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House of Representatives

The House met at 11 a.m.

PRAYER

Rabbi Rachel S. Mikva, Congregation Hakafa, Glencoe, IL, offered the following prayer:

For the sake of Heaven.

The rabbis taught: Any argument conducted for the sake of Heaven will bear fruit. If not for the sake of Heaven, it yields nothing.

God, Source of knowledge and insight, what does it mean: For the sake of Heaven?

That each of us has the courage to face and to speak the truth? And still, however, passionately we may cling to our vision of truth, we must never fail to recognize Your image, God, reflected in the face of the other.

For the sake of Heaven.

That we are always mindful before whom we stand? Committed to serve constituents, the Nation, the people of the world, ultimately we stand before You, naked of power or possessions, seeking only to understand Your will and do it with a whole heart.

For the sake of Heaven. God, we pray that our words and our deeds may be for Your sake, bringing healing to our world and wholeness to all those whose lives we touch. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from Maryland [Mrs. MORELLA] come forward and lead the House in the Pledge of Allegiance.

Mrs. MORELLA led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 244. An act to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

REPORT ON H.R. 1158, EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR ADDITIONAL DISASTER ASSISTANCE AND MAKING RESCISSIONS FOR FISCAL YEAR 1995

Mr. LIVINGSTON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 104–70) on the bill (H.R. 1158) making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

REPORT ON H.R. 1159, SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS FOR FISCAL YEAR 1995

Mr. LIVINGSTON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 104–71) on the bill (H.R. 1159) making supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

COMMUNICATION FROM CHAIRMAN OF THE COMMITTEE ON HOUSE OVERSIGHT

The SPEAKER laid before the House the following communication from the chairman of the Committee on House Oversight:

COMMITTEE ON HOUSE OVERSIGHT,
Washington, DC, March 3, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: Pursuant to House Rule 51, clause 7, I have appointed the Honorable Lincoln Diaz-Balart as chairman of, and the Honorable Robert W. Ney to serve on, the review panel established by that Rule for the 104th Congress.

Best regards,

BILL THOMAS,
Chairman.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will recognize 10 Members on each side for 1-minutes, after the gentleman from Illinois [Mr. PORTER].

TO WELCOME RABBI RACHEL MIKVA

(Mr. PORTER asked and was given permission to address the House for 1 minute.)

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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Mr. PORTER. Mr. Speaker, I have the great pleasure today of welcoming to the House Chamber Rabbi Rachel Mikva of Temple Hakafa who graciously began our session this morning with her opening prayer. It is an honor to welcome Rabbi Mikva to Washington and to the House of Representatives, and the wonderful words she shared with us today reflect the strong leadership she provides to the people of her congregation in Glencoe, IL.

But my connection with Rabbi Mikva goes far beyond the fact that her synagogue is located in my congressional district. Her farther, Abner Mikva, is well known to all of us in this Chamber for his distinguished service as a judge and later as chief judge for the Circuit Court of Appeals for the District of Columbia, a position to which he was appointed by President Jimmy Carter. After many years of outstanding work as a jurist, Ab agreed last year to leave the bench to serve in his current office in the White House as counsel to the President.

What newer Members may not know is that Ab Mikva once represented the 10th District of Illinois. And in 1978, I challenged him for the seat. Our campaign that year was heated and energetic and was a race of ideas and respectful debate in the greatest tradition of American politics.

The victor of the campaign was not known on election evening. And when we awoke the morning after, Ab had retained his seat by a margin of 650 votes. Rachel at that time was 18 years of age, and one can expect that with her hard work for her father perhaps she provided enough of her fellow 18-year-old votes to win so close an election.

Shortly thereafter, Ab was appointed to the bench by President Carter, and I ran successfully in the special election that followed to succeed him and represent the wonderful people of the 10th District here in Washington.

We have remained good friends over the years, and it is a pleasure to welcome him here today. He is in the gallery to my right with his grandchildren and Rachel's children, Jacob and Karen, and I thank his daughter, Rabbi Rachel Mikva, for inspiring us with her opening prayer today.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. PORTER. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Speaker, I join many friends of the Mikva family in welcoming Rabbi Rachel. The Mikva family and my family became friends many years ago when they first came to Washington. We lived in the same neighborhood. Little Rachel and our youngest daughter, Lori, became very good friends, schoolmates.

I can recall and I can recommend it to about 350 high school kids here this morning, when they would come to visit their fathers. Rachel would sit on this side of the aisle, on the center aisle, and our daughter, Lori, on the other side, and just stare at each other, good friends at home and in school, but they became very competitive here. So we always remember that little Rachel, so proud today as we join the Mikva family and their grandchildren and welcome Rachel. We thank her for joining us today.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. CUNNINGHAM). Members should not refer to the gallery.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, our Contract With America states the following: On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget.

We kept our promise.

The contract goes on to state that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we kept our promise; and commonsense legal reform to end frivolous lawsuits—we are doing this now.

And we have these items still to go: Welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; Senior Citizens' Equity Act to allow our seniors to work without Government penalty; and congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

RESPONSIVE TO THE NEEDS OF VETERANS

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, I also would like to welcome Rabbi Mikva to be our guest Chaplain today.

Mr. Speaker, doctors still are unable to diagnose some illnesses affecting gulf war veterans. Speaking before the Veterans of Foreign Wars Monday, the President of the United States indicated his intention to continue the search for the answers, and we certainly congratulate him on that.

Mr. Speaker, moving to another area, we will have a vote on this floor next week to cut some funding for veterans' programs. I hope the House will not do this and will continue to appreciate our great veterans.

INTERNATIONAL WOMEN'S DAY

(Mrs. MORELLA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MORELLA. Mr. Speaker, today, March 8, we commemorate International Women's Day, and is it not appropriate to have Rabbi Rachel Mikva offer us the morning inspiration.

This is a time to recall the difficulties which women in the United States and around the world continue to face in their efforts to achieve equal rights and equal opportunity and to commit ourselves to remedy the difficulties.

Recent times have seen great attention to the subject of women and human rights. Women made great gains at the Vienna Human Rights Conference, and last September's International Conference on Population and Development focused attention not only on the need for access to family planning but other issues also concerning women, literacy, girls' education, and childhood and maternal nutrition programs. Women's issues are central to the current economic conference in Copenhagen and will take center stage at the Beijing conference later this year.

As we look to cutting U.S. foreign assistance, I hope we will take care to see the benefits which we receive when we support women's rights. Let us in all ways make sure that we celebrate International Women's Day.

REPUBLICAN SHELL GAME

Mr. GENE GREEN of Texas. Mr. Speaker, the Republicans should stop playing the shell game with promising increased funding for school lunches but not guaranteeing that increase. The Republican welfare reform bill removes the guarantee of school lunches, but it does provide an increase in the spending authorization. Promising an increase in one bill at the same time passing this week massive education and school rescissions in another bill proves to America that no program is safe from the budgetary axe of the majority party, including school lunches.

I ask my colleagues from Texas to contact the State agency which is running the school breakfast and lunch program. They estimate a cut in meals to children.

We may wish to waive this off as a reduction of an increase, but what about the increase in population which has occurred in Texas and particularly in Houston.

Let us be fair, take school lunches and breakfast program out of welfare reform and put it back into education. A hungry child is not a good student. These programs could be streamlined, but Congress should guarantee that

every child in America should have a hot nutritious meal at school.

Under the Republican bill, we lose the lunch guaranteed by this shell game, promising an increase, taking away an appropriation and yet letting the State transfer 20 percent.

THE TOP 10 LIST

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, from the home office in Scottsdale, AZ, the top 10 falsehoods of 1995: No. 10, owners and players really care only about the game of baseball; No. 9, Republicans are cutting children's nutrition programs; No. 8, you can trust Connie Chung; No. 7, the protesters around here in recent days are not paid with taxpayer funds; No. 6, the media is fair and unbiased; No. 5, we need more Federal regulations, not less; No. 4, those six Democrats voted against a balanced budget amendment for principle, not for politics; No. 3, Bill Clinton really knows what he is doing in Mexico; No. 2, the President really wants to end welfare as we know it; and, Mr. Speaker, the No. 1 falsehood of 1995 we will get out early tonight.

□ 1115

A TRIBUTE TO MARYAM RAJAVI AND FREEDOM FIGHTERS IN IRAN ON INTERNATIONAL WOMEN'S DAY

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, today is International Women's Day, celebrated here in America, but not in Iran. In Iran, women are treated like cattle. Women cannot own property. In fact, women cannot even choose their own clothing, and are still stoned to death.

What is ironic is this terrorist nation, this totalitarian regime is now being challenged by a new democratic resistance party led by a woman, Maryam Rajavi. I rise today to pay tribute to Maryam Rajavi and the freedom fighters in Iran and, on International Women's Day, to pay tribute to the achievement of all women, but advise Congress to take a look at Iran.

Iran will not change from without; Iran must change from within. President Maryam Rajavi and her government in exile, a democratic government in exile in France, can do that, and provide human rights in Iran.

REFORMING THE WELFARE SYSTEM SO IT WORKS FOR THE PEOPLE, NOT AGAINST THE PEOPLE

(Mr. HEFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HEFLEY. Mr. Speaker, it is time for us to admit to ourselves that the grandiose welfare programs of the 1960's have failed. Welfare has been riddled with crime and abuse for years. At long last, it is time to fix the welfare system from just maintaining the poor to transforming the poor.

Middle-income Americans no longer equate compassion with spending more money in Washington for programs that do not work. Money is not the answer. Change is the answer. And that is what we want to do—change the welfare system so that it works for the people not against the people.

The three principles of change are personal responsibility, work, and State control.

Mr. Speaker, we are keeping our promises. Instead of defending the status quo, we will produce real change.

DON'T CUT THE SCHOOL LUNCH PROGRAM

(Mr. ROMERO-BARCELÓ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROMERO-BARCELÓ. Mr. Speaker, the school lunch program is a good, proven program. It fees hungry children nutritious meals. Children who are not hungry learn better and are healthier. This is a simple premise, but it is a premise that has worked well since the original school lunch program was signed into law in 1946.

I believe that it is a travesty and a disgrace to destroy such a successful program. Throwing this program into a block grant does absolutely nothing to ensure that such funds will end up in a school lunch program of the high caliber that we now have. As a former mayor and Governor, I have grave reservations about the effectiveness of a system of block grants where vitally necessary nutrition programs are forced to compete against each other for increasingly scarce dollars.

No child in a nation like ours should go to school hungry or suffer from malnutrition. The school lunch program helps to ensure that this does not happen. It is a proven program—it works. Do not cut the school lunch program. Do not cut taxes for wealthy corporations at the cost of our children's physical and emotional health.

This is not a Contract with America, this is a contract with the wealthy of America against the poor, against the veterans, and against the children of America.

THROUGH WELFARE REFORM AMERICANS WILL BE AGAIN EMPOWERED, NOT ENTITLED, TO LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS

(Mr. MARTINI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARTINI. Mr. Speaker, when my grandfather, Michael, came from Italy to America over 90 years ago, he came because of a promise. It was the promise that sets the United States apart from every other nation in the world.

That promise is the American dream: the deal that if you are willing to sacrifice and live by the rules set out by the world's greatest democracy, then you are empowered, not entitled, to follow a life of liberty and a pursuit of happiness that only America can offer.

When I came to Congress, I came because of that promise. I told my constituents I would protect that dream that our forefathers created, nurtured, and cherished.

Mr. Speaker, after 2 months on the job, I can say with great satisfaction that we are indeed restoring that sacred promise. Our efforts to date protect in our society what was so dear to my grandfather and all of our ancestors: a sense of opportunity, responsibility, and accountability that truly distinguishes these United States of America.

DEMOCRATS WILL NOT BE HAPPY UNTIL EVERY CHILD GETS GOOD NUTRITION

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, the Los Angeles Times today reports that when Speaker NEWT GINGRICH was asked about the Democrats and the school lunch program, he said, ''The Democrats won't be happy until every child gets a Ferrari.''

Let me tell you, this is not a school car program, this is a school lunch program, and the Democrats will not be happy until every child gets good nutrition, ''Why Johnny can't eat.'' We are not talking about happy meals with little prizes in them, and we are not talking about big fancy cars, because we do not give them to our kids; besides which, I must say to the Speaker, if Democrats were going to give anything, they would give a Ford.

ENDING POVERTY, CONTROLLING WELFARE ARE GOALS OF BLOCK GRANTS TO STATES

(Mr. JONES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES. Mr. Speaker, during the past 30 years, the Government has tried solving the problems of the poor. The Government has invested over $5 trillion to create a better life for the needy while in reality, this outdated and bureaucratic-laden system has encouraged a destructive social behavior in recipients, including an ever increasing illegitimacy rate. Since 1965, the average household has spent $50,000

in taxes to support this system and of the 5 million families who receive benefits only 20,000 people work.

As members of Congress, we have the responsibility to end this cycle of dependency. The Republican proposal will do just that. We will merge four cash welfare programs into one block grant to the States, saving the taxpayer $5.6 billion. Under this block grant, States will gain greater responsibility in administering the program and more flexibility to be innovative in combating poverty and welfare.

We will continue to create programs to restore the power of the States and to return the American dream to everyday people.

CURTAILMENT OF JOBS PROGRAM THREATENS 1.2 MILLION CHILDREN WITH ILLNESS

(Mr. FIELDS of Louisiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FIELDS of Louisiana. Mr. Speaker, I rise today to voice my strong opposition to the dismantling of our National Summer Youth Job Programs.

Mr. Speaker, 1.2 million children will lose the opportunity to be employed and educated this summer. In my State $19 million would be eliminated, canceling 13,000 summer youth jobs. That is right, Mr. Speaker, this summer we will have an additional 600,000 young people nationwide on the streets with nothing to do, at a time when we should be encouraging work, and discouraging crime.

I submit, Mr. Speaker, this rescission is a crime and we should defeat the rescission proposal when it arrives to the floor.

I urge my colleagues on both sides of the aisle to look beyond our whips, look beyond our caucuses, look beyond our party positions. Let us not look beyond our consciences.

Let us stand up for our young people and say ''yes, you will have and deserve the right to work this summer.''

INTERNATIONAL WOMEN'S DAY

(Ms. PRYCE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PRYCE. Mr. Speaker, today is International Women's Day, a day in which women around the world are commemorating their struggles and victories.

One of the most important ways to ensure the safety and success of women throughout the world is to provide them with economic stability.

This is especially true in America, and is center to the debate taking place in this body over welfare reform. The current welfare system locks women into dependency and destroys their futures. It does not provide the incentives to obtain job skills or an education. It is a system that encourages teenage mothers to leave their parents' home and take a premature step into life's troubles. In short, not only does the current welfare system fail to help women, it suppresses women and destroys chances for their futures and those of their children.

We have to create a welfare system that encourages responsibility; one that provides women with opportunities to become self-sufficient and to provide for their families.

Economic stability allows women to take charge of their lives and not live as victims of government dependency.

In the spirit of International Women's Day, I urge my colleagues to support America's women through meaningful welfare reform—we all should be able to live the American Dream.

GINGRICH REVOLUTIONARIES SAY TO HUNGRY CHILDREN ''LET THEM EAT BLOCK GRANTS''

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, a school principal in my district told me of children lined up at the door of one of our neighborhood schools on a Monday morning, not because they were so anxious to learn, but because they were hungry. Their school breakfast was to be their first hot meal since school lunch on Friday, 2½ days without a hot meal.

Those hungry kids are just going to have to go a little bit longer if the Republican cuts in the Nutrition Programs and the School Lunch Programs go through. They tell us it is just the administrative costs, they just want to eliminate the Federal bureaucrats to the cook in the local school, that would be 4 percent of the costs. Their cuts are seven times the administrative costs.

Mr. Speaker, just a little decrease or increase in the price of food? More eligible hungry kids? The Republicans have an answer for that: Give them smaller portions, that is the Republican plan. Two centuries ago Marie Antoinette said ''Let them eat cake.'' Today's Gingrich revolutionaries say ''Let them eat block grants.''

PRESIDENTIAL EXECUTIVE ORDER BANNING THE HIRING OF PERMANENT REPLACEMENT WORKERS BY FEDERAL CONTRACTORS

(Mr. GOODLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOODLING. Mr. Speaker, this morning, President Clinton signed an Executive order that would ban Federal contractors from hiring permanent replacement workers. I rise today to express my strong opposition to the President's action, both in terms of what it means for our country's workplace policy, as well as the manner in which it was done.

In terms of workplace policy, the President's order will have serious negative implications for our system of collective bargaining. The foundation of that system is a balancing of the interests and risks of labor and management that allows the bargaining process to prod both parties toward a collective agreement on the terms and conditions of employment.

A ban on the use of replacement workers will undoubtedly lead to more strikes, and the ripple effects of those strikes will result in lost jobs and lost business opportunities throughout industry.

