

60-day periods can be indefinitely renewed. Moreover, "imminent attack" is defined as an "attack likely to cause death, serious injury, or substantial economic damage." What is "substantial economic damage?" This definition is so sweeping that hacking into a computer could fit. This bill also strips all courts of jurisdiction over surveillance cases, preventing anyone from seeking redress for illegal or unconstitutional electronic surveillance.

All of us want to be protected from terrorists, but we can protect our Nation without expanding the FISA law so broadly that innocent people can be spied on by their own government without reasonable justification, trampling on our civil liberties. The FISA law already has measures that take into account the need for emergency surveillance, and the need for urgency cannot be used as a rationale for going around America's law. FISA allows wiretapping without a court order in an emergency; the court must simply be notified within 72 hours. The government is aware of this emergency power and has used it repeatedly.

Mr. Speaker, the United States is a Nation built upon its adherence to the laws. And no one—not even a U.S. president—is above the law. Our system of checks and balances must be maintained if American democracy is to be preserved. I urge all of my colleagues to vote "no" to H.R. 5825.

#### TRIBUTE TO B. MONROE HIERS

### HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 29, 2006*

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to a great public servant and Southern gentleman. Mr. B. Monroe Hiers is retiring as the attorney for the City of Bamberg, South Carolina, a post he has held for more than forty years.

Monroe Hiers was born on October 15, 1923 in the town of Ehrhardt, South Carolina to Mr. and Mrs. B.W. Hiers. In 1943, he graduated from Wofford College and went on to serve three years as a First Lieutenant in the U.S. Army during World War II. Following his military service, Mr. Hiers returned to school and earned a Juris Doctor from the University of South Carolina in 1948.

For more than 55 years, Monroe has practiced law in Bamberg, and for many of those years served as the city's attorney. During that time, he worked with five different mayors. The current mayor, Alton McCollum, calls Monroe, "the essence of a Southern gentleman."

Monroe Hiers has also devoted his spare time to his community. He has served more than 50 years as the Bamberg County Veterans Service Officer. He is the past president of the Bamberg Chamber of Commerce; past president of the Men's Garden Club; and a past director of the Bamberg County Red Cross. For many years, he has been the vice president, director and attorney for Bamberg's Home Federal Savings and Loan Association, and has been honored by the CFISC for promoting "Community Financial Institutions Business in South Carolina" for 40 years.

He currently serves as Adjutant of the Bamberg County American Legion Post #39, and is a past commander of the Post. He has

helped many students' participation in the American Legion Oratorical Contests, Boys State, and the American Legion Baseball Team.

Perhaps his greatest loyalty lies with the Lions Club. Monroe has been recognized by the organization for 50 years perfect attendance, and was selected for the Lion of the Year Award in 1973–74 for his outstanding service. He is a past president of South Carolina Lions Sight Conservation Foundation, for which he prepared the first Constitution and By-Laws, and made the application for the first Charter of the South Carolina Lions Sight Conservation Foundation, Inc. He has also served as a past president of the South Carolina Lions Sight Conservation Association, Charitable Services.

Monroe was District 32–B's Governor and a 100 percent District Governor, in addition to several other positions he held with the Lions organization. He also organized two Lions Clubs in Swansea and the Seven Oaks area of Columbia. His extraordinary dedication to the Lions Club won him the honor in 2004 of being named to the South Carolina Hall of Fame for District 32–B.

Monroe is a man grounded by his faith and his family. He is married to Eugenia Crosby of Lodge, South Carolina, and the couple has two daughters, one grandchild and one great-grandchild. For over 50 years, he has been teaching adult Sunday school at both Mt. Pleasant Lutheran Church in Ehrhardt and Trinity Methodist in Bamberg.

Mr. Speaker, I ask you and my colleagues to join me congratulating Mr. Monroe Hiers for his extensive service to his community. He has dedicated more than 50 years of his life to serving others through his profession and his community involvement. I am confident the City of Bamberg and the State of South Carolina will continue to benefit from his extraordinary commitment even as he officially retires. On this occasion, I offer my best wishes and Godspeed.

