

AR, Tab 20, at 4-18 to 4-19.

<sup>9</sup>In addition to Newport's proposed pier, the EA noted some potential that Newport's proposed buildings containing office and warehouse space might be constructed below the BFE.

<sup>10</sup>In contrast to Newport's failure to provide any meaningful information regarding the apparent location of Newport's proposed pier within the designated floodplain area, Newport's response did address the other structures on its proposed site.

<sup>11</sup>Despite the agency's purported reliance on Newport's conclusory representation, the contracting officer expressly acknowledges that Newport's response provided no meaningful information regarding the location of its pier, summarizing Newport's response as follows:

The Port of Newport provided a response [to the floodplain discussion question] with its FRP that included a statement an[d] analysis dated May 22, 2009, by a professional engineer with KPFF Engineering, that except for the pier, Newport's proposed site was not in a 100-year or base floodplain. [Bold added.]

AR, Tab 1, Contracting Officer's Statement, at 10.

<sup>12</sup>Specifically, EO No. 11988 states:

[I]n order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development whenever there is a practicable alternative, it is hereby ordered as follows:

(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain. . .

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requiring siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

Protesters Comments on Agency Report, exh. 1, at 1-2.

<sup>13</sup>In this regard, in defending against this protest, the contracting officer has stated: "Pier structures are essential to meet the operational requirements of the Marine Operations Center-Pacific." AR, Tab 1, at 11.

<sup>14</sup>As noted above, in addition to concluding that the pier would "likely be impacted by flooding," the EA stated that the pier could potentially affect the area "by trapping debris against the piles of the dock and/or altering the way in which floodwaters circulate/flow within the bay." AR, Tab 20, at 5-96.

<sup>15</sup>As the agency points out, there can be no question as to the qualifications of the personnel that prepared the EA. Specifically, as described by the agency, the EA "was performed by personnel from various technical disciplines including, but not limited to, those with background in port, engineering, environmental planning, water resources, wetlands, geology, and marine species and habitats." AR, Tab 2, at 15.

<sup>16</sup>Indeed, as summarized by the contracting officer, Newport's response to the agency's discussion question regarding the floodplain matter addressed all of Newport's proposed site "except for the pier." AR, Tab 1, at 9.

<sup>17</sup>Although not specifically addressed by the parties, we note that FEMA has discussed this issue in connection with the National Flood Insurance Program (NFIP). In a booklet titled "Answer to Questions About the NFIP," FEMA has stated:

75. Does elevating a structure on posts or pilings remove a building from the Special Flood Hazard Area (SFHA)?

Elevating a structure on posts or pilings does not remove a building from the SFHA. If the ground supporting posts or pilings is within a floodplain, the building is still at risk. The structure is considered to be within the floodplain, and flood insurance will be required as a condition of receipt of Federal or Federally related financing for the structure. The reason for this, even in cases where the flood velocity is minimal, is that the hydrostatic effects of flooding can lead to the failure of the structure's posts or pilings foundation. The effects of ground saturation can lead to decreased load bearing capacity of the soil supporting the posts or pilings, which can lead to partial or full collapse of the structure. Even small areas of ponding will be subject to the hydrodynamic effects of flooding; no pond or lake is completely free of water movement or wave action. This movement of water can erode the ground around the posts or pilings and may eventually cause collapse of the structure.

FEMA Internet Website at [www.fema.gov/business/nfip/fidmanre.shtm](http://www.fema.gov/business/nfip/fidmanre.shtm).

<sup>18</sup>In defending against this matter, the agency has requested that we dismiss Bellingham's protest for various reasons, including the agency's assertions that it was legally precluded from awarding the lease to Bellingham due to Bellingham's price and/or that Bellingham's proposal should be similarly viewed as offering a structure within a designated floodplain area. We have declined to dismiss the protest based on the agency's post-protest assertions, since it is not clear that, during the acquisition process, the agency considered either of these matters as a mandate for rejecting Bellingham's proposal. While these matters may be proper considerations by the agency in determining if there are practicable alternatives, in the context of the agency's dismissal requests we view the agency's post-protest assertions as being made "in the heat of litigation," and we will not rely on them as bases for dismissing the protest. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 ¶ 91 at 15.

#### TRIBUTE TO REV. SAMUEL R. HARDMAN, SR.

#### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 18, 2011

Mr. BONNER. Mr. Speaker, I rise to pay tribute to a patriotic American who loved his country and loved the Lord, and dedicated his life to the service of both.

The Rev. Samuel R. Hardman, Sr. passed away on February 10, 2011, at the age of 85. A native of Zephyrhills, Florida, he was a lifelong resident of Magnolia Springs, Alabama.

To anyone who knew Father Sam, it was clear he was passionate about America. At the young age of 17, as the world was embroiled in the Second World War, he eagerly enlisted in the U.S. Navy. He was commissioned a bomb disposal officer at age 19 and served in the South Pacific as the United States battled the Empire of Japan.

After the war, he returned home to attend the Episcopal Seminary in Sewanee, Tennessee, and was ordained a priest in 1950.

