervene and say it is not open season on secrecy. This particular amendment, if we are truly concerned about judicial reform, simply requires the judge to make a ruling that, yes, this does not impact the public health and safety.

Madam Chairman, I cannot imagine that Americans would not be so concerned as to not ensure that we have the open access to information that would impact their life and safety.

□ 1315

Secrecy keeps vital health and safety information from consumers. They have a right to know. The confidential settlements of early litigation involving the artificial valves kept life-threatening defects secret, even as more valves were being implanted. Hundreds of patients have died as a result of our failure.

In other cases, doctors have avoided disciplinary charges because court files, which would document negligent care, have been sealed. Secrecy creates more litigation. If you do not have the right to have this information acknowledged, then others are injured.

What does that generate? More litigation. If we are talking about bringing down the cost of what we perceive to be a litigious society, I happen to think everyone has a right to access the court of justice. But if for matter of argument we talk about increased litigation, secrecy helps to increase litigation, no matter what the cause. Business, personal injury, whatever we speak of, if we do not have knowledge and information, we increase litigation.

I would simply say as the American courts operate under the presumption of openness, my amendment enhances that openness. It allows those who feel that there is an element of secrecy that devastates the public safety the opportunity for the judge to rule that, in fact, this information must be presented to the American public and protect the safety and health of Americans.

Mr. COBLE. Madam Chairman, I rise in opposition to the amendment.

Madam Chairman, the tenor here on the floor has gone from discord to harmony. I am not going to bring it back to discord, but I want to at least go on record as resisting the amendment of the gentlewoman from Texas.

The amendment was defeated during the committee markup of the bill. It is opposed by persons interested in privacy issues; as well as the business community, including the National Association of Manufacturers, NFIB; the Chamber of Commerce, and others.

The amendment, it seems to me, would limit the ability of parties to negotiate private settlements and the authorities of a court to seal sensitive information after a final judgment has been reached unless a court makes a separate finding of fact that not revealing the information would not adversely affect public health or safety.

Recent studies, the Harvard Federal Judicial Center, the Judicial Conference, they strongly suggest that protective orders issued under rule 26(c) are not causing health or safety problems. In fact, the Civil Rules Advisory Committee of the Judicial Conference met in March, last month, and determined that no changes to rule 26(c) were needed.

Since many protective orders, and maybe most, are issued in employment discrimination and civil rights cases, the amendment would compromise the privacy rights of individuals, it seems to me. For example, a sealed order regarding medical records of an AIDS patient, for example. The amendment would also jeopardize the proprietary rights of businesses, trade secrets, and other confidential information, which a competitor might want to gain access to such information.

The courts already have rather wide discretion not to issue protective orders or to modify or rescind them. Discovery and the discovery process are designed to encourage parties to share information with each other and to settle, if possible. The amendment, it seems to me, interferes with this process and may well impose a greater strain on limited judicial resources.

Madam Chairman, I urge my colleagues to vote against the amendment.

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

Madam Chairman, my dear friend, the gentleman from North Carolina, Mr. COBLE, pointed out this amendment was defeated in subcommittee. Well, that is probably an indication it is a pretty good amendment. But it is important that we know that.

The next thing I should point out to everybody is that this amendment does not apply to civil rights cases. This amendment prohibits orders preserving the secrecy of documents that would adversely affect public health or safety. So, we are all in agreement so far.

So this is an amendment you might want to consider favorably, because when you do not disclose vital health and safety information and keep it out

of the public's reach, we have people that pay dearly; loss of life, as has been referenced by the gentlewoman from Texas.

So these protective orders are dangerous. The artificial heart valves problem with their defects were kept hidden. Hundreds of people died unnecessarily, because the court allowed these records to be sealed.

Then before I yield to the gentlewoman from Texas, I want to raise the problem that might become involved with the tobacco settlement. Look, the court records have hidden thousands of critical documents concerning the strategies used around teenage smoking, minority targeting, nicotine manipulation. You do not want to keep that information secret, do you?

The tobacco industry, bless their hearts, have gone to incredible lengths to keep these documents under wraps. Let us make sure that with this amendment, they will not be able to do that, because the courts are public institutions, and the records and what goes on in the courts should be within the province of the people.

Ms. JACKSON-LEE of Texas. Madam Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Madam Chairman, I thank the ranking member for yielding. I am glad the gentleman has emphasized this is not and does not have an impact on civil rights cases. Clearly, it points to the question of public health and safety.

Interestingly enough, if we want to clarify the procedural tracking of this amendment in committee, we had unanimous consent on this amendment for a period of time. I do note, and I, too, want to add to the collegiality of the floor debate and say to the gentleman from North Carolina (Chairman COBLE) that I recognize that there are supporters of this bill that are not supporting this particular amendment. Many of them are from the manufacturing and business community.

I would argue that that does not justify opposing this particular amendment, because, in fact, I think it is more important to not get into a discussion between defense attorneys and trial lawyers or plaintiff's lawyers. This has to be a question of the public health and safety and the balance between the scales of justice.

Do you want knowledge about car seats that impact babies to be kept secret, so that those who would have to utilize these seats will not have the opportunity to know the information to prevent future litigation? What about Xomax, the artificial pain reliever that was manufactured in the early 1980s and was found to be dangerous? What about waterslides, where a gentleman fell and slid and broke his neck? Why would we not want the information to be able to provide the consumers with the basis of not having that happen again?

So I really think that we do better to err on the side of allowing the judge, and, again, this is not open season on violating settlements; it is allowing the judge to make an independent assessment that, in fact, you would do damage to public health and safety if you did not open these records.

Mr. CONYERS. Madam Chairman, reclaiming my time, it is an easy ''aye'' vote, and I urge support of the amendment.

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

Madam Chairman, I rise in support of this amendment. I think it is an excellent amendment.

We have all read in the newspapers of settlements of major lawsuits in which many of the documents in court, the terms of the settlement, are secret. The fact is one of the purposes of our system of justice is to vindicate the public interest and the public safety. The suit in which someone sues a major company because the product they are producing is unsafe, that it is going to cause deaths, and the company settles the suit, and one of the terms of the settlement is that the evidence and the admission, perhaps, that this product is unsafe, or will cause death unless modified; you keep that secret so people do not know it, that does not serve the public interest.

Companies should not be permitted to buy off for cash these kind of safety concerns so that other members of the public will die or be injured. This needs to be in the public domain.

So I commend the gentlewoman from Texas (Ms. JACKSON-LEE) for having the originality and initiative to offer this amendment. I ask my colleagues to vote for it.

Ms. JACKSON-LEE of Texas. Madam Chairman, will the gentleman yield?

Mr. NADLER. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Madam Chairman, I thank the gentleman for his leadership on many of these issues.

I would like to go back, Madam Chairman, to something that remains sort of controversial even today, but knowing the many breast implant survivors that I have had the opportunity to interact with from a perspective of not trying to do anything more than to bring to the American public that their illnesses, that the impact of the silicone breast implants are not a dream; they are not unreal, they are actually real.

So we are not talking about now the litigation and debate or nonlitigation. What we want to debate is whether or not if we had had this particular provision we would have been able to avoid the tragedies of what we are seeing today with so many victims of silicone breast implants.

For example, in 1984, as I said earlier, and I want to repeat this, studies indicated the hazards of silicone breast implants were being uncovered. Because of a protective order, this critical information was hidden from the public view and from the FDA until 1992, more than 7 years, and literally tens of thousands of victims later.

I would imagine if the business community actually sat down, scratched their head, and took out their pen, it would have been better for this information to be known in 1984 to avoid the thousands upon thousands and millions of women who have been devastated by the silicone breast implant. Knowledge would have avoided the tragedies of 1998.

I also say that with respect to fuel tanks, with respect, as I said, to the heart valves, with respect to a certain lighter that was utilized, as well as certain xerox, asbestos, the Corvair story which we know so full well, these are stories that the American consumers would have far better appreciated or benefitted, if a judge had simply assessed beyond the need of secrecy and the individuals inside that courthouse, to say you have a settlement. But with respect to the violation of the consumer product or the product itself, I believe in making an assessment.

That information should either go to the public or a governmental agency. That is what we are losing if we do not vote for this amendment. I cannot imagine if we are talking about judicial reform that we would not allow a court to make that assessment.

For the response that the rule works all right, what was really said was we have seen no problems. We know a judge will do it if they need do it. Again, I am not doubting the integrity of the judiciary, but this is too high a stake for us to leave it randomly to the arguments of lawyers who would plead to that judge, ''don't you dare,'' and, rightly so, the judge leaves it secret, rather than making an independent assessment that would cause a review of that material to allow just that information, public safety and health, to be allowed to be part of the public right-to-know.

Madam Chairman, with that, I would ask with all due seriousness and call for judicial reform; that this is an amendment that speaks to reform beyond all. I would certainly ask that my colleagues join in voting for this amendment on behalf of the American people's right to know.

Mr. NADLER. Madam Chairman, reclaiming my time, I would add that I hope everyone votes for this amendment. It seems to me this is one of the very few amendments for which the arguments are all on one side. I urge all Members to vote for it.

The CHAIRMAN pro tempore (Mrs. EMERSON). The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

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

RECORDED VOTE

Ms. JACKSON-LEE of Texas. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 177, noes 242, not voting 13, as follows:

[Roll No. 104]

AYES—177

Abercrombie
Ackerman
Allen
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Bereuter
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Campbell
Capps
Cardin
Carson
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Edwards
Emerson
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Fazio
Filner
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Green
Hall (OH)
Harman
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Horn
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (WI)
Johnson, E. B.
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Leach
Lee
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Lewis (GA)
Lipinski
Lowey
Luther
Maloney (CT)
Manton
Markey
Martinez
Mascara
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller (CA)
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Moakley
Mollohan
Moran (VA)
Morella
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rohrabacher
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schumer
Scott
Serrano
Shays
Sherman
Slaughter
Smith, Adam
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Tauscher
Thompson
Thurman
Tierney
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Towns
Velazquez
Vento
Visclosky
Waters
Waxman
Wexler
Weygand
Wise
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Yates

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Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
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Calvert
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Castle
Chabot
Chambliss
Chenoweth
Christensen
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Collins
Combest
Condit
Cooksey
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Cubin
Cunningham
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Davis (VA)
Deal
DeLay
Diaz-Balart
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Dreier
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Ehlers
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English
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
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Gibbons
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Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
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Greenwood
Gutknecht
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lofgren
Lucas
Maloney (NY)
Manzullo
Matsui
McCollum
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Moran (KS)
Murtha
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
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Pitts
Pombo
Pomeroy
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Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Roemer
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Rogers
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sandlin
Sanford
Saxton
Scarborough
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Schaffer, Bob
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Sisisky
Skaggs
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—13

Bateman
Clay
Cook
Dixon
Gonzalez
Gutierrez
Hall (TX)
Hastings (FL)
Istook
McCrery
Miller (FL)
Paxon
Tanner

☐ 1351

Ms. McCARTHY of Missouri, Mrs. THURMAN and Mr. BOSWELL changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

(By unanimous consent, Mr. WELDON of Pennsylvania was allowed to speak out of order.)

ANNOUNCEMENT OF FIRE EMERGENCY IN THE LONGWORTH HOUSE OFFICE BUILDING

Mr. WELDON of Pennsylvania. Madam Chairman, I move to strike the last word.

Madam Chairman, we just experienced what could have been a very tragic incident in one of our House office buildings, and that was a fire which started in the basement of the new elevator shaft that is being constructed, that poured smoke throughout that seven-story complex and required that building to be evacuated for a significant period of time.

Eleven years ago I came on this floor and offered a privileged resolution of the House regarding the health and safety of the Members, because we had a similar fire in then Speaker Jim Wright's office which burned out of control, and to which I had to respond that the buildings that we work in are absolute fire traps because there were no detection devices, no alarm systems, no sprinklers, there was no preplanning, no exit drills. There were no efforts in place to guarantee the safety of both the Members and our constituents.

Today I can rise and report exactly the opposite. In fact the response was quick, it was efficient. The Sergeant at Arms, the Capitol Hill Police, and those brave officers who by the way had to go to the hospital because of smoke inhalation and whose names I will enter into the RECORD today, all performed above and beyond the call of duty.

I might add, however, that Members who were on the seventh floor of Longworth did acknowledge that immediately the alarm system did not go off, and that is the reason why we must continue to press for adequate preplanning and the need for us to understand the severity of the situation.

As I stood there during the entire operation and saw people in wheelchairs and people who were challenged physically coming off the elevators, we come to realize the importance of taking lessons in advance to understand the potential for injury and perhaps even loss of life in these kinds of situations.

So while the story was absolutely a positive one, and Sergeant at Arms Livingood and the Architect of the Capitol, Ken Lauzier and the Chief of the Capitol Hill Police did an absolutely fantastic job with all the various components that we could muster on Capitol Hill, Dr. Eisold's staff to treat those personnel who were, in fact, affected with smoke inhalation, there are some lessons to be learned from this. I would hope that it would remind all of us that we need to understand that life safety, both for ourselves and for our staffs and for our constituents, needs to be a top priority every day this Congress is in session.

Mr. HOYER. Madam Chairman, will the gentleman yield?

Mr. WELDON of Pennsylvania. I yield to the gentleman from Maryland.

Mr. HOYER. Madam Chairman, I thank the gentleman from Pennsylvania (Mr. WELDON) for yielding to me. Madam Chairman, as all of us know, many of us know, the gentleman from Pennsylvania has been one of the leaders on fire service protection not only on Capitol Hill but throughout this country.

He is a former chief of a volunteer fire company of his own congressional district, a former municipal leader. And he did, in fact, raise to a high level of attention, subsequent to the fire in Speaker Wright's office, the necessity to make our buildings more safe for our Members, for our staffs, as well as for the visitors to our offices.

Today's fire in the Longworth House Office Building was a fire that apparently an acetylene torch, I think, heated up some materials that ignited very rapidly and shot flames seven stories high up through the elevator shaft. There was very significant smoke on

the seventh floor. I do not know about other floors, but I heard from my staff on the seventh floor.

What is significant, and I think we all ought to know, is the extraordinarily quick and very skillful response that was given by the Capitol Hill officers, our medical staffs, the Sergeant at Arms' staff, all of those who were called upon to assist in evacuating the building. Some of the officers that were taken out, were taken out because they remained in the building to make sure that the building was, in fact, evacuated by showing great courage to assure the safety of all of those who might be in the building.

In addition, I want to report that my staff reported that the District of Columbia Fire Department was there almost immediately. There has been some criticism of the District of Columbia Fire Department for not responding as quickly as they might, but in this instance they were there very, very quickly.

And I think we owe a debt of thanks to all of those who we rely on day-to-day. As is so often the case, we do not think of them because we are not personally involved, it does not happen, there is not a crisis. And because they are there to respond to domestic crises such as this and we do not have one, we may not acknowledge their presence and their readiness to risk their limbs and their lives to protect their communities.

So I want to join with the distinguished gentleman from Pennsylvania (Mr. WELDON), who has really made it a cause, and a successful one at that, to ensure that we are aware of the risks and take every precaution to avert risks that might have tragic consequences for individuals not only on Capitol Hill, not only in this city, but throughout this country.

So I thank the gentleman for taking this time and thank him for yielding me this time.

Mr. WELDON of Pennsylvania. Madam Chairman, reclaiming my time, just in closing I would mention from the D.C. Fire Department that Battalion Chief Schaefer was the leader. We had Engine Company 13, 2, 8 and 6; Truck Company 7 and 10; Rescue Company 1 and 3; and Battalion 2. They did an absolutely fantastic job.

In addition, I would like to enter the names of those officers who were taken to the hospital. We do not know the status of these officers' conditions. They were all affected by smoke inhalation, but I think it once again underscores the need for us to be aware of the duty and the honor that these people take so seriously in protecting the lives of ourselves and our constituents.

