3 years, and I think this is a very good success, and I want to thank the chairman of the subcommittee, the great Member, the gentleman from Ohio (Mr. REGULA), for his outstanding work.

Ms. JACKSON LEE of Texas. Mr. Chairman, I move to strike the last word.

I wish to thank the chairman for his kindness, and also I do believe, although we disagree, that the first amendment had merit. Obviously, I would have supported it, but I hope we can recognize that even though the amendment was not put to the floor for a vote, that there are issues that we should all discuss about saving our forests and our trees and hope that we will continue this discussion.

Mr. Chairman, my only concern, and I would like to yield to the gentleman as we rise, we are still continuing in title II for tomorrow as we resume; is that my understanding?

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

Ms. JACKSON LEE of Texas. I yield to the gentleman from Ohio.

Mr. REGULA. Mr. Chairman, the gentlewoman's understanding is correct.

I would also add that I think we have an agreement among many people that the forests have a multipurpose potential for the public. It is a matter of how we achieve that in the best possible way.

Ms. JACKSON LEE of Texas. Mr. Chairman, I appreciate the chairman's kindness and I think we can continue to go forward and work these issues out.

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

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. LATOURETTE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4193) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1999, and for other purposes, had come to no resolution thereon.

EDUCATION SAVINGS AND SCHOOL EXCELLENCE ACT OF 1998—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following veto message from the President of the United States.

To the House of Representatives:

I am returning herewith without my approval H.R. 2646, the ''Education Savings and School Excellence Act of 1998.''

As I have said before, we must prepare our children for the 21st century by providing them with the best education in the world. To help meet this goal, I have sent the Congress a comprehensive agenda for strengthening our public schools, which enroll almost 90 percent of our students. My plan calls for raising standards, strengthening accountability, and promoting charter schools and other forms of public school choice. It calls for reducing class size in the early grades, so our students get a solid foundation in the basic skills, modernizing our schools for the 21st century, and linking them with the Internet. And we must strengthen teaching and provide students who need additional help with tutoring, mentoring, and after-school programs. We must take these steps now.

By sending me this bill, the Congress has instead chosen to weaken public education and shortchange our children. The modifications to the Education IRAs that the bill would authorize are bad education policy and bad tax policy. The bill would divert limited Federal resources away from public schools by spending more than $3 billion on tax benefits that would do virtually nothing for average families and would disproportionately benefit the most affluent families. More than 70 percent of the benefits would flow to families in the top 20 percent of income distribution, and families struggling to make ends meet would never see a penny of the benefits. Moreover, the bill would not create a meaningful incentive for families to increase their savings for educational purposes; it would instead reward families, particularly those with substantial incomes, for what they already do.

The way to improve education for all our children is to increase standards, accountability, and choice within the public schools. Just as we have an obligation to repair our Nation's roads and bridges and invest in the infrastructure of our transportation system, we also have an obligation to invest in the infrastructure needs of our public schools. I urge the Congress to meet that obligation and to send me instead the legislation I have proposed to reduce class size; improve the quality of teaching; modernize our schools; end social promotions; raise academic standards; and hold school districts, schools, and staff accountable for results.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 21, 1998.*

□ 2015

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The objections of the President will be spread at large upon the Journal, and the veto message and the bill will be printed as a House document.

Mr. HERGER. Mr. Speaker, I ask unanimous consent that the veto message of the President, together with the accompanying bill, H.R. 2646, be referred to the Committee on Ways and Means.

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

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on the motion to suspend the rules if a recorded vote or the yeas and nays are ordered or if the vote is objected to under clause 4 of rule XV.

Such a rollcall vote, if postponed, will be taken tomorrow.

SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

Mr. BLILEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1689) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1689

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 ''Securities Litigation Uniform Standards Act of 1998''.

TITLE I—SECURITIES LITIGATION UNIFORM STANDARDS

SEC. 101. LIMITATION ON REMEDIES.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 16 of the Securities Act of 1933 (15 U.S.C. 77p) is amended to read as follows:

''SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REMEDIES.

''(a) REMEDIES ADDITIONAL.—Except as provided in subsection (b), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

''(b) CLASS ACTION LIMITATIONS.—No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

''(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(c) REMOVAL OF COVERED CLASS ACTIONS.—Any covered class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

''(d) PRESERVATION OF CERTAIN ACTIONS.—

''(1) ACTIONS UNDER STATE LAW OF STATE OF INCORPORATION.—

''(A) ACTIONS PRESERVED.—Notwithstanding subsection (b) or (c), a covered class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(B) PERMISSIBLE ACTIONS.—A covered class action is described in this subparagraph if it involves—

''(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(ii) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

''(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(II) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(2) STATE ACTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

''(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

''(3) ACTIONS UNDER CONTRACTUAL AGREEMENTS BETWEEN ISSUERS AND INDENTURE TRUSTEES.—Notwithstanding subsection (b) or (c), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

''(4) REMAND OF REMOVED ACTIONS.—In an action that has been removed from a State court pursuant to subsection (c), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

''(e) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(2) COVERED CLASS ACTION.—

''(A) IN GENERAL.—The term 'covered class action' means—

''(i) any single lawsuit in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(B) EXCEPTION FOR DERIVATIVE ACTIONS.—Notwithstanding subparagraph (A), the term 'covered class action' does not include an exclusively derivative action brought by 1 or more shareholders on behalf of a corporation.

''(C) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

''(3) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in section 18(b)(1) at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under this title pursuant to rules issued by the Commission under section 4(2) of this title.''.

(2) CIRCUMVENTION OF STAY OF DISCOVERY.—Section 27(b) of the Securities Act of 1933 (15 U.S.C. 77z–1(b)) is amended by inserting after paragraph (3) the following new paragraph:

''(4) CIRCUMVENTION OF STAY OF DISCOVERY.—Upon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection.''.

(3) CONFORMING AMENDMENTS.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(A) by inserting ''except as provided in section 16 with respect to covered class actions,'' after ''Territorial courts,''; and

(B) by striking ''No case'' and inserting ''Except as provided in section 16(c), no case''.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) AMENDMENT.—Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended—

(A) in subsection (a), by striking ''The rights and remedies'' and inserting ''Except as provided in subsection (f), the rights and remedies''; and

(B) by adding at the end the following new subsection:

''(f) LIMITATIONS ON REMEDIES.—

''(1) CLASS ACTION LIMITATIONS.—No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

''(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(2) REMOVAL OF COVERED CLASS ACTIONS.—Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

''(3) PRESERVATION OF CERTAIN ACTIONS.—

''(A) ACTIONS UNDER STATE LAW OF STATE OF INCORPORATION.—

''(i) ACTIONS PRESERVED.—Notwithstanding paragraph (1) or (2), a covered class action described in clause (ii) of this subparagraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(ii) PERMISSIBLE ACTIONS.—A covered class action is described in this clause if it involves—

''(I) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(II) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

''(aa) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(bb) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(B) STATE ACTIONS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

''(ii) STATE PENSION PLAN DEFINED.—For purposes of this subparagraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

''(C) ACTIONS UNDER CONTRACTUAL AGREEMENTS BETWEEN ISSUERS AND INDENTURE TRUSTEES.—Notwithstanding paragraph (1) or (2), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

''(D) REMAND OF REMOVED ACTIONS.—In an action that has been removed from a State court pursuant to paragraph (2), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

''(4) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(5) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(B) COVERED CLASS ACTION.—The term 'covered class action' means—

''(i) any single lawsuit in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law

or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(C) EXCEPTION FOR DERIVATIVE ACTIONS.—Notwithstanding subparagraph (B), the term 'covered class action' does not include an exclusively derivative action brought by 1 or more shareholders on behalf of a corporation.

''(D) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(E) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in section 18(b)(1) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 pursuant to rules issued by the Commission under section 4(2) of such Act.

''(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.''.

(2) CIRCUMVENTION OF STAY OF DISCOVERY.—Section 21D(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(b)(3)) is amended by inserting after subparagraph (C) the following new subparagraph:

''(D) CIRCUMVENTION OF STAY OF DISCOVERY.—Upon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.''.

(c) APPLICABILITY.—The amendments made by this section shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

SEC. 102. PROMOTION OF RECIPROCAL SUBPOENA ENFORCEMENT.

(a) COMMISSION ACTION.—The Securities and Exchange Commission, in consultation with State securities commissions, shall seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission seeking to compel persons to attend, testify in, or produce documents or records in connection with an action or investigation by a State securities commission of an alleged violation of State securities laws.

(b) REPORT.—Within 24 months after the date of enactment of this Act, the Commission shall submit a report to the Congress—

(1) identifying the States that have adopted laws described in subsection (a);

(2) describing the actions undertaken by the Commission and State securities commissions to promote the adoption of such laws; and

(3) identifying any further actions the Commission recommends for such purposes.

SEC. 103. REPORT ON CONSEQUENCES.

The Securities and Exchange Commission shall include in each of its first 3 annual reports submitted after the date of enactment of this Act a report regarding—

(1) the nature and the extent of the class action cases that are preempted by, or removed pursuant to, the amendments made by section 101 of this title;

(2) the extent to which that preemption or removal either promotes or adversely affects the protection of securities investors or the public interest; and

(3) if adverse effects are found, alternatives to, or revisions of, such preemption or removal that—

(A) would not have such adverse effects;

(B) would further promote the protection of investors and the public interest; and

(C) would still substantially reduce the risk of abusive securities litigation.

TITLE II—REAUTHORIZATION OF THE SECURITIES AND EXCHANGE COMMISSION

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission $351,280,000 for fiscal year 1999.

''(b) MISCELLANEOUS EXPENSES.—Funds appropriated pursuant to this section are authorized to be expended—

''(1) not to exceed $3,000 per fiscal year, for official reception and representation expenses;

''(2) not to exceed $10,000 per fiscal year, for funding a permanent secretariat for the International Organization of Securities Commissions; and

''(3) not to exceed $100,000 per fiscal year, for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations, appropriate representatives, and staff to exchange views concerning developments relating to securities matters, for development and implementation of cooperation agreements concerning securities matters and provision of technical assistance for the development of foreign securities markets, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings, including—

''(A) such incidental expenses as meals taken in the course of such attendance;

''(B) any travel or transportation to or from such meetings; and

''(C) any other related lodging or subsistence.''.