With one war behind him, many would have chosen the more comfortable road of civilian life. Yet, Father Sam elected to take a different path. He chose to serve the Lord while at the same time serving his country. He returned to the Navy as a Chaplain, taking him to battlefronts in Korea and Vietnam. Much of his time in uniform was in the service of the U.S. Marine Corps.

Father Sam retired from the Navy as a Captain in 1975 and moved to Magnolia Springs where he served in the Diocese of the Central Gulf Coast for the next 32 years.

Mr. Speaker, Father Sam's uncommon devotion to America and his faith make him a very special man. However, he is all the more special to me as he presided over the marriage ceremony when my wife, Janee, and I were wed on August 15, 1990. We will be forever grateful for his spiritual and fatherly role in our lives and in the lives of countless others who have been parishioners of St. Paul's Episcopal Church in Mobile.

On behalf of all the people who have been touched by Father Sam's life, I wish to extend condolences to his family, including his sons, William, and Samuel, Jr.; sisters, Alfea Thomas, and Mary Lee; 9 grandchildren; 9 great grandchildren, and a host of nieces and nephews and other relatives. You are all in our thoughts and prayers.

#### THE THIRD TIME IS AS GOOD AS THE FIRST

#### HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 18, 2011

Mr. COBLE. Mr. Speaker, I am sure that fans across the country will have their own opinion, but for my money, I have to say that the best high school football team in the country resides in the Sixth District of North Carolina. I have some facts to back up my opinion.

West Rowan High School owns the nation's longest active football winning streak among all high schools. The Falcons won their 46th consecutive game while capturing their third straight North Carolina 3-A high school football championship. West Rowan's last loss was in Week 2 of the 2008 football season.

The Falcons completed their third straight season of perfection on December 11, 2010, when they defeated Eastern Alamance 34-7 at N.C. State's Carter-Finley Stadium. I must also note that the Sixth District was a double winner in this game because the Eastern Alamance Eagles proved to be a worthy opponent. Eastern Alamance also resides in the Sixth District. So, congratulations to the Falcons and the Eagles for a tremendous 2010 football season.

The way that West Rowan captured this title was special because of the obstacles that had to be overcome in the title bout. It has long been said that defense wins championships and the Falcons are a prime example of this philosophy. In the title game, the star quarterback for the Falcons was knocked out of the game with a concussion requiring a full team effort to capture the state crown. West Rowan and Eastern Alamance battled in a great

game, both sides worthy of accolades. The Falcon defense, however, was able to take over in the second half while paving the way for the win. The Falcons define team work and dedication and that starts with the Head Coach Scott Young and all of his assistants.

With many players returning next season, including the offensive and defensive MVPs, the Falcons have vowed to continue their winning streak. On February 3, 2011, I was honored to meet with the team and offer my personal congratulations on another outstanding season.

The players on this championship team are Tyler Stamp, Trey Mashore, Daishon Barger, Odell McBride, Clifford Long, BJ Sherrill, Dinkin Miller, Quentin Sifford, Connor Edwards, Jamarian Mabry, Eric Cowan, Ethan Wansley, Harvey Landy, Taylor Garczynski, Jockaile Burnside, Bertin Suarez, Jarvis Morgan, Domonique Noble, Kendall Hosch, John Dunlap, Darryl Jackson Jr., Andrew Garrison, Trey Cuthbertson, Brandon Ijames, Mack Flanagan, Terence Robinson, Troy Culbertson, Patrick Hampton, Trevor Loudin, Desmond Jackson, Emmanuel Gbunblee, Trey Shepherd, Tacoma McNeely, Cody Eggers, Kiero Cuthbertson, Jacob Tomlin, Logan Stoodley, Jordan Davenport, Terrence Polk, Andre Archie, Matthew Choi, Charles Holloway, Preston Garner, Chad Bailey, Brandon Hansen, Xavier Still, Cody Haire, Hunter Mashburn, Josh Bailey, Jordan Myers, Greg Dixon, Mike Norman, Rashad Sherrill, Zeke Blackwood, Davon Quarles, Jarius Lewis, Louis Kraft, Hobie Proctor, Jalen Morrow, Ahmed Blackwell, Quinton Phifer, Maurice Warren, Kelly Miller, Keyows Weeks, Justin Teeter, Jovani Alvirer, Daisean Reddick, Ray Bath, Derrick Fortson, Teoz Mauney, and Michael Pinkston.

Every great team needs a great coaching staff, as well as support from their school community. Plaudits must go to Head Coach Scott Young, Assistant Coaches Ed Bowles, Butch Browning, Durwood Bynum, Jeff Chapman, Tim Dixon, Ralph Ellis, Dave Hunt, Lee Linville, Darrell Misenhiemer, Joe Nixon, Kevin Parks Sr., Stevie Williams, James Collins, Zeb Link, and Mark Young. In addition, it should be noted that Scott Young has been honored as the Associated Press Prep Football Coach of the Year for North Carolina.