Taken to local hospitals and either treated or currently there for further treatment are Sergeant Givens, Officer Merz, Officer Scott, Officer Worley, Officer Sturdivant, Officer Cleveland and Officer Blackman-Malloy.

□ 1400

We thank all of them. We thank the chief of the department, Chief Abrecht. We thank Bill Livingood for a fantastic job, Dr. Eisold, as well as Ken Lauizer and everyone who came together in doing what should have been the right thing, and that is responding. I would encourage, again, our colleagues to remember that on the seventh floor, the alarm did not go off.

It is our responsibility to make sure if an incident occurs that we have to activate that manual alarm. It does not activate automatically. You have to pull that device down. That was not done on the seventh floor.

Furthermore, I would say this is an opportune time for me to announce that next Thursday at this time, 12 noon, there will be 3,000 firefighters from across the country in the parking lot right outside this door where we will assemble the largest gathering the Nation's fire and EMS community who are coming to us to talk about the fact that they feel we are not doing enough to assist them in their current efforts by our agencies in Washington to deal with the threats of terrorism and the response to those terrorist acts.

I would encourage our colleagues to join with the gentleman from Maryland (Mr. HOYER) and myself as we have a national press conference with the Speaker in attendance and focus on their issues, one week from today at 12 noon directly outside of the House Chambers.

AMENDMENT OFFERED BY MR. NADLER

Mr. NADLER. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NADLER:

Page 17, strike line 20 and insert the following:

(b) AUTHORITY OF DISTRICT COURTS.—

(1) IN GENERAL.—Notwithstanding—

Move the remaining text on lines 21 through 25 2 ems to the right.

Add after line 25 the following:

(2) OBSCURING OF WITNESSES.—(A) Upon the request of any witness in a trial proceeding other than a party, the court shall order the face and voice of the witness to be disguised or otherwise obscured in such manner as to render the witness unrecognizable to the broadcast audience of the trial proceeding.

(B) The presiding judge in a trial proceeding shall inform each witness who is not a party that the witness has the right to request that his or her image and voice be obscured during the witness' testimony.

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

The CHAIRMAN pro tempore (Mrs. EMERSON). Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. NADLER. Madam Chairman, I am pleased to offer this amendment along with my colleague, the gentleman from Ohio (Mr. CHABOT). As my colleagues know, this bill would permit cameras into Federal district courts at the judge's discretion. In the past, I have been very concerned, and I have opposed allowing cameras into trial courts because I feared it might intimidate witnesses. It is already intimidating enough for someone who witnesses an accident or a crime, and then sees an appeal on television that the police ask anyone who has seen this or has information please come forward. It is intimidating enough for such a person who knows that if they come forward they may well be asked to testify in court; they may well be subject to cross-examination by an attorney whose job it is to impeach their credibility as a witness, and to make them look foolish. In effect, that is a pretty intimidating prospect.

It is bad enough even if you are only going to be subject to that cross-examination in front of 30 people in the courtroom. But to be subject to that cross-examination perhaps in front of all your relatives, and friends, and wife, and children, and neighbors might be even more intimidating. I have always feared that this might lead to some witnesses not coming forward.

The gentleman from Ohio (Mr. CHABOT) suggested a way out of this dilemma, and I am delighted to join him in offering this amendment. He suggested, and what this amendment does is to say that where you are having cameras in the courtroom in a trial court, any witness other than a party to the action may at his or her request have his face and voice distorted so you cannot tell whose face it is, and you cannot recognize the voice. You can still hear what he is saying on the television so that, yes, this person's name will be known; yes, you can photograph him walking in or out of the courtroom, but he is not, he will have less fear of being made to look foolish in front of his friends on television by the opposing attorney.

This is not the most important thing in the world, but I suspect very much that there are witnesses in this world who will come forward if this is the procedure who might not otherwise come forward if this is not the procedure.

Again, you have cameras in the courtroom. This does not take that away. But it simply allows a witness at the witness' request to have his or her face and voice obscured during the testimony. At the committee, no arguments were offered in opposition so there was some confusion and some Members voted against it. I hope that will not happen on the House floor today.

Mr. CHABOT. Madam Chairman, I move to strike the last word.

I rise in support of the amendment offered by the gentleman from New York (Mr. NADLER) and myself. The amendment gives important protections to witnesses who may be otherwise reluctant to testify in a televised trial by requiring upon request of the witness that the face and voice of the witness be disguised or obscured in such a manner that it will not be evident who that person is testifying. I

think it is a good amendment. I thank the gentleman for offering it.

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

I will not consume 5 minutes. As we all know, cameras in the courtroom is an issue adamantly opposed by some; enthusiastically supported by others. This amendment, it seems to me, does no harm. It modifies the cameras in the courtroom approach slightly, but I think there the error is harmless, and I will not resist the amendment, not oppose the amendment.

Mr. FRANK of Massachusetts. Madam Chairman, I move to strike the requisite number of words.

After the passionate appeal of the gentleman from North Carolina, I thought I would try to restore a sense of calm to the Chamber. I also do not regard this as an amendment of enormous significance. I may approach it, however, from the opposite direction. I do not like the underlying provision.

I think requiring witnesses to a trial to be on camera, I think, is a mistake. I think where you are talking about appellate courts, it is reasonable, and I think the Supreme Court of the United States deserves criticism for not allowing its arguments to be run. I can think of few things that would be more useful and more informative for the country than for people to be able to watch Supreme Court arguments.

The notion that the nine Supreme Court justices and members of the Supreme Court bar would somehow be intimidated or thrown off by this is nonsensical. But when you get to witnesses, I think it is a mistake. I am not offering an amendment now; I do not want to take the time in the House. I do think the gentleman's amendment makes a situation that I regard as an unfortunate one a little less unfortunate. I think it is a good idea to have the face obscured.

On the other hand, I do have to say the gentleman said, well, people might be afraid of being made to look foolish. They will still be made to look foolish. They will, however, be made to look foolish with their face obscured. There may be a large number of people in this society who do not mind being made to look foolish, when everyone knows who they are, as long as their faces are obscured. But I think the, okay, put a mask over me and make me look silly group is smaller than my friend may make.

So therefore I would rather not see this at all with regard to witnesses. I do think anybody ought to have a right to object. When you talk about people who are involuntary participants, private citizens, not used to the public debate being thrust into the public this way in a trial, I do not think it is a good idea to require them to be cross-examined, perhaps, and made to look foolish to be there. But that is not the issue now. This is an amendment that, as I said, makes what I regard as an unfortunate situation a little less unfortunate, so I will also vote for the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The amendment was agreed to.

Mr. WATT of North Carolina. Madam Chairman, I move to strike the last word for the purposes of a colloquy with the chairman.

I simply wanted to, in a sense, create a legislative record so that everybody is aware of an interpretation that we are giving to a provision in this bill, and wanted to call the chairman's attention to page 3, section 3 of the bill, and reaffirm with the chairman that it is, in fact, the intention of this bill to allow an immediate appeal either on the granting of a class action motion, or on the denial of a class action motion to assure that this provision in the bill is intended to work in both directions.

Mr. COBLE. Madam Chairman, will the gentleman yield?

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

Mr. COBLE. Madam Chairman, the gentleman from North Carolina is precisely correct; that is the intent, to apply to both.

AMENDMENT OFFERED BY MS. LOFGREN

Ms. LOFGREN. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. LOFGREN:

Add the following at the end:

SEC. 12. PARENT-CHILD TESTIMONIAL PRIVILEGES IN FEDERAL CIVIL AND CRIMINAL PROCEEDINGS.

Rule 501 of the Federal Rules of Evidence is amended—

(1) by designating the 1st sentence as subdivision (a);

(2) by designating the 2nd sentence as subdivision (c); and

(3) by inserting after the sentence so designated as subdivision (a) the following new subdivision:

''(b)(1) A witness may not be compelled to testify against a child or parent of the witness.

''(2) A witness may not be compelled to disclose the content of a confidential communication with a child or parent of the witness.

''(3) For purposes of this subdivision, 'child' means, with respect to an individual, a birth, adoptive, or step-child of the individual, and any person (such as a foster child or a relative of whom the individual has long-term custody) with respect to whom the court recognizes the individual as having a right to act as a parent.

''(4) The privileges provided in this subdivision shall be governed by principles of the common law, as they may be interpreted by the courts of the United States in the light of reason and experience, that are similar to the principles that apply to the similar privileges of a witness with respect to a spouse of the witness.''.

Ms. LOFGREN (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. LOFGREN. Madam Chairman, this amendment is offered by myself and the gentleman from New York (Mr. NADLER) to correct what is a very serious defect in our Federal criminal and civil procedures.

Under our Federal law and the law of many States, children can be compelled to testify against their parents, and parents can be compelled to testify against their children. Although most prosecutors refrain from subjecting a family to this terrible situation, it can and does occur. I have long believed that parents and their children should be shielded from this trauma, and that doing so would not do significant damage to the administration of justice.

Therefore last month the gentleman from New York (Mr. NADLER) and I introduced H.R. 3577, which currently has 18 cosponsors in the House. This bill, the Confidence in the Family Act, is identical to this proposed amendment.

This amendment would ensure that parents and children could not be compelled to testify against one another, and that confidential communications between parents and children will be protected. These privileges would be similar to the privileges currently provided under Federal law to spouses, and would be developed by the courts in light of the common law, reason, and experience.

Rule 501 of the Federal Rules of Evidence states that, except as otherwise required by the Constitution of the United States or act of Congress, the privilege of witnesses, persons, governments, States, et cetera, will be governed by the principles of the common law as they may be interpreted by the courts of the United States.

We went to this development of evidence back in 1975 when the Committee on the Judiciary recommended, and the Congress adopted, the rule that allows our courts to develop the details of privileges and exceptions.

As you note, in the amendment that the development of this exception for parents and children should follow that allowed for spouses. In answer to some questions that Members have had, spouses currently can be compelled to testify against each other in certain circumstances.

For example, threats against spouses and spouses' children do not further the purposes of marital communications, and therefore are not protected from disclosure. Similarly, marital communications subject to the privilege are subject to an exception for crimes committed against a minor child and the rule that one spouse cannot be a witness against the other is subject to exception where one spouse commits an offense against the other. That is U.S. v. Allery.

Why is this important? I think many of us, without going into any of the details, recently observed a situation in which a mother was asked in a very high profile case to testify about confidences that her daughter had placed

in her. When I saw that, and it is not a new thing in the law, I immediately thought of my daughter who is 16 years old, and I thought, could the government force me to reveal what my 16-year-old told to me in confidence? There is something quite wrong about that.

We parents spend most of our lives trying to make sure that our children trust us enough that if they have a problem, if there is something that is troublesome, they always know that they can, and they should, come to their mom and sort through it with us so that we can help them make mature decisions, so that we can help them lead a good life, and come to where they need to be.

If the young people of this country understand, as they currently do now, unfortunately quite well, that the confidences revealed to a parent as we sort through the things that we do in adolescence could be forced out into public view, that important bond, that important value, that family value is unalterably disrupted.

We have talked a little bit about the details and the exceptions to this rule of evidence, but I think it is important to understand why there are exceptions to forcing testimony at all.

□ 1415

We do not force a husband and wife to testify against each other, and the reason why is that we have said that the spousal relationship is so important that we will not allow it to be disrupted by the government for any purpose.

Surely, the relationship between mother and daughter, between father and daughter, between father and son is as valuable, as precious as that between husband and wife.

I hope that the House will look favorably upon the amendment.

Mr. COBLE. Madam Chairman, I rise in opposition to the amendment, and I do so not real comfortably because of the fact that the gentlewoman from California (Ms. LOFGREN) has been a very valuable member of the Committee on the Judiciary and, more specifically, the Subcommittee on Courts and Intellectual Property.

But I say to the gentlewoman from California, there is a matter that probably should have come a little earlier. I realize that we cannot always be perfect as far as timing is concerned. But Rule 501 simply requires a court to observe principles of common law when deciding whether to confer privileged status to an individual or relationship unless an action is civil and involves State law, in which case State law on the matter would be applicable.

A privilege means, as most of my colleagues know, that a court may not compel testimony against a privileged witness or party. For example, many States will not compel a person to testify against his or her spouse or to reveal confidential conversations between them.

The amendment creates a broad privilege that would prevent a court from compelling a witness to testify against a child or a parent of that witness or from revealing confidential conversations between the two. The overwhelming majority of Federal and State courts, Madam Chairman, have rejected such a parent-child privilege.

The Judicial Conference—well, let me say it a different way. I do not mean to say that we should only comply with what the Judicial Conference wants. But we do stay in touch with the Judicial Conference, and the Judicial Conference has not informed the committee that it plans to recommend any changes to Rule 501, which is of some significance I think.

Recognition of a parent-child privilege might prevent a parent from acting in the child's best interest by notifying authorities. Similarly would the alleged benefits of such a privilege outweigh the harm caused by a child whose testimony could not be compelled against a parent indulging, for example, in drug trafficking.

The scope of the privilege is not explained in the Lofgren amendment. I do not think the scope of the privilege is explained in the amendment. For example, would it only apply to unemancipated minors? What about stepparents? What about grandparents?

And I guess I alluded to this earlier, Madam Chairman, that this was not the subject of the subcommittee hearing nor the full committee markup. And I think the idea is, essentially, untested at the State level; and I just do not believe that we can anticipate the consequences of enactment. And I just believe that it is ill-timed, among other reasons that I just mentioned.

Madam Chairman, I yield to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Madam Chairman, I recognize that the gentleman from North Carolina disagrees on the substance, but I did want to clarify so as not to mislead in terms of my previous comment. I was referring to line 3 in Rule 501.

''The privilege of a witness, person, government, State or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States and in the light of reason and experience,'' is what I meant to refer to so as to avoid any confusion.

And as my colleague notes in the amendment, on line 3, page 2, the amendment suggests to the court that the privileges to be carved out for parent-child should be similar to those with the same exceptions that have been devised for the spousal privilege.

Further, in answer to the question as to foster parents or stepchild, I have suggested, on line 17 on section 3, that such individuals should be included if the court recognizes that the individual is seen as having the right to act as a parent.

Mr. NADLER. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise to support this amendment to protect the parent-child privilege. A few weeks ago, I joined with the gentlewoman from California (Ms. LOFGREN) to introduce a bill to create this privilege in Federal law; and I am proud to support this amendment today.

Frankly, I always assumed it was in the law. It was only when we read about the situation with Ms. Lewis being compelled to testify against her daughter by the independent counsel that I, to my surprise, found there was no such privilege.

This amendment will not affect that situation. That testimony has already occurred. But it will affect the future.

We pride ourselves in this country on the sanctity of the family. It is one of the core, fundamental American values. We encourage our kids to talk to us. We ask them to confide in us, to come to us when they are in trouble. It is not always easy, but I am sure a lot of fellow parents out there will agree with me when I say that developing that bond of trust between parent and child is part of what being a parent is all about.

The concept that a parent could be compelled to testify against his or her own daughter or son is shocking to a lot of people. It is shocking to me. In fact, a lot of people that I have spoken to are amazed that this kind of thing is not illegal already. They have asked, how can we do this in America?

We have decided in our judicial system that certain privileges, certain relationships are sacred. The vast majority of jurisdictions recognize the husband-wife privilege as well as attorney-client and psychiatrist-patient. And, yes, there are cases that would have turned out differently if we could have compelled a psychiatrist to testify about his patient or lawyer against her client or husband against wife or wife against husband. But that is not the kind of judicial system we want, where husbands and wives are compelled to testify against each other except where there has occurred spousal abuse or child abuse or something of that nature. It is not the kind of country we want.