#### HONORING TEXAS STATE REPRESENTATIVE AND EDUCATION ADVOCATE DR. ROBERT D. HUNTER

### HON. KENNY MARCHANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 29, 2006*

Mr. MARCHANT. Mr. Speaker, I rise today in honor of Dr. Robert "Bob" Hunter for his 50 plus years of public service in the state of Texas and his devotion to higher education.

Dr. Hunter's commitment to educational institutions, the millions of collegiate students and potential students in the state of Texas make him more than worthy of this recognition. Dr. Hunter has displayed a loyalty to higher education that few can match. He served 10 years as Executive Vice President for the Independent Colleges and Universities of Texas non-profit organization. Dr. Hunter coordinated the passage of the Texas Tuition Equalization Grant that made attending the university of your choice a reality for thousands of disadvantaged students. As an advocate of education he has served on numerous boards and committees, including being appointed by then Governor of Texas, Dolph

Briscoe, to the Advisory Council for Technical-Vocational Education.

After serving in the Navy as a Security Aide to two Admirals in the South Pacific, Dr. Hunter returned home to Abilene, TX. He began work at his Alma Mater, Abilene Christian University where, before his retirement in 1993, was named Senior Vice President. In recognition of his diligent work to further higher education, Bob has received Honorary Doctoral degrees from many highly regarded institutions, including: Pepperdine University, Texas Wesleyan College, University of St. Thomas, McMurry University, Hardin-Simmons University, Austin College, and Abilene Christian University. Currently Dr. Hunter is serving his 10th term as a member of the Texas House of Representatives.

An asset to the state of Texas and its higher education system, Dr. Hunter has consistently served without want of recognition. However, today I commend him for his diligent public service efforts in furthering higher education.

#### IN HONOR OF LYNETTE AND FRANKIE BISCONTI

### HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, September 29, 2006*

Mr. MANZULLO. Mr. Speaker, Lynette Bisconti is a courageous young woman who rejoiced when she discovered she was pregnant, only to soon learn she had breast cancer. Six physicians told her to terminate the pregnancy. Thankfully, she ignored the advice of these physicians and delivered a healthy baby boy. Her inspiring story is set forth in the attached excerpt from a recent national magazine article.

[From the Family Circle Magazine Oct. 2006]

"WE FOUGHT BACK"

(By Sandra Gordon)

Lynette was overjoyed late in 1997 when she learned she was pregnant. But a month later that happiness turned to heartache. After having surgery to remove what was presumed to be a benign cyst on her left breast, she was told she had cancer. "The doctors said that the hormones my body was producing would likely fuel the cancer, and that I had to terminate the pregnancy immediately to save my own life," she says. Lynette spent the next few days wrestling with the dilemma of what to do and at the same time began to experience bleeding that made her think she might be miscarrying.

When she went in for an ultrasound, the obstetrician told her, "This little guy is hanging on." Lynette's mind was made up in that moment. "My heart leapt," says Lynette. "I knew that no matter what, no matter how bad it got, my baby and I would get through this together."

Biggest hurdle: Finding physicians who respected her decision. Three weeks after her diagnosis Lynette had a mastectomy. "The lab report was bad. I had an aggressive cancer that had spread to several lymph nodes. I was told that if I went ahead with chemotherapy, which was the next step, my baby might die or be brain damaged." Six other physicians she consulted said the same thing: She had to terminate her pregnancy and get into chemotherapy immediately. "I left every visit crying," she says.

After a truly agonizing first trimester, Lynette got a referral from a family friend that

led her to the Cancer Treatment Centers of America (CTCA), in Zion, Illinois, which was 75 miles from her home in Menomonee Falls, Wisconsin. "At the CTCA I met doctors and medical personnel who treated me with respect and compassion."

Advice to others: If you're not getting the answers you want, keep searching. While going to see more than six doctors may seem crazy, it might be necessary, says Lynette. She was not satisfied until she found a place that would treat her the way she wanted to be treated. She decided to go with fractionated-dose chemotherapy (smaller doses of chemo over a greater length of time), which was considered gentler for both her and her unborn baby. "They also allowed me to refuse antinausea medication and steroids, to avoid exposing my baby to those drugs," she says.

