well illustrated in Pennsylvania where most people, particularly the elderly, dread the idea of leaving their home and family and moving to a nursing home. Consumers have become more sophisticated and are looking for alternatives of service and care that will allow people to retain their independence, including staying in their home or with family-member care givers.

Research suggests that a highly important cultural change is at work—a trend toward home and community based long-term care services. This means that government must recognize this important shift and encourage the expansion of home and community-based care programs and services.

While current government policies support and promotes public funding for institutionalized care (the type of care that those in need do not prefer) society has come to rely almost exclusively on informal family-care givers to provide the type of care desired by the majority of care recipients.

Researchers estimate that the value of care giving responsibilities regularly assumed by family members and friends exceeded $200 billion in 1997. In comparison, federal spending for formal home care in 1997, was $32 billion, with an additional $83 billion for nursing home care.

Informal or family-care givers provide more long-term care and support, free of charge and with limited support, than the federal government in all settings combined.

The obvious question becomes: how about paying or providing relief to the informal or family-care giver? I am taking steps to do just that by introducing legislation to amend the Internal Revenue Code of 1986 to provide a $1,200.00 tax credit for care givers of individuals with long-term care needs.

A $1,200.00 tax credit is the logical first step designed to recognize and compensate care givers for the long-term cost associated with informal or family-care giving.

CAPTIVE NATIONS WEEK, 43RD OBSERVANCE

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 19, 2001

Mr. CALVERT. Mr. Speaker, I rise today with a deep sense of personal conviction and pride to submit for the RECORD a proclamation on the 43rd Observance of Captive Nations Week. It was in memory of the millions who perished under authoritarian regimes and remain under authoritarian regimes still that the 86th Congress and President Dwight D. Eisenhower began the tradition of paying tribute to their fight for freedom, democracy, free market economy, human rights and national independence, with Public Law 86–90. President Ronald Reagan served to more forcibly imprint this need several years later when he called history's most powerful authoritarian regime, the Soviet Union, an 'evil empire.'

I am convinced that Captive Nations Week has served a vital role in the fight against authoritarian governments. This one week a year has provided, and continues to provide, a level of focused pressure and attention on those nations that utilize force, coercion and fear to maintain control over the individual. As a result, we no longer witness Germany fascism, Soviet Stalinism, the Nazi concentration and work camps of World War II and more. In time, I believe that remaining Captive Nations, such as China, will also join the community of democratic states.

China in particular provides us visible daily evidence of the human rights violations that continue to be perpetuated in the world. In this country the authoritarian government continues to deny men and women their inalienable rights, including freedom of speech, freedom of movement and assembly, freedom of the press and the right to practice their religious beliefs without fear of persecution.

Captive Nations Week recalls our obligation to speak out for captive peoples around the world. During this one week in July, we may reaffirm our support for peaceful efforts to secure their right to liberty and self-determination. Thomas Jefferson's timeless words on the 50th Anniversary of our Nation's Independence in 1826 best highlight the goals of Captive Nations Week:

"All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God. These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights and an undiminished devotion to them. . . ."

Therefore, Mr. Speaker, I add my prayers and hopes to the millions said each and every day for the "rights of man" to be secured for all peoples around the world and that Americans are privileged to experience with each breath that they breathe. And I also applaud those who would not be victimized, the individuals who refused to be swayed by untruths and promises of power—the ones who fought tyranny and prevailed. In 2001 there remain many Captive Nations, but our hope remains that one day there will be none.

CONSTITUTIONAL AMENDMENT AUTHORIZING CONGRESS TO PROHIBIT PHYSICAL DESECRATION OF THE FLAG OF THE UNITED STATES

SPEECH OF

HON. JERRY WELLER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 17, 2001

Mr. WELLER. Mr. Speaker, I rise today to give my strong support to H.J. Res. 36, the Flag Protection Amendment.