Beyond its policy implications, the legality of the Executive order is also questionable. The Congress has expressed its will with respect to the legality of permanent replacement workers and the President's order runs completely counter to that will. The responsibility for setting employment policy rests in the Congress, not in the White House.

I call on President Clinton to reconsider his decision to pursue this dangerous and ill-conceived threat to our national labor policy.

COMMEMORATING INTERNATIONAL WOMEN'S DAY

(Mrs. LOWEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LOWEY. Mr. Speaker, I rise today to Commemorate International Women's Day. Today we celebrate the victories and commemorate the struggles of women around the globe.

While women have made considerable progress in the struggle for civil rights and equity, we still have a long way to go. Women have gained greater access to education. But currently, throughout the world there are about 85 million fewer girls enrolled in school than there are boys, despite nearly equal numbers of girls and boys in the world. We must do better.

Women have gained greater access to jobs and the economy, but currently, women compromise nearly two-thirds of the world's illiterate population. We must do better.

Women have fought, in this country and around the world, to gain access to adequate health care and full reproductive rights. But an estimated 500,000 women die each year from pregnancy related causes, including unsafe abortions. And in this country, the debate over abortion rights, and recent actions to eliminate that right in the case of victims of rape and incest, threatens to undermine the health and safety of women. We must do better.

Mr. Speaker, the upcoming U.N. Fourth International Conference on Women will provide us an opportunity to look at how we might do better. I join my colleagues in commemorating today, International Women's Day. It is

a day to look toward the future, when we must do better for women.

OPPOSING THE EXECUTIVE ORDER BANNING THE USE OF PERMANENT REPLACEMENT WORKERS DURING STRIKES

(Mr. FAWELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAWELL. Mr. Speaker, in the collective bargaining process, the union has the ultimate right to strike in an economic strike. The employer has the right, however, to hire permanent replacement workers in order to be able to continue his business.

I rise today to express my strong opposition to the Executive order just issued by the President which would ban the use of permanent replacement workers during strikes against government contractors. I question the authority of the President to issue such an order, and I urge him to rethink this divisive strategy.

The labor law implications of banning permanent replacements have been debated at length in this Chamber. The fact that many, many days have been devoted to the issue in recent years should leave no doubt in anyone's mind that this is a legislative issue. Any Executive order that touches on this same issue is an infringement on the separation of powers so vital to our constitutional form of government. It would be an usurpation of the congressional authority.

THE GOP'S DRAMATIC CUTS TO PROGRAMS FOR CHILDREN

(Mr. STUPAK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STUPAK. Mr. Speaker, the GOP budget cutters are at it again. In yesterday's Congress Daily, the GOP chairman said ''I want to downsize in a way that makes sense, but is dramatic.''

Yes, the GOP is dramatic. It is dramatic to cut the children's preschool nutrition program. It is dramatic to cut the school breakfast program. It is dramatic to cut the school lunch program. It certainly is dramatic, but where does all this dramatic money go?

After the GOP dramatically cuts the children's nutrition program, the money will go not to the deficit, not to reduce our debt, but it goes to those families who will get a tax break, those families who make more than $180,000 a year.

□ 1130

Tax breaks for those families who do not worry about hot lunch or who worry about preschool nutrition programs.

Oh, yes, it is dramatic. Let us reject these Republican cuts aimed at all children. While it may be dramatic, Mr. Speaker, it certainly does not make sense.

EXECUTIVE ORDER BARRING USE OF REPLACEMENT WORKERS DURING LABOR DISPUTES CALLED UNCONSTITUTIONAL

(Mr. LAHOOD asked and was given permission to address the House for 1 minute.)

Mr. LAHOOD. Mr. Speaker, 8 months ago the striker replacement legislation died in the Senate of the United States. Almost 4 months ago, the people of the United States vetoed the failed policies of the past. They demanded less intrusion in our lives. The President of the United States is seeking to force through that which we and the American people have rejected.

Mr. Speaker, we learn from the media that the administration has issued an Executive order to ban the use of permanent replacement workers during labor disputes involving government contractors. We have not seen the details yet, but I cannot imagine such an order that would be constitutional or lawful.

The Executive order will be a serious impediment to our defense readiness. The order would debar Federal contractors for reasons other than quality and effectiveness. As a result, for political reasons, our fighting men and women would not necessarily be guaranteed the best product by the best possible contractors. This I cannot countenance.

Mr. Speaker, it is a sad day for our Nation whenever one branch of our constitutional form of government seeks to encroach on the province of another. I am afraid we are on the verge of such a day.

SUPPORT FEDERAL NUTRITION PROGRAMS

(Ms. ESHOO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ESHOO. Mr. Speaker, we have become the most powerful country in the world because previous generations invested in us. Now the new Republican majority is treating this generation of children differently. If we do nothing else in this body, we need to take care of our children, those whom we inherit as legislators, the children of our Nation. I am a mother and I have spent my adult life raising, nurturing, and caring for my children. They are my first priority and my reason for living.

The children of our country deserve the same from us. We must feed their bodies to keep them healthy and nourished and feed their minds to help them become productive citizens. That is why we provide school lunches. That is why we have a public education system, and job training programs. That is why mind-enriching noncommercial public programming and public television is so important.

The Republican majority is cutting the funding for the children of our Nation, the nutrition for their bodies and the food for their minds, and these cuts will starve our Nation's future.

I urge my colleagues to think about our Nation's children and not rob them of their future.

ANNUAL REPORT ON ADMINISTRATION OF FEDERAL RAILROAD SAFETY ACT OF 1970—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore (Mr. CUNNINGHAM) laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Transportation and Infrastructure.

To the Congress of the United States:

I transmit herewith the 1993 annual report on the Administration of the Federal Railroad Safety Act of 1970, pursuant to section 211 of the Act (45 U.S.C. 440(a)).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

1995 TRADE POLICY AGENDA AND 1994 ANNUAL REPORT ON TRADE AGREEMENTS PROGRAM—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, together with the accompanying papers, without objection, referred to the Committee on Ways and Means.

To the Congress of the United States:

As required by section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213), I transmit herewith the 1995 Trade Policy Agenda and 1994 Annual Report on the Trade Agreements Program.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

ANNUAL REPORT OF FEDERAL COUNCIL ON THE AGING—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, together with the accompanying papers, without objection, referred to the Committee on Economic and Educational Opportunities.

To the Congress of the United States:

In accordance with section 204(f) of the Older Americans Act of 1965, as amended (42 U.S.C. 3015(f)), I transmit herewith the Annual Report for 1994 of the Federal Council on the Aging. The report reflects the Council's views in

its role of examining programs serving older Americans.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

SECURITIES LITIGATION REFORM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 105 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1058.

□ 1135

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, with Mr. COMBEST in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, March 7, 1995, the amendment offered by the gentleman from Texas [Mr. FIELDS] had been disposed of and the bill was open for amendment at any point.

Six hours and thirty-five minutes remain for consideration of amendments under the 5-minute rule.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MS. ESHOO

Ms. ESHOO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. ESHOO: Page 18, beginning on line 2, strike ''For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless.''.

Ms. ESHOO. Mr. Chairman, I offer this amendment to improve the standard by which H.R. 1058 determines if a person has acted recklessly in misleading buyers or sellers of securities.

Protecting against reckless conduct is critical in securities law because in the world of finance there is ample opportunity to mislead investors with recklessly fraudulent statements.

My amendment is an effort to improve H.R. 1058 in this critical area. H.R. 1058 has many solid and much needed legal reforms. And as several of my colleagues mentioned yesterday, we should have had legislation on this issue before this House long before today. It is needed, and it is overdue.

However, Mr. Chairman, the bill before us is seriously deficient when it comes to recklessness—not so much by what is missing, but by what has been added. My amendment protects the recklessness standard by striking the sentence which allows the defendant to escape liability by saying, ''Your honor, I forgot to disclose that important fact to the customer.'' In other words, I forgot to tell the truth.

Outside of this sentence, Mr. Chairman, the bill's definition of recklessness is perfectly adequate. It follows the so-called Sundstrand decision which has been supported by 75 percent of the Federal courts.

Yet, H.R. 1058 has taken Sundstrand and modified it to include a provision which exempts from liability defendants who forgot to act responsibly.

Mr. Chairman, I believe there is a reason that no U.S. appellate courts have adopted the definition for recklessness as it is stated in H.R. 1058.

Our Nation's judges, most of them conservative appointees, understand the difficulty plaintiffs, with legitimate cases, have in proving ''knowing'' fraud. Our courts have resoundingly said recklessness is not the same as knowing fraud, and ''I forgot'' is not an excuse.

For two centuries this country has prided itself on the fact that we are governed by the rule of law rather than by the whim of individuals. Now the majority proposes to overturn this principle with one sentence providing every guilty defendant the opportunity to escape retribution.

Mr. Chairman, I am not a lawyer. But I have a lay person's respect for our Nation's statutes. They should be written with care and with the goal of providing justice for every citizen.

Now with that in mind, Mr. Chairman, when we write the statute which prohibits reckless and fraudulent conduct in securities law, do we want to include the following sentence: ''For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless.''

Mr. Chairman, do we want our laws to say such a thing? Do we want to give the defense of faulty memory to a reckless person? I don't think so.

The high technology companies in my district need relief from meritless lawsuits now. We need to pass legislation that will end these suits yet protect investors' rights.

My amendment would be one step in the long process of writing a bill which Congress passes and that the President can sign. I urge my colleagues on both sides of the aisle to support this reasonable amendment and improve this legislation.

Mr. BLILEY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the second sentence of the recklessness definition comes directly from the Sundstrand decision. It is part of the holding of the case. Take it out and we change the law. In footnote 20 of the Sundstrand decision, the court wrote, ''[t]hus, if a trial judge found, for example, that a defendant genuinely forgot to disclose information or that it never came to his mind, etc., this prong of the * * * test would defeat a finding of recklessness * * * '' 553 F.2d 1033, 1045F n. 20 (7th Cir. 1976). Thus, the second sentence comes directly from the original decision at the point where the judges were explaining the standard. Opponents of the legislation seem to want to choose selectively from Sundstrand or to pretend that the explanatory second sentence does not exist. But it does.

Opponents of the language argue that the second sentence is merely a footnote. If we ignore footnotes, we should ignore the recklessness issue—because the Supreme Court created the issue in the now-famous footnote 12 in the Hochfelder decision. Other famous footnotes in judicial history include footnote 4 in the Carolene Products case, which has generated dozens of law review articles and thousands of pages of commentary.

The Sundstrand court was using the footnote to explain that the standard for recklessness is something more than inexcusable negligence. In the Hochfelder decision, the Supreme Court expressly recognized that negligence is not enough for liability under IOb–5. Thus, a mistake, even a bad mistake, is not enough to establish liability. The wrongdoing must be conscious for liability to attach. In applying the Supreme Court's standard, the Sundstrand court explained that for a party to be liable for recklessness, the omission must derive from something more egregious than even ''white heart/empty head, good faith.'' The footnote explains that ''this is a subjective test with the requirement of something more than ''inexcusable negligence'' imposed because of Hochfelder.'' Thus, by including the second sentence in the legislation, Congress is clarifying its intent not to lower the standard under IOb–5 cases to mere negligence or gross negligence. As the Court explained, forgetting facts is not actionable.

Not a single Federal district or appellate court relying on the Sundstrand standard has raised any objections to footnote 20, or have found it inconsistent with the recklessness standard articulated in the case. Federal district courts have referred to footnote 20 when articulating the Sundstrand test. The courts appear to accept footnote 20 as part of the holding in the case. For example; *Seifer* v. *Topsy's International, Inc.* 487 F. Supp. 653, 665 (D. Kan. Mar. 19, 1980):

[T]he core requirement of Hochfelder and Ultramereal is that the plaintiff establish that the defendant lacked a genuine belief that the information disclosed was accurate and complete in all material respect.—Accord, Sundstrand, 553 F.2d at 1045 n. 20.

None of the circuit courts that have adopted the Sundstrand standard have rejected footnote 20 or its substance.

Opponents claim that the second sentence would reverse the rule of ''ignorance of the law is no excuse.'' This argument is nonsense. The Sundstrand standard speaks of ignorance of the facts, not ignorance of the law. Ignorance of the law is, indeed, no excuse. But, as the footnote says, ignorance of the facts is negligence, or even inexcusable negligence, and actors are not liable for negligence under IOb–5 actions. The law is not intended to penalize individuals who forget particular facts. The second sentence says nothing about ignorance of the law and does

not provide an affirmative defense for one who forgot to obey the law—as the minority argues. It speaks only to ignorance of facts.

I urge a ''no'' vote on the amendment.

Mr. DEFAZIO. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as I heard the former Member speaking, I could hear a distant sound and I think it was champagne corks popping on Wall Street. This is extraordinary. I am not an attorney, so I will not cite chapter and verse of precedents. I will go straight to the heart of the matter.

□ 1145

If a person who has worked hard their whole life to put together a little bit of savings for retirement, or maybe they want to annuitize their pension, they have to depend upon someone for advice. And they go and they depend upon the advice of a stockbroker or a prospectus written by some $500-an-hour lawyer on Wall Street. And there is a little omission in that prospectus. It forgets to tell you that you are not investing in Treasury bills, you are investing in derivatives. You lose your money, your life savings, your annuitized pension. It is gone. You are broke.

Do my colleagues know what? You now have a little problem. Two things. One is if you want to sue, this has loser pay in it. So if you are the individual who lost your life savings, you have to find the wherewithal to come with the money to pay for the costs.

Second, it has a new and novel defense from a lay person's perspective. I do not know of any other law in America where you can say, ''I forgot. I forgot.''

What this means is the next time that someone tries to go to court to recover against the next Charles Keating—there will not be another Charles Keating—that would be great if there were no more frauds that cost the American people millions of dollars like the savings and loan scandals. No, that is not what it means. What it means is you will not have recourse to sue them because they forgot or they just overlooked the disclosure that the bank was on the brink of insolvency when you put your money in there, or when you invested it in that bank.

At a time of turmoil in international markets, just after the bank's scandal, not very long after the Orange County scandal, how is it that we can come credibly before the American people and say Wall Street needs protection from those little stockholders, Wall Street needs protection from people who are putting their life savings in their hands. Why? Well, because Wall Street might forget to tell them something crucial.

This is absolutely outrageous beyond the pale. It is a step through a looking glass into some bizarre new world.

Mr. BLILEY. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Virginia.

Mr. BLILEY. Mr. Chairman, the gentleman makes a strong argument, but he is wrong on one of the facts, and that is if the firm knew of some information that was derogatory and withheld it, they would not be excused under this language. They could not use the ''I forgot'' defense, because they knew the language to begin with.

Mr. DEFAZIO. If I can reclaim my time, I think what this leads to is full employment for psychologists, because we are going to have an awful lot of amnesia on Wall Street. It was not that they knew or recklessly disregarded or consciously omitted, but it is just they forgot at the moment that they were drafting it, or when the print of the prospectus came back from the printer, the proof, and it left out the section on risky derivatives, well, they forgot. They forgot that that should have been there.

Mr. BLILEY. Mr. Chairman, will the gentleman yield again?

Mr. DEFAZIO. I yield again to the gentleman from Virginia.

Mr. BLILEY. The word in there is genuinely forgot, and as a proof in fraud, you have to prove all fraud in court. But they would not be able to stand a chance of maintaining a defense under this language if they knew in advance and deliberately just withheld it, because they could not use that defense because they did not genuinely forget.

Mr. DEFAZIO. If I can reclaim my time, I understand this is not the reckless disregard section, so we already have reckless disregard, and this is a further definition of reckless disregard. That is, a defense for reckless disregard is ''I forgot.'' Is that not correct? It is a definition of reckless disregard.

Mr. BLILEY. It is a definition of reckless, yes. The gentleman is correct.

Mr. DEFAZIO. Reclaiming my time, if someone recklessly disregards and they lose your pension or your annuity, I think at that point they should be liable. I do not think they should have the defense of they forgot. I do not think the average American is going to think depending on experts, that is an incredible position to be taken by the U.S. Congress.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as we are having this debate I think it is important for all of us as Members not to forget certain points.

Point No. 1 mentioned by Chairman BLILEY just a moment ago is if you take this sentence out of the statute as the statute is currently drafted, you change the law. This sentence that is the subject matter of the debate comes directly from Sundstrand.

Some people say that this is not important because this sentence comes from a footnote. But it is important to point out, as the chairman did just a moment ago, that in footnote 12 of Hockfelder that footnote created the issue of recklessness and whether recklessness might meet the standard of intent that was required.

This sentence in Sundstrand was used to describe what was meant by the court in interpreting recklessness. This sentence has been litigated and relitigated. This sentence has stood the test of judicial review. In fact, this sentence as part of Sundstrand has been adopted by 9 of the 12 Federal circuit courts.