I have long believed that the same sort of privilege should be extended to parents or children. No parents should ever be faced with the agony of being in contempt of court or of testifying against his or her child. No child should ever have to fear that sharing personal information with his parent or her parent could result in a subpoena for his parent.

This amendment would remedy this by establishing this parent-child privilege and would require the Federal courts to establish its boundaries according to the principles of common law as well as the court's own reason and experience.

For the past several years, there has been a lot of talk in this town about family values. I think it is fair to say that this amendment is a test of that.

If we truly respect family values, we must put our money where our mouth is. If we truly respect family values, we must protect the ability of parents and children to have full trust in each other and not fear the court's subpoena to get in between them.

Now, I heard the gentleman a moment ago say that we do not want to prevent parents, that this amendment might prevent parents from notifying authorities in case of crimes or damages. But that is mistaken. It would not. This amendment would only prevent compulsion from the court. It would prevent the court from compelling a parent to testify or a child to testify against his or her parent. It would certainly not prevent the parents from notifying the police or the courts of drugs of or crimes or of danger or anything else that they wanted to notify and thought it advisable to notify the police or other authorities about. It simply would say the court shall not be between a parent and child and compel that testimony.

I think we have to recognize, as to this human relationship we have, if we are ever going to be serious about protecting family values, this is the key. Everything else we do about family values may be wise or not wise, but nothing is more key than enabling a parent and a child to talk under all circumstances without anyone worrying that someone is going to compel the child or the parent to testify in court about the confidences. We want children to be able to confide in their parents and vice versa.

So I very much urge all my colleagues to support this excellent amendment.

Mr. FRANK of Massachusetts. Madam Chairman, I move to strike the requisite number of words.

I rise to disagree with my friend on the general principle, also on one specific. He said, in the course of discussion of good conversations with our parents, we should put our money where our mouth is. My mother always told me never to put any money in my mouth. So I want to be truth to what she taught me.

But I have both substantive and procedural objections to this amendment. I understand that a lot of my colleagues were unhappy with what Kenneth Starr did. I have been often unhappy about what Kenneth Starr did. We might even want to come back after we have adjourned in a special session and call it the Kenneth Starr correction session. Because there are a number of things I would like to do to change some of the things Kenneth Starr has done, beginning with the underlying statute, but not in this manner.

Hard cases make bad law we are told. Well, it can also be bad law if we react too quickly because we have a specific objection to a particular act. I am sorry that he subpoenaed Marcia Lewis. But what if we were talking about a case of murder? What if we were talking about a kidnapping? What if we were talking about a 60-year-old parent and a 35-year-old child? What if the criminal was the 60-year-old parent and the 35-year-old child had valuable information dealing with a serious felony?

This bill extends the privilege equally to a 35-year-old child of a 60-year-old accused criminal as it does to a 35-year-old mother of an 8-year-old child, or vice versa. So, for instance, one of the questions I have and I noted my staff pointed out to me, the State of Massachusetts has such a privilege for minor children only. Now, that is an interesting idea I would like to explore. Maybe there ought to be some kind of privilege for minors. But that is not in this bill.

This bill went through subcommittee. It went through hearing and subcommittee and committee. This is the first I have heard of it. I notice the gentlewoman from California (Ms. LOFGREN) did file this as part of her bill on March 28, the Friday before we went out. It is just not enough time.

This is civil and criminal. Maybe there should be a privilege in civil cases. Although, even in civil cases, I note when I read about insider trading, a crime which a lot of people on my side do not like, that very often those involved in insider trading are relatives, they are adult relatives, the adult stockbroker son of a lawyer father or mother. Well, I do not know that I want to give those people a privilege.

I do not see that there is any problem in saying that adult children and adult parents who are in the financial business can conspire to do inside trading without talking to each other. These are all the issues that ought to be talked about, and they have not been.

I do not think it is a good idea in anger against Kenneth Starr to bring this forward at this point without knowing a lot more about it. Maybe there are Members here who know a lot more than I do about this subject. That would not be hard. But that is precisely the point. I doubt that very many of us are very familiar with this.

The gentleman from New York (Mr. NADLER) acknowledged that he was surprised, as many were, that there was no such privilege. I do not think we should go as a body from ignorance about it, which I certainly had, to within a month or so passing a law that governs every civil case and every criminal case in the Federal system and every parent and every child no matter what their age.

Madam Chairman, I yield to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Madam Chairman, I thank the gentleman from Massachusetts for yielding.

I think the point made about hearings is not a balanced one and it is one I have made from time to time on this floor about other bills. We have offered it up as an amendment to this bill because it is germane and because I am reasonably confident that my bill will not be heard.

Mr. FRANK of Massachusetts. Madam Chairman, let me say this. I think the gentlewoman has made something of an assumption that is not fair to the gentleman from North Carolina. I do not see why she would assume that we could not have a hearing on this issue. I would be surprised if the gentleman from North Carolina said at an appropriate time he will not do this.

I will note that, on a bill that has been a bill for less than a month, it certainly would not be fair to criticize, and the gentlewoman was not criticizing. We have only been back in session for about a week and a half. But I think this is something we should be considering. But taking it up on the floor now, when nobody knows much about it, without any of these questions, on a blanket basis, seems to me a very poor way to legislate.

I also want to add again, I disagree at this point. I do not understand why a 40-year-old who may have murdered someone should be shielded from his or her 60-year-old parent testifying. I do not understand that. It is a very different situation if we are talking about a 14-year-old. But having one blanket to cover all of these situations seems to me to be a mistake.

Ms. LOFGREN. Madam Chairman, if the gentleman would yield further, that is a substantive disagreement; and that is fair enough.

I would like to point out, however, in defense of the proposal, even though I understand his valid and thoughtful objection, but the better view in terms of the cases as to criminal activity in the area of spousal privilege is that the privilege does not apply to furtherance of this.

Mr. FRANK of Massachusetts. Madam Chairman, I thank the gentlewoman. As she knows, the better view means, for the nonlawyers, understand my colleague is talking lawyer now, not English. That is not her fault. That is the language.

The CHAIRMAN pro tempore (Mrs. EMERSON). The time of the gentleman from Massachusetts (Mr. FRANK) has expired.

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

Mr. FRANK of Massachusetts. Madam Chairman, the better view means more people hold that view than hold the other view. It means more courts have gone one way more than the other. But it also means some courts have gone the other way. So the gentlewoman is agreeing that, under the law to which she would refer us, this is an unsettled question and some judges go one way and some another.

Well, I think if we are going to deal with this kind of privilege, we ought to decide whether we want it to cover murder cases. And, again, what the gentlewoman has here is a blanket provision that applies equally as between

adults who may have conspired together to murder and minor children. And we all think about children. We all think about protecting young children. That is a very valid thing to do.

□ 1430

It seems to me Massachusetts has a good idea by talking differently about minor children. That is not what the gentlewoman's amendment does. To rush into this now and to lock it in would be an emotional response to an understandable provocation, but it would be, I think, an inappropriate way to legislate.

I would say, as the senior minority member of the committee, this is the first time I have heard of this issue, today, yesterday, taking it back to the Committee on Rules. I would be glad to go and lobby my colleague from North Carolina and let us address this issue of privilege. There may be other privileges we want to look at. The question of lawyer/client privilege when the client has died might be a problem. I suppose lawyer/client privilege when the lawyer has died is less problematic, except for Shirley MacLaine.

But, in general, this whole question of privilege could be looked at, but not hastily in reaction to a very politicized situation involving the current Independent Counsel, without many Members knowing what they should about it or having a chance to explore it.

So I urge the Members to vote ''no'' on this, and let us deal with this very, very important issue in a more thoughtful context.

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

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

Mr. HYDE. Madam Chairman, I want to join the gentleman from Massachusetts (Mr. FRANK) in his well thought out sentiments because I think he is exactly right. This is an important subject and it is one that deserves thoughtful consideration.

A trial is a search for truth; and when we start asserting privileges, we are putting obstacles to that search for truth. They may well be justifiable, but I think they do impede the quest for learning the facts about a given situation.

We have a spousal privilege. We have an attorney/client privilege. We have executive privilege. We have a Secret Service privilege. Now we are creating a parent and child privilege. The whole subject of privilege is, it seems to me, important and significant and complicated, and perhaps we should look at it in a more thoughtful way than we are doing here.

We missed the priest/penitent privilege. But what we are doing here, the gentlelady's amendment is creating for the first time a Federal privilege, because section 501 of the Federal Rules of Evidence says there are no Federal privileges. We follow the State law. Of course here we are creating for the first time a new privilege: A parent may not be compelled to testify against a child.

I will forgo the opportunity to broaden this discussion as some have by bringing in the name of the Independent Counsel now, but I think it is helpful in this context to note that President Clinton's lawyers deposed Paula Jones' mother, Delmer Lee Corbin, and her sister, Lydia Cathey, in October of 1997. There was no hue and cry about protecting the mother from compulsory testimony.

I think it is worth noting that Colonel North, Oliver North, back in the halcyon days of Iran Contra, his wife was called to testify before the grand jury. Colonel North's lead attorney, Brendan Sullivan, was subpoenaed to appear before the grand jury. Colonel North's wife's sister was interrogated about how much it cost to feed their daughter's horse. The Norths' baby-sitter and a teenager who mowed the Norths' lawn were questioned about how much they were paid. Oh, and Colonel North's minister was asked how much the North family contributed on Sunday.

So we have had these things before. Fortunately, the gentlewoman has become sensitized to the problem somewhat late in this century, but that is all right. But I would suggest that this is inappropriate, and I hope the gentlelady's amendment is defeated.

I hope, and I pledge, as the gentleman from Massachusetts (Mr. FRANK) suggests, that we look at this whole subject across the board on privilege, but try to take it out of the fever swamps of our current political situation.

Ms. LOFGREN. Madam Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentlewoman from California.

Ms. LOFGREN. Madam Chairman, I just would like to note that I think in 1973, in the 93rd Congress, that the reference, at least the notes from the Committee on the Judiciary note several privileges that were recognized and then followed into rule 501 for future delineation.

I understand that the gentleman's objections are well-stated and sincere, and everyone has respect for his judgment. I would just like to note that I am in my second term. I was not here during Iran Contra to object or to introduce bills about that. I think it is terrible if Mr. North's minister was called by the grand jury.

As to the calling of the mother of the individual referenced, I think that is objectionable as well. I did not know about it until after I introduced this bill.

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

Ms. JACKSON-LEE of Texas. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, although the arguments on the floor opposing the gentlelady's amendment may prove to be somewhat convincing, I would like to take those arguments and turn them around in support of the gentlelady's amendment, and to acknowledge the gentleman from Illinois (Mr. HYDE), the chairman, in recognizing that this is in fact a bipartisan amendment or one that should garner bipartisan support.

The fact that Oliver North's relatives were called, the fact that the President's lawyers deposed the mother of Ms. Jones, does not make it any more right. The issue of parent/child immunity should certainly fall and be given enough or sufficient or equal deference as the patient/doctor privilege, the psychiatrist/patient privilege, the priest's privilege with his religious constituent, and certainly the spousal privilege.

What the gentlewoman is saying, I believe, is that the common law has not responded to the crisis. Putting aside the immediacy of the national attention to the recent set of circumstances, I would argue as an aside that the hauling down, in front of massive media, the horrible evidence of the stress on that particular parent certainly encourages this kind of proposal. It does not take away from it. But it certainly answers a response to any set of circumstances that involves a parent/child, although the gentlewoman's proposal and the proposal of the gentleman from New York (Mr. NADLER) does give an exception if there is criminal fraud or conspiracy. So, therefore, if a parent and child were conspiring to do wrong, there is an exception.

Just a few weeks ago we saw a daring attempt for a mother to help her child escape from jail. I do not think there is any need to worry about whether there is parent/child immunity. The bare facts, the visuals will allow us to convince, I am sure, at some point, though there will be a trial, a jury that something was done wrong, without either the child or the parent being required to testify against each other. There are others who may provide the evidence that would be able to point to the criminal and/or the civil act of wrong.

So I do think that if we talk about all of our expressions of the sanctity of the parent, the child, our brief in the best interest of a child, the relationships of family, I believe that this amendment is one that carries with it the weight of what is right, the moral weight of what is right.

I welcome the opportunity for further hearings.

Ms. LOFGREN. Madam Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentlewoman from California.

Ms. LOFGREN. Madam Chairman, as someone who is steeped in the law and a former judge, I am sure the gentlewoman is aware of the so-called trilemma that lends doubt to the veracity of testimony compelled by a parent against a child. If the parent

faces this dilemma, she can either fudge the truth, she can betray her child's confidences, or she can go to jail. Under those three choices, many prosecutors and many judges have grave doubt about the veracity of testimony, because some parents choose to fudge the truth, the first option.

Ms. JACKSON-LEE of Texas. Madam Chairman, I thank the gentlewoman for that clarification. She is so very right, that in the course of the setting of a trial and a trial atmosphere, it is often doubtful as to whether that parent is totally truthful on the facts. And so I think that the question of whether or not we are moving too quickly on a parent/child immunity, I would hope that we would recognize that we would not do great or enormous injustice or deny justice by providing that privilege.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, let me give another example. Two people for whom I have an enormous amount of respect are two people who may be considered to have betrayed the family tie, but they are the Kaczynskis, Ted Kaczynski's brother and mother. They were not compelled, but they came forward. But that is an example. They came forward. Since they came forward, I think lives were saved, innocent lives were saved because they took this dangerous murderer off the streets.

If, in fact, the prosecutor became aware that Mrs. Kaczynski had information that could have led, as it in fact did, to the apprehension of her son, I do not see why we would want to give absolute privilege for a man in his 50s and his mother so that she could not be compelled to testify. In her case it was voluntary, but we could have seen a situation where that compulsory testimony could have been useful.

Yes, where we are talking about a small child, maybe a teenager, it is a very appealing situation. Maybe we ought to tailor a privilege for that. But where we are talking about Ted Kaczynski's mother and Ted Kaczynski, I do not think it is at all immediately obvious that we ought to, on this floor today, to vote to give somebody like that preference.

The CHAIRMAN. The time of the gentlewoman from Texas (Ms. JACKSON-LEE) has expired.

(By unanimous consent, Ms. JACKSON-LEE of Texas was allowed to proceed for 2 additional minutes.)

Ms. JACKSON-LEE of Texas. Madam Chairman, the gentleman is extremely convincing when we are talking about something that is heinous as that of those acts. I think, however, we need to ask the question as to whether or not, and a voice rises up, as to whether or not we know the status of the investigation and whether or not those investigating this heinous crime of the Unabomber would have, even without, would have been able to determine the fact that he was the person and brought him to justice.

I think more often than not we find circumstances where the parent/child relationship really rises above these questions of these very unique heinous crimes. I would simply say that the parent/child relationship, covering over 200 million Americans, we can find more cases than not when we should protect that relationship as opposed to suggest we would be, if you will, tampering or hindering the rights of justice if we did not allow the parent/child immunity. I simply see a range of places where that is important.

I chair the Congressional Children's Caucus. I think that when we talk about promoting children as a national agenda, when we talk about allowing these relationships, I look to it as the bulk of children, if you will, and realize that in cases where we are talking about an adult, I think there are exceptions to inhibit any disallowance of justice.

Ms. LOFGREN. Madam Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentlewoman from California.

Ms. LOFGREN. Madam Chairman, I would just note that all of the modern cases that I have been able to find in the spousal immunity area that would be the guide in the parental/child immunity cases do make exceptions for criminal activity.

I would note also that in the case cited by our colleague, the Kaczynskis, I would join in his admiration of the Kaczynski family that came forward under very trying circumstances and did the right thing and did save lives, and they did it voluntarily. I believe, had they relevant evidence, clearly that since they came forward with the evidence, they would have testified.

The CHAIRMAN. The time of the gentlewoman from Texas (Ms. JACKSON LEE) has again expired.

