Race Team, a racing team that enhances the goals of National AFV Day by racing alternative fuel vehicles in high-profile races throughout the United States.

Mr. Speaker, at this time, I ask that you and my other distinguished colleagues join me in recognizing and paying tribute to the National Alternative Fuels Training Consortium, Ivy Tech Community College Northwest, and South Shore Clean Cities, Incorporated as they strive to provide the tools and education for protecting our local and national interests in securing both the future of our environment and our Nation's energy independence.

THE SENTENCING FAIRNESS AND EQUITY RESTORATION ACT OF 2006

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Mr. SENSENBRENNER. Mr. Speaker, today I introduce the ''Sentencing Fairness and Equity Restoration Act of 2006,'' to restore uniformity to Federal sentencing and reaffirm Congress' commitment to protecting our Nation's children.

This legislation addresses the Supreme Court's decision in *United States* v. *Booker,* 543 U.S. 220 (2005), which invalidated the mandatory sentencing requirement of the Sentencing Guidelines (18 U.S.C. section 3553(b)(1)), and struck down the de novo standard for appellate review of any downward departures in 18 U.S.C. Section 3742(e), which was enacted as part of the PROTECT Act in 2003.

On March 13, 2006, the U.S. Sentencing Commission issued its report on Booker's impact on Federal sentencing. The Sentencing Commission's report shows that unrestrained judicial discretion has undermined the very purposes of the Sentencing Reform Act, and jeopardizes the basic precept of our Federal court system that all defendants should be treated equally under the law.

The Federal Sentencing Guidelines are now advisory in all cases, even in those where they can be applied without any judicial fact-finding. Federal judges are now able to impose sentences outside the prescribed ranges, thereby undermining the very purpose of the Sentencing Reform Act to ''provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct.''

The PROTECT Act ensured that appropriate sentences would be administered to sex offenders, pedophiles, child pornographers, and those who prey on our children. Thus, I am troubled that the Commission's Report shows that these fundamental sentencing reforms have been effectively eliminated. That is neither good nor acceptable for justice and public safety.

Most alarming is the dramatic increase in departure rates for sex offenses including sexual abuse of a minor, sexual exploitation of a minor, and possession or trafficking in child pornography. Downward departures increased for these offenses to levels that had not existed since enactment of the PROTECT Act in 2003.

The Sentencing Commission's report shows that in the last year there has been a six-fold increase in below guideline range sentences for defendants convicted of sexual abuse of a minor, a five-fold increase in below guideline range sentences for defendants convicted of sexual exploitation of a child, a 50 percent increase in below guideline range sentences for defendants convicted of sexual contact of a minor, trafficking in child pornography, and possession of child pornography.

The report also shows an increase in overall departure rates for nearly all Federal offenses across all Federal jurisdictions, including drug trafficking offenses, firearms offenses, theft and fraud offenses, and immigration offenses. These four offense types comprise 75 percent of all Federal cases annually. According to current sentencing data, the rate of downward departures has not improved.

Shortly after the release of the Booker report, I expressed my concern for the increase in departures rates, particularly for sexual offenses, and promised a legislative response. The Sentencing Fairness and Equity Restoration Act directs the courts to impose a sentence at the minimum of the guideline range up to the statutory maximum and reinstates de novo review for all downward departures. The act also requires the Attorney General to create and implement a new policy for the filing of motions for departure for substantial assistance and report this policy to Congress within 180 days of enactment of the bill.

Mr. Speaker, I am introducing this legislation to restore equity in Federal sentencing and to ensure that tough sentences are handed out to all defendants, including sex offenders.

THE SENTENCING FAIRNESS AND EQUITY RESTORATION ACT OF 2006

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. This section provides that the Act may be cited as the ''Sentencing Fairness and Equity Restoration Act of 2006.''

Section 2. Reaffirmation of Intent of Congress in the Sentencing Reform Act of 1984.

Subsection (a). This subsection amends section 3553(b)(1) of title 18 to address the Supreme Court's holding in *United States* v. *Booker*, 543 U.S. 220 (2005). The Booker court ruled that the Sixth Amendment applies to the federal Sentencing Guidelines and noted that the Sixth Amendment implications hinged on the mandatory nature of the Guidelines, which are dependent on judicial fact-finding. Id. at 232. In a separate opinion, the Court excised the provision in section 3553(b) that instructed the court to ''impose a sentence of the kind, and within the range'' provided by the Guidelines.

This subsection amends the first sentence of section 3553(b)(1) to instruct that the sentencing court may not impose a sentence below the minimum of the guideline range unless the court finds the existence of a mitigating circumstance that is not adequately addressed by the Sentencing Guidelines. The amendment also instructs that the court may impose a sentence above the minimum of the guideline range up to the statutory maximum sentence.

Subsection (a) replaces the mandatory provision excised by the Court with a requirement that the court adhere to only the minimum of the guideline range established by the Sentencing Commission. This requirement, however, is not mandatory because the court may still depart from the minimum of the range in certain instances.