I think it is really important for this debate to put this in perspective. Where does this particular amendment affect the legislation, and it is important for Members to know that this occurs in subsection 4 in defining recklessness. But it occurs in section 10(a) where we are talking about the requirements for securities fraud actions, and particularly under section (a) of Scienter, and we say under this section, it says to establish Scienter and we list elements, the defendant indirectly made a fraudulent statement, the fact that the defendant possessed the intention to deceive, manipulate or defraud and the defendant made such fraudulent statement knowingly or recklessly, and that is why the definition of reckless is so important in its definition and how it is put down in this particular statute.

So it is important to go to the definition of recklessness in the statute as it is drafted to understand the purpose of that particular sentence.

I will read in section 4, recklessness. ''For the purposes of paragraph 1,'' the paragraph I will refer to in just a moment, ''a defendant makes a fraudulent statement recklessly if the defendant in making such statement is guilty of highly unreasonable conduct that involves not simply merely simple or even gross negligence, but an extreme departure from standards of ordinary care; and (b) presents a danger of misleading buyers or sellers that was either known to the defendant or so obvious that the defendant must have been consciously aware of it.''

Then the sentence that is the subject of this follows. It says: ''For example, a defendant who genuinely forgot to disclose or to whom disclosure did not come to mind is not reckless.'' The court was indicating what was meant in the definition of reckless in that Sundstrand decision, so it is important that this sentence remain, and it is important that people recognize that this has already been adopted, it has been litigated time and again, but adopted by 9 of the 12 Federal circuit courts.

Mr. MANTON. Mr. Chairman, I move to strike the requisite number of words and I rise in favor of the Eshoo amendment.

At the outset, I want to commend my colleague, Ms. ESHOO, for offering this important amendment which would dramatically improve the bill's recklessness standard.

As a representative who hails from New York City, the financial capital of

the world and the headquarters of most of our Nation's securities accounting firms, I share my colleagues interest in passing securities litigation reform and easing capital formation for our local, regional, and national economies.

However, as the representative of New York's Seventh Congressional District, I am also committed to protecting the people of Queens and the Bronx, who help keep New York City running by supplying the city's businesses with skilled labor. My district is also home to a large number of retired middle class workers.

I want to state that I support a level playing field in securities litigation.

I think clear rules will serve to define prohibited activities and eventually lead to better protection of all parties. We must resist the temptation to try to address the uncertainties of the securities market by presuming bad faith by either party in securities litigation cases.

In that regard, I rise in support of Ms. ESHOO's amendment which would correct the bill's untenable standard for defining recklessness which would protect fraudulent conduct.

When first introduced, this securities litigation reform legislation contained no provisions designed to hold businesses accountable for reckless conduct, instead, defrauded investors would have had to prove that defendants actually intended to defraud them. After much criticism from members of the Commerce Committee, liability for recklessness was restored, but was defined as willful blindness, a definition which has been adopted by no circuit courts of appeal.

It is difficult to understand why willfulness that is, intent, should be required as a prerequisite to a finding of recklessness.

In fact, the only thing that seemed to recommend that obscure definition was that it was so narrow that it was unlikely anyone could be found reckless under its definition, and in fact, no one had never been found reckless through its use.

For the benefit of my colleagues who are not on the Commerce Committee I would like to point out that, contrary to what they may hear today, there is little disagreement about what recklessness means in Federal courts. The majority of circuits, including the second circuit in New York, which most people acknowledge has special expertise in securities matters, has adopted the seventh circuit's determination in Sundstrand versus Sun Chemical, that:

> Reckless conduct may be defined as a highly unreasonably omission involving not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.

While H.R. 1058 now contains language similar to Sundstrand, I ask my colleagues to consider why the ''For Example'' sentence, which the Eshoo amendment would strike, was added to this accepted standard. I do not think that I am being unreasonably suspicious by suggesting that these changes were designed to undermine the Sundstrand standard. If my colleagues are not trying to weaken the accepted standard, why don't they simply accept this amendment?

The issue before us is not a complex legal question.

If the Congress passes something which represents the accepted definition of recklessness plus ''something,'' then we are not codifying the current court standard. Courts will determine that we must mean something besides the accepted definition of recklessness, and set about to determine what else the addition of the footnote will require before a showing of recklessness can be made.

As Anthony Lewis pointed out in the New York Times on Monday, this extra sentence will likely open new loopholes for securities fraud.

I can think of no reason to allow businesses to escape liability for their own fraud if they conveniently forget that they perpetrated fraud on investors.

I cannot fathom the common sense in this definition of recklessness.

My colleague, Ms. ESHOO, and I have worked together through the committee process to improve the securities litigation portion of the Contract With America.

In an unfortunately all too partisan setting, Ms. ESHOO has attempted to forge reasonable legislation which balances the rights of businesses and investors. She has drafted a commonsense amendment. I urge my colleagues to support it.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MS. ESHOO

Mr. COX of California. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

> Amendment offered by Mr. COX as a substitute for the amendment offered by Ms. ESHOO: Page 18, beginning on line 2, strike ''For example'' and all that follows through line 5 and insert the following: ''Deliberately refraining from taking steps to discover whether one's statements are false or misleading constitutes recklessness, but if the failure to investigate was not deliberate, such conduct shall not be considered to be reckless.''

□ 1200

Mr. COX of California. Mr. Chairman, I would like to address myself to the comments that have been made thus far by my colleagues concerning one sentence in our definition in the statute of the court-created cause of action for reckless violation of the securities laws. The 1934 act and the 1933 act do not contain any private cause of action. This has been created by the courts.

Likewise, they do not contain any cause of action for recklessness. That, too, has been created by the courts in very recent years.

Our legislation takes the rather dramatic step of codifying this judge-made law of recklessness in the lower courts, judge-made law that the Supreme Court has never agreed to; only in a footnote in a Supreme Court decision did they say they were not prepared to decide whether recklessness could be a cause of action at all.

So for the first time our legislation would be codifying recklessness, and to do this, we borrowed, at the suggestion of Democrats on the Committee on Commerce, language from the seventh circuit Sundstrand case. The Sundstrand decision itself crafted a recklessness standard borrowed from another court in the western district of Oklahoma, and that court had its opinion quote verbatim in the Sundstrand case.

Then the judge in the Sundstrand case came up with his own interpretation of what that meant, which he put in a footnote. We have both the western district of Oklahoma case that was recited in Sundstrand and the judge's own words in this proposed legislation. It is the judge's own words in Sundstrand that contain the definition of the distinction between recklessness and negligence, so that someone who honestly makes a mistake is definitionally negligent but not reckless. Therein lies the distinction. And it is that language that is giving rise to all of this debate.

So my colleague from California has proposed merely to strike that sentence which would leave us with something of a vacuum in our legislative definition of recklessness, but her reason for wanting to strike it is, I think, a fair one, and that is that examples are not normally contained in statutes.

Now, one of the reasons that I think we need to put as much as possible into the statute is that judges increasingly are not looking to legislative history to determine what Congress meant. I actually support that mode of judicial interpretation of statute.

I think there is a way to solve the problem. I am going to agree with my colleague from California that we can strike this last sentence and still achieve the objective, and I have proposed that we substitute instead language from a court case in the southern district of New York that simply harmonizes the Hochfelder standard that we have already written into subparagraph (b) of this statute with the idea of recklessness. The sentence we would substitute says simply this:

> Deliberately refraining from taking steps to discover whether one's statements are false or misleading constitutes recklessness, but if the failure to investigate was not deliberate, such conduct shall not be considered to be recklessness.

I think we can all agree this is exactly what this statute means. This is what the judge-made case law already on the books means. Even if we do not enact this statute, it clarifies precisely

what is our congressional intent. It offers guidance to the courts, and most importantly of all, guidance to the American people who would like to know in advance the standard to which they should conform their conduct.

So I congratulate my colleagues for focusing our attention on this issue. I think that this is a fair resolution.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I appreciate the gentleman's congratulations. We tried very hard to focus you on this issue in committee. Let us just go over, briefly, what happened here.

In the subcommittee you told us the Sundstrand decision said one thing. We argued vigorously with that. In full committee you told us it said another thing which is what is in the bill today. Now you are presenting us with a handwritten amendment in which you say that you have tried to find some way to further codify what you were after.

I think it raises a serious question about exactly what you guys are doing. I mean, have you thought this thing through or not? Why is this just a handwritten amendment? Was this just patched together in the last hour? We are writing laws that affect pension plans, affect people's stock investments, affect the stability of the market. This is a serious matter. You come up here at the very last minute with a handwritten amendment which, by the way, I find to be very difficult, much of which is almost impossible to distinguish from what is in the bill already.

When did you write this amendment, I ask the gentleman from California [Mr. COX]?

Mr. COX of California. Reclaiming my time, the gentlewoman from California, at the close of business last night, was recognized as the opening amendment today, and it is, therefore, timely that we are discussing her amendment to this bill today, and it is because of the initiative to change the legislation that we are now engaged in describing how to do that. It is, of course, important for all of us to participate in this debate.

Mr. BRYANT of Texas. If the gentleman will yield further, the Republican leadership told us yesterday there would be no additional amendments. We just saw this in the last 5 minutes.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the substitute amendment.

We are talking literally about the last sentence of the definition contained in the Sundstrand decision of recklessness. I want to point out for the members of the committee that the last sentence that is being debated here by the Eshoo amendment is contained in the Sundstrand decision. It is contained in the Sundstrand decision in further elaboration of what recklessness is not; Sundstrand adopts the language from the Oklahoma case which was the first case that was decided after the Supreme Court case of Hochfelder. It adopted that language and defined what recklessness is. That is in the bill exactly, indeed, as the court described it in the Sundstrand decision.

But Sundstrand and the court in Sundstrand went a step further. It said not only is this what recklessness is, this is what it is not.

And why was that important? It was important because in the original Supreme Court decision the Court made it very clear to its circuit courts who are going to be interpreting the law even more precisely than the Supreme Court did, it made it very clear, and here is a quote from Hochfelder, that ''When a statute,'' like 10(b)(5) ''when a statute speaks so specifically in terms of manipulation and deception and of implementing devices and contrivances, the commonly understood terminology of intentional wrongdoing, and when its history reflects no more expansive intent, we are quite unwilling to extend the scope of this statute to negligent conduct.''

In effect, what Hochfelder was saying was that this statute, 10(b)(5), that we are codifying and amending today, was clearly in its origination and in its history an intentional-fraud statute, not a negligence statute. Now, I know that there are many who would like to turn it into a negligence statute. That is not what it is. It is an intentional-fraud statute.

The courts have interpreted that statute to say that when somebody's conduct is not quite clearly intentional but so reckless as to get real close to intentional misconduct, that that, too, can be used as a cause of action under the statute.

Hochfelder was saying you still need to find some elements that lead you to that conclusion that recklessness is so severe that it is the equivalent of intentional wrongdoing, and so Sundstrand came along, the Oklahoma case came along interpreting that Supreme Court decision even further and defined recklessness in those terms.

Let me quote from what is in the bill and what is in Sundstrand: ''Reckless conduct may be defined as a highly unreasonable omission involving not merely simple or even inexcusable negligence.'' Hear this again, ''Not even inexcusable negligence, but an extreme departure from the standards of ordinary care and which presents a danger of misleading buyers or sellers that is either known by the defendant or is so obvious that the actor must have been aware of it.''

Sunstrand is, in effect, saying that you have got to get awfully close to intentional negligence.

What the gentleman is now offering in place of further clarifying language of what is not negligence that is contained in Sundstrand, verbatim, is a statement that is taken from other court decisions, again interpreting the Supreme Court decision saying ''deliberately refraining from taking steps to discover whether your statement is true or false is, indeed, recklessness.'' In effect, referring again, as the Supreme Court said you must refer to, some kind of deliberateness, some kind of intentional misconduct, something so close to the intent to defraud that it meets both the history, the intent, and the original language of section 10(b)(5). Let me say it again: There are many people who would like this section of the law to be a negligence section. It is not. This is a fraud section of law, and you can try to turn it into a negligence standard if you like by amendment. That is not what this law is all about. That is not what this section of litigation is all about.

There are many lawyers who try to turn it into a negligence standard. The court in Sundstrand and the Supreme Court said that is not the law. This is a recklessness, almost right up there close to intent to defraud, and if you want to make sure that that is true, the gentleman's substitute amendment is not only right but eliminates, indeed, an example that is in Sundstrand, because I frankly think that is not good text in the law and substitutes instead a finding of the court.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(By unanimous consent, Mr. TAUZIN was allowed to proceed for 1 additional minute.)

Mr. BRYANT of Texas. Mr. chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. A few moments ago you all were quoting to us from a 1976 decision in Sundstrand saying this is the common law; we are just going to codify it.

Last night we were told there would be no more amendments to the bill. In the last 5 or 10 minutes, we have been handed a very illegible handwritten amendment which you are now lauding as a great new standard for this industry.

I would like to ask the gentleman, if I can——

Mr. TAUZIN. Reclaiming my time, I will be happy to respond; whatever time I have, I have got your question. The question is should the example that is quoted in Sundstrand of what is not negligence be contained in this bill. You have objected to that. The gentlewoman has asked we take it out. We are saying OK, if you really want to do that, let me answer the question——

Mr. BRYANT of Texas. Do you take it out?

Mr. TAUZIN. Let me answer your question.

Mr. BRYANT of Texas. I did not ask a question. I have got a question for you.

Mr. TAUZIN. If the gentleman has suggested it should come out as he and the gentlewoman have, we are saying OK, if you are going to take that out,

you need to clarify as the Supreme Court asked us to do that you are still talking about a deliberate refraining from taking steps to discover the truth or falsity of the statement.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has again expired.

(At the request of Mr. BRYANT of Texas and by unanimous consent, Mr. TAUZIN was allowed to proceed for 1 additional minute.)

Mr. BRYANT of Texas. If the gentleman will yield further, when did you first see this handwritten amendment that we have been handed here in the last few minutes?

Mr. TAUZIN. We have been discussing that and other language taken from the Supreme Court decisions for some days now in an effort to try to make this bill more palatable to my friend from California who was going to offer this amendment.

Mr. BRYANT of Texas. We know as of last night there was no plan to offer any additional amendment. Now we see a handwritten amendment in the last few minutes.

Mr. TAUZIN. Reclaiming my time, this is not an additional amendment. This is a substitute for your own amendment. The idea is before I and other Members who support this bill are willing to accept your amendment which deletes language from the Sundstrand decision, we think you ought to have language that clarifies what the Supreme Court said. That is what this amendment does.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, I would just point out last night this amendment did not exist, that this has been a dynamic process. We have taken the concerns expressed by people on the other side of the aisle. We have attempted to address those concerns to make the legislative language a little tighter, and we worked as late as this morning trying to come up with the particular language.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to oppose the substitute.

I rise first to commend the gentlewoman from California for her amendment. It should be adopted.

Second of all, this curious piece of paper that has been passed around should be rejected. The gentleman from California has presented us with an amendment that was never before seen. This is not inconsistent with the practices that we have observed.

But I want to take my colleagues through what is going on here. What is at stake here is the rights of investors, not a bunch of slippery lawyers, but investors, investors who were hurt in things like Orange County, things like the Milken, Boesky defalcations and a large number of other items of rascality, also in questions like we saw in connection with the savings and loan debacles where lawyers and accountants gave bad opinions, where they audited improperly, where they failed to keep track of property, where they did not find that property which was carried on the books did not exist, or where they failed to find that it was overvalued. Those matters have been found to be reckless, reckless by the courts, and actionable.

Now we find that there is an attempt to get away from the problem of these people by defining recklessness to essentially be deliberate misbehavior. At question is not the issue of negligence or even of fraud. It is simply of reckless misbehavior.

The amendment which is offered by the gentleman from California would say that if the failure to investigate was not deliberate, such conduct shall not be considered to be reckless. We are talking here about lawyers giving opinions as to suitability. We are talking here about accountants who are failing to ascertain that the property which is carried on the books and which is filed in the reports which are submitted to the shareholders and the SEC, in fact, does not exist or does not have the value which is assigned to it.

Is that fraud? Quite probably. Is it reckless? Absolutely. These people have a fiduciary duty, a fiduciary duty, a duty of the highest responsibility to the shareholders, and they have a responsibility which they must carry out to the Federal Government and to the State regulators to file their reports truthfully and to use due care and proper care to find out that the value is there, that the property exists, that it is not overvalued in some kind of a fraudulent evaluation.

□ 1215

That is what is at stake. This is an attempt to reduce the amendment offered by the gentlewoman from California [Ms. ESHOO] as an attempt to reduce the responsibility and to define recklessness now as some kind of deliberate misbehavior. That is not it.