(On request of Mr. FRANK of Massachusetts, and by unanimous consent, Ms. JACKSON-LEE of Texas was allowed to proceed for 1 additional minute.)

Mr. FRANK of Massachusetts. Madam Chairman, will the gentlewoman yield to me?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, my colleague said that there is an exception for criminal, but let me read what might be more relevant here, the title of her amendment as she wrote it: Parent/Child Testimonial Privileges in Federal Civil and Criminal Proceedings. If the gentlewoman in fact intends to exempt criminal, putting ''criminal'' in the title is not the most artful drafting I have ever seen.

Ms. JACKSON-LEE of Texas. Madam Chairman, let me close by simply saying that I really do believe that we have made a very strong argument as to the sanctity of the parent/child relationship. I would commend, as well, the family of the Unabomber, and would say that that is something that probably occurs more regularly than not where parents and relatives come forward because they believe in justice.

□ 1445

In the instance, however, where there is a relationship, parent-child, I cannot imagine that we would diminish parent-child any lower than the priest, the psychiatrist, the physician, the lawyer and anyone else that has now benefited from privilege. And as well let me say that in the criminal sense I do believe that justice will not be denied if we provide this single privilege.

Madam Chairman, I would ask support of this amendment.

The CHAIRMAN pro tempore (Mrs. EMERSON). The question is on the amendment offered by the gentlewoman from California (Ms. LOFGREN).

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

Ms. LOFGREN. Madam Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 408, further proceedings on the amendment offered by the gentlewoman from California (Ms. LOFGREN) will be postponed.

AMENDMENT NO. 4 OFFERED BY MR. DELAY

Mr. DELAY. Madam Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. DELAY:

Add the following at the end:

SEC. 12 LIMITATION ON PRISONER RELEASE ORDERS.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following new section:

§ 1632. Limitation on prisoner release orders

''(a) LIMITATION.—Notwithstanding section 3626(a)(3) of title 18 or any other provision of law, in a civil action with respect to prison conditions, no court of the United States or other court listed in section 610 shall have jurisdiction to enter or carry out any prisoner release order that would result in the release from or nonadmission to a prison, on the basis of prison conditions, of any person subject to incarceration, detention, or admission to a facility because of a conviction of a felony under the laws of the relevant jurisdiction, or a violation of the terms or conditions of parole, probation, pretrial release, or a diversionary program, relating to the commission of a felony under the laws of the relevant jurisdiction.

''(b) DEFINITIONS.—As used in this section—

''(1) the terms 'civil action with respect to prison conditions,' 'prisoner,' 'prisoner release order,' and 'prison' have the meanings given those terms in section 3626(g) of title 18; and

''(2) the term 'prison conditions' means conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Limitation on prisoner release orders.''.

(c) CONSENT DECREES.—

(1) TERMINATION OF EXISTING CONSENT DECREES.—Any consent decree that was entered into before the date of the enactment of the Prison Litigation Reform Act of 1995, that is in effect on the day before the date of the enactment of this Act, and that provides for remedies relating to prison conditions shall cease to be effective on the date of the enactment of this Act.

(2) DEFINTIONS.—As used in this subsection—

(A) the term ''consent decree'' has the meaning given that term in section 3626(g) of title 18, United States Code; and

(B) the term ''prison conditions'' has the meaning given that term in section 1632(c) of title 28, United States Code, as added by subsection (a) of this section.

Mr. DELAY. Madam Chairman, I just wanted to say that this is a wonderful debate that we are having. It is great to be part of an institution that is actually trying to regain some of its authority and responsibility that the Founding Fathers envisioned in the Constitution of the United States, and I am offering an amendment with the gentleman from Pennsylvania (Mr. MURTHA) that is, I think, pretty simple. It ends forever the early release of violent felons and convicted drug dealers by judges who care more about the ACLU's prisoners' rights wish list than about the Constitution and the safety of our towns and communities and our fellow citizens.

Under the threat of Federal courts, States are being forced to prematurely release convicts because of what activist judges call prison overcrowding. In Philadelphia, for instance, Federal Judge Norma Shapiro has used complaints filed by individual inmates, criminals, convicted criminals, to gain control over the prison system and establish a cap on the number of prisoners.

Federal Judge Shapiro put a cap on the number of prisoners in Pennsylvania. To meet that cap she ordered the release of 500 prisoners a week, 500 prisoners a week. In a 18-month period alone, 9,732 arrestees were out on the streets of Philadelphia on pretrial release because of her prison cap. They were arrested on second charges, including 79 murders, 90 rapes, 701 burglaries, 959 robberies, 1,113 assaults, 2,215 drug offenses and 2,748 thefts.

How does Judge Shapiro sleep at night? Each one of these crimes was committed against a person with a family, dreaming of a safe and peaceful future, a future that was snuffed out by a judge who has a perverted view of the Constitution.

Of course Judge Shapiro is not alone. We are seeing this all over the United States. There are many other examples. In Texas, my home State, a case that dates back all the way back to 1972, Federal Judge William Wayne Justice took control of the Texas prison system and dictated changes in basic inmate disciplinary practices that wrested administrative authority from staff and resulted in rampant violence behind bars.

And under the threats of Judge Justice, under the threats of Judge Justice, Texas was forced to adopt what is known as the ''nutty release law'' that mandates good time credit for prisoners. Murderers and drug dealers who should be behind bars are walking the streets of our Texas neighborhoods as I speak, thanks to Judge Justice.

Wesley Wayne Miller was convicted in 1982 of a brutal murder. He served only 9 years of a 25-year sentence for butchering an 18-year-old Fort Worth girl. Now, after another crime spree, he was rearrested. Huey Moe was sentenced to 15 years for molesting a teenaged girl. He is eligible for parole this September after serving only 2 years in prison. Kenneth McDuff was on death row for murder when his sentence was commuted. He ended up murdering somebody else.

In addition to the cost to society of Judge Justice's activism, Texas is reeling from the financial impact of Judge Justice's sweeping order. I remember back when I was in the State legislature, 1979, the State of Texas spent about $8 per day per prisoner to keep these prisoners. By 1994, with the full force of Judge Justice's edict being felt in the State of Texas, the State is spending more than $40 every day for each prisoner. That is a fivefold increase over a period when the State's prison system barely doubled. All of that money comes out of our families' pocket.

The truth is, no matter how Congress and State legislatures try to get tough on crime, we will not be effective until we deal with judicial activism.

The CHAIRMAN pro tempore. The time of the gentleman from Texas (Mr. DELAY) has expired.

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

Mr. DELAY. Mr. Chairman, the courts have undone almost every major anticrime initiative passed by the legislative branch. In the 1980's, as many States passed mandatory minimum sentencing laws that the American people wanted to see happen around the country to keep these criminals in jail, judges checkmated the public by imposing prison caps on the amount of population that we can hold in prisons. When this Congress mandated the end of consent decrees regarding prison overcrowding in 1995, some courts just ignored our mandate.

There is an activist judge behind each of most of the perverse failures of today's justice system, violent offenders serving barely 40 percent of their sentences. Three and a half million, 3½ million criminals, most of them repeat offenders, are on the streets today and are on probation or parole. Thirty-five percent of all persons arrested for violent crime were on probation, parole or pretrial release at the time of their arrest.

Well, the Constitution of the United States gives us the power to take back our streets. Article III allows the Congress of the United States to set jurisdictional restraints on the courts, and my amendment will set such restraints.

I presume we will hear the cries of court stripping by the opponents of my amendment. These cries, however, will come from the same people who voted to limit the jurisdiction of Federal courts in the 1990 civil rights bill.

Now let us not forget the pleas of our current Chief Justice of the United States, William Rehnquist. In his 1997 year-end report on the Federal judiciary he said, ''I therefore call upon Congress to consider legislative proposals that will reduce the jurisdiction of the Federal courts.'' We should heed Justice Rehnquist's call right here, right now.

The voters will be watching this vote. A vote against this amendment is a vote to put prisoners, convicts, drug dealers and rapists on the streets of my colleagues' congressional districts. Judicial activism threatens the very safety of our children and our constituents, if in the name of justice murderers and rapists are allowed to prowl on our streets before they serve their time. It is time to return some sanity to our justice system and keep violent offenders in jail, and I ask my colleagues to support my amendment.

Mr. FRANK of Massachusetts. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I listened to the gentleman from Texas describe an amendment that I would be prepared to vote for but I do not see it before me. The gentleman talked about murderers and rapists walking the streets of our districts, and I do not want that to happen. And if it was an amendment that was limited as the gentleman said, I suspect it would get virtually no opposition here, but the amendment is far broader. It is not limited to murderers and rapists, it is not even limited to people who committed violent crimes. It applies to anybody convicted under any felony.

Now there are some nonviolent felonies. There are also situations where prison conditions have been outrageous. The gentleman said we should not release murderers because of overcrowding. I agree. But what about people who might have violated a securities law or people who might have been guilty of nonsupport, if that were a felony, or some other nonviolent felony which we have, insurance fraud. I do not like people committing insurance fraud, but they are not all murderers and rapists. Most of them are probably not. It is probably kind of a distinction in the criminal class.

And it also is not just overcrowding. It says prison conditions means conditions of confinement are the effect of actions by government officials on the lives of persons confined in prison. If in fact there are situations where particular prison officials have behaved in a outrageous fashion abusive of people's rights, may even have put these people in danger, and we are talking about nonviolent felons, I am not prepared to

say that no judge ever ought to let them out.

Now, as I said, if the gentleman had offered the amendment he described, I would not be up on my feet talking about it and I would not expect anyone else to be. If we were talking about violent criminals, particularly murderers and rapists, but muggers and others who were being released surely for overcrowding, I would agree with him.

We have an amendment that goes far broader. It does not just deal with overcrowding. It would immunize prison officials, as it is written, even by actions they took that were violative of people's rights and even for nonviolent criminals. It also is completely retroactive. It says any order now in effect is ended, and I think that would be a very unwise idea.

Mr. DELAY. Madam Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas.

Mr. DELAY. Madam Chairman, I appreciate the gentleman yielding. He must be reading a different amendment than I put in. This amendment does not affect any court action brought against prison officials that might violate the criminals' rights or even prison conditions. There are other kinds of remedies that can come into play here.

What we are just saying is do not turn felons out, and surely the gentleman is not for turning felons out, including nonviolent felons like drug dealers, out on the street just because prison conditions may be overcrowded and they could put prisoners in tents.

Mr. FRANK of Massachusetts. No, because the gentleman is wrong in the description of his amendment. In the first place, there are nonviolent felons other than drug dealers. There are people who committed insurance fraud; there are people who cheated on their taxes, their State taxes. I do not say that under no circumstances should they be released because I think they are not the kind of danger that we are talking about to the community in the near term. The gentleman talked about murderers and rapists, but it includes nonviolent felons.

Mr. DELAY. I totally agree with the gentleman.

Mr. FRANK of Massachusetts. And I am glad the gentleman from Texas does, and therefore there is no reason to interrupt me. Let me just say to my friend he should only interrupt me when he disagrees with me. He need not interrupt me when he agrees with me. He should just nod his head and we will all notice that.

But I appreciate the agreement. So we are now in agreement that we are talking about nonviolent felons, and they said including people who may have been convicted of tax fraud or insurance fraud.

Secondly, though, this does say no release could be a remedy because of conditions of confinement or. Now the gentleman says it is only overcrowding, but the word ''or'' apparently means something different to me than it does to the gentleman. ''Or'' generally means there is something else that is involved. It says these insurance fraud perpetrators cannot be released either because of conditions of confinement or because of the effects of actions by government officials on the lives of persons confined in prison.

□ 1500

In other words, if prison officials are grossly violating people's rights, and even people who have committed fraud have rights, as we all agree, even if it is not overcrowded, but if it deals with violations of their rights by conscious acts, one of the remedies cannot be to release people.

The CHAIRMAN pro tempore (Mr. ROGERS). The time of the gentleman from Massachusetts (Mr. FRANK) has expired.

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

Mr. FRANK of Massachusetts. Mr. Chairman, I do not think where we are talking about conscious misbehavior that violates the rights of nonviolent criminals. What we are talking about is saying if you have prison officials who are consciously abusing the rights of nonviolent felons, people who have committed fraud, it has nothing to do with overcrowding or violence, under no circumstances should a judge be able to say the remedy is, if you don't stop abusing these people, we are going to make you let them loose. I don't think under all circumstances we ought to say no to that.

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

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I agree with the gentleman, but disagree with his interpretation. I have the advantage of not having gone to law school. The advantage is such that nothing stops the inmates' rights to bring action against prison officials. All we are saying here is do not turn these felons out on the street.

The CHAIRMAN pro tempore. The time of the gentleman from Massachusetts (Mr. FRANK) has again expired.

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

Mr. FRANK of Massachusetts. Mr. Chairman, I think the issue is not that my friend didn't go to law school, the question is in what language did he not go to law school, because I am talking about English here; not law. What I am talking about is the phrase that says you cannot release nonviolent felons because of the effects of actions by government officials on the lives of persons confined in prison.

In other words, nothing to do with overcrowding, but conscious abuse of people's rights. I do think in some cases where you have got that pattern of abuse, ordering the release of nonviolent felons might be something they may want to consider.

For that reason, while I would have voted the amendment the gentleman described, I cannot vote for the gentleman's amendment as offered.

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

Mr. Chairman, I happen to disagree with our previous speaker. The DeLay amendment really corrects a problem that I have spent most of my political career trying to fix.

When I was in the Texas statehouse, I spent a lot of time speaking out against the antics of a judge named William Wayne Justice, a Federal judge who in 1980, single-handedly took control of and weakened the Texas prison system, which I think is a little bit out of line as far as our States rights policies are concerned.

Judge Justice felt our State prisoners were cramped and ''unhappy with their living conditions,'' so he forced Texas to turn jails into country clubs so that dangerous criminals could be more comfortable. He even ordered Texas to provide these criminals with color television. He ordered that 11 percent of Texas prison beds be empty at all times, and mandated that cells built for two prisoners only hold one, and that cells built for four prisoners only hold two.

Consequently, we have got over 5,000 empty beds in the Texas prison system because of a Federal judge's ruling, and that caused overcrowding and it caused extra expense. These mandates have done nothing but set criminals free, increase overcrowding, and waste billions of taxpayer dollars.

I want everyone to understand it is our Texas lawmakers that were forced to release hardened criminals on the order of a Federal judge. This means that criminals have been released back on to the Texas streets, all because a Federal judge was more concerned about the comfort of criminals than about the safety of law-abiding citizens.

This amendment will do what the Texas legislature tried to do and could not; stop Federal judges like William Wayne Justice from pushing their agenda at the expense of public safety. This language states in no uncertain terms that Federal judges cannot mandate early release of violent criminals. It also nullifies current consent decrees like the one inflicted on Texas by Judge Justice.

This is common sense legislation. It is long overdue. The people of Texas have waited 20 years for relief from this Federal judge. Let us not make them wait any longer. I think it is long overdue.

Mr. Chairman, I urge my colleagues to support this amendment, because it is going to make America a lot safer by keeping your violent criminals behind bars.

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

Mr. Chairman, what the House is doing today, the House of Representatives, the People's House, is so unique

in history, and it is truly remarkable, because what we are doing today is we are showing that when the Constitution was drafted in 1787, that the men who met in Philadelphia in that year envisioned a system of the separation of powers, and they built into the Constitution a mechanism whereby one branch of government could reclaim the authority that had been usurped by another branch of government, and that is the genius of the Constitution.

We can go back to the Declaration of Independence when Jefferson was asked by Benjamin Franklin, also in Philadelphia, to draft that document and to set forth the reasons for the establishment of this republic. One of the reasons that Jefferson put in the Declaration of Independence is that King George III had obstructed the administration of justice by refusing assent to laws for establishing judiciary powers. In other words, it would be up to the individual colonies, and thus a central government in a new country, to establish and define exactly what those judicial powers are.