In addition, we need to congratulate Head Trainer Amber DeDoming along with student trainers J.J. Pangburn, Ashley Gaston and Nicole Barber. Additionally the cameramen Alan Champion and Jonathan Brown, the ball girls Ally Young, Sarah Day and Mary Sobataka and ball boys Bryant Young, Owen White, Marcus Corry and Brandon Wallace, all deserve to be recognized for the total team effort.

Last, but certainly not least, we offer our congratulations to Athletic Director Todd Bell and Principal Dr. Jamie Durant for their support of a national high school football dynasty.

Again on behalf of the Sixth District of North Carolina, we congratulate the West Rowan High School football team, faculty, staff, students, and fans for another history-making season. This team will be remembered for many years to come for its perfection on the field and resilience in securing a third straight North Carolina 3-A state championship.

## FULL-YEAR CONTINUING APPROPRIATIONS ACT, 2011

SPEECH OF

**HON. DONALD M. PAYNE**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, February 17, 2011*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 1) making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes:

Mr. PAYNE. Mr. Chair, under the Higher Education Act, proprietary colleges and universities and career training programs are required to offer programs that lead to gainful employment in a legally recognized occupation in order to participate in the federal student aid programs. In July 2010, the Department of Education published a proposed rule to enforce this statutory requirement. While I share the Department's desire to ensure that federal financial aid dollars are spent wisely and that students are not taken advantage of, my concern is that the proposed rule does not accurately address this purpose and the consequences have not been fully considered.

Rather than using actual measures of educational quality such as job placement and graduation rates, the Department is promulgating a regulation that defines "gainful employment" through a complex matrix that examines the student loan debt-to-income ratio of graduates to the student loan repayment rate of graduates in the programs. The proposed rule would also require the US Department of Education to approve every new program created at a proprietary institution prior to the start of the program. This proposed rule needs to be further developed and possible unintended consequences considered.

In the midst of our economic crisis and high national unemployment rate, there remains a group of employers who struggle to find workers with skill sets required for today's changing job market. These employers have, in some cases, partnered with community and career colleges to build a 21st century workforce. Today, more than 6 million non-traditional students—including single parents, displaced workers, and low income individuals—are enrolled in community colleges and another 2.8 million in career colleges to develop the skills necessary to advance in the 21st century workplace.

Yes, there are "bad apples" among career preparation programs, who are taking advantage of vulnerable populations. In fact, before coming to Congress, I was at the forefront of an effort to close a beauty school in New Jersey which had done a disservice to students in the area. For this reason, again, I share the concern of many regarding the abuse of Title IV funds as well as any institutional action which would cause a student academic failure or financial harm. However, I also know that many good career colleges and community college programs exist that remain strong partners in the effort to meet the President's goal of leading the world in the percentage of college graduates by 2020.

My concern is that the Department's rule, while addressing poor quality programs, will have a negative impact on high quality pro-

grams as well. Therefore, I urge my colleagues to vote in favor of this amendment to provide for the reevaluation of the proposed metric system and full consideration of its impact.

RECOGNIZING KATHY ICHTER, DIRECTOR OF THE FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION UPON HER RETIREMENT

**HON. GERALD E. CONNOLLY**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, February 18, 2011*

Mr. CONNOLLY of Virginia. Mr. Speaker, I rise to recognize Kathy Ichter, the Director of the Fairfax County Department of Transportation for her long and dedicated service to the residents of Fairfax County, Virginia, and to wish her well in her retirement. Ms. Ichter started with the County in 1984, and spent 27 years working tirelessly to improve regional transportation. She began as a Transportation Planner, served for twelve years as the Division Chief of the Department's Transportation Planning and Operations Division, and was subsequently appointed as Director of the entire Department in 2005. I was a Member of the Fairfax County Board of Supervisors at that time, and happily supported Ms. Ichter's appointment. Having worked closely with her on many transportation issues over the years, I developed a profound respect for her abilities and dedication.

Ms. Ichter was instrumental in improving all modes of transportation, including roadways, supporting pedestrian and transit opportunities and implementing innovative alternatives such as telework. While no one transportation project will completely eliminate challenges in urbanized areas, Ms. Ichter's wide-ranging focus provided residents with a number of options for their daily commutes. During her time as Director, she facilitated a partnership with the private sector to expand capacity on the Washington Beltway at no cost to taxpayers, oversaw the final planning and start of construction on extending Metrorail to Dulles Airport—one of our region's most significant transportation improvements, and planned redevelopment for the Tysons Corner area to transform the currently gridlocked urban core into a workable community. In addition, she worked diligently with me when I served as Chairman of the Board to enact two Four-Year Transportation Plans, the first such efforts in Fairfax to develop and implement a comprehensive, long-term transportation strategy.

Throughout her years of service, Ms. Ichter received a number of awards recognizing her efforts and leadership, including the Les Dorson Public Leadership Award in 2004 and the A. Heath Onthank Award, the highest honor awarded to Fairfax County government employees, in 2005.

Mr. Speaker, I ask my colleagues to join me in providing further recognition to Kathy Ichter and thanking her for her years of service to the citizens of Fairfax County and her dedication to improving the National Capital region's transportation challenges.