SEC. 202. REQUIREMENTS FOR THE EDGAR SYSTEM.

Section 35A of the Securities Exchange Act of 1934 (15 U.S.C. 78ll) is amended—

(1) by striking subsections (a), (b), (c), and (e); and

(2) in subsection (d)—

(A) by striking the subsection designation;

(B) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3).

TITLE III—CLERICAL AND TECHNICAL AMENDMENTS

SEC. 301. CLERICAL AND TECHNICAL AMENDMENTS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77 et seq.) is amended as follows:

(1) Section 2(a)(15)(i) (15 U.S.C. 77b(a)(15)(i)) is amended by striking ''section 2(13) of the Act'' and inserting ''paragraph (13) of this subsection''.

(2) Section 11(f)(2)(A) (15 U.S.C. 77k(f)(2)(A)) is amended by striking ''section 38'' and inserting ''section 21D(f)''.

(3) Section 13 (15 U.S.C. 77m) is amended—

(A) by striking ''section 12(2)'' each place it appears and inserting ''section 12(a)(2)''; and

(B) by striking ''section 12(1)'' each place it appears and inserting ''section 12(a)(1)''.

(4) Section 18 (15 U.S.C. 77r) is amended—

(A) in subsection (b)(1)(A), by inserting '', or authorized for listing,'' after ''Exchange, or listed'';

(B) in subsection (c)(2)(B)(i), by striking ''Capital Markets Efficiency Act of 1996'' and inserting ''National Securities Markets Improvement Act of 1996'';

(C) in subsection (c)(2)(C)(i), by striking ''Market'' and inserting ''Markets'';

(D) in subsection (d)(1)(A)—

(i) by striking ''section 2(10)'' and inserting ''section 2(a)(10)''; and

(ii) by striking ''subparagraphs (A) and (B)'' and inserting ''subparagraphs (a) and (b)'';

(E) in subsection (d)(2), by striking ''Securities Amendments Act of 1996'' and inserting ''National Securities Markets Improvement Act of 1996''; and

(F) in subsection (d)(4), by striking ''For purposes of this paragraph, the'' and inserting ''The''.

(5) Sections 27, 27A, and 28 (15 U.S.C. 77z–1, 77z–2, 77z–3) are transferred to appear after section 26.

(6) Paragraph (28) of schedule A of such Act (15 U.S.C. 77aa(28)) is amended by striking ''identic'' and inserting ''identical''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended as follows:

(1) Section 3(a)(10) (15 U.S.C. 78c(a)(10)) is amended by striking ''deposit, for'' and inserting ''deposit for''.

(2) Section 3(a)(12)(A) (15 U.S.C. 78c(a)(12)(A)) is amended by moving clause (vi) two em spaces to the left.

(3) Section 3(a)(22)(A) (15 U.S.C. 78c(a)(22)(A)) is amended—

(A) by striking ''section 3(h)'' and inserting ''section 3''; and

(B) by striking ''section 3(t)'' and inserting ''such section 3''.

(4) Section 3(a)(39)(B)(i) (15 U.S.C. 78c(a)(39)(B)(i)) is amended by striking ''an order to the Commission'' and inserting ''an order of the Commission''.

(5) The following sections are each amended by striking ''Federal Reserve Board'' and inserting ''Board of Governors of the Federal Reserve System'': subsections (a) and (b) of section 7 (15 U.S.C. 78g(a), (b)); section 17(g) (15 U.S.C. 78q(g)); and section 26 (15 U.S.C. 78z).

(6) The heading of subsection (d) of section 7 (15 U.S.C. 78g(d)) is amended by striking ''EXCEPTION'' and inserting ''EXCEPTIONS''.

(7) Section 14(g)(4) (15 U.S.C. 78n(g)(4)) is amended by striking ''consolidation sale,'' and inserting ''consolidation, sale,''.

(8) Section 15 (15 U.S.C. 78o) is amended—

(A) in subsection (c), by moving paragraph (8) two em spaces to the left;

(B) in subsection (h)(2), by striking ''affecting'' and inserting ''effecting'';

(C) in subsection (h)(3)(A)(i)(II)(bb), by inserting ''or'' after the semicolon;

(D) in subsection (h)(3)(A)(ii)(I), by striking ''maintains'' and inserting ''maintained'';

(E) in subsection (h)(3)(B)(ii), by striking ''association'' and inserting ''associated''.

(9) Section 15B(c)(4) (15 U.S.C. 78o–4(c)(4)) is amended by striking ''convicted by any offense'' and inserting ''convicted of any offense''.

(10) Section 15C(f)(5) (15 U.S.C. 78o–5(f)(5)) is amended by striking ''any person or class

or persons'' and inserting ''any person or class of persons''.

(11) Section 19(c) (15 U.S.C. 78s(c)) is amended by moving paragraph (5) two em spaces to the right.

(12) Section 20 (15 U.S.C. 78t) is amended by redesignating subsection (f) as subsection (e).

(13) Section 21D (15 U.S.C. 78u–4) is amended—

(A) by redesignating subsection (g) as subsection (f); and

(B) in paragraph (2)(B)(i) of such subsection, by striking ''paragraph (1)'' and inserting ''subparagraph (A)''.

(14) Section 31(a) (15 U.S.C. 78ee(a)) is amended by striking ''this subsection'' and inserting ''this section''.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended as follows:

(1) Section 2(a)(8) (15 U.S.C. 80a–2(a)(8)) is amended by striking ''Unitde'' and inserting ''United''.

(2) Section 3(b) (15 U.S.C. 80a–3(b)) is amended by striking ''paragraph (3) of subsection (a)'' and inserting ''paragraph (1)(C) of subsection (a)''.

(3) Section 12(d)(1)(G)(i)(III)(bb) (15 U.S.C. 80a–12(d)(1)(G)(i)(III)(bb)), by striking ''the acquired fund'' and inserting ''the acquired company''.

(4) Section 18(e)(2) (15 U.S.C. 80a–18(e)(2)) is amended by striking ''subsection (e)(2)'' and inserting ''paragraph (1) of this subsection''.

(5) Section 30 (15 U.S.C. 80a–29) is amended—

(A) by inserting ''and'' after the semicolon at the end of subsection (b)(1);

(B) in subsection (e), by striking ''semi-annually'' and inserting ''semiannually''; and

(C) by redesignating subsections (g) and (h) as added by section 508(g) of the National Securities Markets Improvement Act of 1996 as subsections (i) and (j), respectively.

(6) Section 31(f) (15 U.S.C. 80a–30(f)) is amended by striking ''subsection (c)'' and inserting ''subsection (e)''.

(d) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) is amended as follows:

(1) Section 203(e)(8)(B) (15 U.S.C. 80b–3(e)(8)(B)) is amended by inserting ''or'' after the semicolon.

(2) Section 222(b)(2) of (15 U.S.C. 80b–18a(b)(2)) is amended by striking ''principle'' and inserting ''principal''.

(e) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended as follows:

(1) Section 303 (15 U.S.C. 77ccc) is amended by striking ''section 2'' each place it appears in paragraphs (2) and (3) and inserting ''section 2(a)''.

(2) Section 304(a)(4)(A) (15 U.S.C. 77ddd(a)(4)(A)) is amended by striking ''(14) of subsection'' and inserting ''(13) of section''.

(3) Section 313(a) (15 U.S.C. 77mmm(a)) is amended—

(A) by inserting ''any change to'' after the paragraph designation at the beginning of paragraph (4); and

(B) by striking ''any change to'' in paragraph (6).

(4) Section 319(b) (15 U.S.C. 77sss(b)) is amended by striking ''the Federal Register Act'' and inserting ''chapter 15 of title 44, United States Code,''.

SEC. 302. EXEMPTION OF SECURITIES ISSUED IN CONNECTION WITH CERTAIN STATE HEARINGS.

Section 18(b)(4)(C) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(C)) is amended by striking ''paragraph (4) or (11)'' and inserting ''paragraph (4), (10), or (11)''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. STUPAK) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BLILEY).

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

GENERAL LEAVE

Mr. BLILEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1689 and to insert extraneous material on the bill.

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

There was no objection.

Mr. BLILEY. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in strong support of H.R. 1689, the Securities Litigation Uniform Standards Act of 1998. This legislation has been carefully constructed and refined throughout the legislative process on a bipartisan basis. We now have a bill that is ready to be considered by this Congress that will protect our Nation's investors and shareholders from needless expenses companies incur from meritless lawsuits.

Congress thought we would stop the flow of frivolous securities lawsuits with the enactment of the Private Securities Litigation Reform Act of 1995. The number of cases in Federal court has declined, but the explosion of cases being brought in state courts since the Reform Act demonstrates that the problem has not been eliminated, it has just changed venue.

It is unfortunate that additional legislation is needed to plug a loophole that undermines the intentions of Congress. Nevertheless, it is our job to ensure that the laws we pass work in the manner we intended. Based on the number of cosponsors of this legislation, I think it is safe to say that the law is not working the way it was intended.

The Uniform Standards Act will permit meritorious claims to continue to be filed while preventing the migration of baseless class actions to state courts. The standard provided in this legislation builds on the simple nature of our capital markets. If the alleged violation is national and it is filed on behalf of a class, then the case should be brought in Federal court. If the case is of a local nature, then it is more appropriately handled at the state level.

This legislation will put a stop to the inappropriate use of state courts to circumvent the protections that Congress deemed appropriate in 1995. H.R. 1689 will not prevent individual claims from being filed in state courts but will simply set a standard to determine when the Reform Act of 1995 is applied.

The legislation also includes a title to reauthorize the Securities and Exchange Commission for Fiscal 1999. This language is substantially similar to H.R. 1262, the SEC Reauthorization Act of 1997, which passed the House unanimously last session.

At the suggestion of the gentleman from New York (Mr. LAZIO), technical changes were included to this title to eliminate provisions in the Securities Exchange Act that have been identified as an impediment to the possibility of future privatization of the EDGAR system. I commend the gentleman for his efforts and suggestions in the pursuit of good government and a more efficient, more cost-effective EDGAR system.