Subsection (a) also reaffirms Congress' intent in the Sentencing Reform Act of 1984 that the maximum sentence a judge may impose is the statutory maximum rather than the Guideline maximum. The Booker Court reasoned that because section 3553(b)(1) required courts to adhere to the sentencing guidelines, the ''maximum'' sentence authorized by law was, in fact, the Guideline maximum and not the statutory maximum. Amended section 3553(b)(1) removes the mandatory requirement from the sentencing statute. Thus, the court is not bound by the Guideline maximum and may impose a sentence up to the maximum authorized by statute.

Subsection (a) makes identical revisions to section 3553(b)(2).

Subsection (b). This subsection amends section 3553(c) to conform with subsection (a). Section 3553(c) continues to require the court to state for the record its reasons for imposing a particular sentence. The amendment does not change the ability of the court to receive information in camera pursuant to the Federal Rules of Criminal Procedure and requires the court to indicate for the record when such in camera information is received and relied upon for sentencing purposes. Finally, this subsection maintains current language regarding restitution and dissemination of sentencing transcripts.

Subsection (c). This subsection amends section 3742(e) of title 18 to re-establish the de novo appellate review standard for downward departures. In Booker, the Court also excised the de novo appellate review standard, which was enacted as part of the PROTECT Act, based upon its rationale that this section ''contains critical cross-references to the (now excised) §3553(b)(1) and consequently must be severed and excised for similar reasons.'' Id. at 247. The Court, however, provides no nexus between the de novo appellate standard of review and the Sixth Amendment right to a jury for sentencing. Moreover, having excised the mandatory sentencing provision in §3553(b)(I), the cross-reference to that section in §3742(e) carries no Sixth Amendment implications. Section 3742(e) merely outlines the criteria appellate courts use to review sentences.

Subsection (c) reasserts Congress' intent to reign in the increasing rate of reduced sentences, particularly for sexual offenses, expressed in the PROTECT Act. Pursuant to this amendment, the appellate courts will continue to review sentences below the minimum of the range de novo while maintaining Booker's reasonableness standard for all other sentencing appeals.

Section 3. Uniform National Standards for Downward Departures for Substantial Assistance. A significant result of the Booker decision is the spike in downward departures for substantial assistance imposed by the courts in the absence of a government motion. Substantial assistance motions are filed in instances where the defendant has provided the government with information relating to another investigation or prosecution. In reviewing this increase in sua sponte departures, the committee has learned that the government's standards for these motions vary from district to district, creating the potential for disparate treatment of similarly situated defendants.

This section, therefore, directs the Attorney General to implement a uniform policy for departure motions for substantial assistance, including the definition of substantial assistance in the investigation, the process for determining whether departure is warranted, and the criteria for determining the extent of departure. The amendment instructs the Attorney General to report the policy to Congress within 180 days of enactment of this Act.

Section 4. Assuring Judicial Administrative Responsibilities are Performed by the

Judicial Branch. This section amends section 994(w) of title 28, which governs the reporting requirements of the federal district courts to the U.S. Sentencing Commission. This amendment simply clarifies that the reporting required by this section is to be completed by the judicial branch and may not be delegated to the executive branch.

CONGRATULATING PAUL PRIBBENOW

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Ms. McCOLLUM of Minnesota. Mr. Speaker, I rise today to offer my congratulations and warm wishes to Paul Pribbenow on his appointment as the 11th president of Augsburg College. Located in Minneapolis, Minnesota, Augsburg College is a private liberal arts college associated with the Evangelical Lutheran Church in America (ELCA).

Augsburg has a long and proud history of not only educating and preparing students, but also in engaging and strengthening communities in Minnesota, especially those that coexist with and neighbor the Augsburg campus. Dr. Pribbenow, with expertise in issues related to philanthropy, non-profit management, and ethics, is uniquely prepared to continue to strengthen community ties. He holds a B.A. from Luther College in Iowa, and an M.A. and Ph.D. in social ethics from the University of Chicago. Before accepting the position at Augsburg, Dr. Pribbenow served as the President of Rockford College in Rockford, Illinois.

I am pleased to have this opportunity to join with the students, faculty and staff of Augsburg in welcoming Dr. Pribbenow to Minnesota and to Augsburg College. I look forward to continued work with Augsburg under the leadership of Dr. Pribbenow in ensuring a strong partnership between the federal government and our institutions of higher education in providing access to all those who wish to pursue a higher education, while strengthening the economic and social well-being of our communities.