So in the Constitution, under Article III, Section 1, Congress was given the express power to ordain and establish inferior Federal courts, which includes the power of vesting them with jurisdiction, either limited, concurrent, or exclusive.

In fact, in a 1943 case, it has been, perhaps, we do not know how many decades, we have arguments here where Congress is trying to get back from judiciary powers that judiciary has taken, and in the case of Lockerty versus Phillips, the court said that Congress has the power to withhold jurisdiction from courts in the exact degrees and character which to Congress may seem proper for the public good.

That is what is exciting about the legislation of the gentleman from Texas (Mr. DELAY). It takes a look at Congress, the elected branch, the representative branch of government, and says we are overseeing the court system to bring about a change when something has happened in the court system that violates the public good.

The public good to which the gentleman from Texas (Mr. DELAY) addresses himself is the fact that courts have overstepped their boundaries by releasing dangerous felons, who go out to kill, and to maim, and to peddle drugs to our little children, who ingest these drugs, and the little innocent ones, my children and children of all Americans, thus become susceptible to more people who the law enforcement people have in good faith put away, but which a Federal judge says they should be out.

So we are here today because the Constitution compels us to do so. It would do no good for me to reiterate the various travesties that have taken place in America because of what the Federal courts have done. But let us look upon this day in this Congress as being a responsible Congress and telling the American people that the courts have gone too far, and that Congress is exercising the jurisdiction and the authority envisioned by the founders of this republic in saying we are going to correct what is wrong with the court system.

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

Mr. Chairman, let me strongly support the efforts of the majority whip, the gentleman from Texas (Mr. DELAY), because this amendment goes right to the heart of a horrible situation we in Florida have faced.

In 1993, the Florida Department of Corrections reported that between January 1, 1987, and October 10, 1991, some 127,486 prisoners were released early from Florida prisons. Within a few years of their early release, they committed over 15,000 violent and property crimes, including 346 murders and 185 sex offenses.

Florida tried to stop the early release program last year, the ''gain time'' provision, which was created because of prison overcrowding. But, whoa, the judges said, the courts would not allow them to change it.

The courts suggested that since it was given in advance to create or vacate prison space, that it was now part of their sentence. It did not say when they were sentenced that they were entitled to it, but because it was a mechanism, a management tool created by the legislature, that it had to apply to every person in prison, no matter what crime they committed, whether it was bounced checks, murder or rape.

Now, who is paying for this type of thinking? Who pays for this type of thinking in our society? Let me give you a few examples.

One is a 21-year-old convicted burglar who got out of prison last October on early release. A month later he was charged with kidnapping and murdering a 78-year-old woman in Avon Park near my district. He abducted her from her home, forced her into the trunk of her car, and killed her in an orange grove about 20 miles away.

Then, there is the 30-year-old man jailed in 1989 on grand theft and armed burglary charges, who was released early in 1992 because of prison crowding. Four years later he was charged with murdering the owner of a convenience store in West Palm Beach, Florida, part of which I represent.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. Our guests in the gallery will be advised they are guests of the House, but must not express approval or disapproval to interfere with the activities of the House.

Mr. FOLEY. Mr. Chairman, last month a 30-year-old drifter, jailed in 1986 for kidnapping and brutally beating a British tourist in Hollywood, Florida, but released early in 1986, was charged with first degree murder of a teenager after her partially mutilated corpse was found in his bathtub in Miami Beach.

In 1991, in St. Lucie County, which I represent, a Fort Pierce police officer, Danny Parrish, was murdered by an ex-convict who had been released after serving less than a third of his prison term for auto burglary. Officer Parrish stopped him for driving the wrong way on a one-way street. The ex-convict, who admitted later he did not want to go back to prison for violating probation, disarmed Officer Parrish and killed him with his own gun.

Now, when are we in America going to wake up and recognize the rights of victims? I have heard constantly about judges stepping in and allowing prisoners to smoke in prison, prisoners being allowed video machines so they can watch TV, prisoners being given weight rooms so they can exercise and feel comfortable and good about themselves. And the same judges then say because it is a little crowded, we should let these people out early.

So then ultimately, after serving only a third of the time they have been sentenced to, they maim, murder, kill our families and our children, and society pays greatly for these acts. Society pays more for the violence on our street because of early release than we could ever pay for the proper construction of prison facilities.

So I urge my colleagues to look very seriously at this amendment. It is not defeating the judges' power; it is not usurping judicial power. It is asserting, first and foremost, that victims and their families should be given their rights first, not the criminal; that when you are sentenced to prison, it should mean something. When you are given 10 years, it should be 10 years, not 2 years.

When our young people look at the fact that people are being sentenced for 10 years, they should know it is serious. But when you commit a murder and are let out after 3 years of a 10-year sentence; when you are convicted of a crime, and told ''don't worry about it, it is only a year;'' in a recent case where a young girl killed her child, I understand she may get 2½ years in prison. What a punishment.

What does it say to society, the value we place on life. What does it say about the law of the land? What does it say to the law-abiding citizen? You can go ahead and get away with it, because a judge is going to be worried about your comfort in prison; that he will let you out on the street to maim, murder and kill once again?

□ 1515

I know judges do not do this because they do not care about our communities, but Congress has to step into the debate, protect the communities we represent, all 435 of them, and do our best to suggest that if a prisoner commits a crime, if a person victimizes another human being, if a person violates a human being, if a person murders someone else, that that person

should fulfill the full terms of the sentence meted out by the courts, should not be granted special benefits, should not be given game time, and should be treated like the criminals that they are.

I urge the support of the fine amendment of the gentleman from Texas (Mr. DELAY).

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. The Chair will remind all persons in the gallery that they are here as guests of the House, and that any manifestation of approval or disapproval of proceedings is in violation of the rules of the House.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is a very, very difficult issue to debate, because when one postulates the rights of citizens, innocent citizens, against folks who have been sentenced to prison who are released, whether they are released for misdemeanors or felonies or whatever reason, because of prison overcrowding and conditions in prisons, it always seems like you are taking sides with the prisoners, as opposed to taking sides with the innocent people in the street.

The gentleman from Florida (Mr. FOLEY) obviously makes a very, very powerful argument. But an amendment which basically says we are going to go back retroactively and undo existing consent orders that have been entered into, that retroactively says we are going to undo orders that courts have entered in these cases, or even an amendment which, looking forward, says that even though the Constitution might, and we as a body of people in our country believe that nobody, no individual, ought to be put into conditions where they are subjected to rape or disease or whatever by overcrowding or failure of supervision, we cannot enforce that order to protect those people, is an amendment which, in my opinion, goes too far.

That is what this amendment does. It undoes prior consent orders. It undermines prior orders, whether they are consent orders or not. Also, it effectively says that where there is a constitutional violation there really is no remedy for that violation, because we are not going to provide a constructive remedy for somebody who is put in inhumane, overcrowded conditions.

So while I clearly am uncomfortable, and if anybody believes that I am siding with prisoners over victims in the street, I am uncomfortable being in that position, but I think this amendment goes too far.

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

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

Mr. DELAY. Mr. Chairman, I appreciate the gentleman yielding. I understand the struggle that the gentleman is going through. I appreciate that.

I just want to remind the gentleman that in 1995 we passed a law, signed by this President, dictating to these judges that they should vacate these consent decrees if they have no further constitutional grounds, and these judges have found loopholes by which they can continue.

Mr. WATT of North Carolina. Let me stop the gentleman in the middle of his sentence, because that is a big ''if,'' if there are no further constitutional grounds. The ones that I am talking about are where there is a constitutional ground. And what this amendment does is say you cannot have a remedy where there is a constitutional basis for the order. So to just kind of gloss over that big ''if'' in the gentleman's sentence is a serious matter.

The CHAIRMAN pro tempore. The time of the gentleman from North Carolina (Mr. WATT) has expired.

(On request of Mr. DELAY, and by unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 1 additional minute.)

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

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

Mr. DELAY. Mr. Chairman, first of all, I am not, in my amendment, stopping any other remedies, any other constitutional remedies or the rights of inmates that are being mistreated, overcrowded, or any other prison condition. That is not my amendment.

My amendment basically is saying to judges, stop finding loopholes to continue your consent decrees, and we are going to eliminate the ''if'' part about early release of prisoners. We are not going to put these criminals back on the streets. They can have all the other remedies.

Mr. WATT of North Carolina. Mr. Chairman, if in fact the amendment was nearly as gentle and kind as the gentleman has portrayed it, I think I could get there with him, but that is not what the language of this amendment says. It says, we are undoing prior consent orders, we are undoing prior orders, and we are making it impossible to address a constitutional violation because there is no remedy for it. It is that that I have serious concerns about.

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

Mr. Chairman, I rise today on behalf of families, victims and law-abiding citizens everywhere to support the Judicial Reform Act of 1998, and particularly to support the amendment offered by my good friend, the gentleman from Texas (Mr. DELAY).

I do so because I believe there is a time in the life of every problem when it is large enough to see and yet small enough to solve. The problem of judicial activism is one which we can see and we can also solve, if only we have the commitment and the courage to make it right.

According to the Bureau of Judicial Statistics, every day this year 14 people will be murdered, 48 women raped, and 570 robbed by criminals who have already been caught, convicted, and returned to the streets on probation or early parole.

Mr. Chairman, this is more than a crisis, this is the crime. I believe the first order of our legal system is to protect the innocent, and one way we can do this is to punish the guilty. But we cannot protect the innocent or punish the guilty by putting criminals back on the streets. Yet that is exactly what some judges are doing.

Under the guise of legal apologetics, many judges are giving felons and drug dealers get-out-of-jail-free cards. For example, a U.S. district judge in Philadelphia imposed a prison cap that had the effect of freeing scores of felons and drug dealers who are waiting trial in the prisons. In fact, 600 prisoners a week were released for over 1 year.

What did they do when they got a new lease on life? They committed 79 murders, 959 robberies, 2,215 drug-related crimes, 90 rapes, and over 1,100 assaults. This type of judicial activism is crazy, and it is changing once we pass the DeLay amendment.

Mr. Chairman, the American people want criminals to serve the sentences they are given. They do not want some judge overruling the law, the prosecutors who got them the conviction, or the jurors who sentenced them.

Mr. Chairman, let us not confuse our wants with our needs. We all want to give everyone a second chance, but we absolutely need to ensure that crime does not pay. I urge my colleagues to support the DeLay amendment. It is simple, it is smart, and it is a solution.

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

Mr. Chairman, I agreed to cosponsor this amendment with the gentleman from Texas (Mr. DELAY) because I felt it was so important for us to send a message to the court system and to our judicial system that, when a person is sentenced, that person should spend that appropriate time in prison.

Now, I realize there may be some deficiencies in this amendment. I realize if this goes to conference that maybe a few things ought to be changed. But I think one of the reasons that we do not have as much crime as we had a few years ago is because people are staying in jail longer. We put mandatory sentences in.

I worried about mandatory sentences, but the results are the crime rate has dropped dramatically for violent crime throughout the country, and I think it is important for all of us to think about the victims of the crime. One way to make sure that they are separated is to keep them in prison for the time.

They spend a lot of time in thinking about how long the sentences ought to be. If we put them out, drug dealers, a person that commits a violent crime, out on the street prematurely, there is no question in my mind the crime rate will start to go back up again.

So I would urge Members to support this amendment and to vote overwhelmingly to send a message that we do not want people, just because of a technicality, overcrowding, to be out in the street before their time that they have spent in prison.

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

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

Mr. DOOLITTLE. Mr. Chairman, I strongly support the DeLay amendment. I think it is a great amendment, and I hope that it survives unscathed through both Houses of the Congress.

This deals with the most fundamental obligation of government, the reason we pay all of the huge amount of taxes that we are having to pay these days. That is, it is the job of government to restrain men from injuring one another, to quote Thomas Jefferson.

It is just unconscionable that these liberal judges, unelected by the people but in office for life, have taken it upon themselves, in some cases, to inflict this kind of injury upon a community. Think of the thousands and thousands of lives that have been ruined, in many cases, or severely impacted in others, by the types of crimes that have been committed.

We did a study in our State legislature years ago, and it was a pretty established fact, as a result of the study, that two-thirds of the forcible-sex felonies are committed by repeat offenders, so that by dealing with this population and incarcerating them for long periods of time, we would dramatically reduce this type of crime. Indeed, that has been the case.

In California and other States where they have had mandatory sentences and where they have long terms, we have spent an awful lot of resources in California locking people up, and we have overcrowded those prisons as much as we could, and I am glad that we have, because it has made our streets safer.

We have now about 130,000 people incarcerated in the State of California alone. Look at our crime rates. They have been dropping dramatically. So taking off the streets this kind of offender was exactly the right thing to do.

Yet to have some isolated, arrogant, liberal, unelected district court judge turning these people loose because of some benighted belief in upholding some prisoner's constitutional rights is totally wrong.

Occasionally, there will be a conflict between the constitutional right of the prisoner and between the right of the public not to have dangerous criminals out in the street. The amendment of the gentleman from Texas (Mr. DELAY) simply says, Judge, do not make your remedy letting them go. You have other remedies. One of them is not to say, let these dangerous people back out on the street.

The public overwhelmingly supports the policy reflected in the DeLay amendment. It is long overdue. I strongly urge its adoption.

Mr. PACKARD. Mr. Chairman, I would like to voice my support for Congressman TOM DELAY's (R–TX) amendment to the Judicial Reform Act, which we will be voting upon shortly. Mr. DELAY's amendment addresses an issue of growing concern—the early release of convicted criminals due to overcrowding in prisons.

By this time we are all well aware of repercussions related to judicial activism. Mr. DELAY's amendment plays an important role in curbing this practice by targeting federal judges who order the release of persons convicted of violent or drug related crimes because of prison conditions. Uncomfortable prison conditions are no excuse for turning dangerous criminals out onto our streets.

Mr. Chairman, I hope that my colleagues will join me in voting in favor of the Judicial Reform Act and the DeLay Amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. DELAY).

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

RECORDED VOTE

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

A recorded vote was ordered.

The CHAIRMAN pro tempore. Pursuant to House Resolution 408, the minimum time for electronic voting on the Lofgren amendment, if ordered, without intervening business, will be 5 minutes.

The vote was taken by electronic device, and there were—ayes 367, noes 52, not voting 13, as follows:

[Roll No. 105]

AYES—367

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berman
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Borski
Boswell
Boucher
Boyd
Brady
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Capps
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clayton
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeFazio
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Etheridge
Everett
Ewing
Farr
Fazio
Foley
Forbes
Ford
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennelly
Kildee
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Menendez
Metcalf
Mica
Minge
Mink
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Ortiz
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Ryun
Salmon
Sanchez
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schumer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Talent
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Thurman
Tiahrt
Torres
Traficant
Turner
Upton
Vento
Visclosky
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Young (AK)
Young (FL)

NOES—52

Barrett (WI)
Bonior
Brown (CA)
Campbell
Carson
Clyburn
Conyers
Davis (IL)
DeGette
Delahunt
Evans
Fawell
Filner
Frank (MA)
Furse
Hilliard
Hinchey
Jackson (IL)
Jackson-Lee (TX)
Kennedy (MA)
Kennedy (RI)
Kilpatrick
Lee
Lewis (GA)
Martinez
McDermott
Meehan
Meeks (NY)
Millender-McDonald
Miller (CA)
Oberstar
Olver
Owens
Payne
Pelosi
Rangel
Rush

Sabo
Sanders
Scott
Serrano
Skaggs
Stark
Stokes
Thompson
Tierney
Towns
Velazquez
Waters
Watt (NC)
Waxman
Yates

NOT VOTING—13

Bateman
Clay
Dixon
Fattah
Gonzalez
Hastings (FL)
Istook
Meek (FL)
Miller (FL)
Obey
Paxon
Spratt
Tanner

□ 1552

Messrs. BARRETT of Wisconsin, T0WNS, MILLER of California, SKAGGS, and TIERNEY changed their vote from ''aye'' to ''no.''