I would also like to commend the original author of the legislation the gentleman from Washington (Mr. WHITE). His tireless work and pursuit of good public policy has improved this legislation from day one. I also would like to commend the gentlewoman from California (Ms. ESHOO) for all of her efforts as a leading proponent of this legislation.

Many of the changes that have improved this legislation so significantly are a result of the work and compromise of the gentleman from Ohio (Mr. OXLEY) the chairman of the Subcommittee on Financial and Hazardous Materials. I commend him for his leadership and skill in developing these important refinements.

Some of the changes included were at the suggestion of the ranking member the gentleman from Michigan (Mr. DINGELL) of the Committee on Commerce. Notwithstanding his opposition to the legislation, his continued pursuant of good public policy has improved the bill.

I would also commend the gentleman from New York (Mr. MANTON) the ranking member of the Subcommittee on Finance and Hazardous Material, whom I am very distressed to see has announced his retirement from this body, for his cooperation and support. At his suggestion, the Committee on Commerce included a provision to provide the SEC with nationwide enforceability of subpoenas served in our districts. Unfortunately, the concerns by the Committee on the Judiciary about this provision have not been worked out and it is not included in H.R. 1689. I would tell the gentleman from New York that I will work with him to see that the provision makes it into the final legislation.

Mr. Speaker, I urge my colleagues to join me in support of H.R. 1689.

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

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

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

Mr. STUPAK. Mr. Speaker, I yield myself such time as I may cosume.

Mr. Speaker, I rise in opposition to the bill before us tonight.

Mr. Speaker, 2 years ago, Congress passed the Private Securities Litigation Reform Act, that changed all the rules for the investors like people who invest in today's stock market. Now

proponents of this legislation want to extend an untested federal system upon all the states.

If we pass this bill, Congress will place all investors into a largely untested, untried new federal system that will make it very difficult for investors to prove fraud. Many of the proponents of this bill claim that it corrects an oversight from the Private Securities Litigation Act of the last Congress. This claim is disingenuous and false. These same Members claim that during the debate over the Private Securities Litigation Reform Act that investors would continue and would always have available to them the protection afforded by the state courts.

The prime sponsor of the previous legislation explicitly stated that state courts would continue to be an avenue for defrauded investors to recoup their losses. Now these Members are seeking to preempt these state laws.

If this legislation passes, it will overrule, do away, with the aiding and abetting statutes in 49 states. It will do away with 33 statute of limitations provisions that we are now telling states that forget about their own statute of limitations to protect their investors, they will now have to protect their citizens with an untried, untested federal system. The Federal Government will now tell them what protections states can afford their citizens.

It is important to remember throughout this debate tonight that the blue sky laws predated the existence of federal securities law. When Congress wrote the Securities Act of 1933 and the Securities Exchange Act of 1934, they did not impose liability on aiders and abettors or insert an adequate statute of limitation. They declined to take these steps because Congress felt that it was necessary to allow states to decide these issues at the state level. But yet, tonight, if we vote for this bill, we will take away from these investors protections they have enjoyed for over 60 years under state law.

Chairman Arthur Levitt of the Securities Exchange Commission, consumer groups, municipal officers all supported maintaining these two simple provisions, extending the statute of limitations and maintaining the states' aiding and abetting statutes, but they were denied that request by the supporters of this bill.

As we look at the market today, we see record numbers of small investors are entrusting their life savings to the stock market. There are a number of proposals to allow the Social Security Trust Fund to be invested in the stock market. Now more than ever, these small investors need to be protected from fraudulent securities transactions. 28 million Americans over the age of 65 depend on investment income to meet part of their expenses.

The proponents of this bill claim its passage will actually benefit these investors. I am flabbergasted by this statement because consumer groups, institutional investors, state pension boards, retirement plan administrators, county officials and many other groups oppose this legislation.

This federal preemption is not necessary. Proponents argue that this bill is necessary because there has been an increase in the number of suits in state courts since the passage of the Private Securities Litigation Reform Act 2 years ago. Yet in 1997 there was a decrease in private securities as compared to levels before the passage of the Private Securities Litigation Reform Act in 1995.

Nationwide, private security litigation state filings account for less than 100th of 1 percent of state filings nationwide. I believe that it is irresponsible and unnecessary to supersede the law of all 50 states. The joint system of state and federal causes of action have existed for over 60 years. At a time when a market has joined its bullish run, I do not believe that we need now to preempt the 50 state laws with an untried, untested federal system.

Mr. Speaker, I believe this bill will make it easier for charlatans and rip-off artists to defraud investors, especially senior citizens. I truly hope that I am wrong. But before we pass this bill, I ask all Members to contemplate whether or not they want to make it easier for their constituents to become victims of fraud. I urge them to vote against this bill and protect our investors.

Mr. Speaker, I include for the RECORD letters from the Consumer Federation of America and the Government Finance Officers Association in opposition to this bill.

CONSUMER FEDERATION OF AMERICA,
July 20, 1998.

Hon. BART STUPAK,
House of Representatives,
Washington, DC.

OPPOSE H.R. 1689, SECURITIES LITIGATION REFORM BILL

DEAR REPRESENTATIVE STUPAK: It is our understanding that the full House of Representatives will vote as early as today or tomorrow on H.R. 1689, the ''Securities Litigation Uniform Standards Act.'' I am writing on behalf of the Consumer Federation of America (CFA) to express our strong opposition to this legislation and to urge you to oppose it.

CFA shares the view expressed by state and federal securities regulators that the current federal law, as articulated in the Private Securities Litigation Reform Act (PSLRA), tilts the balance too far in favor of securities fraud defendants and threatens the ability of defrauded investors to recover their losses. For this reason, we strongly oppose extending that standard to lawsuits currently being brought in state court. Even those who are more optimistic about the effects of the federal law, however, must acknowledge that this preemption legislation would deprive investors of important protections, such as aiding and abetting liability and longer statutes of limitation, that are available only under state law.

Because it is fundamentally unjustified, would further undermine defrauded investors' access to justice, and could leave defrauded investors with no effective means of recovering their losses, CFA strongly opposes H.R. 1689 and urges you to vote against it.

Sincerely,

BARBARA L.N. ROPER,
Director of Investor Protection,
Consumer Federation of America.

JULY 20, 1998.

Re H.R. 1689, Securities Litigation Uniform Standards Act of 1998.

MEMBER OF CONGRESS,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE: The state and local government organizations listed above write in opposition to H.R. 1689, the Securities Litigation Uniform Standards Act of 1998, as reported by the House Committee on Commerce, which is scheduled to be considered by the full House early this week. Our most significant concerns are the following:

Despite the preservation of the right of state and local governments and their pension plans to pursue class actions in state courts which is included in H.R. 1689, the limitation on this right that those in the class must be named plaintiffs and authorize such participation will severely limit the ability of the most vulnerable public entities to recover their losses. State and local governments support the underlying provision to preserve the fundamental right of a state or local government or public pension plan to bring a class action in state court. However, we believe that the limitation placed on that right in H.R. 1689 will effectively exclude the most vulnerable public entities, such as small pension plans. These fraud victims are the least likely to be aware of a pending class action and may be unable to initiate a suit on their own. These parties potentially have the most to lose in case of fraud, yet this provision virtually eliminates their ability to recover their losses.

H.R. 1689 fails to reinstate liability for secondary wrongdoers who aid and abet securities fraud. Despite two opportunities to do so since the Supreme Court struck down for private actions aiding and abetting liability for wrongdoers who assist in perpetrating securities fraud, Congress appears to be on the verge of not only failing to reinstate such liability but extending it to the states.

H.R. 1689 fails to reinstate more a reasonable statute of limitations for defrauded investors to file a claim. As in the case of aiding and abetting, Congress has now had two opportunities to reinstate a longer, more reasonable statute of limitations for defrauded investors to bring suit. Many frauds are not discovered within this shortened time period, but this bill misses the opportunity to make wronged investors whole by not including this provision in H.R. 1689 and by extending the existing unreasonably narrow time period in which suits may be brought to the states.

The definition of ''class action'' contained in H.R. 1689 is overly broad. We believe that the definition of class action in H.R. 1689 would allow single suits filed by individual plaintiffs to be rolled into a larger class action that was never contemplated or desired by individual plaintiffs and have it removed to federal court. Claims by the bill's proponents that individual plaintiffs would still be able to bring suit in federal court are undercut by this provision. We believe that no showing has been made of the need for a securities law definition of class action which differs from that of other types of class actions under the Federal Rules of Civil Procedure.

There have been few state securities class actions filed since the Private Securities Litigation Reform Act of 1995 (PSLRA) was passed. Despite the claims of the bill's proponents, tracking by the Price Waterhouse

accounting firm shows that only 44 securities class actions were filed in state court for all of 1997, compared with 67 in 1994 and 52 in 1995. Most of these cases were filed in California, indicating that, if there is a problem in that state, it is one which should be dealt with at the state level. Citizens of the other 49 states should not be penalized as a result of a unique situation in a single state.

The PSLRA was opposed by state and local governments because the legislation did not strike an appropriate balance, and this legislation extends that mistake to state courts. As both issuers of debt and investors of public funds, state and local governments seek to not only reduce frivolous lawsuits but to protect their investors who are defrauded in securities transactions. The full impact of that statute on investor rights and remedies remains unsettled because even now many parts of the PSLRA have not been fully litigated; however, this untested law would now be extended to state courts.

The above organizations believe that states must be able to protect state and local government funds and their taxpayers and that H.R. 1689 inhibits these protections. We urge you to oppose preemption efforts which interfere with the ability of states to protect their public investors and to maintain investor protections for both public investors and their citizens.

Government Finance Officers Association; Municipal Treasurers' Association; National Association of Counties; National Association of County Treasurers and Finance Officers; National Association of State Retirement Administrators; National Conference on Public Employee Retirement Systems; National League of Cities.

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

Mr. BLILEY. Mr. Speaker, I am happy to yield 3 minutes to the gentleman from Washington (Mr. WHITE) an instrumental force in bringing this bill to the floor.