Our flag is the symbol of the free world. It is the symbol that men and women have given their lives to protect and preserve. Thanks to these sacrifices, we are at peace today and are able to return the favor to the brave soldiers and sailors who stood guard to our flag and freedom from Lexington & Concord to the shores of Kuwait.

Mr. Speaker, the United States flag stands for freedom, equality, and patriotism. These qualities are embodied in the true, tried waves of the flag as she flies proudly above this building, the United States Capitol. To protect the flag is not only the right thing to do, it is the necessary action to pursue.

Mr. Speaker, I commend Mr. CUNNINGHAM and Mr. SENSENBRENNER on their hard work on this amendment and I urge my colleagues to support this meaningful and necessary piece of legislation.

SUBCHAPTER S MODERNIZATION ACT OF 2001

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 19, 2001

Mr. SHAW. Mr. Speaker, today over 2 million businesses pay taxes as S corporations and the vast majority of these are small businesses. The Subchapter S Modernization Act of 2001 is targeted to these small businesses by improving their access to capital, preserving family-owned businesses, and lifting obsolete and burdensome restrictions that unnecessarily impede their growth.

Even after the relief provided in 1996, S corporations face substantial obstacles and limitations not imposed on other forms of entities. The rules governing S corporations need to be modernized to bring them more on par with partnerships and limited liability companies. For instance, S corporations are unable to attract the senior equity capital needed for their survival and growth. This bill would remove this obsolete prohibition and also provide that S corporations can attract needed financing through convertible debt.

Additionally, the bill helps preserve family-owned businesses by counting all family members as one shareholder for purposes of S corporation eligibility. The bill also increases the limit on the number of shareholders from 75 to 150. Also, nonresident aliens would be permitted to be shareholders under rules like those now applicable to partnerships.

The Subchapter S Modernization Act of 2001 includes the following provisions to help: improve capital formation opportunities for small businesses, preserve family-owned businesses, and eliminate unnecessary and unwarranted traps for taxpayers.

TITLE I—ELIGIBLE SHAREHOLDERS OF AN S CORPORATION

SECTION 101. MEMBERS OF FAMILY TREATED AS ONE SHAREHOLDER

The Act provides for an election to count family members that are not more than six generations removed from a common ancestor as one shareholder for purposes of the number of shareholder limitation (currently 75 shareholders). The election requires the consent of a majority of all shareholders. The provision helps family-owned S corporations plan for the future without fear of termination of their S corporation elections.

SECTION 102. NONRESIDENT ALIENS ALLOWED TO BE SHAREHOLDERS

The Act would permit nonresident aliens to be S corporation shareholders. To assure collection of the appropriate amount of tax, the Act requires the S corporation to withhold and pay a tax on effectively connected income allocable to its nonresident alien shareholders. The provision enhances an S corporation's ability to expand into international markets and expands an S corporation's access to capital.

SECTION 103. EXPANSION OF BANK S CORPORATION ELIGIBLE SHAREHOLDERS TO INCLUDE IRAS

The Act permits Individual Retirement Accounts (IRAs) to hold stock in a bank that is

an S corporation. Additionally, the Act would exempt the sale of bank S corporation stock in an IRA from the prohibited transaction rules. Currently, IRAs own community bank stock, which results in a significant obstacle to banks that want to make an S election. The provision allows an IRA to own bank S stock, and thus, avoids transactions to buy back stock, which drains the bank's resources.

SECTION 104. INCREASE IN NUMBER OF ELIGIBLE SHAREHOLDERS TO 150

Currently a corporation is not eligible to be an S corporation if it has more than 75 shareholders. The Act increases the number of permitted shareholders to 150. The provision will enable S corporations to raise more capital and plan for the future without endangering their S corporation status.

TITLE II—QUALIFICATION AND ELIGIBILITY REQUIREMENTS

SECTION 201. ISSUANCE OF PREFERRED STOCK PERMITTED

The Act would permit S corporations to issue qualified preferred stock (QPS). QPS generally would be stock that (i) is not entitled to vote, (ii) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, and (iii) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium). Stock would not fail to be treated as QPS merely because it is convertible into other stock. This provision increases access to capital from investors who insist on having a preferential return and facilitates family succession by permitting the older generation of shareholders to relinquish control of the corporation but maintain an equity interest.