What is at stake here is the question of whether or not the individual has carried out his proper fiduciary relationship, whether he has been reckless, and recklessness comes to the brink of, but does not include, deliberate wrongdoing.

This is an attempt to get a little more protection for wrongdoers and to strip a little more of the protection from the ordinary citizen who has invested his or her life savings in a stock or a security which can be converted to worthlessness by the kind of wrongdoing that this amendment offered by the gentleman from California [Mr. COX] would sanctify. That is what is at stake here.

Now, the original amendment offered by the gentlewoman simply struck out dicta, struck out a footnote. The committee was largely agreed that what we should do was to address this within the framework of the Sundstrand decision. The gentleman from California now finds that inadequate. He essentially would seek now to repudiate the language which he pushed in the committee. That is perhaps right, and I think that he should be commended for retreating from it, but not for retreating to something which raises the burden on the litigants to a still higher level, to address the problem of wrongdoing by people who are failing to carry out their fiduciary responsibility to investors and investing public of this country.

Mr. WHITE. Mr. Chairman, I move to strike the requisite number of words. I would say simply I yield to the gentleman from California for his comments on this issue.

Mr. COX of California. I thank the gentleman for yielding.

Mr. Chairman, I listened carefully to the comments of the gentleman from Michigan [Mr. DINGELL], and I must say it proves the law of the inverse correlation between desperate level and factual content on many occasions.

What the gentleman from Michigan may have forgotten is that the bill we are discussing today simply embodies the policy choices that, for decades and decades, have been made by Democrat Congresses and confirmed by our Supreme Court.

The pattern of the Federal securities laws is clear. When Congress wanted to impose absolute liability or impose liability for mere negligence, it did so explicitly. What the gentleman may have forgotten is that the securities laws already impose strict and absolute liability on the directors of a company for fraudulent misstatements and omissions. It is not just recklessness, not just negligence, but strict liability and absolute liability for the directors of company under section 11. It is the same thing for the officers of the company.

By and large, what the Congress has chosen to do in securities laws is deal differently with formal documents filed with the SEC and deal differently with the enforcement powers of the SEC, on the one hand, and, on the other hand, informal documents and conversations ranging from press releases to telephone conversations and so on, where we want to make sure we facilitate the free movement of informal communications between issuers of securities and participants in the security markets.

So we find that the legislative judgment made by the New Deal Congresses of the 1930's was that it was appropriate to apply a very high standard of liability and not to require liability and not to require fraudulent intent where prepared offering documents, formal prepared offering documents and SEC filings are involved.

On the other hand, as is the case with private litigation that we are dealing with in this bill, Congress did not want to chill candid, free, and informal communications.

The language which the gentleman is discussing would affect private securities actions way outside the bounds of the formal offering documents that are provided prospectuses and so on, where we have strict liability. The ''I forget'' defense does not work for any people who are the issuers of securities.

I think we need to focus on the fact that what we are doing here is not writing language for the first time in this bill, we are taking language from court decisions and putting it into statutes, and we are doing it, I think, in a very foresighted way. So that for the very first time, what the gentleman would like to see, I think, a codification of recklessness, would exist in our securities laws, and that codification will reflect the best reconciliation of our Supreme Court decisions in Hochfelder, which said every violation of section 10–B has to be intentional and which our lower courts have said sometimes that would include recklessness.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding to me.

Mr. Chairman, the gentleman from Michigan has asserted that the addition of the word ''deliberately,'' which is contained in the gentleman's substitute, is something new to the law. Let me beg to differ, and let me quote from the Supreme Court.

The court said on page 212 of the decision, ''We note that such a reading cannot be harmonized,'' a reading of nonintentional fraud, ''with the history of this ruling. A history making clear that when the Commission adopted the rule, it was intended to apply only to activities that involved Scienter.''

Scienter is defined by the court on page 194. It means ''a mental state embracing intent,'' that is deliberateness, ''intent to deceive, manipulate, or defraud.''

I will quote from Sundstrand as well. This is the Sundstrand language, the definition of recklessness is ''the kind of recklessness that is equivalent to willful fraud.'' Willful, deliberate fraud.

Further, ''Indeed the franking definition,'' which is what they used, ''of recklessness should be viewed as the functional equivalent of intent.''

Deliberateness is what the Supreme Court in Sundstrand talked about, is absolutely part of our law, and it should be part of it. And I thank the gentleman for yielding.

Mr. ALLARD. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Colorado.

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

Mr. ALLARD. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of H.R. 1058 and the Cox amendment.

Mr. Chairman, abuses of securities litigation are particularly excessive. This act restricts the filing of frivolous suits by imposing stricter conditions.

The act requires class action suits to have plaintiff steering committees to ensure that the interests of the lawyers to do dominate those of the plaintiffs. It equalizes individual plaintiff awards in a class action suit and restricts named plaintiffs from filing more than five suits in a 3-year period. The act also allows the court to order the ''lower pays'' rule in unjustified cases.

The plaintiff has a greater burden of proof under this act, which allows the defendant to avoid liability if there is no intentional deceit. Also, the plaintiff must prove that loss was incurred because of reliance on a fraudulent statement. Finally, the act protects publishers of market predictions if the forecasts are well-reasoned but do not hold true.

Without these reforms, plaintiff lawyers can file securities cases with few restraints. They routinely pounce on companies following a chance drop in stock. They have good reason to take, and in fact promote these suits. The plaintiff's counsels generally spend little time determining the facts of the case, yet receive a considerable amount of money for their involvement. Such practices are fostered by so-called professional plaintiffs who are sometimes recruited by lawyers with the promise of easy money. H.R. 1058 removes the incentives to file unfounded claims.

Mr. Speaker, it is time we restore the notion that a capitalist economy, there are risks. The process is simple. Stocks rise, you win, stocks drop, you lose. Each person making an investment knows that it is a risk, still certain investors have been encouraged by counsel to fault companies for their inability to predict earnings. We can no longer afford to operate this way. Risk is an important element in the market.

In Colorado alone it is estimated that frivolous securities litigation unjustly costs tens of millions of dollars every year. The assailed companies feel like they are dealing with a terrorist. Following a simple shift in stock price or a particular corporate decision, they find that their company is suddenly held hostage and they are compelled to negotiate a ransom payment.

The cost of these suits is even more outrageous when you consider that the filing parties never see the bulk of the payment, it is the plaintiff attorneys who reap most of the benefits. When the law provides such incentives for greed, the law should be revised.

H.R. 1058, the Securities Litigation Reform Act, will effectively limit unreasonable law suits. I strongly support this legislation.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the question for Members of the House is what should the standard, what would the standard be, if the Eshoo amendment were adopted? It is that simple.

Leaving aside all else you have heard today; if the Eshoo amendment was adopted, what would be the standard? Here is the standard. It is in the bill as brought out by the majority. The standard would be: ''Reckless conduct may be defined as highly unreasonable (conduct) involving not merely simple,'' not merely simple, ''or even inexcusable negligence, but an extreme departure from the standards of ordinary care and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the action must have been aware of it.'' That is the standard. That is an extremely high standard.

Simple negligence is not enough, gross negligence is not enough; it has got be even worse than that before you can hold one of these security dealers liable in a civil action.

What we are arguing about is, should anything more come at the end of this paragraph? What the gentleman from California [Mr. COX] wanted to put at the end of this paragraph is a sentence that would have said, ''Even if they do as bad as all of that, if they just plain forgot, it is all right, and they are not in trouble.''

Now, having been, I assume, embarrassed by the absurdity of that proposal, he comes now with a last-minute rewrite, a handwritten amendment which we have just seen in the last few minutes, which says, ''Add at the end of this extremely high standard a sentence that, ''Deliberately refraining from taking steps to discover whether one's flagrant or false or misleading conduct would constitute recklessness. But if the failure to investigate was not deliberate, such conduct shall not be considered to be reckless.''

Mr. Chairman, this language does not need an add-on. But, second, it sure does not need an add-on. But, second, it sure does not need an add-on that says, I forgot. In effect, Mr. COX's last-minute rewrite, which we did not see until 10 or 15 minutes ago, is just another way of saying, I forgot.

What does it say: ''If the failure to investigate was not deliberate, such conduct shall not be considered to be reckless.'' What does that mean if failure to investigate is not deliberate?

The point is the law should hold somebody who is in the business of issuing securities to at least this standard so that those who invest will know that they are not being the victim of false statements or grossly reckless statements that could cause them to lose their money.

If they lost their money, under the Cox language, they could say, ''Well, our failure to investigate the facts which we put into the issuing documents was not deliberate.'' How can a failure to investigate be not deliberate? Who has the burden to decide whether or not an investigation ought to be done? Surely the burden ought to be upon those who are in a position, with an office full of experts and unlimited resources to do the investigation of whether or not the facts set forth in the offering document are true or not. The burden should not be left upon the pensioner, or upon the widow, upon the hopeful investor who has no

way whatsoever to know what facts should or should not be investigated.

Members of the House, we have never ever allowed ignorance to be an excuse in a civil action or in a criminal action. If an American citizen forgets to buy their license plate after the old one has expired, they do not get to plead, ''I forgot.'' They do not get to say, ''Well, my failure to investigate whether or not my license plate has expired was not deliberate.'' You do not get off with that. If your lawyer fails to record your deed, he does not get off by saying, ''I forgot,'' or, ''My failure to investigate my file to see whether or not I had a deadline to record the deed,'' somehow or other was accidental. That does not let him off the hook.

Who should be held responsible? Surely it is not the average person, relying upon the representations of experts, who invests his money. This level of responsibility is higher than we place on probably any other potential defendant in a civil action. You cannot hold him responsible for simple negligence or even gross negligence. In fact, you cannot hold him responsible unless they exhibit an extreme departure from the standards of ordinary care or present a danger of misleading buyers and sellers known to the defendant are so obvious that he should have known it.

Ms. ESHOO wants to leave a period at the end of that sentence. These guys want to say, ''However, if in spite of all that, the guy says, 'I forgot,' he gets off the hook.''

Now, embarrassed by the words ''I forgot,'' they come up with a last-minute rewrite which means, in effect, the same thing as I forgot.

I strongly urge you to vote down the Cox amendment, to say ''no'' to this reckless kind of legislative procedure where amendments are thrown together at the last minute on critical legislation like this, to say ''no'' to the Cox amendment, say ''yes'' to the Eshoo amendment, and let us leave some kind of protection in this law for the average American investor so that those who take advantage of them by misleading them in offering documents will not be able to profit from their recklessness.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to thank you for recognizing me because I really had intended to stay out of this discussion, but I got more and more outraged as I heard the debate taking place on the floor about what was going on. I want to respond to my colleague from Louisiana, Mr. TAUZIN, who said we were trying to go back to a negligence standard.

I want to admit to my colleagues that if it were me, I would be happy with a negligence standard. I did not come to the floor to play games with you. Lawyers are subject to negligence standard, doctors are subject to a negligence standard, ordinary people who drive automobiles and run into folks are subject to a negligence standard. If they make a mistake and they injure somebody, they are held liable.

But I will not recognize to you that under the law as it is written Congress has already imposed a higher level of standard for folks in the stock brokerage business and those who engage in securities business. They have said, ''You can be held liable only if you do something fraudulently, knowingly, recklessly.'' That is a higher standard or actually, from the common, ordinary people's vernacular, it is a lower standard.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. No, I will not yield. I want to make sure that you can confuse the issue if you want, but right now is my time to try to relate this to some semblance of sanity rather than missed—come and go that you all are engaged in.

□ 1230

What my colleagues want to do is take the already high standard, the one that is a step up, that applies to every other member of society, and create what I would call an impossibility standard, because if we adopted this language, you would never ever be able to win any cases in the securities area because any time recklessness is alleged or somebody is engaged in fraudulent conduct, the securities person would come back and say, ''Oh, well, that might be true, but I forgot to tell you,'' and all of a sudden they would be off the hook.

Well, my colleagues, I thought the purpose of this bill was to get rid of frivolous lawsuits and to cut down on the amount of securities litigation which we have built in a wonderful procedure for trying to stop those kinds of lawsuits, but, Mr. Chairman, when we start to raise the standard to an even higher level of care, an impossibility standard, then I start to wonder is the purpose really to get rid of frivolous lawsuits or is it to protect the buddies up on Wall Street from what goes on in the real world, from the standard that everybody else in our society, these people, all of whom are seated in the gallery, are subject to, this common, everyday standard, and all of a sudden securities people, whom we have already given a higher level of protection to, now they want to give an impossible level of protection to.

So, Mr. Chairman, I want to make sure that everybody understands in common, everyday language what is being proposed here: If I do something, if I am reckless, if I do it knowingly, and I come into court and say, Oh, no, I forgot, all of a sudden I am shielded from liability under this amendment.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from California.

Mr. COX of California. I would just point out, to correct the record, that underwriters, brokers and dealers who act as underwriters are absolutely and strictly liable, and I say to the gentleman, ''You don't need to prove negligence and recklessness; they are strictly——

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair would remind Members not to make reference to individuals in the gallery.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from California [Mr. COX] to the amendment offered by the gentlewoman from California [Ms. ESHOO].

Mr. Chairman, let us make it quite clear that today there is a standard which is used by the Federal courts, and that standard is largely an agreed upon standard, and it is the standard which is in the well of the House which has been sitting there as a printed statement of what has been accepted by 80 percent of the Federal courts of the United States.

Now remember the standard is one which Federal judges across the country, most of them Reagan and Bush Federal district court judges, have used as their standard, and it has served our country quite well.

Now, if over the course of the last 10 to 15 years 75 to 80 percent of the Federal district court judges, almost all of them Reagan and Bush appointees, have drafted a standard, have adopted a standard, which they use, why would we on the floor of the United States Congress adopt a standard which is a handwritten standard just presented to us that will override 15 years of precedents of the Reagan and Bush era judges that have reached the consensus as to what the standard should be? Should we not give some deference to these Federal district court judges? Should we not allow them in their courts, knowing all of the facts and law, the history of this country, to come to some consensus?

Now I have the greatest respect for the legal knowledge of the gentleman from California, but it is not so substantial a level of respect that I think that a handwritten amendment on the floor, with no notice to any Members and in contradiction to the promise that there would be no additional majority party amendments to the legislation here today, should serve as a substitute for 15 years of settled law. The intent of this amendment, I think at the end of the day, is nothing more, nor less, then to dress up, dress up the I-forgot defense. It puts it in fancier words. It uses a legalese that, I think, is probably more professional than actually putting the words ''I forget'' into the law, but the effect of it is the same, to ensure that the standard for ordinary Americans to be able to bring

actions against executives of companies who have misled those individuals in the investment of their money have a more difficult time in court.

That is what this is all about, by the way, or else we would not be out here on the floor of the House of Representatives. We would not be here if they were really happy with what the Sundstrand decision says, which is again, and this is what we believe the public should have as their protection, that there be reckless conduct which may be defined as highly unreasonable conduct involving not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care and which presents a danger of misleading buyers or sellers that are either known to the defendant or so obvious that the actor must have been aware of it.

This standard is one which the Federal district court judges have, George Bush and Ronald Reagan judges, codified for all intents and purposes as the national standard. We cannot use, we should not be allowed to use, a handwritten amendment on the floor of the House of Representatives to be attached to this profoundly important piece of American jurisprudence, and I just hope that anyone who is listening to this debate understands quite clearly that any additions to this are meant to reduce the ability of ordinary Americans to recover in the courts of the United States when executives of S&L's, when executives of a private company, have deliberately misled—

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all I want to compliment the gentleman from California [Mr. COX]. In Sundstrand the court defined ''recklessness'' building on the court decision in Hochfelder, and that is what we have currently in the statute. We have language that has already been litigated, and relitigated, and been adopted by 9 of the 12 Federal circuit courts.

Now I am complimenting the gentleman because, if I understand what the gentleman from California is doing with his handwritten amendment, which at one time that is the only type of amendments we had on the floor, handwritten amendments, but what the gentleman is doing is, first, I understand, he is trying to be cooperative. There were some concerns expressed on the other side of the aisle, and the gentleman is stepping up to the plate to meet some of those concerns, and we take the amendment offered by the gentlewoman from California [Ms. ESHOO] as being a sincere attempt to make the language better. Well, I hope that the other side of the aisle can look at this in the same vein, that the gentleman from California is trying to make this a better piece of legislation, and in doing so he is being consistent with what is in the statute now, and I would ask the gentleman: ''Is that the gentleman's intent, first, to be cooperative; and, second, to be consistent with the thrust of the language that is currently in the statute as drafted?''

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I thank the gentleman from Texas for his kind words. That is, of course, precisely the purpose here.