Mr. WHITE. Mr. Speaker, I thank the chairman very much for yielding me the time and also for his patience and wonderful leadership in bringing this bill to the point where it is today. It is a real testament to his leadership in our committee.

Mr. Speaker, we spend a lot of time in this House complaining about lawyers. And as a former lawyer, I would have to say that sometimes our complaints are justified. But when we pass a bill that intelligent lawyers can use to a purpose other than what we intended, it is not the lawyers' fault; it is our fault.

□ 2030

Frankly that is what this bill, H.R. 1689, is all about. In 1995, two-thirds of this House, in fact more than two-thirds of this House voted for the Private Securities Litigation Reform Act of 1995. We passed it over President Clinton's veto. The whole idea of this legislation was to let good suits go forward but to try to slow down frivolous lawsuits so they did not cause too much harm in our economy, especially to the smaller companies that are the provider of so many jobs and so many innovations in our economy. But as luck would have it, we left a few loopholes in that bill. One thing we discovered is that suits that were formerly brought in Federal court under the old days were now being brought in State court as a way of getting around the statute that we passed. Not only were these suits being brought in State court, it was clear from the testimony of lawyers who testified in our committee that they had to advise their clients to bring these suits in State court because it was a more favorable environment.

H.R. 1689 is simply designed to fix that particular problem. Now, we will hear some things today as some potential problems that people have with H.R. 1689. Frankly, Mr. Speaker, it is quite logical that people who did not support the law that we passed in 1995 are not going to support this law, either. This law is designed to perfect what we did in 1995, to make it work right. But this is a limited bill designed to accomplish a very good purpose.

Make no mistake about it, Mr. Speaker, this bill only applies to national lawsuits. It only applies to securities that are traded on the three national exchanges in our country. It only applies to class actions. State lawsuits will still be permitted under this bill.

Mr. Speaker, I urge my colleagues in the House to vote for this bill and finish the job that we started in 1995 so that we can bring some order and responsibility to shareholder lawsuits in our country.

Mr. STUPAK. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. KLINK).

Mr. KLINK. Mr. Speaker, back in 1995 the Committee on Commerce developed and this Congress passed and approved over a presidential veto the Private Securities Litigation Reform Act which put strict limits on Federal investor class action lawsuits. At the time we were being told by our friends who argued in favor of that that these victims would still have State redress. They could go to the State courts. Well, here we go again. From on high in Washington, D.C., dictating back to the States, ''You can't do this.''

I did not dream that my Republican colleagues would ever want to start telling the State courts what they could and could not do. My question is, what next do we tell them? That you cannot hear tobacco suits? That you cannot hear real estate suits? This comes at a time when an increased number of unsophisticated investors are getting into the stock market. An increased number of unsophisticated investors are getting into all marketplaces. We fear that these unsophisticated investors, many of them our constituents, might be victimized and not have redress at the Federal level and now being told by this Congress they would not have redress at the State level.

Now, there appears to be no explosion of State securities class actions. I do not see any need for this bill. I would point to last year when there were only 44 cases throughout this entire Nation, the lowest number in 5 years. We have a situation back in Pennsylvania where not exactly unsophisticated investors, many school districts, were taken for a ride by a company called Devon Capital Management. They defrauded 100 municipal clients in Pennsylvania and elsewhere. Those clients included 75 school districts, mostly in western and central Pennsylvania. Are these unsophisticated investors? I do not think so. Many of these municipal governments, school districts included, will be lucky if they can get 10 cents on the dollar. A few may get lucky enough to get 50 cents on the dollar.

Mr. Speaker, this is a bad bill and I would suggest that the Members of this Congress vote against it.

Mr. BLILEY. Mr. Speaker, I yield 3½ minutes to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. Mr. Speaker, let me first thank the gentleman from Virginia (Mr. BLILEY) and those that worked with him to bring this bill to the floor. As many of my colleagues know, the securities litigation reform bill was first filed way back in 1992. It was a bill that we crafted, in fact I was the lead sponsor of it then, to put an end to strike lawsuits in this country of which 94 percent were settled out of court at 10 cents on the dollar. When lawsuits are filed and settled at that rate, 94 percent of them, at 10 cents on the dollar, it paints the picture that I think in a bipartisan way this Congress responded to in 1995. It paints a picture of strike lawsuits, frivolous lawsuits that do not have value except to force the people who have been sued to divvy up, to pay up 10 cents on the dollar just to end the lawsuit, to end the abusive lawsuits.

When were they filed? They were filed immediately when any stock prices changed up or down. They were filed in cookie cutter fashion, very often with the same plaintiffs on the front of the class action lawsuits, very often by the same set of lawyers in America, a unique set of lawyers who constantly brought these strike lawsuits aimed at the directors of corporations, aimed at the corporations themselves, aimed at the accountants and the law firms that represented those corporations, aimed at as many people as they could gather in a lawsuit so at 10 cents on the dollar the lawyers can make a killing.

Did the shareholders who supposedly were defrauded do well in these lawsuits? Absolutely not. We found out that the shareholders got as little as four cents of the claims, four cents of the supposedly defrauded amounts. The truth was that the law before 1995 existed for the benefit of a few lawyers who literally were abusing the system with these strike suits. And abusing who? The corporations, their investors, their pension fund investors, all of us who invested in these corporations thinking that we were making a legitimate investment in a corporation that

was going to go out and try to earn a profit for their American stockholders. Instead these corporations were having to pay tribute time after time at 10 cents on the dollar for these strike suits aimed at the heart of corporate America and aimed at the heart of all of us who invest, from the poorest American who invests through their pension funds to the richest who invest in Wall Street directly.

The bottom line was that in 1995, this Congress in a bipartisan fashion not only passed that bill but overrode a presidential veto, a bill that had the support then of the chairman of the Securities and Exchange Commission. But what did we find out after passing the bill even over a presidential veto with such a huge bipartisan majority of over two-thirds? We found out that the same lawyers attempted in the State of California to overcome that Federal law and set up a regime in California to file all the same lawsuits simply in State court in California. We found that time and again the same lawyers were filing the same cookie cutter lawsuits in State courts around America. In short, they were avoiding the reforms we passed over a presidential veto in Congress by using other jurisdictions to accomplish it.

So we are here tonight to perfect that law, to say you cannot use the State courts to do the same illicit, abusive strike suits that you were formerly doing in Federal court.

Have we taken away any legitimate rights of people who have been harmed? No. Lawsuits brought on fraud charges both in State and Federal courts can go forward. They simply go forward under the reforms we passed both on the Federal law and now conforming that Federal law to the 50 States. In short, this bill perfects the work of the 104th Congress in 1995. I urge the passage of this bill and the end of these abusive lawsuits.

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

Mr. Speaker, I include for the RECORD a letter from the Government Finance Officers Association, Municipal Treasurers' Association, National Association of Counties, National Association of County Treasurers and Finance Officers, National Association of State Retirement Administrators, National Conference of Public Employee Retirement Systems, and National League of Cities, all signed this letter in opposition to this legislation.

The text of the letter is as follows:

GOVERNMENT FINANCE OFFICERS ASSOCIATION, MUNICIPAL TREASURERS' ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL ASSOCIATION OF COUNTY TREASURERS AND FINANCE OFFICERS, NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS, NATIONAL CONFERENCE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS, NATIONAL LEAGUE OF CITIES

July 20, 1998.

MEMBER OF CONGRESS,
House of Representatives, Washington, DC.

RE: H.R. 1689, Securities Litigation Uniform Standards Act of 1998

DEAR REPRESENTATIVE: The state and local government organizations listed above write in opposition to H.R. 1689, the Securities Litigation Uniform Standards Act of 1998, as reported by the House Committee on Commerce, which is scheduled to be considered by the full House early this week. Our most significant concerns are the following:

Despite the preservation of the right of state and local governments to their pension plans to pursue class actions in state courts which is included in H.R. 1689, the limitation on this right that those in the class must be named plaintiffs and authorize such participation will severely limit the ability of the most vulnerable public entities to recover their losses. State and local governments support the underlying provision to preserve the fundamental right of a state or local government or public pension plan to bring a class action in state court. However, we believe that the limitation placed on that right in H.R. 1689 will effectively exclude the most vulnerable public entities, such as small pension plans. These fraud victims are the least likely to be aware of a pending class action and may be unable to initiate a suit on their own. These parties potentially have the most to lose in case of fraud, yet this provision virtually eliminates their ability to recover their losses.

H.R. 1689 fails to reinstate liability for secondary wrongdoers who aid and abet securities fraud. Despite two opportunities to do so since the Supreme Court struck down for private actions aiding and abetting liability for wrongdoers who assist in perpetrating securities fraud, Congress appears to be on the verge of not only failing to reinstate such liability but extending it to the states.

H.R. 1689 fails to reinstate more a reasonable statute of limitations for defrauded investors to file a claim. As in the case of aiding and abetting, Congress has now had two opportunities to reinstate a longer, more reasonable statute of limitations for defrauded investors to bring suit. Many frauds are not discovered within this shortened time period, but this bill misses the opportunity to make wronged investors whole by not including this provision in H.R. 1689 and by extending the existing unreasonably narrow time period in which suits may be brought to the states.

The definition of ''class action'' contained in H.R. 1689 is overly broad. We believe that the definition of class action in H.R. 1689 would allow single suits filed by individual plaintiffs to be rolled into a larger class action that was never contemplated or desired by individual plaintiffs and have it removed to federal court. Claims by the bill's proponents that individual plaintiffs would still be able to bring suit in federal court are undercut by this provision. We believe that no showing has been made of the need for a securities law definition of class action which differs from that of other types of class actions under the Federal Rules of Civil Procedure.

There have been few state securities class actions filed since the Private Securities Litigation Reform Act of 1995 (PSLRA) was passed. Despite the claims of the bill's proponents, tracking by the Price Waterhouse accounting firm shows that only 44 securities class actions were filed in state court for all of 1997, compared with 67 in 1994 and 52 in 1995. Most of these cases were filed in California, indicating that, if there is a problem in that state, it is one which should be dealt with at the state level. Citizens of the other 49 states should not be penalized as a result of a unique situation in a single state.