SECTION 202. SAFE HARBOR EXPANDED TO INCLUDE CONVERTIBLE DEBT

The Act permits S corporations to issue debt that may be converted into stock of the corporation provided that the terms of the debt are substantially the same as the terms that could have been obtained from an unrelated party. The Act also expands the current law safe-harbor debt provision to permit nonresident alien individuals as creditors. The provision facilitates the raising of investment capital.

SECTION 203. REPEAL OF EXCESSIVE PASSIVE INVESTMENT INCOME AS A TERMINATION EVENT

The Act would repeal the rule that an S corporation would lose its S corporation status if it has excess passive income for three consecutive years. A corporate-level ''sting'' (or double) tax would still apply, as modified in Section 204 below, to excess passive income.

SECTION 204. MODIFICATIONS TO PASSIVE INCOME RULES

The Act would increase the threshold for taxing excess passive income from 25 percent to 60 percent (consistent with a Joint Tax Committee recommendation on simplification measures). In addition, the Act removes gains from the sales or exchanges of stock or securities from the definition of passive investment income for purposes of the sting tax.

SECTION 205. STOCK BASIS ADJUSTMENT FOR CERTAIN CHARITABLE CONTRIBUTIONS

Current rules discourage charitable gifts of appreciated property by S corporations. The Act would remedy this problem by providing for an increase in the basis of shareholders stock in an amount equal to excess of the value of the contributed property over the basis of the property contributed. This provision conforms the S corporation rules to those applicable to charitable contributions by partnerships.

TITLE III—TREATMENT OF S CORPORATION SHAREHOLDERS

SECTION 301. TREATMENT OF LOSSES TO SHAREHOLDERS

In the case of a liquidation of an S corporation, current law can result in double taxation because of a mismatch of ordinary income (realized at the corporate level and passed through to the shareholder) and a capital loss (recognized at the shareholder level on the liquidating distribution). Although careful tax planning can avoid this result, many S corporations do not have the benefit of sophisticated tax advice. The Act eliminates this potential trap by providing that any portion of any loss recognized by an S corporation shareholder on amounts received by the shareholder in a distribution in complete liquidation of the S corporation would be treated as an ordinary loss to the extent of the shareholder's ordinary income basis in the S corporation stock.

SECTION 302. TRANSFER OF SUSPENDED LOSSES INCIDENT TO DIVORCE

The Act allows for the transfer of a pro rata portion of the suspended losses when S corporation stock is transferred, in whole or in part, incident to divorce. Under current IRS regulations, any suspended losses or deductions are personal to the shareholder and cannot, in any manner, be transferred to another person. Accordingly, if a shareholder transfers all of his or her stock in an S corporation to his or her former spouse as a result of divorce, any suspended losses or deductions with respect to such stock are permanently disallowed. This result is inequitable and unduly harsh, and needlessly complicates property settlement negotiations.

SECTION 303. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK AMOUNTS BY QUALIFIED SUBCHAPTER S TRUST INCOME BENEFICIARIES

The Act clarifies that, if a QSST transfers its entire interest in S corporation stock to an unrelated party in a fully taxable transaction, the income beneficiarys suspended losses from S corporation activity under the passive activity loss rules would be freed up for use by the income beneficiary.

The Act further provides that the income beneficiary's at-risk amount with respect to S activity would be increased by the amount of gain recognized by the QSST on a disposition of S stock. These provisions clarify a troublesome area under current law, and so, eliminate traps for the unwary taxpayer.