Messrs. RODRIGUEZ, JEFFERSON, SHAW, REYES, and FORD changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MS. LOFGREN

The CHAIRMAN pro tempore (Mr. ROGERS). The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from California (Ms. LOFGREN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 256, not voting 14, as follows:

[Roll No 106]

AYES—162

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Becerra
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Campbell
Capps
Carson
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fazio
Filner
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Harman
Hefner
Hilliard
Hinchey
Hinojosa
Hooley
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
King (NY)
Klink
LaFalce
Lampson
Lantos
Leach
Lee
Lewis (GA)
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (NY)
McDade
McDermott
McKinney
McNulty
Meehan
Meeks (NY)
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sanford
Schumer
Serrano
Skelton
Slaughter
Stabenow
Stark
Stokes
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson
Thurman
Torres
Traficant
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weller
Weygand
Woolsey
Wynn
Yates

NOES—256

Aderholt
Allen
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bentsen
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Dickey
Dicks
Dingell
Doggett
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Kleczka
Klug
Knollenberg
Kolbe
Kucinich
LaHood
Largent
Latham
LaTourette
Lazio
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
Lucas
Manton
Manzullo
McCarthy (MO)
McCollum
McCrery
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Moakley
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Pease
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Scott
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snyder
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Tierney
Towns
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Wexler
White
Whitfield
Wicker
Wise
Wolf
Young (AK)
Young (FL)

NOT VOTING—14

Bateman
Clay
Davis (FL)
Dixon
Fattah
Gonzalez
Hastings (FL)
Istook
Meek (FL)
Miller (FL)
Paxon
Snowbarger
Spratt
Tanner

□ 1603

Mr. SAWYER changed his vote from ''aye'' to ''no.''

Mr. ABERCROMBIE changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. DAVIS of Florida. Mr. Chairman, during roll call vote 106, I was unavoidably detained. Had I been present, I would have voted ''aye'' on the amendment offered by the gentlewoman from California (Ms. LOFGREN).

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

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

Mr. Chairman, at this stage, I was about to offer an amendment. I will not offer the amendment, but I think it is important to explain what kind of an amendment it was and why I am not going to offer it.

Mr. Chairman, there are not many of us, a narrow band of Members, but there are some on both sides of the aisle who feel that we mistreat in terms of cost-of-living allowances our Federal judiciary. Now, that is a poisonous subject in some quarters, because judge bashing is a universal sport. But it is a fact, of all the government employees in the galaxy, the only group that does not get an automatic cost-of-living increase is the Federal judiciary.

There is a law, it is called Section 140, that requires a specific vote before any Federal judge gets a cost-of-living allowance. Not a pay raise, a cost-of-living allowance. Even ourselves get an automatic cost-of-living allowance. Under the law, it can be reversed by vote. And, of course, sometimes we succumb to the penurious complaints of Members and deny ourselves a pay raise. But we must take affirmative action to do that.

Not so with the Federal judges. The only way they can get a cost-of-living allowance is by us voting them one. I think isolating Federal judges from all of the other employees in the Federal Government is wrong, it is mean-spirited, it is unfair. And I do believe the quality of justice, which is not of the highest I hasten to add, depends on the caliber of the people administering that justice; and that is the judges, male and female, throughout the land.

We penalize them because they are Federal judges and we are mad at this judge or that judge for a dumb decision and, so, we are going to have the whole system rigged so they are different from everybody else. I think that is unfair.

Now, I have proposed in this bill a judicial reform bill to remove the requirement that Federal judges could not get a cost-of-living increase without a vote to remove that. I learned very late in the day before I was to appear before the Committee on Rules that the rule that would be proposed would be self-executing and would delete Section 9 of my bill, which was my amendment to provide for treating Federal judges like everybody else on cost-of-living allowances. I was upset at that and not having any notification.

But, in any event, I was informed that the reason my bill was going to have that part deleted was that I was creating an entitlement and we do not create entitlements that way. Well, there are ways to handle that, and one is to subject this change to appropriated funds. That would cure that. But nobody was interested in helping me do that in the rule. And I was told if I offered an amendment to that effect on the floor, even though this is an open amendment, that this would not be germane.

Well, we took steps to see that it would be germane by redrafting it. Certain amendments were adopted that broadened the purview of the statute. But that encountered serious resistance. And so, the upshot of all of this folderol about people nobody cares a great deal about, the Federal judiciary, treating them equally with everybody else, although we pretend to support equal justice for all, the upshot of it is, if I persist in my efforts, the bill will go down. And I do not want the bill to go down.

I think this is a good bill. There are some good things in this. And, therefore, I have agreed not to offer my amendment, to bite my lip, and to take the unfair, in my judgment, treatment of an issue that deserves debate on the floor in the vote.

I understand why people do not want this change to occur, because it helps us get a pay raise if we can say the judges are being held back, too. But I do not see why economic politics should deny one group of Federal employees, with all their warts and their flaws, equal treatment.

The CHAIRMAN pro tempore (Mr. ROGERS). The time of the gentleman from Illinois (Mr. HYDE) has expired.

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

Mr. HYDE. Mr. Chairman, I yield to the gentleman from Michigan (Mr. CONYERS), the ranking member.

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

Mr. CONYERS. Mr. Chairman, I thank the chairman of the Judiciary for yielding.

I join my colleague in his sentiments and point out that this is going to take a considerable amount of work to accomplish this delinking. But I think the time has come that judges, as a governmental class, should be able to be entitled to these very modest cost-of-living increases that the rest of people that serve in the government enjoy. I appreciate the efforts of the gentleman.

Mr. HYDE. Mr. Chairman, I yield to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, I thank the distinguished member of the Committee on the Judiciary for yielding.

There are not many, there are some but not many, who have stood on this floor and either voted for or advocated for the pay raises not only for Federal employees but for Members of Congress than I.

I, however, in this instance, although understanding the concern that some have with respect to impact on Members' pay, want to strongly join the chairman of the committee in his comments with respect to delinking.

Very frankly, my friends, this has to do with whether or not the Congress of the United States has either the courage or judgment to stand and do what I think the overwhelming majority voted to do back in 1989, and that is take a cost-of-living adjustment, not a pay raise, but a cost-of-living adjustment to keep pay even. That is what a cost-of-living adjustment does. It keeps pay even.

Now, if we think we ought not to do that for ourselves, what the Chairman is saying, we ought not to tie in others to that same position, which in my opinion relates not to the equity of pay but relates all to politics. I understand that. I criticize no one for that. But I was going to support the Chairman's inclusion of the delinking in the bill.

Many on my side have not have done that, Mr. Chairman, as my colleagues know. And, frankly, some of my strongest allies on the other side on the pay issue would not have supported it. But I think it is wrong that we continue to keep the judiciary tied to the political vagaries of what this body is willing to do for itself.

Mr. HYDE. Mr. Chairman, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the Chairman for yielding.

I would like to add my concern and willingness to go the extra mile on what I think is an important and crucial issue: Are we going to have the best judicial branch this Nation can afford? And I, too, supported the effort of the Chairman to reflect on our appreciation and respect for the judiciary and the difficulty of their job and position and, likewise, as a newer Member, think that we can defend COLAs no matter who it happens to before, unfortunately, politics do get in the way.

Just about a year ago, one of my senior judges, Judge Norman Black, who, unfortunately, passed away, came and made an eloquent argument, not for self, but for the standing and the quality and the excellence of the judiciary. How can we do any less than to compensate them for this high calling?

So I would just offer to work with the Chairman. I appreciate his position in terms of the overall bill.

□ 1615

But I do believe that we need to have further discussions on this issue and work through it so that we can have the quality of the judiciary that we would like to have and ensure that there is adequate compensation out of the way of the politics.

Mr. HYDE. Mr. Chairman, I yield to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Chairman, I rise to offer my support for the amendment that will now not be offered. But I want to express my admiration to the gentleman from Illinois. Taking the position he is taking so vigorously is not an easy one around here. But I hope Members will listen to what he said, separate out views that Members may have on particular judges and particular decisions from the more important question.

We all agree that there is going to be Federal law. We agree that there is going to be Federal criminal law and Federal civil law. We certainly all agree, I hope, that we want our constituents well served by thoughtful, intelligent people.

We want people who are at the top of the profession in temperament, and intelligence, and ability. Paying them as little as we do is a mistake. We are not going to get justice on the cheap that way, and we do not serve well this cause of justice for our constituents.

The CHAIRMAN pro tempore (Mr. ROGERS). The time of the gentleman from Illinois (Mr. HYDE) has expired.

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

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield to me?

Mr. HYDE. I yield to the gentleman from Massachusetts, certainly.

Mr. FRANK of Massachusetts. We do not serve the cause of justice by confusing unhappiness with particular judges and particular decisions with the functions of the judiciary. The gentleman is making a valiant effort to protect that function. I hope that in some other context those efforts are more successful. I regret, although I understand fully, the situation in which he found himself, that we will not be able to vote on it now.

I will say, as an aside, this does make it an easier decision for me because, had the gentleman offered the amendment and had it been succeeded, I would have been conflicted, but now I can vote against what I think is kind of a silly bill without any problem.

AMENDMENT OFFERED BY MR. CONYERS

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

The Clerk read as follows:

Amendment offered by Mr. CONYERS:

Add the following at the end:

SEC. 12. FOREIGN JURISDICTION AND PROCESS.

(a) IN GENERAL.—Chapter 113 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1697. Foreign jurisdiction; service of process; compliance with rules of discovery

''(a) FOREIGN JURISDICTION AND PROCESS.—In any civil action for harm sustained in the United States, that is brought in a Federal court against a defendant located outside the United States, the court in which the action is brought shall have jurisdiction over such defendant if the defendant knew or reasonably should have known that its conduct would cause harm in the United States. Process in such civil action may be served wherever the defendant is located, has an agent, or transacts business.

''(b) COMPLIANCE WITH RULES OF DISCOVERY.—In any action described in subsection (a), any party who is a citizen or national of a foreign country shall comply with the rules governing the conduct of discovery in the same manner and to the same extent as a party that is a citizen of the United States, except that the deposition of a person who is a citizen or national of a foreign country may be taken only by leave of the court on such terms as the court prescribes.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 113 of title 28, United States Code, is amended by adding at the end the following new item:

''1697. Foreign jurisdiction; service of process; compliance with rules of discovery.''.

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

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

There was no objection.

Mr. CONYERS. Mr. Chairman, I used to say that my amendment is simple and should be noncontroversial, but I have stopped doing that lately. But this is not a complicated amendment. It changes title 28 to provide for service of process against actions brought against defendant corporations located outside of the United States. It is an amendment that has succeeded before on a couple of occasions, once in a bipartisan vote, and the other in a motion to instruct conferees.

It responds to the problem of service to a foreign corporation by creating a nationwide contacts test whenever a foreign defendant is sued in Federal court if it knew or reasonably should have known that its conduct would cause harm in this country.

This is not a new test. It has been repeatedly upheld by our courts and is in the law already and for other activities. It is similar to the standard adopted last Congress when we amended the Foreign Service Immunities Act to permit actions against terrorist States to proceed in this country.

Secondly, we provide for worldwide service of process. Presently, a big problem with service of process is that each nation requires different methods for process. A uniform worldwide service will fix this problem, and is consistent with our other laws like the Clayton Act, and the securities laws permitting service wherever the defendant can be found.

Finally, my amendment ensures that foreign persons are subject to the same rules of discovery as our own citizens and corporations when they are sued for wrongdoing. Currently, Americans are subject to a cumbersome discovery process which requires involvement of foreign courts and is subject to foreign laws that are designed to thwart discovery process.

Let us continue to create a level playing field so that our American companies are not, in fact, disadvantaged by foreign competitors. It will also help ensure justice for U.S. citizens that might be harmed by a foreign product.

When a foreign automobile is defective, or when fruit imported from out of the country causes widespread disease, or when a halogen lamp made overseas but used in this country explodes, we need to make sure that there is some form of accountability, whether the defendant is located within the United States or not.

So I urge, again, for the favorable consideration of the amendment.

Mr. CANADY of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Michigan. This is an amendment which was considered by the full Committee on the Judiciary and was not adopted. It is also an amendment that was considered by the full House 3 years ago, I understand, when it was offered as an amendment to the product liability reform bill. It was defeated then. I understand there may have been a conflicting action on a motion to instruct conferees.

I think it is important for the Members to focus on the potential impact of this amendment. I share the concern of the gentleman from Michigan that we act in such a way that we can help ensure that American companies are not subjected to unfair foreign competition. But I think we also have to be very concerned about the potential retaliation by foreign nations if we adopt a provision such as this, that that is a primary concern, I think, that should move us to oppose the gentleman's amendment and see that it is not adopted.

The extent to which American statutes apply to foreign nationals already is a serious point of contention in our foreign relations. I believe it is important that we proceed cautiously in this area. I think additional caution is indicated due to the fact that this amendment has not been the subject of full consideration in hearings.

I agree with the gentleman that this is an area for us to look at, but I do not think that we have adequately evaluated this in order to make sure that we are striking an appropriate balance that is not going to end up actually harming American interests.

I respect the intentions of the gentleman from Michigan. I understand that he is trying to protect American interests. But it is my concern for which I believe that there is a strong basis that the actual impact of this could actually be to harm American interests around the world and to subject American companies, American citizens doing business in other countries to retaliatory action in response to our enactment of this amendment.

In light of those concerns, and with the recognition of the gentleman's good faith in offering this, I would strongly urge the Members of the House to reject the amendment, but I would for myself certainly offer to the gentleman to work with him on this issue and to see if there may be a way that we can strike an appropriate balance where we can help protect American interests without inviting retaliation that could be harmful.

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

Mr. CANADY of Florida. I am happy to yield to the gentleman from Colorado.

Mr. SKAGGS. Mr. Chairman, I just was curious because I was tracking, I think, the gentleman's logic in this. It seems to me it might extend then to, for instance, opposing the Helms-Burton legislation which has certain extraterritorial effects that run into serious opposition from our friends around the world.

Mr. CANADY of Florida. Mr. Chairman, I thank the gentleman for his insight on that issue. I would suggest to the gentleman from Colorado that there are extraordinary considerations involved there which the House has debated. The House has spoken on that issue along with the Senate, and I might also add along with the administration.

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

Mr. Chairman, I yield to the distinguished gentleman from Michigan (Mr. CONYERS), the ranking member.

Mr. CONYERS. Mr. Chairman, I would want to say to my friend from Florida, we need to work on this some more, but what more work does the gentleman have in mind? This is no different from the committee amendment. We have gone through this in the Committee on the Judiciary. That is the only way it got out to the floor.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

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

Mr. CANADY of Florida. Mr. Chairman, it is true we went through it in the Committee on the Judiciary, and the amendment was defeated. It was rejected by the committee. Obviously, that is why we are here debating it today.

Mr. CONYERS. Yes, it was defeated in the committee; but with no derogatory reflection on the committee. It was passed in the House by a vote of 258 to 166, and then it was approved by an even larger motion to instruct conferees by 256 to 142, February 29, 1996.

If the gentlemen are suggesting that I have got to pass an amendment in the Committee on the Judiciary before I can pass an amendment that has already passed on the floor, we maybe ought to reconsider the way that Congress works. Notwithstanding the Members in the committee, this is a very popular motion.

Let us talk about the problems that one might examine here. First of all, I do not want to put the gentleman into a not wanting to protect American interests like the majority of us do. I know he does. I would argue that for anybody. But there is no retaliation. We are the ones that are being disadvantaged already.