I say to the gentleman, naturally, when we put the Sundstrand language into the case, or, excuse me, into the statute, to begin with in committee, it was an accommodation in itself in response to concerns expressed on the other side of the aisle. What we now seek to do is to remove part of the Sundstrand decision even though there was request to put it in to begin with and instead to clarify, as best we can, how we are harmonizing the Supreme Court decision in Hochfelder, which all lower courts recognize is the law of the land. It states rather clearly that there must be an intent to deceive, manipulate and defraud. We have put that into the statute with the common law of recklessness that has developed in concert with that, and we are simply saying that good faith is not reckless.

There are many different ways to say this. We want to say it as clearly and as often as we can so we can avoid litigation on this subject, and while there has been much reference to a handwritten amendment, the fact is the handwriting was a mere transcription of language that appears in the Second Circuit of New York District Court case from which we are quoting. It is the courts' language; it is the courts that have crafted this common law remedy.

I would also just like to point out for the record that one would think from this debate that recklessness is the only standard by which we judge securities laws violations, but in fact it is the standard by which Congress, acting in the wake of the Depression, the New Deal Congress, sought to judge actions on the periphery of securities transactions, at the center of securities transactions, involving issuers, underwriters, accountants and experts. We have strict liability.

I say to my colleagues, so the notion that you can't sue someone who was reckless or someone who was merely negligent is wrong. You can sue and win on the basis of strict liability against the company, the issuer, the directors, the officers, the accountants who issue the registration statement and act as its underwriters and its experts. There is strict liability.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Texas [Mr. FIELDS] for yielding, and I, too, want to compliment the gentleman from California [Mr. COX]. What he did was to listen very carefully to the concerns expressed by the gentlewoman and try to address them and answer them and bridge the gap. What he has done is not made up language. The language is from the latest expression of the courts, the U.S. District Court for the Southern District of New York, interpreting the Supreme Court decision in Hochfelder, and what the court said in that case, and I quote:

> When the defendant deliberately failed to acquire the information that would have indicated to her that statements were false or misleading, that constituted recklessness.

That is the exact language the gentleman has presented to us today in this amendment. In quotes, ''The defendant deliberately refrained from taking steps to discover whether their statements were false or misleading constitutes recklessness,'' which is an exact statement of what the court said, not what the gentleman from California said.

Mr. FIELDS of Texas. Reclaiming my time for just a moment to see if the gentleman agrees, this has been an evolutionary process. There have been changes from the time this bill was originally introduced up until today. I mean we have changed on the loser pay provisions, we have changed on this particular section. There have been other things that we have done in trying to craft a good piece of legislation working with all parties.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(On request of Mr. BRYANT of Texas and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 1 additional minute.)

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I would just like to appeal to the common sense of the gentleman from Texas. This amendment, which they all have handwritten at the last minute, says that deliberately from taking steps—for refraining from taking steps to discover whether or not one's own statements are false is reckless, but if the failure to investigate whether one's own statements were false was not deliberate, then that conduct is not considered to be reckless.

How in the world could a failure to investigate whether or not one's own statements were false, that it was not deliberate, possibly justify as a way of exonerating one from responsibility? I ask, who has responsibility to make sure that your statement is not false in the first place?

□ 1245

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, first of all, I think this is an honest-to-goodness, legitimate attempt to clarify, and I also

think it is an honest-to-goodness attempt to work with the other side of the aisle. Again I want to compliment the gentleman from California for doing that, and I want to go one step further. I think it makes the standard even stronger.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield further?

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX] as a substitute for the amendment offered by the gentlewoman from California [Ms. ESHOO].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. FIELDS of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 252, noes 173, answered ''present'' 1, not voting 8, as follows:

[Roll No. 210]

AYES—252

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—173

Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jefferson
Johnson (SD)
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
Meehan
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pickett
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—8

Abercrombie
Gibbons
Johnson, E.B.
McDade
McKinney
Meek
Rangel
Waters

□ 1304

Mr. HALL of Texas and Mr. WELLER changed their vote from ''no'' to ''aye.''

So the amendment offered as a substitute to the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California [Ms. ESHOO], as amended.

The question was taken; and on a division (demanded by Mr. FIELDS of Texas) there were—ayes 120, noes 73.

So the amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MARKEY:

Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. INAPPLICABILITY TO DERIVATIVES.

This Act and the amendments made by this Act shall not apply to any action based on an allegation of fraud in connection with the purchase or sale of a derivative instrument. For purposes of this section, the term ''derivative instrument'' means any financial contract or other instrument that derives its value from the value or performance of any security, currency exchange rate, or interest rate (or group or index thereof), but does not include—

(1) any security that is traded on a national securities exchange or on an automated interdealer quotation system sponsored by a securities association registered under section 15A of this title;

(2) any forward contract which has a maturity at the time of issuance not exceeding 270 days;

(3) any contract of sale of a commodity for future delivery, or any option on such a contract, traded or executed on a designated contract market and subject to regulation under the Commodity Exchange Act; or

(4) any deposit held by a financial institution.

Mr. MARKEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MARKEY. Mr. Chairman, the amendment which is now pending before the House is one that deals with one of the most complex areas of the financial world. The issue is derivatives. The issue here today is whether or not these new financial products, derivatives, which are causing more and more trouble out in our financial marketplace, are going to be given the proper respect, which they should in this legislation, with respect to protection of investors.

Derivatives are financial products whose value is dependent upon or derived from the value of some underlying financial asset, such as a stock or a bond, a foreign currency, a commodity or an index representing the values of that asset.

Some derivatives have been around for many years, such as exchange traded futures and options used by investors and dealers seeking to hedge positions taken in the stock and bond markets, or to speculate on future market movements.

Within the last few years, however, exchange traded futures and options have been supplemented by a vast and dizzying array of over-the-counter derivatives. These include structured securities, forwards, swaps, options, swaptions, caps, floors, and callers that may be linked to the performance of the Japanese stock market, the dollar, deutsche mark, the S&P 500, or virtually any other asset out in our marketplace.

Today the outstanding value of the principal underlying the over-the-counter derivatives is estimated to be $12 trillion. Remember, we are going to have a big debate here this year on how to spend $1.5 trillion, which will divide this Congress quite bitterly. We are talking here now about instruments that are valued at $12 trillion in their principal form.

Now, the dynamic growth of the over-the-counter derivatives market is the direct result of developments in telecommunications and computer technologies and breakthroughs in new concepts and modern portfolio management strategies.

Using these new tools of technology and portfolio management strategies, a new generation of Wall Street geniuses have begun to market these products out across out country. By breaking down the price movement into individual deltas and gammas, betas, and vegas dancing across the computer screen, the quants, that is the mathematical geniuses who call themselves quants because they deal in quantitative mathematics, they deal as physicists, who have moved over from the nuclear physicist world into the world of creating these new products, have created the new world of cyberfinance, which is reshaping both the United States and the global financial marketplace.

□ 1315

These geniuses, these young men and women that work with computers and highly sophisticated mathematical and other principles, have developed these captions and flortions, the accreting and amortizing swaps, the digital options, the butterfly spreads, the condors, the straddles, the cylinders, the roller coaster swaps.

All of these products have now been sent out into the American marketplace, in many instances with the promise that they are quite safe for a municipality to purchase. There might be a home town that has been told they can purchase some of these products. There may be people inside of the district who have been told they are quite safe to purchase.

The problem is, Mr. Chairman, is that in the hands of ''The Boy Who Lost $1 Billion; Nicholas Leeson, the 28-Year-Old Trader Who Bankrupted England's Oldest Financial Firm,'' that is Newsweek's cover this week; Fortune magazine, ''Cracking the Derivatives Case: the Untold Story of Lies, Arrogance, and Ignorance That Cost Major Players Billions.'' This is Fortune magazine we are talking about.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unanimous consent, Mr. MARKEY was allowed to proceed for 3 additional minutes.)

Mr. MARKEY. Mr. Chairman, this is Time magazine: ''Ego and greed, the insider story of the 28-year-old trader who blew $1 billion, broke a bank, and stunned the world.''

This is Fortune magazine from 2 weeks ago: ''The risk that won't go away; financial derivatives are tightening their grip on the world economy, and nobody knows how to control them.''

Mr. Chairman, we are talking here about ensuring that these very sophisticated geniuses not be able to inoculate themselves against suit while they are dealing in these very risky financial products that are so complex that, in more instances, the CEO's of the companies themselves do not understand them. Proctor & Gamble, Gibson, companies across this country are alleging that they were misled into these products.

The objective of the Markey amendment out here is to ensure that investors are protected when they are misled into products of this nature, which by their very personality cannot possibly be understood by ordinary, unsophisticated investors. By that, I mean the town treasurers, the country treasurers, the ordinary individual that thinks that they are sophisticated, but they are not so sophisticated that they can understand an algorithm that stretches out for half a mile and was constructed only inside of the mind of this 26- or 28-year-old summa cum laude in mathematics from Cal Tech or from MIT who constructed it. No one else in the firm understands it.

The lesson that we are learning is that the heads of these firms turn a blind eye, because the profits are so great from these products that, in fact, the CEO's of the companies do not even want to know how it happens until the crash, which brings down the oldest bank in England, which brings down a company, a county, a municipality, an individual.

Mr. Chairman, this amendment is intended to ensure that protections are given to individuals against these kinds of products being sold to them. Mr. Chairman, I urge every Member that is very concerned about Fortune magazine's identification of this as one of the most serious problems in our economy to vote ''yes'' on the Markey amendment, to give real protection to the ordinary investor in this country.

Mr. FIELDS of Texas. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the purpose of this legislation is to stop frivolous lawsuits. That is the purpose, to stop lawyers from rolling the dice. I want to point out that the example of Mr. Leeson does not fit under this particular legislation because he acted with intent, knowingly.

The proposed amendment would exclude from the coverage of the Securities Litigation Reform Act many derivative instruments. The benefits of the act should not be denied to any type of transaction that is a security. Vexatious and expensive litigation is a general problem, not just in one area and not another.

The proposed amendment is based upon a fundamental misunderstanding of derivatives. Few derivative transactions are securities. Of those that are securities, fewer still are traded off the exchange. This act that has been drafted is designed to provide protection against frivolous securities litigation.

It would be counterproductive to introduce exclusions based upon classes of transactions, particularly for transactions that frequently provide substantial hedging benefits to end-users throughout the United States.

Derivative transactions are now essential risk management tools. Exposing these transactions that are securities to the risk of frivolous litigation would raise the cost of essential risk management activities.

To adopt this amendment, and I cannot say it any more succinctly than this, to adopt this amendment is to adopt two standards of fraud for securities, one for derivative securities traded in the over-the-counter market, and then a separate standard for all other securities. That is not fair. This amendment is flawed, and I urge Members to vote against it.

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

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment. Mr. Chairman, this amendment would remedy a problem that is being largely ignored throughout this society, and is largely being ignored in connection with this legislation.

This is a problem of huge investments by pension funds, investment funds, mutual funds, and State and local governments across the country in the high-risk derivative securities. These investments are often made without purchasers being informed by their brokers of the true nature or the great risk of these investments or, in some cases, without the brokers even informing the purchaser that they are making these investments at all.

The amendment would exempt derivative securities from the bill. Those are the securities which caused the collapse of the investment pool run by Orange County. Americans are only beginning to understand the risks associated with these things, which are little

better than financial time bombs. Only because of investments in derivatives which caused one of the wealthiest communities in the country, Orange County, CA, to go belly up in a matter of months and now be in bankruptcy, has the public begun to focus on the huge risks associated with these kinds of investments.

In Orange County the derivative losses have forced cutbacks in vital Government services such as health care, education, and even road maintenance. In some cases, county employees have been laid off completely, or else have had their hours of pay reduced.

Mr. Chairman, Orange County is not alone, as the ''60 Minutes'' expose on Sunday night dramatically highlighted. A particularly chilling moment in that piece toward the end was when ''60 Minutes'' asked their expert whether there may be other Orange counties out there, and he responded with this warning: ''It is not a question of whether there are others out there. There are, and many other municipalities are out there sitting on huge derivative timebombs, without any of them even knowing that they confront this great peril on behalf of themselves and their constituents.''

As we debate this bill in only 7 hours, literally hundreds of local municipal governments scattered all over the country are just beginning to discover the extent of their exposure to high-risk derivative securities. Many of them are seeking to avoid this disaster and to climb out of the pit after suffering colossal losses on their investments.

From Auburn, Maine, to the State of Florida, from Charles County, MD, to Odessa College, TX, to Aspen, CO, and to Orange County, State and local governments are suffering staggering losses due to incredibly complex, incomprehensible high-risk securities whose risk cannot only not be calculated, but not even understood.

There is a chart here which explains and shows the communities and public institutions across the United States which have just so far reported losses from investments in speculative derivatives. Look at the list: Orange County, $1.7 billion in losses; Louisiana State pension fund, $50 million; Georgia Municipal Electric Authority, $49 million; City College of Chicago, $46 million; Minnetonka fund in Minnesota, over $90 million; New Hampshire State pension fund, $25 million; the Virginia State retirement system, $66 million, and West Virginia investment pool, up to $279 million.

How would the Members from all these States and all the others who might be afflicted with this situation explain to their constituents that they have voted to prevent their county governments and their governments from acting to recover from wrongdoers for their failure to properly advise, or their failure to properly reveal facts associated with the speculative and risky character of the investment?

We just got over paying $150 billion to bail out the savings and loans institutions from a financial disaster, largely caused by legislation that was rushed through this body because big business came in here pleading for relief.

If Members will recall, they came in saying that they had to have the ability to engage in all kinds of businesses so that they would then be able to go out and make money and get themselves out of a hole which they had rapidly been digging.

The same situation is here. Mr. Chairman, in a nutshell, this is deja vu all over again. I urge my colleagues to support the Markey amendment. Vote to protect the American people against derivatives. Vote to allow them to engage in proper self-help, to retrieve ill-gotten gains from wrongdoers who carelessly and recklessly disregard their responsibility to investors, to taxpayers, and to this country.

Mr. COX of California. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment. The effect of this amendment is to carve out a $1.5 trillion hunting preserve for strike suit lawyers. It would exempt from the protections for plaintiffs who are class members, plaintiffs who are involved in actions related to derivatives.

Presumably in order to protect the citizens of Orange County, CA, the gentleman from Michigan would make sure that our legislation would not be available to provide for people in Orange County a plaintiffs' steering committee, so that the plaintiff class has a means to protect themselves against abusive practices. There would be no court-appointed guardian for members of the class if they happen to be suing in relation to Orange County. There would be no ban on professional plaintiffs. There would be no ban on bonus payments to preferred plaintiffs, so some members of the class could be discriminated against. All the protections in our bill would be unavailable.

There is also an incredible non sequitur in the argument that I just heard, and that is that Barings and Orange County and Proctor & Gamble's problems with derivatives and Gibson Greetings' problems with derivatives, all of these things would never have happened if only we had the present strike suit system in place.

Of course, we do have the present strike system in place, and these things happened. What we are seeking to do is prevent fraudulent abuse using the securities laws.

Our existing security laws are targeted at abusive practices, devices to deceive, manipulate, and defraud. For the first time what the gentleman from Massachusetts would be doing is shifting us away from focusing on bad practices and saying that ''We are only going to focus on these bad practices if they involve certain kinds of securities, and we will discriminate from one kind of security to another.'' It would be an incredible hodge-podge, unmanageable for our Nation's capital markets.

It is not as if we have to deal with this issue at the 11th hour with a floor amendment. We have actually had hearings on this subject. The Senate Committee on Banking had extensive hearings on derivatives and on their role in Orange County.

Alan Greenspan, the Chairman of the Federal Reserve System, testified. Arthur Levitt, Chairman of the Securities and Exchange Commission, testified. Here is what he said, Arthur Levitt: ''It would be a grave error to demonize derivatives and blame them for the loss in Orange County. Derivatives are not inherently bad or good. They are a bit like electricity, dangerous if mishandled, but bearing the potential to do tremendous good.''

□ 1330

Alan Greenspan: ''It would be a serious mistake to respond to these developments by singling out derivative instruments for special regulatory treatment.'' The Chairman of the Federal Reserve said it would be a serious mistake to pass the Markey amendment because the amendment singles out derivatives for special treatment and special legal status in 10b–5 actions. It would create a separate legal status for the treatment of derivatives.

Furthermore, there is no reason Congress should permit abusive litigation to continue if a derivative is involved. What we are after here with this legislation is the prevention of abusive practices. Why would we want those abusive practices to go on if derivatives were involved? It makes no sense at all. Congress would defeat its purpose if it allowed abusive lawsuits to continue in one special area of securities transactions. Congress should end abusive securities litigation, regardless of the particular type of transaction that was involved.