Life goes on: Lynette gave birth to a healthy baby boy on August 31, 1998. "When I held Frankie for the first time, I just thought, We did it!" Frankie continues to thrive and Lynette has been in remission for eight years now.

### CREDIT RATING AGENCY REFORM ACT OF 2006

SPEECH OF

**HON. MICHAEL G. FITZPATRICK**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, September 27, 2006*

Mr. FITZPATRICK of Pennsylvania. Mr. Speaker, I would like to extend and revise my remarks made on September 27th regarding S. 3850, the Credit Rating Agency Reform Act of 2006. I submit the attached statement by Brian Carroll in Vol. 232 Number 186 of the Legal Intelligencer.

[From the Legal Intelligencer, Sept. 26, 2005]

#### ENRON SCANDALS SPUR PROPOSED CREDIT RATING LEGISLATION

(By Brian Carroll)

The regulatory legacy of Enron, WorldCom and other major accounting frauds remains a work in process. Credit rating agencies, such as Moody's Investor Services Inc., Fitch Inc. and the Standard and Poor's Division of the McGraw-Hill Companies Inc. (S&P), issued favorable credit ratings of WorldCom bonds just three months before it declared bankruptcy and, more disturbing, Moody's and S&P favorably opined on Enron bonds four days before its bankruptcy. The unexpected collapse of these issuers cost investors billions of dollars. This raised the question: Why did credit rating agencies issue favorable bond ratings that did not appear to accurately reflect the likelihood of these bankruptcies?

While the Sarbanes-Oxley Act of 2002 fundamentally recast the statutory responsibilities of chief executive and financial officers, audit committees and auditors, it took a different tack when it came to credit rating agencies: Section 702(b) mandated that the Securities and Exchange Commission study the role of credit rating agencies in securities markets. While acknowledging this study, Bucks County Congressman Michael G. Fitzpatrick, R-8th District, has introduced the Credit Rating Agency Duopoly Relief Act of 2005, aimed at increasing competition among credit rating agencies while extending SEC oversight authority. This article reviews the role of credit rating agencies and compares the SEC's approach to credit rating agency regulation with Fitzpatrick's proposed legislation.

#### CREDIT RATING FIAT

Some credit rating agencies have enjoyed an enviable position. Demand for certain agency services is statutorily guaranteed—no less than dozens of federal, state and foreign government statutes, including securities, banking, higher education finance, and housing and community development statutes, mandate creditworthiness ratings by credit rating agencies that qualify as a 'nationally recognized statistical rating organization' (NRSRO). Innumerable private contracts, such as loan and merger agreements, and more than 20 SEC rules require use of NRSRO services.

NRSRO credit ratings have significant consequences. For example, Rule 2a-7 under the Investment Company Act of 1940 sets a minimum credit rating benchmark for certain money market fund investments. An issuer's failure to meet that benchmark renders the security ineligible for money market investment. Many regulations set mandatory threshold credit rating benchmarks. From an issuer perspective, there is generally an inverse relationship between the credit rating an issuer's debt instrument receives and, the rate of interest the issuer will pay on the borrowing. Finally, institutional and individual investors rely on credit ratings in making investment decisions.

The SEC, through its staff, controls the supply of NRSROs by staff determinations of whether to issue what is called a 'No Action' letter, to provide assurance to a credit rating agency that its ratings can be considered those of an NRSRO without the SEC initiating an enforcement action. The SEC staff began issuing No Action letters in 1975, as part of the agency's efforts to clarify the application of its broker-dealer Net Capital Rule. At present, only three NRSROs have staff No Action letters: Moody's, S&P and Fitch Inc., with the first two capturing nearly 80 percent of the market.

Under this process, a credit rating agency requests the SEC staff conduct an informal inquiry to determine whether the agency is qualified. If satisfied, the SEC staff issues a No Action letter to a credit rating agency, effectively designating it an NRSRO. Once the letter is issued, an NRSRO registers as an adviser pursuant to the Investment Advisers Act of 1940 (Advisers Act).