The PSLRA was opposed by state and local governments because the legislation did not strike an appropriate balance, and this legislation extends that mistake to state courts. As both issuers of debt and investors of public funds, state and local governments seek to not only reduce frivolous lawsuits but to protect their investors who are defrauded in securities transactions. The full impact of that statute on investor rights and remedies remains unsettled because even now many parts of the PSLRA have not been fully litigated; however, this untested law would now be extended to state courts.

The above organizations believe that states must be able to protect state and local government funds and their taxpayers and that H.R. 1689 inhibits these protections. We urge you to oppose preemption efforts which interfere with the ability of states to protect their public investors and to maintain investor protections for both public investors and their citizens.

Mr. STUPAK. Mr. Speaker, I yield 2 minutes to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, I rise in opposition to H.R. 1689, the Securities Litigation Uniform Standards Act. I too believe that strike suits can be a problem, but I believe more importantly that defrauded investors who cannot recover their losses is a greater problem, and furthermore the way we are superseding long established State laws is a problem as well.

I am concerned like everyone else that many of these lawsuits are being pursued by a very small number of attorneys who are only looking to make money for themselves at the expense of newly emerging high tech firms. These lawsuits can cost a company millions. The issue needs to be addressed. But frankly the issue to this date has been quite limited.

Both proponents and opponents of the bill agree that the number of suits have actually declined in the last year. I believe we would be setting a dangerous precedent by going in and blatantly preempting State securities laws, many of which were passed before the Federal Securities Act of 1933, and many of these States which have long established bodies of blue sky laws and securities cases in their own States.

I have significant federalism concerns about this bill. I think anybody on either side of the aisle who cares about States rights ought to have significant federalism concerns. This is an issue which is important but it is also an issue that is limited in its impact to date and it is an issue where if we pass legislation today, we will severely restrict State laws that protect investors and protect small investors most importantly. For that reason, I urge rejection of this bill. It is premature, and

we need to find out a way that States can pass appropriate laws without having them be preempted by Federal law.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. ESHOO) who has been most helpful in this legislation.

Ms. ESHOO. Mr. Speaker, I rise today in support of this legislation which I am very proud to have been the chief Democratic sponsor of, H.R. 1689. This is a narrowly focused bipartisan bill that closes a loophole in the 1995 Private Securities Litigation Reform Act that allowed for, or created really, a circumvention to State courts.

The migration to State courts is not a minor problem. It represents an undermining of the core reforms that this Congress implemented in 1995 because the reform act relied on uniform application and enforcement of the law in order to be effective. The bill is needed because as long as frivolous strike suits are threatening high growth companies, they will be held hostage. Consumers are hurt because the companies will not use the safe harbor provision in the 1995 law.

Mr. Speaker, I have a very limited amount of time, one minute, to try to summarize a year and a half's work, and so I want to spend the remaining seconds to thank the gentleman from Virginia (Mr. BLILEY), the gentleman from Michigan (Mr. DINGELL), the gentleman from Ohio (Mr. OXLEY), the gentleman from New York (Mr. MANTON), the gentleman from Louisiana (Mr. TAUZIN) and the gentleman from Massachusetts (Mr. MARKEY). I also want to thank my very effective partner the gentleman from Washington (Mr. WHITE). It has been a pleasure to work with him and all that have been a part of this. I urge adoption of this legislation. I think the 105th Congress will distinguish itself by doing so.

Mr. STUPAK. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, this is a terrible bill. I mean really a bad one, a stinker. Write it down, top 10 this year, Bad Bills.

When I was reviewing the legislation, I was reminded of a poem that I once learned as a child:

As I was going up the stair
I met a man who wasn't there.
He wasn't there again today;
Oh, how I wish that he'd stay away.

□ 2045

The proponents of this bill would have you believe that a man has appeared on the stair in the form of investors flocking from Federal to State courts pursuing frivolous class action suits against honest corporate chieftains.

But the fact is that the number of class actions filed in the States is lower this year than it was last year. In fact, it is lower this year than it was in the year before this Congress passed their Federal Securities Litigation Reform Act in 1995. Fewer State class actions, this year. So there is no increase in State class action suits. People are not looking for that as a loophole around the Federal class action law. It is just not happening.

In fact, what is happening is the loophole that is being closed is the one that the authors of this bill in 1995 told us would still be open, which is that they were not going to touch the State securities laws, that we should not complain, because people can still go to their own home States.

That is the loophole. The loophole is that people who do not want ordinary citizens to be able to ban together in order to protect themselves against fraud are going to have that final door shut in their face with a much-heightened standard, making it much more difficult than ever before for individuals banding together to go in if they have been defrauded.

And believe me, when the market goes up 4,000 or 5,000 points in 3 or 4 years, the bad stocks and the fraudulent stocks go up with the good stocks. You do not find out which ones were the fraudulent ones until the market goes down. Believe me, Newton's law of gravity will take hold here, working in combination with Adam Smith in the future. We will find out that that is the case.

But what do they do? They say, if you find out that you have been defrauded, you cannot any longer rely upon your State's laws for how much time you have. In Massachusetts right now, my home State, by the way, there have only been three class action suits brought in Massachusetts in the last 3 years. Three in 3 years, none of them against high-tech companies. What an epidemic. Three in 3 years. None against high-tech companies.

There are 65 in California. If they have got a problem in California, go to Sacramento. That is why we have State legislatures. Devolution, have you heard about it? It is a big movement in the 1990s. Go to the State legislatures. If you have got a problem, go there.

We should be voting on this. The assembly? The Senate? California? Big debate? Have you heard about it? No, I have not. They come to Washington. I do not get it.

We do not have a problem in Massachusetts. By the way, none in Pennsylvania, Virginia, Louisiana, across most of the country, no suits. What are we doing here? We should be in Sacramento. It is cooler. It is 95 degrees here in Washington. We should be watching the California State legislature in California debating this great crisis.

No, there is no man on the stair except for those who are trying to cut away those rights and privileges that for 60 years have been given to all investors across this country.

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

STATE BY STATE COMPARISON OF STATUTE OF LIMITATIONS AND AIDING AND ABETTING LIABILITY

Locality	Statute of Limitations	Aiding and Abetting
Federal	1 year after discovery/3 years from sale.	No.
Alabama	2 years after discovery of the facts	Yes.
Alaska	3 years from the contract for sale	Yes.
Arizona	2 years after discovery of the facts	Yes.
Arkansas	5 years after discovery	Yes.
California	1 year after discovery/4 years from sale.	Yes.
Colorado	3 years after discovery/5 years from sale.	Yes.
Connecticut	1 year after discovery/3 years from sale.	Yes.
Delaware	3 years from the contract for sale	Yes.
D.C.	2 years from the transaction upon which it is based.	Yes.
Florida	2 years after discovery/5 years from sale.	Yes.
Georgia	2 years from the transaction upon which it is based.	Yes.
Hawaii	2 years after discovery/5 years from sale.	Yes.
Idaho	3 years from the contract of sale	Yes.
Illinois	3 years after discovery/5 years from sale.	Yes.
Indiana	3 years after discovery of the facts	Yes.
Iowa	2 years after discovery/5 years from sale.	Yes.
Kansas	3 years after discovery of the facts	Yes.
Kentucky	3 years from the contract for sale	Yes.
Louisiana	2 years from the transaction upon which it is based.	Yes.
Maine	2 years after discovery of the facts	Yes.
Maryland	1 year after discovery/3 years from sale.	Yes.
Massachusetts	4 years after discovery	Yes.
Michigan	2 years after discovery/4 years from sale.	Yes.
Minnesota	3 years from the contract for sale	Yes.
Mississippi	2 years after discovery of the facts	Yes.
Missouri	3 years from the contract for sale	Yes.
Montana	2 years after discovery/5 years from sale.	Yes.
Nebraska	3 years from the contract for sale	Yes.
Nevada	1 year after discovery/5 years from sale.	Yes.
New Hampshire	6 years from the contract for sale	Yes.
New Jersey	2 years after discovery of the facts	Yes.
New Mexico	2 years after discovery/5 years from sale.	Yes.
New York	6 years after sale	Yes.
North Carolina	2 years after discovery of the facts	Yes.
North Dakota	5 years after discovery of the facts	Yes.
Ohio	2 years after discovery/4 years from sale.	Yes.
Oklahoma	2 years after discovery/3 years from sale.	Yes.
Oregon	2 years after discovery/3 years from sale.	Yes.
Pennsylvania	1 year after discovery/4 years from sale.	Yes.
Rhode Island	1 year after discovery/3 years from sale.	Yes.
South Carolina	3 years from the contract for sale	Yes.
South Dakota	2 years after discovery/3 years from sale.	Yes.
Tennessee	1 year after discovery/2 years from sale.	Yes.
Texas	3 years from discovery/5 years from sale.	Yes.
Utah	2 years after discovery/4 years from sale.	Yes.
Vermont	6 years from the contract for sale	Yes.
Virginia	2 years from the transaction upon which it is based.	Yes.
Washington	3 years after discovery of the facts	Yes.
West Virginia	3 years from the contract for sale	Yes.
Wisconsin	3 years after discovery of the facts	Yes.
Wyoming	2 years from the transaction	Yes.

Mr. BLILEY. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. DICKEY). The gentleman from Virginia (Mr. BLILEY) has 7¾ minutes remaining.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. COX).

Mr. COX of California. Mr. Speaker, I appreciate, too, my colleague's remarks. I have not heard that poem for a while, even though I have little kids age 5 and 4. But I do think of Little Red Riding Hood. Do you remember when the wolf is licking his chops and so on? Here, it is not the investors that the wolf is worried about. The wolf wants to eat the investors.

The stockholders here are being taken advantage of by lawyers who

bring lawsuits for their own benefit, and that is what the 1995 Private Securities Litigation Reform Act was all about.

There are a lot of these suits. There have been a lot of these suits. Over half of the top 150 companies in Silicon Valley alone were hit by such suits that were regulated by the 1995 Private Securities Regulation Reform Act.