SECTION 304. DEDUCTIBILITY OF INTEREST EXPENSE INCURRED BY AN ELECTING SMALL BUSINESS TRUST TO ACQUIRE S CORPORATION STOCK

The Act provides that interest expense incurred by an ESBT to acquire S corporation stock is deductible by the S portion of the trust. Recently issued proposed regulations would provide that interest expense incurred by an ESBT to acquire stock in an S corporation is allocable to the S portion of the trust, but is not deductible. This result is contrary to the treatment of other taxpayers, who are entitled to deduct interest incurred to acquire an interest in a pass through entity. Further, Congress never intended to place ESBTs at a disadvantage relative to other taxpayers.

SECTION 305. DISREGARD OF UNEXERCISED POWERS OF APPOINTMENT IN DETERMINING POTENTIAL CURRENT BENEFICIARIES OF ESBT

The Act revises the definition of a ''potential current beneficiary'' in the context of the ESBT eligibility rules by providing that powers of appointment should only be evaluated when the power is actually exercised. Current law provides that postponed or nonexercisable powers will not interfere with the making of an ESBT election. However, proposed regulations provide that, once such powers become exercisable, the S election will automatically terminate if the power could potentially be exercised in favor of an ineligible individual—whether it was actually exercised in favor of the ineligible individual or not. The application of this rule would prevent many family trusts from qualifying as ESBTS.

The Act expands the existing method to cure a potential current beneficiary problem. Under the Act, an ESBT will have a period of up to one year (currently 60 days) to either dispose of all of its S stock or otherwise cause the ineligible potential current beneficiary's position in the trust to be eliminated without causing the ESBT election or the corporation's S election to fail.

SECTION 306. CLARIFICATION OF ELECTING SMALL BUSINESS TRUST DISTRIBUTION RULES

The Act clarifies that, with regard to ESBT distributions, separate share treatment applies to the S and non-S portions under section 641 (c).

SECTION 307. ALLOWANCE OF CHARITABLE CONTRIBUTIONS DEDUCTION FOR ELECTING SMALL BUSINESS TRUSTS

The Act permits a deduction for charitable contributions made by an ESBT, while taxing the charity on its share of the S corporation's income as unrelated business taxable income. Current law discourages charitable contributions by S corporation shareholders by preventing an ESBT from claiming a charitable contribution deduction. The Act encourages philanthropy by permitting a charitable deduction while at the same time effectively taxing the S corporation's income in the hands of the recipient chairty to the extent of the deduction.

SECTION 308. SHAREHOLDER BASIS NOT INCREASED BY INCOME DERIVED FROM CANCELLATION OF S CORPORATION'S DEBT

The Act provides that cancellation of indebtedness (COD) income excluded from the gross income of an S corporation, i.e. due to the S corporation's insolvency, does not increase shareholder's basis in S corporation stock. The Act changes the result reached in the recent U.S. Supreme Court decision in Gitlitz v. Comm'r (2000).

SECTION 309. BACK-TO-BACK LOANS AS INDEBTEDNESS

The Act clarifies that a back-to-back loan (a loan made to an S corporation shareholder who in turn loans those funds to his S corporation) constitutes ''indebtedness of the S corporation to the shareholder'' so as to increase such shareholder's basis in the S corporation. The provision would help many shareholders avoid inequitable pitfalls encountered where a loan to an S corporation is not properly structured, even though the shareholder has clearly made an economic outlay with respect to his investment in the S corporation for which a basis increase is appropriate.

TITLE IV—EXPANSION OF S CORPORATION ELIGIBILITY FOR BANKS

SECTION 401. EXCLUSION OF INVESTMENT SECURITIES INCOME FROM PASSIVE INCOME TEST FOR BANK S CORPORATIONS

The Act clarifies that interest and dividends on investments maintained by a bank for liquidity and safety and soundness purposes shall not be ''passive'' income. By treating all bank income as earned from the active and regular conduct of a banking business, banks will no longer face the conundrum of evaluating investment decisions based on tax considerations rather than on more important safety and economic soundness issues.