I urge the defeat of this ill-considered amendment.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, just very quickly, I ask the gentleman if he concurs with me. Two examples that have been prominently used in this particular debate on this amendment, Barings and Orange County. If we apply the requirements of Scienter under this particular statute that we are discussing, the defendant directly or indirectly made a fraudulent statement, the defendant possessed the intention to deceive, manipulate, or defraud, the defendant made such fraudulent statement knowingly or recklessly.

As we know the facts of these two particular cases, in these two particular cases, they would not be afforded any of the benefits under the statute

that we are debating which is aimed at stopping frivolous lawsuits. Is that the gentleman's understanding?

Mr. COX of California. Mr. Chairman, that is exactly right. What we will be doing by passing this amendment would be opening the door for frivolous lawsuits in a particular type of case. Ironically, there would even be new issues to litigate. Now we could litigate the question of whether a derivative product was involved or not, whether it was peripheral to the transaction, whether it was central to the transaction, whether it was really derivative or not. All of this is rather abstruse and in any case irrelevant to what we are trying to do right here.

Mr. KLINK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am not an attorney and I will not stand in the well and say that I understand everything about derivatives, either, even having served the last 2 years on the Committee on Banking, Finance and Urban Affairs. But what I do know is that the more you know about them, the more you have to be a little bit leery about how they are handled. They are extremely complicated and they are dangerous financial products. Even some very sophisticated investors do not understand derivatives completely. Their value is derived from the value of other assets, other instruments, other indices, and they are frequently traded over the counter in very highly leveraged transactions. At this time really no one can make a reasonable prediction of the potential losses that institutional holders, including many public entities, face from the derivatives. The one chart that the gentleman from Michigan [Mr. DINGELL] was pointing to showed how many municipalities, how many counties across this Nation, and those are just the ones we know about, may risk some sort of danger and some taxpayers' dollars. I will be offering an amendment very soon to try to deal with that.

But this scantily regulated market is thought to be rife with fraud and abuse. I will point right now to Fortune magazine, we have blown this up, and it says, ''Cracking the Derivatives Case, the Untold Story of Lies, Arrogance and Ignorance that Cost Major Players Billions.''

We are talking about billions of dollars and we do not know the stories about the lies, we do not know how much arrogance and how much ignorance there is.

The point is that now is not the time to relax the already lax controls that exist on the misconducts in the derivatives market.

During the past year, private companies like Procter & Gamble, Gibson Greetings, and public entities like Orange County, CA, have made headlines. Financial institutions like Barings Bank PLC have experienced sudden and dramatic losses based on derivatives trading. According to Sunday's ''60 Minutes,'' the question is not whether there are going to be more losses but the question really is when will those losses be known and how much will they be? How many more billions of dollars will be lost in the derivatives market?

For that reason I would say just as all of the headlines that the gentleman from Massachusetts [Mr. MARKEY] had pointed to earlier, this is just not the time to relax those already lax controls.

Orange County has filed a multi-billion-dollar Federal securities suit already against Merrill Lynch and others. The suit will not be affected because after that news, Orange County was grandfathered in and some other municipalities, other local governments have not been. The gentleman from California [Mr. COX] determined that he wants to make this bill prospective only. Other institutions may soon find themselves in the same predicament.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from Massachusetts.

Mr. MARKEY. We have here Fortune magazine. This is not some populist perspective on this issue. Here is the headline in their magazine, ''The Risk That Won't Go Away.''

''Like alligators in a swamp, derivatives lurk in the global economy. Even the CEO's of the companies that use them don't understand them.''

We have to give the public protection. We have to ensure that they are going to be able to bring class-action suits if there is a systematic pattern of trying to defraud investors in this area.

Derivatives are just not as well understood as they should be even by the people who are selling them, even by the people who are making profits from them. We have to have the protection of the Markey amendment for all investors in this country.

Mr. KLINK. Reclaiming my time and asking the gentleman a question, would you say, sir, by everything that we know that certainly we have had much more experience in the normal securities market. We have not had that experience in understanding how to deal with derivatives and the cases of these billions of dollars. My understanding also is this is sometimes constructed much like just going into one of the gambling casinos in Las Vegas and laying your money down and spinning the wheel.

Mr. MARKEY. If the gentleman would yield further, I think it is a pretty big step for Fortune to take to say that CEO's of the companies do not even understand them, and we are talking about the companies that are selling them as well as buying them. I think that we should give the protection to the ordinary investor on a financial product that is that complex.

Mr. KLINK. I thank the gentleman from Massachusetts, and I support his amendment.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from Texas, the chairman of the subcommittee.

Mr. FIELDS of Texas. I appreciate the gentleman yielding. As always I appreciate the work of the gentleman.

Let me just ask, the gentleman mentioned Procter & Gamble. As I understand, Procter & Gamble is an over-the-counter derivative which is not a security derivative and consequently would not be covered by this amendment. Is that the gentleman's understanding?

Mr. KLINK. It may or may not be true. Again not being an attorney, I do not know the intricacies of my knowledge.

Mr. FIELDS of Texas. Also the gentleman has mentioned Barings.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. KLINK. Barings is offshore. Reclaiming my time for a moment, I yield to the gentleman from Massachusetts.

Mr. MARKEY. I thank the gentleman for yielding.

The answer is that it is an over-the-counter interest rate swap which again the CEO's of these companies are contending were not accurately described to them. There are many derivatives that are infinitely more complex, in fact exotic in their nature.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. KLINK] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. KLINK was allowed to proceed for 3 additional minutes.)

Mr. KLINK. I continue to yield to the gentleman from Texas.

Mr. FIELDS of Texas. I am certainly not trying to put the gentleman on the spot. Going back to Barings, Barings is, as I understand, a situation involving exchange-traded derivatives which again would not be the subject matter of this particular amendment and not the subject matter of this legislation.

Mr. KLINK. Reclaiming my time from the gentleman, I appreciate what the gentleman is trying to do. My problem with this is the process.

The gentleman raises some good questions, but again with the last substitute amendment from the gentleman from California [Mr. COX], the way we are approaching this legislation, I do not think that we have had the opportunity given the fact that we are on this 100-day calendar to address these things, and certainly not to the satisfaction of this Member.

I just think that when we are talking about something as volatile, something that is as dangerous and as complicated as derivatives that I think that the gentleman's amendment from Massachusetts certainly makes a great deal of sense, to say let us just take a step back in this one instance and have the adequate time to hold hearings so that we are not placing this extremely

volatile portion where billions of dollars are being lost on the same train that is taking that 100-day ride.

Let us take time. I may find after we have those hearings that I agree with the gentleman from Texas.

Mr. FIELDS of Texas. Because I am willing to make a commitment to the gentleman that we will have hearings on the subject of derivatives. It is my understanding that the report comes out this week from the Securities and Exchange Commission. I think that is subject matter that must be addressed by our subcommittee and we will be having hearings on that particular subject.

Mr. KLINK. I appreciate the chairman's promise of that. I still support the amendment of the gentleman from Massachusetts. I urge its passage.

Mr. BAKER of Louisiana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if this amendment were to be properly characterized in financial terms, it may well be a derivative in itself because it is not apparently well-understood and second is attempting to solve a very complicated problem in a very simplistic manner. Further, if this were to be classified as a forward-looking statement, the disclosure required for the sale of initial public offering, it might well be actionable under the public fraud statute.

Let me explain why. This amendment is purporting to solve the derivatives problem that exists in our marketplace internationally. It was inferred that if this were in effect, the Barings failure might not well have occurred. It was inferred that if this amendment had been operational, Orange County might well have been somehow prevented.

The simple fact is this amendment creates a new cause of action for only a very small number of derivatives transactions. There are huge numbers of derivatives transactions on a daily basis. The ones that are the target of this amendment deal specifically with a very small number of investors and frankly are not held for investment purposes in most cases but are actually transactions between two knowledgeable business interests who are trying to minimize their business future risk. For instance, one gentleman may have a variable interest rate, one may have a fixed interest rate and for reasons we do not understand, they want to enter into the transaction which limits both their risk.

The irony in this debate is derivatives have been lost, they have been mischaracterized. Derivatives in essence are instruments intended to minimize risk-taking. And because of the sensationalism surrounding a few very significant and unfortunate losses that have occurred in the international market, this amendment is being proposed to appear to be responsive to those problems. It is not in fact. If it had been adopted by this Congress and had been the law of the land, it would make no difference in any of the failures we are now discussing or debating and in fact will likely not preclude any forward failures as a result of its adoption.

The chairman of the committee has proposed hearings on the matter and in our own Committee on Banking and Financial Services, there will be hearings on the matter and we should be taking a responsible look into the regulation of derivatives, but let me quickly add, none of the current regulators, whether it is the SEC, the Federal Reserve, the FDIC, the Comptroller of the Currency, all of whom have testified before the Committee on Banking and Financial Services at any time in the near term have indicated any need for any regulatory authority beyond which that they already have.

I suggest to the Members this amendment is not well thought out, it is ill-timed, and should be rejected.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. BAKER of Louisiana. I yield to the gentleman from California.

Mr. COX of California. The gentleman is exactly correct in noting first that this amendment as drafted excludes most of the big derivatives problems that we have all been made publicly aware of. It also includes many things that are not derivatives at all. The definition as drafted includes, and I quote, a contract that derives its value from the value of any security. That includes a lot of things that most people would not consider to be derivatives at all.

For example, many people in firms across America, many in California, have their compensation package comprised of something called phantom stock. Phantom stock is not real shares of stock but it is just a contract that tracks the value of the underlying stock. The way this is written, because those are not exchange-traded securities, any lawsuit arising out of that employee compensation would be exempt from the coverage of what we are passing right now, the Securities Litigation Reform Act. Surely the gentleman does not mean to include those types of things as derivatives.

Mr. BAKER of Louisiana. If I could reclaim my time, the gentleman's point is well made, and that is that in many cases these are negotiations entered into between two well-intended and understanding business partners for their mutual benefit. If we are actually looking to protect the unsophisticated investor from acquiring an interest in a product which they do not understand, this amendment does not accomplish that goal. If we are worried about pension fund investments or the working person who is trying to enhance his financial condition, adopting this amendment will not in fact help. It may in fact hurt. I thank the gentleman for his comment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. MARKEY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 261, answered ''present'' 1, not voting 10, as follows:

[Roll No. 211]

AYES—162

Abercrombie	Gephardt	Oberstar
Ackerman	Gordon	Obey
Andrews	Green	Olver
Baesler	Gutierrez	Owens
Baldacci	Hall (OH)	Pallone
Barrett (WI)	Hamilton	Pastor
Bateman	Hastings (FL)	Payne (NJ)
Becerra	Hefner	Pelosi
Beilenson	Hilliard	Peterson (FL)
Berman	Hinchey	Pomeroy
Bishop	Holden	Poshard
Bonior	Horn	Rahall
Borski	Hoyer	Reed
Boucher	Jackson-Lee	Reynolds
Brown (CA)	Jacobs	Rivers
Brown (FL)	Johnson (SD)	Roemer
Brown (OH)	Johnson, E. B.	Roukema
Bryant (TX)	Johnston	Roybal-Allard
Cardin	Kaptur	Rush
Clay	Kennedy (MA)	Sabo
Clayton	Kennelly	Sanders
Clement	Kildee	Sawyer
Clyburn	Kleczka	Schroeder
Coleman	Klink	Schumer
Collins (IL)	Lantos	Scott
Collins (MI)	Levin	Serrano
Conyers	Lewis (GA)	Slaughter
Costello	Lipinski	Smith (WA)
Coyne	Lofgren	Spratt
DeFazio	Luther	Stark
DeLauro	Maloney	Stokes
Dellums	Manton	Studds
Dicks	Markey	Stupak
Dingell	Martinez	Tanner
Dixon	Mascara	Taylor (MS)
Doggett	Matsui	Thompson
Doyle	McCarthy	Thornton
Duncan	McDermott	Torres
Durbin	McHale	Torricelli
Edwards	McNulty	Towns
Engel	Meehan	Traficant
Eshoo	Menendez	Tucker
Evans	Metcalf	Velazquez
Farr	Mfume	Visclosky
Fazio	Miller (CA)	Volkmer
Fields (LA)	Mineta	Ward
Filner	Minge	Watt (NC)
Flake	Mink	Waxman
Foglietta	Moakley	Williams
Ford	Mollohan	Wise
Fox	Morella	Woolsey
Frost	Murtha	Wyden
Furse	Nadler	Wynn
Gejdenson	Neal	Yates

NOES—261

Allard	Browder	Cooley
Archer	Brownback	Cox
Armey	Bryant (TN)	Cramer
Bachus	Bunn	Crane
Baker (CA)	Bunning	Crapo
Baker (LA)	Burr	Cremeans
Ballenger	Burton	Cubin
Barcia	Buyer	Cunningham
Barr	Callahan	Danner
Barrett (NE)	Calvert	de la Garza
Bartlett	Camp	Deal
Barton	Canady	DeLay
Bass	Castle	Deutsch
Bentsen	Chabot	Diaz-Balart
Bereuter	Chambliss	Dickey
Bevill	Chapman	Dooley
Bilbray	Chenoweth	Doolittle
Bilirakis	Christensen	Dornan
Bliley	Chrysler	Dreier
Blute	Clinger	Dunn
Boehlert	Coble	Ehlers
Boehner	Coburn	Ehrlich
Bonilla	Collins (GA)	Emerson
Bono	Combest	English
Brewster	Condit	Ensign

Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Vento
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—10

Davis
Fattah
Gibbons
Jefferson
LaTourette
McDade
McKinney
Meek
Rangel
Waters

☐ 1403

The clerk announced the following pair:

On this vote:

Mr. Fattah for, with Mr. Davis against.

Messrs. DEUTSCH, LAFALCE, and TEJEDA changed their vote from ''aye'' to ''no.''

Mr. PAYNE of New Jersey and Mr. BERMAN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DINGELL: Page 28, line 12, insert before the period the following: '', except that this Act and the amendments made by this Act shall not apply to any action commenced by any State or local government, or any agency or instrumentality of any State or local government, before the date which is 3 years after such date of enactment.''.

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] is recognized for 5 minutes.

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

Mr. DINGELL. Mr. Chairman, the purposes of the amendment are very simple, to permit counties and local units of government, States, to continue to sue under existing law for 3 years. If we are concerned about frivolous litigation, that is not a matter of concern here.

Mr. Chairman, the purpose of the amendment is very simple, to permit cities, States, local units of government to continue suing under existing practices for a period of 3 years. This will not afford any professional litigant, any sly lawyer to run around forming class-action suits. It simply allows communities to have the same protection that Orange County would have to sue where wrongdoing is done them using the new derivatives.

I would urge my colleagues to support this legislation.

Mr. Chairman, I yield to my friend and colleague, the gentleman from Pennsylvania [Mr. KLINK], a cosponsor of the amendment.

Mr. KLINK. Mr. Chairman, I thank the gentleman, the ranking member of the Committee on Commerce, for yielding to me.

I am very proud and pleased to cosponsor this amendment with him. Indeed, the gentleman is correct, this is a simple amendment. It allows State and local governments who have been defrauded in the securities market to bring suit for recovery of their losses under current rules for 3 years after the enactment of this bill.

The derivatives disaster that we have seen, we have talked about all morning long, in Orange County, CA, has shown us the risks that currently face State and local governments that have invested public moneys in the securities market.

Again, Orange County, CA, lost $1.7 billion, almost $2 billion. If you take a look at this chart, these are other municipalities, other counties across this country. Many will be in the States of the Members who are in this Chamber.

And what we are simply saying is that residents there now face cutbacks in public services. Orange County's biggest employer now faces layoffs; small investors might lose their nest eggs; retirees in Orange County might lose their pensions. We do not want this to happen in other counties either. We want them to have the same course of action as the people in Orange County will have after they have been grandfathered by this bill that we are taking up today.

Other communities and States across the country face these problems. We have seen losses. You will see the list. It is in places like Minnesota, Colorado, Maine, Maryland, Illinois, Wyoming, Florida, South Carolina, Georgia, Ohio, Louisiana, California, New Hampshire, Texas, Virginia, and Wisconsin.

Mr. Chairman, the losses will run into the multibillions of dollars. These are taxpayers' dollars. We want to protect the taxpayers of your counties, of your cities, of your townships in the same way that we have grandfathered the people from Orange County, CA.

Now, regardless, ladies and gentlemen, of whether you support the provisions of H.R. 1058, you have to agree that they are going to make it more difficult to pursue securities litigation. The bill provides for heightened pleading requirements, a modified losers-pay rule, a more stringent definition of recklessness, and hundreds of other, or many other legal hurdles.

However, I believe that if and when these provisions take effect, State and local governments should have extra time to bring legal action under the current law in order to recover public money that has been lost.

Three years is the current statute of limitations in securities fraud. This amendment that I cosponsor along with the gentleman from Michigan [Mr. DINGELL] will provide that extra amount of time after this bill takes effect for those State and local governments that are now facing losses, or may discover losses in the next year or two, to determine whether they have been defrauded and then to decide the best way to recover those losses.