MILITARY COMMISSIONS ACT

SPEECH OF

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 27, 2006

Mr. MOORE of Kansas. Mr. Speaker, I rise today to share my views on H.R. 6166, the Military Commissions Act. In the aftermath of the terrorist attacks of September 11, the Bush Administration established new procedures for war crime tribunals for terrorist suspects held at Guantanamo Bay, Cuba. The United States Supreme Court ruled 5–3 on June 29, 2006, that President Bush's military order in the detention and treatment of the Guantanamo Bay detainees exceeded his authority. Though the court did not dispute the President's authority to hold the petitioner as an ''enemy combatant for the duration of hostilities,'' it found that military tribunals convened to try detainees did not comply with the Uniform Code of Military Justice of the law of war, as embodied by Common Article 3 of the Geneva Conventions.

Because of the unique nature of the War on Terror, no current system exists for bringing detainees to trial, many of whom are individuals believed to have committed a serious crime and who may seek to further their cause through the murder of innocent civilians. It is important that the United States establish a judicial process for dealing with illegal enemy combatants and allow for the continued interrogation of detainees while following basic international agreements on humane treatment. H.R. 6166 accomplishes this. This legislation provides a framework through which we can bring enemy combatants to justice through an open military commission system that affords substantial due process. It represents a comprehensive approach to try accused war criminals while recognizing the unique national security situation the United States faces in the War on Terror. The commission system created by H.R. 6166 takes into account the concerns of the Supreme Court, as well as the input of intelligence officers and military lawyers in all branches of the armed services.

Prior to casting my vote for H.R. 6166, I voted for the Motion to Recommit, offered by Representative IKE SKELTON of Missouri, which would provide expedited judicial review of the statute's constitutionality and require the reauthorization of the legislation in three years. Specifically, the provision would provide for expedited review of a civil action challenging the bill's legality. A three-judge panel in the D.C. District Court would hear the action and the Supreme Court would review a judgment or order of the panel. Additionally, by requiring a reauthorization in 3 years, we give Congress the ability to carefully review how this statute is working in the real world. Unfortunately, the Skelton Motion to Recommit failed by a vote of 195–228.

While H.R. 6166 is certainly not perfect, it is a step in the right direction. It is essential that our government has the necessary intelligence to prevent future terrorist attacks on our Nation and our allies. As this legislation is implemented, it is important that the Legislative and Judicial branches provide vigorous oversight to ensure that no international laws regarding the treatment of detainees are violated in the name of security.

PERSONAL EXPLANATION

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, on September 7, 2006 I missed rollcall vote No. 431 on the Goodlatte Amendment to the American Horse Slaughter Prevention Act (H.R. 503). Had I been present I would have voted against this amendment because it is impractical to expect that all the horses that would otherwise be slaughtered would be able to go to rescue facilities. These horses could be humanely euthanized, adopted by other owners or kept longer by their current owners. If passed, this amendment would have severely compromised the underlying bill which I support.

NATIONAL SPINA BIFIDA MONTH

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise today to commemorate October as National Spina Bifida Awareness Month.

It is estimated that 3000 babies are born in the United States each year with a serious birth defect of the brain or spine called a neural tube defect. Spina bifida, the most common neural tube defect, is the leading cause of childhood paralysis. There are approximately 70,000 people in the United States currently living with this permanently disabling birth defect.

Spina Bifida can be accompanied by significant social, emotional and financial burdens. But with proper medical and family care, people affected by Spina Bifida can live productive lives with the help of braces and/or a wheelchair. The key to a better life for Americans who live with Spina Bifida is research and improved quality-of-life, and this goal must be a national priority.

Along with developing new methods for treatment and care, a critical effort must also be aimed at prevention. In response to research that showed the incidence of Spina Bifida could be reduced by up to 75% with the addition of folic acid in a woman's diet, the United States Public Health Service recommended that all women of childbearing years should take 400 micrograms of folic acid daily to prevent having a pregnancy affected by a neural tube defect.

Based on this recommendation, I introduced the Folic Acid Promotion and Birth Defects Prevention Act, which was passed into law as part of the Children's Health Act of 2000. This Act authorized a program within CDC to provide professional and public education for folic acid awareness.

The good news is that progress has been made in educating women about the importance of consuming folic acid supplements and maintaining diets rich in folic acid. However, the majority of women in this country are still not aware of the benefits of folic acid, and only 40 percent of women ages 18 to 45 take a daily vitamin with the recommended level of folic acid.

The Centers for Disease Control and Prevention, CDC, reports that the rate of Spina Bifida in the Hispanic population is almost seven in 10,000 births, nearly 40 percent higher than the non-Hispanic rate. And tragically, Hispanic women continue to have the lowest reported folic acid consumption of any racial or ethnic group.

To that end, I am happy to report that Gruma—one of the world's largest producers of corn flour and tortillas—has begun researching and conducting product testing with a year-end goal of enriching with folic acid its corn products sold in the United States. Imported corn flours—unlike most wheat flour and cereal products—are currently not enriched with folic acid. This important voluntary action by Gruma has significant implications for improving the health and well-being of the U.S. Hispanic/Latino population.

Lastly, I would like to take this opportunity to highlight the role of the Spina Bifida Association. The Spina Bifida Association, SBA, is an