The enormous price that investors had to pay in these suits, according to one study, amounted on average to $9 million for each settlement. That comes out of the company, out of the investors' hides. But it goes to the lawyers. The plaintiffs, the supposed beneficiaries of this system, on average, received from these $9 million, on average, settlements between 6 cents and 14 cents on the dollar.

That is why such a strong bipartisan majority of the House and the Senate have acted first to bring us the 1995 Private Securities Litigation Reform Act and now to bring us this very, very worthy legislation, the White-Eshoo Securities Litigation Uniform Standards Act of 1998.

I want to join in congratulating my colleagues, the gentleman from Washington (Mr. WHITE) and the gentleman from California (Ms. ESHOO) for their tireless efforts on behalf of this legislation as well as the gentleman from Virginia (Mr. BLILEY) and the gentleman from Ohio (Mr. OXLEY) for their leadership in bringing to us this point.

In addition, finally, I want to highlight a provision added in the committee by the gentleman from Virginia (Mr. BLILEY) that gets directly to the point raised by my colleague, the gentleman from Massachusetts (Mr. MARKEY), and that is giving States the opportunity themselves to handle the implementation of their own laws.

The continued viability of the section 3(a)(10) of the Securities Act of 1933 is unwritten in this legislation, as well as it should be, and I thank my colleagues for doing such good and worthy work.

A strong bipartisan majority of the House and Senate acted in 1995 to reorient federal securities litigation to encourage investors to bring meritorious claims while protecting innocent employers from meritless extortion suits. We acted to protect the millions of innocent investors who were bearing the cost of meritless lawsuits while gaining little or no recompense for genuine fraud.

In 1996, strong bipartisan majorities of the House and Senate again turned to the issue of securities law, this time addressing the appropriate division of labor between state and federal securities regulators. In that historic bill we determined that ''covered securities''—basically, those traded on national exchanges—would be subject to federal regulation, while non-covered securities would be regulated by the states.

Today we are going to continue our work in this field of law by protecting the gains we made in the 1995 Reform Act from circumvention by entrepreneurial trial lawyers, and by harmonizing the 1995 Reform Act and the 1996 National Markets legislation.

Trial lawyers have sought to get around our 1995 reforms by bringing their suits in state courts, where those reforms do not apply. Yet as our capital markets are national, and thus investors may live in any of the 50 states, bringing a suit in one state unfairly imposes a financial burden on residents of another state. To address this inequity and assert that national markets require nationally applied rules, this legislation will make federal courts the exclusive venue for large-scale securities fraud lawsuits involving securities subject to federal regulation under the 1996 National Markets Act.

Because questions have been raised about the 1995 Reform Act both in Committee and in the other body, I would like to take this opportunity—as a principal proponent of the Act—to discuss what Congress did, and did not, do in 1995.

First, with respect to scienter under the 1934 Act: In *Ernst & Ernst* v. *Hochfelder,* the Supreme Court made clear that, as a necessary element of a cause of action under Rule 10b–5, a plaintiff must show that the defendant acted with ''scienter,'' which the Court described as ''a mental state embracing intent to deceive, manipulate, or defraud.'' [425 U.S. 185 (1976)] The Court in *Hochfelder* expressly left open the question whether extreme recklessness could ever supply this necessary intent element, although subsequent judicial decisions have noted that the language and structure of the Act ''evidenced a purpose to proscribe knowing or intentional misconduct.'' [*Aaron* v. *SEC,* 680, 691 (1980)]

Many Members of Congress and of the Conference Committee that considered the Reform Act believed then, and believe today, that recklessness—the oxymoronic ''unintentional fraud''—is not an appropriate or workable basis for Rule 10b–5 liability. In practice, it has proven difficult to distinguish from certain forms of negligence, and has resulted in little uniformity of treatment among even courts that purport to follow the same standard of scienter.

However, other House and Senate Members felt differently, and the Act as enacted left to the courts the determination of the scienter standard on the basis of the pre-existing, unamended 1934 Act. I, for one, believe that the Supreme Court will ultimately determine that the text, structure, and legislative history of the 1934 Act clearly require intentional conduct to impose liability.

With respect to the pleading standard in the 1995 Act, here again the legislative intent is quite clear that we intended to codify a pleading standard higher than that of the Second Circuit, and that we did not intend to codify or incorporate by reference the Second Circuit's caselaw interpreting that caselaw. As explained in the Statement of Managers, ''The Conference Committee language is based in part on the pleading standard of the Second Circuit . . . Because the Conference Committee intends to strengthen existing pleading requirements, it does not intend the codify the Second Circuit's caselaw interpreting this pleading standard.'' And we went on to specifically explain that this was the reason why we dropped the so-called Specter Amendment on motive, opportunity, and recklessness—because we wanted a standard higher than the Second Circuit's, not because the Specter language was implicit in our own Act's language.

The President was certainly quite clear about our Conference Report language: In his December 20, 1995 veto message, he wrote, and I am quoting:

> I am prepared to support the high pleading standard of the U.S. Court of Appeals for the Second Circuit—the highest pleading standard of any Federal circuit court. But the conferees make crystal clear in the Statement of Managers their intent to raise the standard even beyond that level. I am not prepared to accept that. The conferees deleted an amendment offered by Senator Specter and adopted by the Senate that specifically incorporated Second Circuit case law with respect to pleading a claim of fraud. Then they specifically indicated that they were not adopting Second Circuit case law but instead intended to ''strengthen'' the existing pleading requirements of the Second Circuit. All this shows that the conferees meant to erect a higher barrier to bringing suit than any now existing . . .

The President correctly described the 1995 Reform Act's intent though not its effect. It's ironic that he and other Members of his party, having failed to kill reform openly in 1995, now seek to rewrite the history of the battle they lost.

In addition, I want to again highlight a provision added in the Committee by Chairman BLILEY that makes a technical correction to the 1996 Fields bill. This correction restores the viability of Section 3(a)(10) of the Securities Act of 1933, which provides a voluntary state-law alternative to federal securities registration. This provision—which has been an unamended part of the 1933 Act since the enactment of that legislation, exempts from federal registration securities issued in exchange for other securities, claims, or property interests, if the terms and conditions of the issuance and exchange have been approved as fair by state authorities. It is purely voluntary; issuers may still seek federal registration if they wish. Although the 1996 Act does not amend Section 3(a)(10), it inadvertently impeded its operation. I appreciate the Chairman's consideration in including a curative technical amendment endorsed by the California securities regulatory authority in the manager's amendment.

I look forward to the House's passage of this legislation, and I thank the Chairman and my colleagues for their tireless efforts on behalf of this legislation. Together we have protected investors from frivolous lawsuits in the past, and today we shall ensure that this stands in the future.

Mr. STUPAK. Mr. Speaker, I yield 1½ minutes to the gentleman from Mississippi (Mr. TAYLOR).

Mr. TAYLOR of Mississippi. Mr. Speaker, 1995 is a part of Speaker GINGRICH's Contract With America as Congress passed a bill that was called the Private Securities Litigation Reform Act.

The net result of it was that the only way that a person who intentionally defrauded hard working Americans or retirees of their pension funds can be convicted of doing so would be to walk into a courtroom and say ''I stole from you.'' Just a handful of us voted against it. The President vetoed it. Then a handful of us voted against it again.

Some people who care about working people who do not hang out at the Republican National Committee fundraising headquarters or the Democratic

National Committee fund-raising headquarters but actually care about working people have discovered there is still one chance to keep these people from defrauding working people; and that is if we take them to State court.

Now they want to take even that away because they do not want to protect them because there is no big money in it. The big money is in defrauding people. Ask Michael Milliken. This is a horrible bill. It hurts people that live in my district. It hurts people that live in your district.

They count on us to protect them. They count on us to protect them. They do not have any money. They cannot write us $1,000 checks for our campaign. But they count on us to pass laws that are going to look out for them because they are too busy making a living to do it themselves. So if you want to defraud them of their pension, vote for it. But if you do not, vote against it.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. Cox).

Mr. COX of California. Mr. Speaker, I rise for a colloquy with the gentlewoman from California, the principal Democratic sponsor of H.R. 1689.

I note that some question was raised during consideration of her legislation about the 1995 Reform Act's effect on standards of liability under the Exchange Act.

Is it the gentlewoman's understanding that, in adopting her legislation today, Congress does not intend to alter standards of liability under the Exchange Act?

Mr. Speaker, I yield to the gentlewoman from California.

Ms. ESHOO. Mr. Speaker, it is my clear understanding that, adopting this legislation, Congress does not intend to alter standards of liability under the Exchange Act.

I would further like to ask the gentleman from California, who was author of the '95 Reform Act, whether it is his understanding that Congress did not, in adopting the Reform Act, intend to alter standards of liability under the Exchange Act?

Mr. COX of California. The gentlewoman is correct. It is my clear understanding that Congress did not, in adopting the Reform Act, intend to alter standards of liability under the Exchange Act.

Mr. STUPAK. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from Michigan has 5½ minutes remaining.

Mr. STUPAK. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan (Mr. DINGELL), the ranking member of the Committee on Commerce.

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

Mr. DINGELL. Mr. Speaker, as Yogi Berra said, this is deja vu all over again. In 1995, my Republican colleagues came up with a splendid idea that we should close the courthouse door to innocent investors who had been wronged by scoundrels, rogues and rascals. They found that there was a loophole, however. That loophole is that, guess what, could investors still go to the State courts. But that was exactly what the citizens were told they could do when we passed that earlier legislation.

Now we are closing that loophole and we are going to nail shut the courthouse doors of the State courts so a citizen wronged cannot now go to a State court.

The 1995 act imposed extraordinary pleading standards, a stay of discovery so that special facts necessary to meet those heightened pleading standards could not be reached, and an unreasonably short time limit or statute of limitations for filing a fraud claim, and no ability existed under that law to fully recover from professionals such as accountants and lawyers who aided and abetted in stealing funds from innocent investors.

Those same standards are now extended to State courts by fiat of the Federal Government.

I am curious why it is my colleagues on the Republican side, who talk about States rights, are so diligently imposing this kind of mandate on investors and upon the States.