State and local governments have successfully countered in fraud cases in the past. The city of San Jose, CA, recovered $12.7 million in a case 10 years ago when it sued two investment companies after they lost $60 million. The State of West Virginia successfully sued several brokerage firms after they lost $200 million between 1986 and 1987. These are not frivolous lawsuits. These are government entities that are trying to protect the taxpayers' dollars, those same taxpayers that pay our salaries, from having losses due to securities fraud.

We have all heard stories about frivolous lawsuits, but I would beg to differ that municipalities, government entities, are not going to bring frivolous lawsuits. If they do, then they are going to suffer term limits at the ballot box, because the people that live there and pay their taxes will not allow for people to risk their dollars hiring attorneys, hiring solicitors to file frivolous lawsuits.

This is an attempt to be able to bring back money that has been lost on the securities market. This amendment is simple. It would allow State and local governments who may have been defrauded to bring suit for recovery of their losses under the existing rules

but only for 3 years from enactment of H.R. 1058.

Orange County and others can get their suits filed before this bill takes place, will have an easier time to recover their losses; your State and your community deserve the same chance.

I urge people to support this amendment.

Mr. DINGELL. One last point, this amendment does not roll back the statute of limitations.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am happy to yield to my good friend from Texas, for whom I have greatest regard.

Mr. FIELDS of Texas. Mr. Chairman, I appreciate that.

First of all, I appreciate the gentleman clarifying this does not toll the statute of limitations. That is just what I heard the gentleman say.

Mr. DINGELL. I was aware of the apprehensions of my good friend from Texas. I wanted to ease them as best I could.

Mr. FIELDS of Texas. I appreciate that. If the gentleman will continue to yield, could the gentleman give us the specific examples that he is trying to address?

Mr. DINGELL. Matters of the sort that you see on the poster in the well. You are looking there at, I would say, probably 40 or 50 cities, States, and local units of government as well as possibly a number of State governments where they would be compelled to sue now on matters which might involve derivatives under the new law as opposed to the old law. The amendment permits them to sue under the old law for a period of 3 years. That is because the derivatives situation is growing and expanding, and every day we find some new situation which requires, quite frankly, great concern.

For example, the Barings Bank which just collapsed, Orange County, other places as listed on the chart that my good friend has just shown to the House.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Massachusetts.

Mr. MARKEY. If I may ask the gentleman a question, Have there been any allegations that any municipality in the United States has filed a frivolous lawsuit? Is there any allegation that has ever been made that they should be prevented under this legislation from being exempted and using the older standard?

Mr. DINGELL. If the gentleman would permit, the gentleman has come up with a very good point. The thrust of the legislation before this body at this minute relates to lawyers who assemble class-action suits for their personal profit. This relates, this amendment protects intact for a period of 3 years cities, States, counties, and local units of government, so that they may go in and sue. They have been no allegations whatsoever, none, that cities, States, or counties have engaged in any kind of frivolous litigation on matters of this kind.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Again, just as a point of clarification, and I appreciate the gentleman yielding, are these the only examples that the gentleman is speaking to in his amendment?

Mr. DINGELL. Well, these are the only ones of which I am aware at this particular minute, but I would observe that every day, if you read the Wall Street Journal, you will find that there are new and additional derivatives problems which are afflicting everybody, including highly sophisticated people like General Electric, Barings Bank or, indeed, Orange County, which ran a several-billion-dollar investment trust.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Does the gentleman's amendment exempt countries and municipalities from the other provisions of this bill?

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. TAUZIN. I understand the gentleman to explain the amendment that it allows the municipalities to sue under the old liability regimes.

□ 1415

The question is, does it also exempt the municipalities and pension funds from the other provisions, such as not paying bounties, conflict-of-interest provisions, and other protections of this bill?

Mr. DINGELL. Those matters, I would observe to the gentleman, are not relevant to the kind of litigation that we are discussing here.

Mr. TAUZIN. If the gentleman will yield further, the question is, does this amendment also exempt these suits from the conflict-of-interest provisions, the payment of bounties, other problems we have had with lawsuits where lawyers are, in fact, sometimes engaged in a conflict-of-interest provision?

Mr. DINGELL. If the gentleman would permit, cities, States, counties, local units of government are covered under existing law in all matters; all matters, all fashion, all purposes for a period of 3 years. They are given no additional right over those which they have now, and none are taken away from them. They may proceed to litigate in the fashion they may now do for a period of 3 years.

Mr. TAUZIN. If the gentleman would yield further, the answer is that this amendment does, in fact, exempt cities and these funds from the other protections of this bill, conflict-of-interest, payment of bounties?

Mr. DINGELL. Let me advise my good friend that the protections of this bill have never been extended to investors. The protections of this bill are extended to a bunch of high-priced lobbyists, to a group of people in the accounting profession, large numbers of whom are now in the gallery up above watching this proceeding, and to a group of slippery people in the investment industry who have been taking advantage of investors by marketing questionable derivatives, by engaging in an assortment of difficult, improper series of behaviors.

Mr. TAUZIN. If the gentleman would yield further, then a lawyer who wants to pursue a case for one of these listed up here in front of us could still engage in a conflict-of-interest position that is prohibited by this bill, could still engage in payment of bounties prohibited by this bill?

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. What the gentleman [Mr. TAUZIN] is referring to are class action matters. Those are matters which really do not relate to the business that we are discussing. Here we are talking about communities, cities, States, local units of government, governmental agencies which need to go in and sue. These are not class actions in the sense that we have been talking about in the basic legislation which we address, the actions to which we are addressing ourselves with this amendment are not class actions. No professional plaintiffs, no bodies, no illegal behavior of the kind that would be condemned by this legislation.

It would be illegal for a county treasurer to accept a bounty, and indeed if he were to do so, he would first of all be committing a crime, but second of all if he were to do so, he would be responsible for paying those moneys over to the county or to the governmental agency of which he was a part because that money would belong to the county as opposed to belonging to him.

Mr. TAUZIN. If the gentleman would yield further, I just want to be absolutely clear that the amendment that the gentleman has offered goes further than exempting these kind of lawsuits from the liability standards, it exempts it from the entirety of this bill, is that correct?

Mr. DINGELL. That is correct, but, remember, the language of this bill is not something which is applicable to the kind of lawsuit about which we are

addressing under this particular amendment. The language of this bill relates to bounty hunting, to a large number of other practices which are engaged in by people who participate in class action suits, according to the charges which have been made here, and not governmental institutions which are going out and suing to recover moneys improperly taken from their taxpayers.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Massachusetts.

Mr. MARKEY. I thank the gentleman for yielding to me.

Mr. Chairman, is it not true that the U.S. Conference of Mayors and the Government Finance Officers Association of the United States both favor this?

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(On request of Mr. MARKEY and by unanimous consent, Mr. DINGELL was allowed to proceed for 1 additional minute.)

Mr. DINGELL. I yield to the gentleman.

Mr. MARKEY. I thank the gentleman for yielding.

Mr. Chairman, the mayors of the United States, those whom we are talking about putting block grants together and trusting them with hundreds of billions of dollars of American taxpayers' money, now we are going to put real restrictions upon them, putting them into a suspect class of frivolous plaintiffs who have been abusing the court system of this country. Whereas the mayors and Government Finance Officers Association has a sterling record for bringing suits only where they are justified.

Mr. DINGELL. There is no evidence of abuse by the mayors and Government Finance Officers of the cities, States and counties. It is also a fact their behavior has been exemplary.

It is also a fact that they are engaged in litigation to protect their taxpayers against wrongdoing done not only to the cities, States, and counties, but also to the taxpayers thereof.

U.S. CONFERENCE OF MAYORS,
Washington, DC, March 6, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC

DEAR MR. SPEAKER: On behalf of the United States Conference of Mayors, I would like to raise some serious concerns regarding H.R. 1058—formally title II of H.R. 10, the Common Sense Legal Reforms Act.

Local governments participate in the securities markets both as investors of pension funds and temporary cash balances as well as issuers of municipal debt. Therefore, we have an interest both in preserving well-established and vital investor rights and protecting ourselves from unwarranted and expensive litigation.

While we recognize the goal of H.R. 1058 to curtail ''frivolous'' private securities actions under the federal securities law, we believe that the intended reforms may severely limit justified litigation, lesson deterrence to securities fraud, and waken existing legal standards.

In addition, as has been pointed out by the Government Finance Officers Association (GFOA), this legislation fails to address key issues such as an extension of the statute of limitations to provide a fair and reasonable period for filing a securities fraud case and the creation of investor rights to purse private actions against person who violate appropriately clear standards in aiding and abetting securities fraud.

We ask that these concerns be addressed as this legislation is considered on the House floor. Thank you for your continued attention to our nation's cities.

Sincerely yours,

VICTOR ASHE,
Mayor of Knoxville,
President.

GOVERNMENT FINANCE
OFFICERS ASSOCIATION,
Washington, DC, March 3, 1995.

Re H.R. 1058 (Title II of H.R. 10 concerning securities litigation reform).

Hon. FRANK TEJEDA,
U.S. House of Representatives, Cannon House Office Building, Washington, DC.

DEAR CONGRESSMAN TEJEDA: The House of Representatives will take up H.R. 1058 (formerly Title II of H.R. 10, the Common Sense Legal Reforms Act) next week. I am writing on behalf of the Government Finance Officers Association (GFOA) to register opposition to the package of securities litigation reform changes scheduled for a vote on Tuesday. The GFOA is a professional association of state and local government officials, both elected and appointed, whose duties include the investment of temporary cash balances and pension funds and the issuance of municipal debt.

Our members are both investors in securities and issuers of securities. Therefore, it is especially important to GFOA that any reform legislation strike an appropriate balance to ensure the rights of investors and at the same time correct flaws in the litigation process that result in frivolous litigation. We oppose H.R. 1058 because it is harmful to investors and the markets. We believe the reforms that are intended to deter frivolous lawsuits do not simply address abuses, but chill litigation, even when justified. We support limited and targeted litigation reforms that preserve investors' rights, preserve accountability and instill market discipline.

Additionally, we do not support this bill because it fails to address important issues identified by our members. These are an extension of the statute of limitations to provide a fair and reasonable period for filling a securities fraud case and the creation of investor rights to pursue private actions against persons who violate appropriately clear standards in aiding and abetting securities fraud. Also, we continue to be concerned about the method used to allocate financial liability faced by defendants in securities fraud litigation.

Federal securities litigation reform is an important issue for state and local government officials. However, we urge you to vote ''no'' on final passage of H.R. 1058.

Sincerely,

CATHERINE L. SPAIN,
Director,
Federal Liaison Center.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong opposition to this amendment.

Mr. Chairman, this amendment proceeds on the mistaken premise that what is good for trial lawyers is always good for everybody else. It proceeds on the mistaken assumption that the trial lawyers' interests are always the same as their clients. But what we heard in hearings on this very bill is that that, unfortunately, is not always the case.

The Dodd-Domenici bill which preceded this in the Senate last year, drafted in principal part by the current chairman of the Democratic National Committee contained no such carveout as is being offered today.

The Tauzin bill that was offered in the Congress last year contained no such carveout. This legislation contains no such carveout, for a very good reason. Every client deserves the protections of this legislation. The mere fact that there happens to be a government that is the client does not mean that that client should not still have protections against abusive practices by lawyers.

Let us take, for example, the provisions in this legislation that prevent abusive conflicts of interest. The judge is given the opportunity to disqualify a lawyer from representing the client if it turns out that the lawyer owns the securities that are the subject of the action. That is a conflict of interest, and judges should, except for exceptional cases which this bill provides for, have the opportunity to disqualify the lawyer for conflict of interest.

Why in the world would we want to say, just because taxpayers are involved, they should not have protections against conflict of interest that are provided on page 11 of this bill? There is a full recovery rule in this bill that is a substantial protection to plaintiffs with winning cases. Right now we have a winner/loser system under which, when you get all finished, the winner has to pay the costs anyway even though they proved somebody else is responsible and committed the injury.

We have heard that in some cases that might deter people without much money from bringing cases, and we have already provided for that by letting the contingent fee arrangement take care of that. But obviously, if the government is bringing the case, that is not a question. Instead the problem is going to be at the other end of the case when the government prosecutes a very good cause of action and the taxpayers then end up holding the bag for the damages committed by someone else and that the court has already proven and accepted were established by someone else.

The gentleman from Michigan said that governments cannot be involved in class actions. Nonsense. Of course they can.

This is a new rule that he has just invented on the floor of this Congress. But there is nothing in the Federal Rules of Civil Procedures that would prevent a subdivision of a local government from being a member of a class. And why should they not be entitled to the same protection for class members as this bill provides? Right now we

know that one of the abuses that occurs in that kind of litigation is that the lawyer settle the cases on terms favorable to themselves, giving only cents on the dollar to investors.

But this bill provides protections for members of that class so that they find out up front how much is going to the lawyers per share and how much is going to plaintiffs in the action. All of these protections are designed for investors' benefit. As a practical matter, what the gentleman would do with his amendment is strip all of these investor protections simply on the ground it happened to be a government or a subdivision of a government, not prosecuting under the Federal securities law, not SEC acting as a plaintiff on its own behalf. This makes absolutely no sense whatever. There is no precedent for it in 60 years of Federal securities law, and we should not start at the 11th hour having not taken it up in any committee or subcommittee or any time heretofore, and do it right now.

I strongly oppose the amendment.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, ladies and gentlemen, I do not think there is anything that more highlights the real purpose of this legislation more than the refusal of the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. FIELDS] and others to go along with this amendment.

All this amendment says is that the very harsh new standards for winning one of these cases are not going to apply in the future, will not be made to apply for the next 3 years to cities and to public institutions.

This bill was brought to us because the other side told us, without any evidence, by the way, but told us there were a bunch of greedy lawyers out there and a bunch of greedy professional plaintiffs and all of them got together and would file these strike suits, making life miserable for people in business who need to raise capital.

Well, assuming that that is correct, they never did tell us that the cities and towns of the country and the counties of this country and the universities and public institutions of this country were involved in that kind of behavior. In fact, everybody knows they are not.

I wonder if the city council of a city is going to vote to engage in an irresponsible lawsuit to try to make a little money. I hardly think so. I wonder if the University of Minnesota, which was on this chart before it was taken away, was going to vote that the board of regents involved themselves in an irresponsible lawsuit. I don't think so.

This amendment by Mr. KLINK is a very fine idea. It just says we are not going to apply these standards to public institutions because we have seen an enormous number of them who have gotten into trouble lately and they ought to be able to file lawsuits based upon the current law.

A very remarkable thing with regard to Orange County, Mr. COX's area, should be commented upon. H.R. 1058, when drafted and circulated last fall, contained a provision which would have applied the new, harsh standards in the bill today retroactively to pending cases. Well, then Orange County got in big trouble, lost a whole bunch of money, and lo and behold, without comment, the retroactive provisions of the bill are now out.

So, Mr. COX's community, which is the biggest example in the country of the point that is being made here today, is allowed to file and prosecute its lawsuit under the low standard, but my town and city or your town or city will in the future have to prosecute its case under the harsh standards. What a curious development. Where did that provision go?

The point is this: Even if there is justification for this legislation, and I think there is not, no case has been made that we have had irresponsible lawsuits filed by cities and communities and universities.

For goodness sakes, if these people who sometimes I think are more easily than they ought to be duped and fooled and get into trouble, they ought to be able to file their lawsuits under the existing standards.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from California.

Mr. COX of California. I thank the gentleman for yielding to me.

Mr. Chairman, I would just like to correct the record. The bill, as originally introduced, had the same effective date that the bill on the floor has. This has never been changed.

Mr. BRYANT of Texas. I want to reclaim my time. The gentleman has changed my words. This is a debating technique which is very clever, but it does not work.

What I said was the draft of the gentleman's bill which was circulated last fall after you guys won the election and had your Contract With America, had a retroactivity provision in it. Lo and behold, Orange County realizes it cannot live with the retroactivity provision, and the retroactivity provision, which would have affected your community negatively, was taken out. So all the rest of us will have to prosecute our cases for our towns and cities under the high standard, but your county gets to keep going under the low standard.

My point is that the bill no longer applies retroactively, and therefore the gentleman's community of Orange County is protected, but all the rest of our communities are not.

Vote for the amendment. At least give the taxpayers a break.

Mr. MOORHEAD. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment, and I yield to the gentleman from California [Mr. COX].

Mr. COX of California. I thank the gentleman from California for yielding to me. I will be brief.

Mr. Chairman, I have already made my complete presentation on why I think this amendment would gut the bill. It would strip all the protections concerning conflict of interest, protection of litigants from abuses by the attorneys not in the interests of the clients and so on, just on the thin tissue that there happens to be a government entity involved.