According to the SEC's Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, as required under Section 702(b) of Sarbanes-Oxley, some NRSROs consider their registration as an adviser to be voluntary. Similarly, other NRSROs assert that Advisers Act requirements to retain and produce to the SEC certain books and records are inapplicable because they operate as journalist under the protection of the First Amendment.

Some support for this position is found in *Lowe v. SEC*, where the U.S. Supreme Court in 1985 ruled that a publisher of investment materials fell within the Advisers Act exclusion for publishers. In 1999's *Jefferson County School District No. R-1 v. Moody's Investor's Services Inc.*, the 10th U.S. Circuit Court of Appeals held that Moody's was not liable for allegedly materially false bond ratings, based in part on finding that Moody's was functioning as a journalist and therefore entitled to First Amendment protections. Further supporting the NRSROs' argument, in 2004's *Compuware Corp. v. Moody's Investors Services Inc.*, the Eastern District of Michigan held that Moody's qualified for protection from discovery requests under New York's Shield Law. Although the case law in this area is less than settled, there is support for this position.

In addition to potential constitutional protections, the SEC has granted NRSROs relief

from potential civil and SEC enforcement liability. For example, Rule 436(g)(1) under the Securities Act of 1933 provides that an NRSRO's credit rating appearing in registration statement is not considered part of the statement for purposes of, among others, Section 11 of the Securities Act, a strict liability provision applicable to experts who participate in preparing a security's registration statement. Violations of this section are commonly alleged in shareholder class action suits. In another vein, SEC Regulation Fair Disclosure excludes credit rating agencies from prohibitions on receiving non-public information from issuers. Although this section covers all credit rating agencies, it most commonly would benefit agencies retained by issuers, i.e. NRSROs.

The SEC has wrestled with the issue of how to define an NRSRO. As early as 1994, the SEC issued a concept release requesting comments on a wide range of NRSRO issues, including how they should be defined. In 1997, the SEC issued a proposed rule that would have defined NRSRO, which was not adopted. In January 2003, the SEC submitted its Section 702(b) report to Congress. In April 2003, the SEC issued another concept release calling for comments on, among other things, how to define an NRSRO. In 2005, the SEC issued another proposed rule reviewing the SEC approach to the issue. It is currently pending.

The current proposed rule would define an NRSRO as a credit rating agency that issues publicly available credit ratings (meaning at no cost) and is generally accepted by financial markets as credible and reliable. Some comments on the proposed rule question whether requiring only free public credit ratings would discourage investors, as opposed to the issuer of the security, from paying for credit rating services. More importantly, the SEC recognizes that some view the 'generally accepted' requirement as creating a 'chicken and egg' barrier to entry where an agency has to first obtain NRSRO-like status before meeting the SEC's definition of an NRSRO.

Given the applicable case law, limitations of the Advisers Act and the No Action letter process, the SEC has questionable authority to conduct any follow-up oversight of NRSROs, such as requiring them to maintain certain books and records, conducting examinations or, when appropriate, instituting enforcement actions. On this issue, former SEC director, division of market regulation, and current Commissioner Annette L. Nazareth testified before Congress that without taking a formal position, "[the] Commission believes that to conduct a rigorous program of NRSRO oversight, more explicit regulatory authority from Congress is necessary."

#### PROPOSED FEDERAL LEGISLATION

On June 28, Fitzpatrick addressed the House of Representatives in support of his bill by arguing that two NRSROs currently dominate the ratings market, with SEC approval, which creates 'an uncompetitive marketplace, stifles competition from other rating agencies, lowers the quality of ratings and allows conflicts of interest to go unchecked.' Consistent with this rationale, his Credit Rating Agency Duopoly Relief Act of 2005, H.R. 2990, is designed to achieve two primary objectives: decrease regulatory barriers to credit rating agencies qualifying as an SEC approved statistical rating organization, a new designation to replace NRSRO; and increase SEC statutory authority to oversee approved credit rating agencies.

Under H.R. 2990, a credit rating agency must meet only two requirements to be considered a statistical rating organization and eligible to register with the SEC. First, under the new definition of statistical rating