There may be no real ability now, if this passes, for innocent investors to procure the relief that they are entitled to, and. The Chairman of the SEC wrote that: ''it is too early to assess with any confidence the important effects of the Reform Act and, therefore, on this basis, it is premature to propose legislative changes.''

The assessment of what we did in 1995 is going to take a long time, but it is very clear that now Federal courts are ruling so restrictively that they threaten almost all private enforcement.

The SEC has filed complaints with the courts pointing out in amicus curiae briefs the evils of this situation. What are we doing today? Nailing shut the State court doors, and we are fixing it so that no little investor can expect much relief in State courts any more than he can in Federal courts.

We do this at a time when the market is at an all time high. We also do it at a time when securities fraud is up, way up. The New York Attorney General has reported that investor complaints have risen 40 percent per year in the last 2 years. The U.S. Attorney in New York City has stated that she has witnessed an explosion of securities fraud; and organized crime has now infiltrated Wall Street.

Why then are we passing legislation to give immunity baths to wrongdoers and also to aiders and abetters?

Finally, I note that Members have not had adequate time to review the committee report. I want to commend my good friend the gentleman from Virginia (Mr. BLILEY) and the distinguished gentlewoman from California (Ms. ESHOO) for their part in this. We narrowly avoided a train wreck over the last 2 days because there was an effort made to insert language into the committee report that would have made the plight of investors totally hopeless, and I do commend my friend, the chairman of the committee and of the subcommittee, and the bill's sponsors for blocking that effort.

During the hearing before the subcommittee, the SEC expressed clear concern about District Court cases interpreting the 1995 pleading standards. All 10 Courts of Appeals have considered that question and held that recklessness gives rise to liability.

I note that the legislative history for H.R. 1689 will not seek to alter the standard of liability under the Exchange Act.

Mr. Speaker, I include copies of important letters from the White House, the SEC, the leadership of the Senate Banking Committee on this matter, as follows:

THE WHITE HOUSE,
Washington, April 28, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Senate Hart Office Building, Washington, DC.

Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: We understand that you have had productive discussions with the Securities and Exchange Commission (SEC) about S. 1260, the Securities Litigation Uniform Standards Act of 1997. The Administration applauds the constructive approach that you have taken to resolve the SEC's concerns.

We support the amendments to clarify that the bill will not preempt certain corporate governance claims and to narrow the definition of class action. More importantly, we are pleased to see your commitment, by letter dated March 24, 1998, to Chairman Levitt and members of the Commission, to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the scienter standard for securities fraud actions.

As you know, uncertainty about the impact of the Reform Act on the scienter standard was one of the President's greatest concerns. The legislative history and floor statements that you have promised the SEC and will accompany S. 1260 should reduce confusion in the courts about the proper interpretation of the Reform Act. Since the uniform standards provided by S. 1260 will provide that class actions generally can be brought only in federal court, where they will be governed by federal law, it is particularly important to the President that you be clear that the federal law to be applied includes recklessness as a basis for pleading and liability in securities fraud class actions.

So long as the amendments designed to address the SEC's concerns are added to the legislation and the appropriate legislative history and floor statements on the subject

of legislative intent are included in the legislative record, the Administration would support enactment of S. 1260.

Sincerely,

BRUCE LINDSEY,
Assistant to the President and Deputy Counsel.
GENE SPERLING,
Assistant to the President for Economic Policy.

U.S. SENATE,
Washington, DC, March 24, 1998.

Hon. ARTHUR LEVITT,
Chairman, Securities & Exchange Commission, Washington, DC.

DEAR CHAIRMAN LEVITT AND MEMBERS OF THE COMMISSION: We are writing to request your views on S. 1260, the Securities Litigation Uniform Standards Act of 1997. As you know, our staff has been working closely with the Commission to resolve a number of technical issues that more properly focus the scope of the legislation as introduced. We attach for your review the amendments to the legislation that we intend to incorporate into the bill at the Banking Committee mark-up.

On a separate but related issue, we are aware of the Commission's long-standing concern with respect to the potential scienter requirements under a national standard for litigation. We understand that this concern arises out of certain district courts' interpretation of the Private Securities Litigation Reform Act of 1995. In that regard, we emphasize that our clear intent in 1995—and our understanding today—was that the PSLRA did not in any way alter the scienter standard in federal securities fraud suits. It was our intent, as we expressly stated during the legislative debate in 1995, particularly during the debate on overriding the President's veto, that the PSLRA adopt the pleading standard applied in the Second Circuit. Indeed, the express language of the statute itself carefully provides that plaintiffs must ''state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind''; the law makes no attempt to define the state of mind. We intend to restate these facts about the '95 Act in both the legislative history and the floor debate that will accompany S. 1260, should it be favorably reported by the Banking Committee.

Sincerely,

ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing & Urban Affairs.
PHIL GRAMM,
Chairman, Subcommittee on Securities.
CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities.

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, DC, March 24, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Senate Hart Office Building Washington, DC.

Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities, United States Senate, Senate Russell Office Building, Washington, DC.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1997, and amendments to the legislation which you intend to offer when the bill is marked-up by the Banking Committee. This letter will present the Commission's position on the bill and proposed amendments. (We understand that Commissioner Johnson will write separately to express his differing views. Commissioner Carey is not participating.)

The purpose of the bill is to help ensure that securities fraud class actions involving certain securities traded on national markets are governed by a single set of uniform standards. While preserving the right of individual investors to bring securities lawsuits wherever they choose, the bill generally provides that class actions can be brought only in federal court where they will be governed by federal law.

As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses attributable to reckless misconduct would jeopardize the integrity of the securities markets. In light of this profound concern, we were gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

Our October 1997 testimony also pointed out that S. 1260 could be interpreted to preempt certain state corporate governance claims, a consequence that we believed was neither intended nor desirable. In addition, we expressed concern that S. 1260's definition of class action appeared to be unnecessarily broad. We are grateful for your responsiveness to these concerns and believe that the amendments you propose to offer at the Banking Committee mark-up, as attached to your letter, will successfully resolve these issues.

The ongoing dialogue between our staffs has been constructive. The result of this dialogue, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act. This will help to diminish confusion in the courts about the proper interpretation of that Act and add important assurances that the uniform standards provided by S. 1260 will contain this vital investor protection.

We support enactment of S. 1260 with these changes and with this important legislative history.

We appreciate the opportunity to comment on the legislation, and of course remain committed to working with the Committee as S. 1260 moves through the legislative process.

Sincerely,

ARTHUR LEVITT,
Chairman.
ISSAC C. HUNT, JR.,
Commissioner.
LAURA S. UNGER,
Commissioner.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 24, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Senate Hart Office Building, Washington, DC.

Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: It is with regret that I find myself unable to join in the views expressed by my esteemed colleagues in their letter of today's date. For that reason I feel compelled to write separately to express my own differing views.

Consistent with the opinion the Commission and its staff have repeatedly taken, I believe that there has been inadequate time to determine the overall effects of the Private Securities Litigation Reform Act of 1995, and that the proponents of further litigation reform have not demonstrated the need for preemption of state remedies or causes of action at this time.

In the last few years, we have experienced a sustained bull market virtually unmatched at any time during this nation's history. I therefore question the necessity of the displacement of state law in favor of a single set of uniform federal standards for securities class action litigation. The Commission is the federal agency charged with protecting the rights of investors. In my opinion, S. 1260, the Securities Litigation Uniform Standards Act of 1997, does not promote investors' rights. I share in the views of 27 of this country's most respected securities and corporate law scholars who have urged you and your colleagues not to support S. 1260 or any other legislation that would deny investors their right to sue for securities fraud under state law.

In addition, data amassed by the Commission's staff, compiled in unbiased external studies, indicate that the number of state securities class actions has declined during the last year to pre-Reform Act levels. Indeed, a report by the National Economic Research Associates concluded that the number of state court filings in 1996 was ''transient.'' Under these circumstances, S. 1260 seems premature at the least.

This country has a distinguished history of concurrent federal and state securities regulation that dates back well over 60 years. Given that history, as well as the strong federalism concerns that S. 1260 raises, I believe that much more conclusive evidence than currently exists should be required before state courthouse doors are closed to small investors through the preclusion of state class actions for securities fraud.

Sincerely,

NORMAN S. JOHNSON,
Commissioner.

Mr. Speaker, in closing, this is an outrageously bad bill. The Wall Street and our financial markets do not run on money. They run on public confidence. When you take away the public confidence, no one makes money. If you allow the people of this country to have confidence in their investments and in the marketplace, the market will produce a lot of money for everyone.

This bill strikes at one of the most fundamental rights that the people of this country have, the ability to sue to

protect themselves from wrongdoing and to collect damages from wrongdoing and from wrongdoers. I would observe that this bill takes away that right.

It also attacks public confidence in the securities market, something which is going to cost this country dearly. I urge a no vote on the outrageous legislation.

□ 2100

Mr. BLILEY. Mr. Speaker, I yield one minute to the gentleman from New York (Mr. MANTON), the ranking member of the subcommittee.

Mr. STUPAK. Mr. Speaker, I yield the balance of my time, 30 seconds, to the gentleman from New York, in appreciation for the time the gentleman has served in this House.

The SPEAKER pro tempore (Mr. DICKEY). The gentleman from New York (Mr. MANTON) is recognized for 1½ minutes.

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

Mr. MANTON. Mr. Speaker, I thank the gentlemen for yielding me time.

Mr. Speaker, I rise in reluctant support for the legislation before the House. While I support the underlying goals of the measure to bring greater uniformity to the rules governing securities fraud class action suits, I am concerned that in our rush to bring this bill to the floor for consideration, we are not following the normal legislative process.

Mr. Speaker, this is an important and complicated piece of legislation which will have far-reaching effects. The bill requires and deserves appropriate review by the House. However, both proponents and opponents of this legislation are being denied this opportunity because we are considering the legislation under suspension of the rules.

I am especially disappointed in the process we are following, because it will result in a provision I strongly support and believe brought much-needed balance to this measure being stripped from the bill as part of the motion to suspend. This provision would have granted nationwide service of process authority to the SEC, thus providing the Commission a greater ability to prosecute cases involving securities fraud.