SECTION 402. TREATMENT OF QUALIFYING DIRECTOR SHARES

The Act clarifies that qualifying director shares of bank are not to be treated as a second class of stock. Instead, the qualifying director shares are treated as a liability of the bank and no income or loss from the S corporation will be allocated to these qualifying director shares. The provision clarifies the law and removes a significant obstacle unique among banks contemplating a S corporation election.

SECTION 403. BAD DEBT CHARGE OFFS IN YEARS AFTER ELECTION YEAR TREATED AS ITEMS OF BUILT-IN LOSS

The Act permits bank S corporations to recapture up to 100 percent of their bad debt reserves on their first S corporation tax return and/or their last C corporation income tax return prior to the effective date of the S election. Banks that convert to S corporation status must change from the reserve method of accounting to the specific charge off method. The resulting recapture income is treated as built-in gain subject to tax at both the shareholder and the corporate level. The Act allows banks to accelerate the recapture of bad debt reserve to their last C corporation tax year. The corporate level tax would still be paid on the recapture income, but the recapture would no longer trigger a tax for the bank's shareholders.

TITLE V—QUALIFIED SUBCHAPTER S SUBSIDIARIES

SECTION 501. RELIEF FROM INADVERTENTLY INVALID QUALIFIED SUBCHAPTER S SUBSIDIARY ELECTIONS AND TERMINATIONS.

The Act provides statutory authority for the Secretary to grant relief for invalid QSub elections, and terminations of QSub status, if the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent. This would allow the IRS to provide relief in appropriate cases, just as it currently does in the case of invalid or ten-ninated S corporation elections.

SECTION 502. INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES

The Act would help clarify that a Qualified Subchapter S Subsidiary (QSSS) can provide information returns under their own tax ID number to help avoid confusion by employers, depositors, and other parties.

SECTION 503. TREATMENT OF THE SALE OF INTEREST IN A QUALIFIED SUBCHAPTER S SUBSIDIARY

The Act treats the disposition of QSub stock as a sale of the undivided interest in the QSub's assets based on the underlying percentage of stock transferred followed by a deemed contribution by the S corporation and the acquiring party in a nontaxable transaction. Under current law, an S corporation may be required to recognize 100 percent of the gain inherent in a QSub's assets if it sells as little as 21 percent of the QSub's stock. IRS regulations suggest this result can be avoided by merging the QSub into a single member LLC prior to the sale, then selling an interest in the LLC (as opposed to stock in the QSub). The Act achieves this result without any unnecessary merger and thus removes a trap for the unwary.

SECTION 504. EXCEPTION TO APPLICATION OF STEP TRANSACTION DOCTRINE FOR RESTRUCTURING IN CONNECTION WITH MAKING QUALIFIED SUBCHAPTER S SUBSIDIARY ELECTIONS

The Act provides that the step transaction doctrine does not apply to the deemed liquidation resulting from QSub elections. Application of the step transaction doctrine, in the context of making a QSub election, introduces complexity and uncertainty in what should be a simple matter. The doctrine requires knowledge of decades of jurisprudence and administrative interpretations, and poses an unnecessary trap for the unwary.

TITLE VI—ADDITIONAL PROVISIONS

SECTION 601. ELIMINATION OF ALL EARNINGS AND PROFITS ATTRIBUTABLE TO PRE-1983 YEARS

The Small Business Job Protection Act of 1996 eliminated certain pre-1983 earnings and profits of S corporations that had S corporation status for their first tax year beginning after December 31, 1996. This provision should apply to all corporations (C and S) with pre-1983 S earnings and profits without regard to when they elect S status. There seems to be no policy reason why the elimination was restricted to corporations with an S election in effect for their first taxable year beginning after December 31, 1996.

SECTION 602. NO GAIN OR LOSS ON DEFERRED INTERCOMPANY TRANSACTIONS BECAUSE OF CONVERSION TO S CORPORATION OR QUALIFIED S CORPORATION SUBSIDIARY

The Act makes clear that any gain or income from an intercompany transaction is not taxed at the time of the S corporation or QSub elections.