What I am doing is trying to level the playing field. The fact of the matter is that Americans cannot reach foreign corporations because we are tied up by their laws of service, their laws of discovery, their laws of bringing them into litigation.

All I am saying is that foreign corporations, if and when they may be the subject of litigation, would be subject to no less rules of procedure than American corporations.

How that would antagonize a foreign corporation benefiting from American sales, and by the way, guess who buys the most from everybody in the world? So there is no way that we could make them angry and they would take their products away from us. I do not think that is going to really work. So please, please, sir, realize that this is very critical to American citizens, our constituents, who are trying to seek some recovery.

Now, it just occurred to me, I mentioned halogen lamps. You know, the greatest jazz musician in America, aged 90, Lionel Hampton, had his whole apartment destroyed because of a halogen lamp. I do not know whether it was made in or out of the U.S., but there was going to be a big suit, and they, fortunately, resolved it.

But if it had gone to litigation, if it had been a foreign corporation, Lionel Hampton may not live long enough to ever see anything happen to it, because he would have to go along with the civil rules of procedure for whatever company, for whatever country the company originated in.

All I am saying is let us have everybody play by the same set of rules. So if we could get another vote on it, and everyone is of the same opinion that they were 2 years ago, 1 year ago, I would be very grateful.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

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

Mr. CONYERS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. Pursuant to House Resolution 408, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

The point of no quorum is considered withdrawn.

□ 1630

AMENDMENT OFFERED BY MR. ADERHOLT

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

The Clerk read as follows:

Amendment offered by Mr. ADERHOLT:

Page 8, line 15, insert ''or to disburse any funds to remedy the deprivation of a right under the Constitution,'' after ''tax,''.

Page 8, line 21, strike ''or assessment'' and insert ''assessment, or disbursement''.

Page 9, strike lines 1 through 24 and insert the following:

''(C) the tax or assessment will not contribute to or exacerbate the deprivation intended to be remedied, including through its effect on property valves or otherwise;

''(D) plans submitted to the court by State and local authorities will not effectively redress the deprivations at issue; and

''(E) the interests of State and local authorities in managing their affairs are not usurped, in violation of the Constitution, by the proposed imposition, increase, levying, or assessment.

''(2) The limitation contained in paragraph (1) shall apply only to any order or settlement which—

''(A) expressly directs any State, or political subdivision of a State, to impose, increase, levy, or assess any tax or disburse any funds to remedy the deprivation of a right under the Constitution; or

''(B) will necessarily require a State, or political subdivision of a State, to impose, increase, levy, or assess any tax or disburse any funds to remedy the deprivation of a right under the Constitution.

''(3) If the court finds that the conditions set forth in paragraph (1) have been satisfied, it shall enter an order incorporating that finding, and that order shall be subject to immediate interlocutory de novo review.

Page 10, line 7, insert after ''tax,'' the following: ''and any person or entity that is a resident of the State or political subdivision that would be required to disburse funds under paragraph (1) shall have the right to intervene in any proceeding concerning such disbursement,''.

Page 10, line 16, insert '', or disburse the funds,'' after ''tax''.

Page 10, line 21, insert '', or the disbursement of funds,'' after ''tax''.

Page 10, line 25, insert ''or the disbursement of funds, as the case may be'' after ''tax''.

Page 11, line 10, insert '', or a disbursement of funds that is made,'' after ''imposed''.

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

The CHAIRMAN pro tempore (Mr. ROGERS). Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. ADERHOLT. Mr. Chairman, today I have come to the House floor to call for an end to the unlimited power of Federal judges to legislate from the Federal bench and then send State and local taxpayers the bill. I want to make certain that Federal judges like some in Alabama, like Judge Ira DeMent, so they cannot use the people's hard-earned tax dollars for things like court-appointed prayer monitors and sensitivity training for teachers on how to keep prayer out of schools.

In Dekalb County, Alabama, which I am privileged to represent, the Fourth Congressional District, Judge DeMent has been decided to be a legislator and appropriate from the Federal bench. He ordered county school funds that should be going to the classrooms to go to pay for court-appointed monitors who will go into the schools and to make sure that there is no prayer.

Although I disagree with Judge DeMent's ruling, there may be some here today who agree with it, but when a Federal judge has free rein to take control and take local school funds away from local officials and then use them to pay for whatever he deems necessary, that is going too far. We need to have checks and balances. Our Nation was founded on this principle, and unfortunately we have drifted far away from this. Taxation without representation has been a cause for revolt in this country since the beginning of the American Revolution, and we are still fighting this battle today.

This amendment that I am offering today would re-insert and clarify the original language in section 5 of H.R. 1252 to ensure that certain criteria are met before the courts can disburse existing local and State taxpayer dollars in constitutional cases. The underlying bill has stated that a judge must meet certain criteria in order to raise or assess taxes. My amendment will give Federal judges the same pause for thought before using existing State and local revenues in constitutional cases.

This amendment does not say a Federal judge can never use State and local funds, it merely states that before he acts he must make sure that he is doing the right thing.

An unelected official should not be allowed to impose a tax on the people without first giving careful consideration to their actions. Likewise, if a Federal judge takes away local resources to enforce a ruling, especially in constitutional cases, there need to be protections built into the system to ensure that judges do not overstep their bounds and make decisions that are clearly out of the scope of their authority.

Using existing funds collected from honest taxpaying citizens for purposes that a judge who has clearly over stepped his bounds, they should be prohibited, and that is what my amendment aims to do.

I urge my colleagues to put a stop to the court systems in America that are running amok and vote in favor of my amendment to H.R. 1252.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Alabama (Mr. ADERHOLT).

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

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

The CHAIRMAN pro tempore. Pursuant to House Resolution 408, further proceedings on the amendment offered by the gentleman from Alabama (Mr. ADERHOLT) will be postponed.

AMENDMENT OFFERED BY MR. SKAGGS

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

The Clerk read as follows:

Amendment offered by Mr. SKAGGS:

At the end of the bill, add the following new section:

SEC. COURT SETTLEMENT SUNSHINE.

(a) SHORT TITLE.—This section may be cited as the ''Federal Court Settlements Sunshine Act of 1998.''

(b) REQUIREMENTS REGARDING SETTLEMENT OF CASES.—Chapter 111 of Title 28, United States Code, is amended by adding at the end the following:

''SEC. 1661. PUBLIC AVAILABILITY OF SETTLEMENTS OF CASES.

''Any settlement made of a civil action to which the United States, an agency or department thereof, or an officer or employee thereof in his or her official capacity, is a real party in interest, shall not be sealed, but shall be made available for public inspection, unless the court determines that there is a compelling public interest in limiting such availability. Any such determination shall be made in writing and shall explain the basis for the determination.''

(c) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end the following new item:

''Sec. 1661. Public availability of settlements of cases.''

Mr. SKAGGS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as having been read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. SKAGGS. Mr. Chairman, I appreciate the opportunity to bring this issue to my colleagues, but in doing so I want first to apologize to particularly the chairmen of the committee and the subcommittee for not having brought this to them before we started debate on this on the floor today. It is not a process that I would normally want to follow and certainly not one that they want to have followed.

But this is a matter that actually was heard in a Judiciary subcommittee a few years ago and reported out. It basically would provide that in any civil case in which the United States, an agency of the United States or a officer of the United States is a party in interest, that any settlement entered into in such a case would in the normal course have to be made available to the public, public information, unless the presiding judge entered an order finding that there was a compelling public interest in sealing the settlement papers and making them secret.

Certainly at a time when there is a lot of discussion about the need for more open and accountable government, I believe that moving in this direction with the Federal courts is an appropriate thing to do.

We are all well aware that agencies in the United States Government are involved in litigation routinely around the country involving all manner of important public issues, whether Superfund matters, consumer products issues, whatever. Frequently these cases are settled and the judge considering the settlement is requested to seal the settlement; that is, block any public disclosure. The reason for sealing these settlements can range from just avoiding embarrassment to protecting trade secrets and a number of things, some of them quite legitimate and offering a compelling public interest reason for sealing the information.

But I think it is important and therefore this amendment would create a presumption that in cases in which the United States Government is a party, that the public's right to know should be respected, again absent a presentation of reasons to seal a settlement and absent a determination by the court on a reasonable basis that there is good reason to withhold the terms of the settlement from the public. This is the public's business. Often large sums of money or important matters of public policy can be at stake, so I think it is only right that we all have a chance to see what kind of settlement arrangements our national government has entered into.

I know my colleagues may recall back to the savings and loan debacle days. In Colorado there was a settlement in the old Silverado case involving something like a billion dollars, but that settlement was sealed and the people of Colorado and the country never had any opportunity to find out exactly what was going on there. I do not think that is the kind of presumption that creates and supports public trust and confidence in the courts, so I hope that this is an amendment that is reasonably drawn for a good purpose and can earn the support of my colleagues.

In the hearing that was held on this amendment some years ago before it was passed out of the same subcommittee that brings this bill to the floor, one Federal district judge who testified in support of the bill characterized this kind of public accountability as, quote, the very essence of justice is that it is public. I think that ought to inform our treatment of this matter, and I ask my colleagues' favorable consideration.

Mr. CANADY of Florida. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Colorado (Mr. SKAGGS).

Mr. Chairman, I am sorry to disappoint my friend and colleague from Colorado in opposing the amendment, but as the gentleman noted at the outset, this is an amendment which we on the Committee on the Judiciary have really not had an opportunity to fully evaluate.

I am sympathetic to the concerns underlying the amendment, and although I will have to say that this debate to a certain extent has already taken place in connection with the Jackson-Lee amendment that was offered earlier, obviously the gentleman's amendment is more restricted in that it focuses on settlements involving the Government of the United States, whereas the Jackson-Lee amendment was much broader than that. But, notwithstanding that, I am concerned that this amendment would in its present form serve to discourage settlement of cases by the government and could result in the disclosure of information which should not be disclosed, which could cause unnecessary embarrassment to innocent individuals.

There is also a potential, as the gentleman recognized, for disclosure of proprietary information. I believe the gentleman's position would be that his amendment would not require the disclosure of proprietary information. I am not certain that that is clear from the terms of the amendment, however, so that is a concern.

I think another point to make in connection with this is that the Civil Rules Advisory Committee of the Judicial Conference has recommended that there be no changes to rule 26(c) regarding protective orders, and I do not always agree with the Judicial Conference.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I would just note that the gentleman never agrees with the Judicial Conference.

Mr. CANADY of Florida. Well, occasionally.

Mr. FRANK of Massachusetts. Except now.

Mr. CANADY of Florida. Occasionally we agree with the Judicial Conference. The Judicial Conference has looked at this, and they have decided that there is no compelling need for a change in the rule.

Another point that I think we should consider is that the sort of public matters and settlements by government agencies that the gentleman is concerned about are subject to ongoing oversight by the Congress of the United States. I think that that is an appropriate area for us to be involved, and I believe that to the extent that there may be problems with respect to settlements that are entered into by government agencies, it is our responsibility in the Congress to conduct oversight with respect to those matters. I believe that that avenue of bringing public scrutiny to settlements is a valuable check on potential abuses in this area.

So for all of these reasons I would urge the Members of the House to reject the gentleman's amendment. Again, as with the earlier amendments, I as a member of the Subcommittee on Crime would be happy to work with the gentleman in addressing his concerns.

There may be a way that could be more narrowly tailored and targeted which would help ensure that the public interest is protected, and that all

the other concerns that we have are adequately covered so that we are not compromising the values that we seek to protect. We may be able to craft an approach that would take all those things into account and would be balanced and would deserve passage by the House, but I do not think we are there yet with this particular amendment, so I would urge the Members of the House to reject the amendment.

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

Mr. Chairman, as it has been said that patriotism is sometimes the last refuge of scoundrels, invocation of the Judicial Conference is the last refuge of my friend from Florida. He is rarely to be found on the same side of an issue as the Judicial Conference, he is rarely to be found on the same side of the hemisphere as the Judicial Conference, and when the gentleman from Florida invokes the Judicial Conference it is a simple affirmation of the principle that nature abhors a vacuum. Into the vacuum of arguments that my friend had rushes a reference to the Judicial Conference. The fact that he who ordinarily disagrees with it invokes it shows this is a pretty good idea. Not only is it a pretty good idea, but it is one that is hard to object to.

The gentleman's amendment is quite moderate, the gentleman from Colorado. It says if a judge decides there is a compelling reason not to make this public, the judge can do that. But the rule ought to be, the assumption ought to be that the public will know about public business.

I am surprised, frankly, at some of my conservative friends. Conservatives have traditionally distrusted the executive. For them to be not wanting to require the executive to make clear the terms of any settlement which in the nature of the case would exclude the legislative body but be an executive decision surprises me. So I rise in support of the amendment.

Mr. Chairman, I yield to the gentleman from Colorado (Mr. SKAGGS) the author of the amendment.

□ 1645

Mr. SKAGGS. Mr. Chairman, I appreciate the comments made by my friend from Florida about other ways of getting at the problem. I think it is a bit not quite sufficient to the issue to suggest that any problems along these lines, of course, would be susceptible to Congressional oversight and intervention by us. That can happen in a fairly haphazard fashion, as I think the gentleman is aware.

But this really comes down to a pretty fundamental question, which is do you think the business of the United States courts, when involving the United States itself as a party, ought to be presumptively public business or not, yes or no, subject to the discretion of a judge, employing a reasonable standard to determine whether there are countervailing interests to that presumption of the public business of the public courts being public?

If the gentleman is uncomfortable with that proposition, obviously he will vote against the amendment. But I think it is a fairly straightforward one, and one I was quite proud, for instance, to have the cosponsorship and support of the now chairman of the Committee on the Judiciary when this was reported out of the subcommittee that the gentleman is now a member of a couple of years ago.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado (Mr. SKAGGS).

The amendment was rejected.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 408, proceedings will now resume on those amendments on which further proceedings were postponed in the following order:

The amendment offered by the gentleman from Michigan (Mr. CONYERS), and the amendment offered by the gentleman from Alabama (Mr. ADERHOLT).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT OFFERED BY MR. CONYERS

The CHAIRMAN. The pending business is the vote on the amendment offered by the gentleman from Michigan (Mr. CONYERS) on which further proceedings were postponed, and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 200, noes 216, not voting 16, as follows:

[Roll No. 107]

AYES—200

Abercrombie
Ackerman
Allen
Andrews
Baesler
Baldacci
Ballenger
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Chabot
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cummings
Danner
Davis (FL)
Davis (IL)
Deal
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Duncan
Edwards
Ehrlich
Engel
English
Ensign
Eshoo
Etheridge
Evans
Farr
Fazio
Filner
Ford
Frank (MA)
Franks (NJ)
Frost
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hefner
Hilleary
Hinchey
Holden
Hooley
Hoyer
Hunter
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lewis (GA)
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McHugh
McIntyre
McKinney
McNulty
Meehan
Meeks (NY)
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (VA)
Morella
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pappas
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Roybal-Allard
Rush
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Sherman
Skaggs
Skelton
Slaughter
Smith (MI)
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stearns
Stokes
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Traficant
Velazquez
Vento
Visclosky
Wamp
Waters
Watt (NC)
Waxman
Weygand
Wise
Woolsey
Wynn
Yates

NOES—216

Aderholt
Archer
Armey
Bachus
Baker
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chambliss
Chenoweth
Christensen
Coburn
Collins
Combest
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Davis (VA)
DeLay
Diaz-Balart
Dickey
Doolittle
Dreier
Dunn
Ehlers
Emerson
Everett
Ewing
Fawell
Foley
Forbes
Fossella
Fowler
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilliard
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hutchinson
Hyde
Inglis
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
Lucas
Manzullo
McCollum
McCrery
McDade
McInnis
McIntosh
McKeon
Metcalf
Mica
Moran (KS)
Murtha
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shimkus
Shuster
Sisisky
Skeen

Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stenholm
Stump
Sununu
Talent
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Turner
Upton
Walsh
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wexler
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—16

Bateman
Clay
Coble
Dixon
Fattah
Fox
Gonzalez
Hastings (FL)
Hinojosa
Istook
Meek (FL)
Miller (FL)
Paxon
Poshard
Riggs
Tanner

□ 1709

Messrs. FOLEY, YOUNG of Alaska, and CAMPBELL changed their vote from ''aye'' to ''no.''