Mr. Speaker, while we look at ways to create national uniform standards for securities fraud litigation, we should also certainly look at ways to give State and Federal securities regulators the means necessary to seek out and stop dishonest operators that perpetuate securities fraud across State lines. My language, a provision which was part of an overall agreement, a compromise, if you will, to move this legislation forward, would have addressed this very issue.

Mr. Speaker, I understand that the decision to strike this provision rests primarily on jurisdictional grounds, not necessarily substantive ones. I hope we can work this out with our colleagues as the process moves along.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. DEUTSCH), a member of the committee.

Mr. DEUTSCH. Mr. Speaker, I want to focus in on two issues that my colleagues raised. The first is that frivolous lawsuits have a cost. They have a cost for all Americans. They have a cost in access to capital, they have a cost in lack of job creation.

That is what this issue is really about. We have seen it, we have seen an actual cost. The strike lawsuits that still exist in this country that found a loophole that this legislation is trying to correct have a terrible effect on the country, and the only way to prevent it is through this legislation.

The second thing I want to respond to is really some of the comments about the number of lawsuits, that it is a problem that does not exist. Let me be very clear about this, how you can use numbers and sort of play around with numbers.

In 1992, there were only four State cases that were brought on this issue. In 1993 there was one. In 1994 there was one. After we passed the legislation, there were 59 in 1995. In 1996, there were 40. So, yes, there was a decrease between 1995 and 1996, but the only reason we saw a 6,000 percent increase over 1995 levels and 4,000 percent increase over 1995 levels was because of the loophole that this legislation needs to be able to solve.

Mr. Speaker, I urge its support.

Mr. BLILEY. Mr. Speaker, I yield the balance of my time to the gentleman from Ohio (Mr. OXLEY), the chairman of the subcommittee, to close debate on our side.

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

Mr. OXLEY. Mr. Speaker, I rise in support of this legislation to close the loophole that enables plaintiff's lawyers to continue to sue for what Judge Friendly called ''blackmail settlements.'' Blackmail settlements occur, of course, when trial lawyers attempt to hold up very effective companies who have had particular problems with their stock and end up spending a great deal of money that could be used for more useful purposes, like research and development and creating jobs, aiding economic expansion. And who pays for that? Really investors do. The company's shareholders and employees lose every time that the company has to pay off a passel of lawyers just to settle a case based on nothing other than one fact, that the company's stock dropped in value, along with some vague nonspecific and baseless allegations of fraud.

The Private Securities Litigation Reform Act put into place protections against these types of claims, and, indeed, what we have seen over the last several months has been a deterioration of that, and, indeed, the loophole that the gentleman from Michigan pointed out has been widening as the days go by.

Since passage of that Reform Act, however, we have seen a dramatic change in that securities litigation. But like a teenager who cleans his room by putting everything under the bed, we have not really eliminated the problem, it just moved. In this case it moved to the State court.

The shift to State court means that investors, employees and the companies seeking capital are wasting valuable resources paying off lawyers, who continue to be successful in extracting blackmail settlements from companies who cannot afford to fight even baseless securities fraud claims.

This legislation before us today eliminates the State court loophole by creating a set of uniform standards for class action lawsuits and eliminates a lot of these fishing expeditions that take place as a result. It does this by granting Federal judges the power to quash discovery in State actions if that discovery conflicts with the order of the Federal court.

I want to thank particularly my good friend, the gentleman from Washington (Mr. WHITE), as well as the gentlewoman from California (Ms. ESHOO), the lead Democrat sponsor, for their indefatigable efforts on the part of this legislation.

I want to thank the chairman of the committee, the gentleman from Virginia (Mr. BLILEY), for leading the committee to develop and improve this legislation.

Mr. Chairman, I want to pay particular thanks to the gentleman from New York (Mr. MANTON), the ranking member of my subcommittee, who has been very helpful in this area. Let me first of all say that we will all miss the gentleman from New York (Mr. MANTON) and his good work here, and we hope to have words later for him in honoring him. But let me say to my friend from New York that I pledge to work with him as we go to conference on the provision that the gentleman had inserted into this legislation. It is important, not only for the State of New York, but for the SEC and for states in general. We want to make certain. It is unfortunate because of a jurisdictional dispute that we had this.

This is good legislation that closes a major loophole. I am proud of the bipartisan support that this bill has engendered.

Ms. ESHOO. Mr. Speaker, I ask unanimous consent to extend the debate by 2 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

Mr. DINGELL. Mr. Speaker, reserving the right to object, how is the time to be divided and why we are doing this?

The SPEAKER pro tempore. The Chair recognizes that there is an equal division of the time, 1 minute on either

side. The gentlewoman from California (Ms. ESHOO) will control 1 minute, and the gentleman from California (Mr. COX) will control 1 minute.

PARLIAMENTARY INQUIRIES

Mr. DINGELL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. DINGELL. Mr. Speaker, the gentleman from California (Mr. COX) is for the bill and the gentlewoman from California (Ms. ESHOO) is for the bill. They are going to share the time equally, half the time over there and half the time to the supporters on this side? I am curious, is that a fair ruling?

The SPEAKER pro tempore. The Chair heard no objection to the unanimous consent request.

Mr. STUPAK. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. STUPAK. Mr. Speaker, it is my understanding that the proponents of the bill would like to insert a statement to put in as an addition to the debate. Instead of taking up 2 minutes, can we just do it by unanimous consent? That way we do not have to worry about division of time.

The SPEAKER pro tempore. Colloquy must be spoken and not inserted in the record.

Mr. DINGELL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

The SPEAKER pro tempore. The gentlewoman from California (Ms. ESHOO) is recognized for 1 minute.

Ms. ESHOO. Mr. Speaker, I yield myself 1 minute, and would ask the gentleman from California (Mr. COX) to begin the colloquy.

Mr. COX of California. Mr. Speaker, will the gentlewoman yield?

Ms. ESHOO. I yield to the gentleman from California.

Mr. COX of California. Mr. Speaker, I thank my colleague from California, the coauthor of the bill, for yielding.

Mr. Speaker, earlier on the floor we had discussed our understanding, our clear understanding, that Congress did not, in adopting the Reform Act, intend to alter standards of liability under the Exchange Act. I would add, and I believe the gentlewoman is in agreement, that in Ernst and Ernst v. Hochfelder, the Supreme Court left open the question of whether conduct that was not intentional was sufficient for liability under the Federal securities laws. The Supreme Court has never answered that question. The court expressly reserved the question of whether reckless behavior is sufficient for civil liability under section 10(b) and Rule 10b-5 in a subsequent case, Herman & Maclean v. Huddleston, where it stated, ''We have explicitly left open the question of whether recklessness satisfies of the scienter requirement.''

The Reform Act did not alter the standard for liability under the Exchange Act. The question was expressly left open by the Reform Act for resolution by the Supreme Court on the basis of the statutory language of the Exchange Act.

The SPEAKER pro tempore. The time of the gentlewoman from California (Ms. Eshoo) has expired.

The gentleman from California (Mr. Cox) is recognized for 1 minute.

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

Mr. Speaker, Mr. Speaker, I will just ask the gentlewoman from California (Ms. Eshoo), if that is her understanding as well?

Ms. ESHOO. Mr. Speaker, will the gentleman yield?

Mr. COX of California. I yield to the gentlewoman from California.

Ms. ESHOO. Mr. Speaker, that is my understanding. I thank everyone concerned for the additional time in the debate. This is important language supported by certainly the Chairman of the Securities and Exchange Commission, and I think it will serve the House well.

Mr. DAVIS of Florida. Mr. Speaker, as a cosponsor of this legislation, I rise in strong support of H.R. 1689, the Securities Litigation Uniform Standards Act. This bipartisan initiative is narrowly tailored to address a problem which has arisen since enactment of the 1995 Private Securities Litigation Reform Act. While the 1995 Act was designed to help end abuses in Federal securities class actions, these reforms have been subverted through the use of State courts, undermining the potential benefits to investors, consumers, workers, and the overall economy.

This bill prevents plaintiffs from circumventing the reforms enacted in 1995 by creating a uniform standard for class action lawsuits involving nationally traded securities. The principle behind this legislation is simple. Nationally traded securities, which are primarily regulated by the Federal Government, should be subject to Federal securities law. By establishing fair and consistent rules, Congress not only will protect companies from abuses in class action lawsuits but also will improve the climate for greater forward-looking disclosures for investors.

Mr. Speaker, I urge all of my colleagues to support this common-sense legislation and reinforce the reforms that Congress passed by an overwhelming majority in 1995.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. BLILEY) that the House suspend the rules and pass the bill, H.R. 1689, as amended.

The question was taken.

Mr. STUPAK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

REPORT ON DEVELOPMENTS CONCERNING NATIONAL EMERGENCY WITH RESPECT TO TERRORISTS THREATENING TO DISRUPT MIDDLE EAST PEACE PROCESS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

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

To the Congress of the United States:

I hereby report to the Congress on the developments concerning the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process that was declared in Executive Order 12947 of January 23, 1995. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1703(c).

1. On January 23, 1995, I signed Executive Order 12947, ''Prohibiting Transactions with Terrorists Who Threaten To Disrupt the Middle East Peace Process'' (the ''Order'') (60 Fed. Reg. 5079, January 25, 1995). The Order blocks all property subject to U.S. jurisdiction in which there is any interest of 12 terrorist organizations that threaten the Middle East peace process as identified in an Annex to the Order. The Order also blocks the property and interests in property subject to U.S. jurisdiction of persons designated by the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, who are found (1) to have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East peace process, or (2) to assist in, sponsor, or provide financial, material, or technological support for, or services in support of, such acts of violence. In addition, the Order blocks all property and interests in property subject to U.S. jurisdiction in which there is any interest of persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any other person designated pursuant to the Order (collectively ''Specially Designated Terrorists'' or ''SDTs'').

The Order further prohibits any transaction or dealing by a United States person or within the United States in property or interests in property of SDTs, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons. This prohibition includes donations that are intended to relieve human suffering.

Designations of persons blocked pursuant to the Order are effective upon the date of determination by the Secretary of State or her delegate, or the