SECTION 603. TREATMENT OF CHARITABLE CONTRIBUTION AND FOREIGN TAX CREDIT CARRYFORWARDS

The Act provides that charitable contribution carryforwards and other carryforwards arising from a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain of the corporation for the taxable year. This provision is consistent with the legislative history of the 1986 Act.

SECTION 604. DISTRIBUTION BY AN S CORPORATION TO AN EMPLOYEE STOCK OWNERSHIP PLAN

An ESOP will usually borrow from the sponsoring corporation to fund its acquisition of employer securities. In the case of a C corporation, the tax code provides that an ESOP will not be treated as engaging in a ''prohibited transaction'' if it uses any ''dividend'' on employer securities purchased with loan proceeds to make payments on the loan regardless of whether such employer securities have been pledged as collateral to secure the loan. The policy facilitates the payment of ESOP loans and thereby promotes employee ownership. Because S corporation distributions are technically not ''dividends'', the Act provides that S corporation distributions are treated as dividends. This clarification is necessary to ensure that the policy of facilitating the payment of ESOP loans applies equally to S corporation and C corporation ESOPs.

SECTION 605. SPECIAL RULES OF APPLICATION

The effective dates of some amendments made by the Act may occur in years in which it is too late to file a claim for refund arising in such years from applying the amendments. The Act grants a 1-year extension beginning on the date of enactment in which to file such claims for these closed years.

Mr. Speaker, I urge my fellow members to review and support the S Corporation Modernization Act, which will help create a level playing field for small businesses. I look forward to working with my colleagues on the Ways and Means Committee to enact this bill.

GIVING PRAISE TO ZION EVANGELICAL LUTHERAN CHURCH

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 19, 2001

Mr. BARCIA. Mr. Speaker, I rise today to sing the praises of Zion Evangelical Lutheran Church in Bay City, Michigan, as Reverend William H. Allwardt, his family and the congregation celebrate the 100th anniversary of its founding. Since its humble beginnings in 1901 in a small wood-frame building, Zion has grown to become a stronghold of faith for over 2,000 members in and around Bay City.

In 1901, Zion members first gathered to worship in a wooden building that once had been the Salzburg Band Hall. As the congregation grew, so did the need for a larger forum, resulting in the building in November 1930 of the present-day church. From the beginning, church leaders also recognized that religious education doesn't take place only on Sundays, so they built a schoolhouse. The commitment to Christian education continues today inside the Zion Memorial Building, named to honor the men and women of Zion who served in World War II. During the last school year, 170 students studied and learned at Zion.

Tradition and a sense of continuity have always been important elements in Zion's spiritual mission. In keeping with those practices, the church has had just seven pastors in a century's time. The present pastor, Reverend Allwardt, his wife, Paulette, and children, Will and Charice, have been part of the Zion family since 1978 and have contributed greatly to its rich history and Christian undertaking to spread the word of God to people near and far.

A fruitful church cannot multiply the ranks of the faithful without reaching out and Zion's congregation has always opened its doors and expanded its influence well beyond the sanctuary and into the surrounding community. Over the years, Zion has led by Christian example with their involvement in many social organizations, including the Saginaw Valley Blood Program, the Boy Scouts and Girl Scouts of America, the Bay County Food Pantry and the CROP Walk.

Mr. Speaker, I ask my colleagues to join me in honoring Zion Evangelical Lutheran Church for a century of Christian service, fellowship and leadership from the pulpit, the pews and among the greater community and in wishing them another hundred years of success.

SALUTE TO VERNA SMALL

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 19, 2001

Mr. NADLER. Mr. Speaker, I rise today to laud the incredible and enduring community activism of Verna Small. Verna has been active in the Greenwich Village community of New York City for over half a century, however she got her start right here in Washington, D.C. A 1937 graduate of George Washington University, Verna soon began working for the United States Department of