Messrs. OWENS, KUCINICH, STUPAK, MCHUGH, HILLEARY, MINGE and HUNTER changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. Pursuant to House Resolution 408, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on the additional amendment on which the Chair has postponed further proceedings.

AMENDMENT OFFERED BY MR. ADERHOLT

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Alabama (Mr. ADERHOLT) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 174, noes 236, not voting 22, as follows:

[Roll No. 108]

AYES—174

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bereuter
Bilirakis
Bliley
Blunt
Boehner
Bonilla
Bono
Brady
Bryant
Bunning
Burr
Burton
Callahan
Calvert
Canady
Cannon
Chabot
Chambliss
Chenoweth
Christensen
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Deal
DeLay
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehrlich
Emerson
Ensign
Everett
Foley
Fossella
Fowler
Gallegly
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hoekstra
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jenkins
Johnson, Sam
Jones
Kasich
Kim
King (NY)
Kingston
Knollenberg
Kolbe
Largent
Latham
Lewis (CA)
Lewis (KY)
Linder
Livingston
Lucas
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Moran (KS)
Myrick
Nethercutt
Neumann
Northup
Norwood
Nussle
Packard
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Pombo
Portman
Radanovich
Redmond
Riley
Rogan
Rogers
Rohrabacher
Royce
Ryun
Salmon
Sanford
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shimkus
Shuster
Sisisky
Skeen
Smith (MI)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Spence
Stearns
Stenholm
Stump
Talent
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Wamp
Watkins
Watts (OK)
Weldon (FL)
Wicker
Wolf
Young (AK)
Young (FL)

NOES—236

Abercrombie
Ackerman
Allen
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Bass
Becerra
Bentsen
Berman
Berry
Bilbray
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boswell
Boucher
Boyd
Brown (CA)
Brown (FL)
Brown (OH)
Campbell
Capps
Cardin
Carson
Castle
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (FL)
Davis (VA)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Ehlers
Engel
English
Eshoo
Etheridge
Evans
Ewing
Farr
Fawell
Fazio
Filner
Forbes
Ford
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Ganske
Gejdenson
Gephardt
Gilchrest
Gilman
Gordon
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hamilton
Harman
Hilliard
Hinchey
Hobson
Holden
Hooley
Horn
Houghton
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Kanjorski
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Klug
Kucinich
LaFalce
LaHood
Lampson
Lantos
LaTourette
Lazio
Leach
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDade
McDermott
McGovern
McHale
McKinney
McNulty
Meehan
Meeks (NY)
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Neal
Ney
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Pallone
Pappas
Pascrell
Pastor
Payne
Pelosi
Petri
Pomeroy
Porter
Price (NC)
Pryce (OH)
Quinn
Rahall
Ramstad
Rangel
Regula
Reyes
Rivers
Rodriguez
Roemer
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schumer
Scott
Serrano
Shays
Sherman
Skaggs
Skelton
Slaughter
Smith (NJ)
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Sununu
Tauscher
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Turner
Upton
Velazquez
Vento
Visclosky
Walsh
Waters
Watt (NC)
Waxman
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wise
Woolsey
Wynn
Yates

NOT VOTING—22

Bateman
Buyer
Camp
Clay
Coble
Cox
Davis (IL)
Dixon
Fattah
Fox
Gonzalez
Hastings (FL)
Hinojosa
Istook
Kaptur
Meek (FL)
Miller (FL)
Paxon
Poshard
Riggs
Souder
Tanner

□ 1718

Messrs. GREEN, MCDADE, PETRI and MILLER of California changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. CAMP. Mr. Chairman, on rollcall no. 108, my voting card did not register, although I voted no.

(By unanimous consent, Mr. SOLOMON was allowed to speak out of order.)

AMENDMENT PROCESS FOR H.R. 6, THE HIGHER EDUCATION AMENDMENTS OF 1998

Mr. SOLOMON. Mr. Chairman, I move to strike the last word for the purposes of making an announcement.

Mr. Chairman, the Committee on Rules is planning to meet the week of April 27th, this coming week, to grant a rule which may limit the amendment process on H.R. 6, the Higher Education Amendments of 1998.

The rule may, at the request of the Committee on Education and the Workforce, include a provision requiring amendments to be preprinted in the amendment section of the CONGRESSIONAL RECORD. Amendments to be preprinted should be signed by the Member and submitted at the Speaker's table. Amendments should be drafted to the text of the bill as reported by the Committee on Education and the Workforce.

Mr. Chairman, Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to make certain that their amendments comply with the rules of the House.

Mr. MANZULLO. Mr. Chairman, I ask unanimous consent that the Clerk be directed to strike section 5 of the bill.

The CHAIRMAN pro tempore (Mr. ROGERS). Is there objection to the request of the gentleman from Illinois?

Mr. ADERHOLT. Mr. Chairman, reserving the right to object, and I do not intend to object, but I would like to engage in a colloquy with the distinguished gentleman from Florida (Mr.

CANADY) chairman of the Subcommittee on the Constitution of the Committee on the Judiciary.

Mr. Chairman, I would like to request that the Committee on the Judiciary study the situation in DeKalb County, Alabama, which has occurred as a result of Judge DeMent's ruling. I do not object to the unanimous consent at this time, but I would like to ask that that be studied.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

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

Mr. CANADY of Florida. Mr. Chairman, I certainly understand the gentleman's concerns and I share the concerns regarding certain matters with respect to the judge's order, and that is a matter which we will consider.

Mr. ADERHOLT. Mr. Chairman, reclaiming my time, I withdraw my reservation of objection.

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

There was no objection.

The CHAIRMAN pro tempore. Section 5, as amended, is stricken.

Are there other amendments?

AMENDMENT OFFERED BY MR. COBURN

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

The Clerk read as follows:

Amendment offered by Mr. COBURN:

Add the following at the end:

Sec. 12 Limitation on Racketeering

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following new section:

"Section 1633. Limitation on Racketeering"

''(a) LIMITATION.—Notwithstanding any other provision of law, in an action under section 1964 of title 18, no court of the United States or other court listed in section 610 of this title shall have jurisdiction to enter or carry out any order against the defendant, unless the defendant has engaged in a profit-seeking purpose or committed a criminal offense under state law or under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 99 of title 26, United States Code, is amended by adding at the end the following:

''1633. Limitation on racketeering.''.

Mr. COBURN. Mr. Chairman, everyone knows what a racketeer is and what a racketeer-influenced corrupt organization is. These words refer to organized criminals, to people who form gangs for the purpose of hurting other people and stealing from them.

Declaring people racketeers simply because they engage in activities and activism on behalf of a cause does something very serious to our form of self-government and our sense of civil liberties. It puts citizens at risk of losing everything they have if they support a cause that happens to not be popular in the eyes of some court. It frightens citizens against the kind of civil activism that has been a hallmark of our democracy. It undercuts the very foundations of our government by the people.

This amendment has no effect on the prosecution of criminals. It affects only civil actions under RICO. It offers no loophole of any sort for those who would attempt to steal the property of others or for those who would hurt innocent people.

There is only one class of people who benefit from this amendment: citizens lawfully exercising their rights to speak out on issues of public concern.

Mr. Chairman, it is my hope that we can support this amendment.

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

Mr. COBURN. I yield to the gentleman from Arizona.

Mr. SHADEGG. Mr. Chairman, I rise in support of the gentleman's amendment and do so on the basis that the law needs to provide that the purpose of the crime has to have been a profit-seeking motive.

The Arizona RICO law is written in a fashion to parrot the gentleman's amendment. It provides that the crime, the RICO offense, in order to be a predicate under the law, must have been pursued for financial gain.

What the gentleman's amendment does is simply clarify that and provide that unless there was either a profit-seeking purpose or a criminal offense as defined under State law or under Federal law, a RICO action cannot be brought.

That is consistent, Mr. Chairman, with both the intent of the authors and of the experts that help write the law, specifically, I believe, law professor G. Robert Blakey. I think the gentleman's amendment clarifies the law and is a step in the right direction, and I support the amendment wholeheartedly.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we will now find out if on the Republican side sauce for the goose is sauce for the gander.

I opposed an amendment that was offered before by the gentleman from California that would have created a brand-new privilege, a parent-child privilege, not on the grounds that it was an unthinkable idea but that dealing with a subject of that complexity and that impact for the first time on the floor of the House without having gone through any of our procedure was not a good idea.

□ 1730

The majority agreed with me. I make the same argument here. Actually, this is not so much an amendment as it is a periodical. I have gotten four versions of it. I understand that. I am holding all four versions.

First, it said earlier today it would only apply if the defendant was not primarily engaged in a profit-seeking purpose. Then we got profit-seeking purpose or committed bodily injury. Then we got, we struck bodily injury, and we got criminal offense. Then we got a conforming amendment.

I do not criticize the drafters. They are doing a very good job, but this is a work in progress. We have gotten four versions of it because they are trying to deal with a complex subject. I understand that this is a response to a decision that was just made, but let me make a point that I thought was clear. You run the place. You control the committees. You could schedule a hearing next week. You could schedule a markup the week after. You can bring the bill to the floor. Do not work in such haste on this issue.

Now, Members quoted Professor Blakey as saying that the RICO statute goes too far. Many of us agree. But do my colleagues know it does not just go too far for nonprofits. There are profit-making entities that have been unfairly dealt with under RICO.

You leave them alone, because my colleague from California did not like what Kenneth Starr did with regard to Monica Lewinsky and her mother, and came in with a bill right to the floor of the House. My colleagues here do not like what a court did with regard to a right-to-life group, and they come right to the floor of the House. This is not a place for instant therapy. If you do not like something you read in the paper, please do not come right up with an amendment. Let us use the procedures.

I agree in both cases; legislative action is appropriate, but not right away; not version four of the amendment. Let us have a hearing and a markup, and let us not say that we are only going to protect nonprofits. If you vote for this amendment, are you then going to tell people that as far as profit-making entities are concerned, RICO does not go too far?

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

Mr. FRANK of Massachusetts. I yield to the gentleman from Arizona.

Mr. SHADEGG. Mr. Chairman, I simply want to point out that the language as offered by the gentleman from Oklahoma does not limit this exemption to nonprofits. It will apply to profits or nonprofits. What it does is limit the activity to whether or not the activity was profit-making activity.

Mr. FRANK of Massachusetts. I agree with that. That is exactly what I said. In fact, if you are a corporation trying to make a profit, which most corporations do, you are not covered by this amendment. That is true. If you have a profit-making corporation that is selling girl scout cookies, they could not be RICO'd for selling girl scout cookies. But under this amendment if they are a profit-seeking corporation seeking a profit, which profit-seeking corporations are wont to do, they do not get the benefit of this.

Mr. SHADEGG. Again, Mr. Chairman, if the gentleman will continue to yield, I want to try to make this clear. It does not matter whether the entity is a profit-making entity or a nonprofit-making entity. If a profit-making entity is not engaged in a profit-making activity, they are engaged in a charitable activity.

Mr. FRANK of Massachusetts. Mr. Chairman, I understand that. Reclaiming my time, the gentleman is limited in the amount of time he can state the obvious. Yes, if you are a profit-making corporation and you are going about the business of trying to make a profit, this amendment does not protect you. You could be subject to RICO. I agree.

If General Motors was accused of trying to sell girl scout cookies in a racketeering way, you have come to their defense. But if someone said, corporation X is guilty of racketeering in its profit-making corporate entity, they are not protected. I do not think that ought to be the case. I do think there have been abuses of RICO, but against profit-making entities trying to make a profit. Indeed, if you look at the pattern of RICO, it is more often used by one civil plaintiff against a civil defendant and a profit-making corporation.

I do not know what play they are going to call in the huddle, but we may be about to see version five. I have four versions and seven people working on amendment 5.

Let us go to a hearing. Let us go to a markup. I do not think we should have the markup right here. It is not polite. I think we ought to do this in the regular order. But this amendment says, if you are engaging in profit-making activity, and you have a profit-making purpose, you get no benefit. You are covered by RICO.

RICO says you cannot get together for racketeering purposes. I would not suggest that that is what is going on over there, Mr. Chairman. What they are trying to do is what we should do in the regular legislative process. Let us have a hearing and do this in a sensible way.

Mr. COBURN. Mr. Chairman, I ask unanimous consent to strike the last word.

The CHAIRMAN pro tempore (Mr. ROGERS). Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. COBURN. Mr. Chairman, I recognize the pertinent comments of the gentleman from Massachusetts, and would say that many of his comment are accurate, and that given his comments being accurate, I ask unanimous consent to withdraw the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. COBURN. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I would look forward, as I think many on our side would, and I know the ranking member would, we would love to reexamine the RICO statute across the board and deal with abuses, and on that basis I thank the gentleman and we will be cooperative.

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

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

Mr. HYDE. Mr. Chairman, I want to suggest to the gentleman from Oklahoma (Mr. COBURN) that he has performed a signal service by bringing this matter to our attention. Yes, it is in the wake of a jury verdict and a court case that happened in Chicago, but he is highlighting a problem this Congress has wrestled with for years; namely, trying to make some sense out of the RICO statute.

There are abuses where it is applied where it was never intended to be applied. That is recognized by the gentleman from Massachusetts (Mr. FRANK) and the gentleman from Michigan (Mr. CONYERS) and conservatives on this side. We need to look at RICO. And so if the gentleman is generous enough, and he has been, to withdraw his amendment, I pledge the Committee on the Judiciary will take a hard look at revising the RICO statute, hold hearings, working in a bipartisan way with the minority, and try to come up with a bill that does something substantive and correct what we all agree is an egregious flaw.

Mr. COBURN. Mr. Chairman, I thank the gentleman.

Mr. FRANK of Massachusetts. Mr. Chairman, if the gentleman will continue to yield, we may wind up invoking that great quote from Edward G. Robinson in the civil situation, ''is this the end of RICO?''

Mr. HYDE. That is from Little Caesar, and I remember it well. The gentleman and I are the only two.

Mr. COBURN. Mr. Chairman, I ask unanimous consent that the amendment be withdrawn.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The CHAIRMAN pro tempore. Are there further amendments to the bill?

If not, the question is on the committee amendment in the nature of a substitute, as modified.

The amendment in the committee nature of a substitute, as modified, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SNOWBARGER) having assumed the Chair, Mr. ROGERS, Chairman pro tempore 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. 1252) to modify the procedures of the Federal courts in certain matters, and for other purposes, pursuant to House Resolution 408, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on H.R. 1252.

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

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 1252, JUDICIAL REFORM ACT OF 1998

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 1252, the Clerk be authorized to correct section numbers, punctuation and cross references, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill, H.R. 1252.

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

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 3579, 1998 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT

Mr. LIVINGSTON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3579) making emergency supplemental appropriations for the fiscal year ending September 30, 1998, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

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

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. OBEY.

Mr. OBEY. Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

Mr. OBEY moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 3579, making emergency supplemental appropriations for the fiscal year ending September 30, 1998, and for other purposes, be instructed, within the scope of the conference, to agree to funding for the International Monetary Fund consistent with the terms, conditions, and provisions of H.R. 3114, as reported by the Committee on Banking and Financial Services.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. OBEY) is recognized for 30 minutes, and the gentleman from Louisiana (Mr. LIVINGSTON) is recognized for 30 minutes.