But I did want to address the comments of the gentleman just preceding concerning the applicability of this legislation to litigation arising out of the Orange County problems.

□ 1430

Any litigation arising out of the Orange County problems that anyone chooses to file under Federal securities laws will be covered by this bill as soon as it is passed by the Congress. Thus far the actions have been filed, not under the Federal laws, but under State laws, so it really would not matter what is the effective date for this purpose, and I have taken it to be an affront to this Member to suggest that, when we introduced the bill on January 4 and made sure that the bill was drafted with a provision that makes it clear that there will be only one rule applying in the middle of any lawsuit, that that was somehow directed to Orange County.

In my view this is good legislation which I want applicable to my constituents. I would like to have all of my constituents have the protections against conflict of interest, against abusive practices by lawyers that foment litigation against strike suits apply to them. This will help the taxpayers of Orange County, and I would not be surprised, mark my words, that somebody does not bring a lawsuit against the county of Orange, against the taxpayers of Orange County, and it is they who will be the ultimate deep pockets unless we have these strike suit protections. The new incoming treasurer of Orange County, the guy who has come in at the request of all the people, picking up the pieces, is the guy who knows what is going on here, has written a letter, wrote to our committee, and he said he strongly supports this legislation without the carve out that the gentleman's amendment would provide because it will protect the taxpayers of Orange County from precisely the kind of abuses that we are legislating against here today.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Michigan [Mr. DINGELL] and I rise just to make again the very simple point that the gentleman from Michigan is seeking to ensure that the cities and towns of the United States, who may have already been placed in jeopardy by financial transactions that

have yet to fully manifest themselves in terms of the financial losses which their citizens, their taxpayers, are going to suffer, be allowed to be exempt from this legislation for 3 years so that a lot of this financial activity can be made more manifestly obvious.

The reason for it is quite simple. One, there has been no allegation that any mayor, that any city counselors, that any city solicitor, in the United States has ever filed a frivolous lawsuit, and the ostensible justification for this legislation is that we are going after the lawyers and the professional plaintiffs who are making a mockery of the court system of this country.

If that is our justification for passing legislation, let us not allow the cities and towns, the taxpayers of this country, to be swept into this. If we do not have the capacity to exempt municipalities from this legislation, even though there are no allegations against them, then clearly the intent is to inoculate those whose municipalities might sue rather than protect municipalities themselves.

So let us know what this amendment is all about. I say to my colleagues, The Dingell amendment is to give your mayor, your city counselors, the ability to sue.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield once again to the gentleman from Michigan, the author of this amendment, so he can elaborate upon that point.

Mr. DINGELL. Mr. Chairman, there is absolutely no evidence of wrongdoing on the part of any municipal, State or local government official in connection with litigation of this kind, absolutely none. There are absolutely no protections given to cities, States, and local units of government by the bill, but what is given, and it is a prodigious benefit, is to a group of slippery rascals from the derivatives business. They will receive an inoculation against litigation against them for wrongdoing in connection with derivatives and in connection with investments which the cities have made and the counties and the local units of government have made to increase their earnings on the monies which they have as tax receipts during the time that they are waiting to expend those monies.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman from Massachusetts [Mr. MARKEY], and to supplement the remarks he just made I would just like to address the gentleman from California [Mr. COX] one more time here. He stood up here a moment ago and said what a curiosity that the original draft that was circulated in the fall said that this bill is going to be retroactive, so these high standards would apply retroactively to everybody, and, lo and behold, Orange County got in trouble, got its lawsuit filed, and the retroactively provision went out. The gentleman from California [Mr. COX] said, ''Oh, it wouldn't make any difference because that case is filed in State court.''

I say to the gentleman, Well, I just went there and checked, Mr. COX. The fact is that Orange County filed a $3 billion lawsuit under rule X(b)5 in Federal Bankruptcy Court, so your community gets the lower standard, but our communities get the higher standard.

I urge my colleagues to vote for the Dingell amendment.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I oppose retroactive legislation. It does not work. We had the same question come up on title I of this bill. I opposed it there.

I say to my colleagues, The fact is, if you have two different rules operating inside of the same lawsuit, it doesn't work.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield to me again?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Why did the gentleman just tell us his case was filed in State court when it was filed in Federal court? I mean the grounds of the gentleman's defense continue to shift from moment to moment around here.

I say to the gentleman, The fact is whatever you propose, whatever you support, the fact of the matter is it was going to be retroactive until your community got in trouble, and now all of our communities have to face a higher standard, but not Orange County. Your community gets to go in the lower standard. That's not a good idea.

Vote for the Dingell amendment.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. COX of California. The original lawsuits were filed under State laws and in State courts. The gentleman brings a new matter to my attention, but I assure him that lawsuit was surely filed after January 4, after the date of introduction of this bill, which gets directly to the gentleman's point.

The gentleman just speaks of motive, and I gave the gentleman my answer to his question, which is that I wanted to be sure, when we introduced that bill on January 4, that it was not retroactive.

Indeed, Mr. Chairman, I was in a radio debate with a Member of the other body from California in which she alleged that this was retroactive——

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unaniomus consent, Mr. MARKEY was allowed to proceed for 1 additional minute.)

Mr. COX of California. Mr. Chairman, will the gentleman continue to yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. COX of California. She stated that the bill was retroactive, and I stated that it was not, and I then went back and checked, and indeed that provision of the bill, the effective date, which is a biolerplate provision that comes at the end that this Member had never been involved in drafting, was improperly constructed, and it would have required that inside a lawsuit two different rules apply. That makes no sense whatever.

Mr. MARKEY. Reclaiming my time, Mr. Chairman, just to conclude by making this point:

Once again there are no allegations against any mayor or city council in the United States. Why are we going to charge them with being frivolous in any lawsuits which they are going to bring if there has never been an allegation in the history that has come before this body as testimony that would lend that kind of limitation upon their ability to sue if they have been defrauded?

The gentleman from Michigan [Mr. DINGELL] does not even ask that they be given the rights for eternity, but only for the next 3 years so that the existing body of financial sales, of representations which have been made in the marketplace to municipalities, continue to be litigated under the old law.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me, first of all, address what I almost hear as a basic assumption that the underlying piece of legislation is bad. This is not a bad piece of legislation. This legislation is aimed at the filing of frivolous lawsuits, and I will be glad to stipulate to my good friend from Michigan and my good friend from Massachusetts that our county and local governments do not file frivolous lawsuits.

Now, having said that, the underlying piece of legislation would not apply to them in the filing of lawsuits that have merit, which we are willing to stipulate that is what they do. But why deny for 3 years the protections that we think are in this piece of legislation when frivolous lawsuits are filed?

Now, having stipulated that frivolous lawsuits are not filed by governmental entities, let me create a scenario because, as the gentleman from Michigan pointed out just a moment ago, we have had some local governmental entities who have lost money. There is a fact question in each of those situations whether the money was lost on bad judgment, by someone who represents that governmental entity, or

whether money was lost because of some fraudulent and intentional advice. If it was fraudulent and intentional advice, then this statute would not affect that type of cause of action. If it was bad judgment on the part of the agent for the governmental entity, we could envision under some circumstances where a lawsuit could be brought that would be frivolous.

The point is this statute is designed to stop the filing of the frivolous lawsuits, should not be construed in any way as stopping the legitimate lawsuits that can be brought when there is fraud or some other type of intent, and with that I would have to reluctantly oppose the amendment offered by the gentleman from Michigan [Mr. DINGELL]. I think he brings it with every good intention.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I will express the highest regard to my good friend, the gentleman from Texas [Mr. FIELDS].

First of all, a litigant must prove and plead what is going on in the mind of the other side before he can properly get into court. He has literally got to define the thought process and the intentions of the other party. Cities, States, counties, local units of government, would not be compelled to bear that burden. That is hardly something that I think they ought to be compelled to do because they are litigating on behalf of their taxpayers. There are a large number of other burdens that they must pay before they can get into court and a large number of other burdens they must carry, and I do not see why it is that they should have to carry these burdens to litigate on behalf of their people.

There is no allegation, none, that there has ever been any wrongdoing, that there is any ambulance chasing or any shyster lawyer practices engaged in in connection with these matters, and I would just urge my colleagues to support this, and I appreciate the concerns of my friend from Texas, but I would just say that the burdens that he is imposing on the cities, and States and local units of government by this amendment do not need to be accepted because there is no abuse on their part.

Mr. FIELDS of Texas. Reclaiming my time, Mr. Chairman, again I have the highest admiration for my friend, I return the compliment and I sincerely mean that.

There is a difference of opinion perhaps on the need for the specificity of pleading whether it is a governmental entity or it is a private class seeking some redress, but I will restate to the gentleman that it is my strong belief that this is a fair statute and there should not be two different types of treatments, one for governmental entities and those for all others. I think this is fair to all who might be subject to some action that would be fraudulent, particularly with intent.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from California.

Mr. COX of California. I will just underscore what the gentleman from Texas has just said.

The assertion is made that government entities generally do not bring frivolous lawsuits. So what? That is really not what we are talking about here. What we are talking about is abusive practices in the context of litigation, and in many of the cases and in many of the parts of this legislation those abusive practices are maintained by lawyers acting otherwise than in the interests of their clients, so this bill protects the client, and who is the client for purposes of this amendment? The government entity and the taxpayer.

Why would we want to strip the taxpayer of the protection against abusive practices that this legislation affords?

On the question of pleading, the gentleman from Michigan, although I am sure with every good intention, misstates rather dramatically what the legislation says. What the legislation says is that the complaint shall specify each statement or omission alleged to have been misleading. That is not an onerous requirement for anyone inasmuch as rule X(b)5, section 10(b), in the 1934 act predicates liability on some misstatement or omission, and we already have a requirement in here that either you prove reliance or fraud on the market. So there has to be a fraudulent statement out there somewhere, and asking somebody to identify what those fraudulent statements are before they bring litigation is, I think, entirely reasonable.

Second, the complaint shall also make——

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

□ 1445

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 2 additional minutes.)

Mr. FIELDS of Texas. Mr. Chairman, I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I thank the gentleman for yielding further.

Finally, the section says an allegation may be made on information and belief. So there are several parts of this pleading section that the gentleman from Michigan has conveniently left out of his description.

First of all, we are talking today about allegations, so we do not need to know that they are true. You simply allege it and you get on with your lawsuit, you go through discovery, you take depositions, you subpoena records, and so on, and see if you can back up those allegations. But you make the allegations in your complaint; you do not put the proof in your complaint.

Second, you can do it on information and belief, so you just state in your pleading that the plaintiff is informed and believes and thereupon alleges that—and that is very, very easy to do. The complaint shall make allegations which, if true, would be sufficient to establish Scienter.

So for purposes of judging the pleading, all the court does is assume all of the allegations are true even before you have actually proved them, and if added together, assuming their truthfulness, they would state a cause of action and you get by judgment on the pleadings, and away you go and you are off with your lawsuit. That is the way it ought to work.

Many, many years ago a young lawyer wrote a Law Review article in which he said that the noticed pleadings which, up until that point, had been the rule of Federal pleadings, should be departed from and we should have this rule where you specifically plead, because it would help end abuses in this area. The young lawyer who wrote this, it turns out, is a lawyer named William Shannon Lerach, who is now one of the big securities class action lawyers in America—he lives out in San Diego, out my way in California—and he came as a witness and I asked him about this Law Review article and he said, ''I still agree with that today.''

So I think the gentleman from Michigan should get in league with Mr. Lerach and get on board with our pleading requirements. They are good ones, and we need them.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has again expired.

(On request of Mr. DINGELL, and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, the new rights that would be afforded cities, States, and local units of government would be the following: No. 1, loser pays. Before a city, State, or local unit of government can go into court in connection with derivatives fraud or other fraud upon their consumers involving securities, they would have to absorb the risk of paying the entire cost, lawyers and everything else, if they lost.

In addition to this, there would be, as I mentioned, the heightened pleading requirements. There would be no more joint and several liability. So slippery people would escape. There would be no fraud-on-the-market protections for inactively traded securities.

Now, here is what the United States Conference of Mayors says with regard to protections that the bill would afford them. Reduced to its simplest form, it is ''thanks but no thanks.'' I

will, by unanimous consent, at the appropriate time include this with my remarks.

While we recognize the goal of H.R. 1058 to curtail frivolous private securities actions under Federal securities laws, we believe that the intended reforms may severely limit justified litigation, lessen deterrence to security frauds, and weaken existing legal standards insofar as the communities are concerned.

Mr. Chairman, I thank my friend for yielding.

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, let me address a few of the points the gentleman has just made.

First of all, with regard to the loser-pay provision in our bill, there is a substantial justification clause, and the court has the discretion in the requirement for the posting of a bond.

On the second point, we do have a legitimate disagreement on the specificity of pleadings. I think it is important to have pleadings that are specific.

The third point the gentleman made is with regard to joint and several liability. Joint and several liability is in this statute where there is knowing fraud. Again we have talked about this, and we have been willing to stipulate that the cases we are aware of at this particular moment are cases that are legitimate that the county governments and local governments have against others.

The final point the gentleman made was regarding the fraud on the market. Nothing is changed with this particular statute based on what the law is at this particular moment. We are codifying Levinson.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I am glad to yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, it would require in addition to that also that State or local units of government, cities or counties, before they could litigate, could be required to post a bond; is that not so?

Mr. FIELDS of Texas. That is possible, but also, reclaiming my time, the judge has the discretion to say, ''Your bond is $1,'' or your bond is something else that is reasonable. The judge has the discretion to come in and ask for something other than the posting of what could be the entire cost of that particular lawsuit.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. Reclaiming my time, Mr. Chairman, let me finish and then I will be glad to yield to the gentleman.

We did that on purpose to give the judge the discretion to look at cases like this and use good common sense.

Mr. DINGELL. But under the current law, however, there is no requirement that a city, county, State, or local unit of government post a bond.

Mr. Chairman, I thank my friend for yielding.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there are two classes of stockholders whose interests can be affected by a 10B(5) statute. There is a class of investors who believes they have been defrauded, and they ought to be able to file a lawsuit. Under this bill they can file that suit. Any city, county, or individual in this country who believes they have been defrauded in their investments can file a suit, and if there is a fraudulent claim, they will have the full protections of joint and several liability that exists in current law.

Under this bill the big change is that if you file a suit for something other than intentional fraud in this judge-made area of the law, you are going to have to specify who is guilty of the recklessness or who is guilty of the misconduct, and in the court proceedings they are going to find out what percent they contributed, and they will be liable for that percentage. It is called proportionate liability.

So stockholders or investors, whether they be cities, counties, pension funds, or individuals who believe they have been caused to have a loss in their investments through someone's recklessness, can still file a lawsuit under this bill. They simply have to point to the guilty party, and the proportion of liability is assessed against that guilty party. That is the big change in this bill.

But there is another class of stockholders who under current law are horribly affected under 10B(5) lawsuits. They are the stockholders who still own stock in the company that is being sued, who are still a part of the corporation that just got sued by one of these lawyers, and who find out that the value of their stock has been depressed because their company is suddenly involved in a big extended lawsuit that may be without merit. In fact, most of these cases are settled regardless of merit. In fact, one of the persons who went bankrupt as a result of some of these suits was quoted as saying, ''It wasn't the litigation we would lose that was the problem; it was the cost of winning that caused the greatest part of our financial distress.''

As companies around America are being sued under 10B(5) judge-made law, with deep pockets, or anybody who gets shotgun suits filed against them, finds out that their company is depressed and their stock is hurt, who do we find out is hurt then? It is the pension investor, the private investor, who still owns stock in that company and who finds out that the company is spending most of its money on lawyers and courtrooms instead of on creating products and creating jobs.

Now, should it matter whether a lawsuit is brought by a government or by an individual when that is the result? This amendment will exempt all government suits under this 10B(5) filing, whether it was a derivative investment or not. The suit may be against a small company struggling to create jobs and indeed to return profits to its investors, as is often the case. Are we going to say that governments get better protections, that they can sue in deep pockets liability under this act, when citizens will be under this new standard? Are we going to say under our system of justice that governments have a better standing in court than citizens? If the reforms in this bill are not good for this country, and I firmly believe they are, I would not have engaged in this effort for 4 solid years to reform this section of law. If the Chairman of the SEC is correct when he said, ''There are two classes of stockholders whose rights must be balanced here,'' should we give government better protection under the law than we extend to citizens? Should we not have the same rules applying to government investors as we have applying to individual investors?

If there is one thing Americans hate the most around here, it is when we apply different standards to government that we do to citizens. We just went through that in the first week of this Congress when we decided that the Congress should be accountable to the same laws we impose on businesses across America. Are we now going to say that when we are reforming this body of law, we are going to have a separate set of laws for government and a separate set of laws for citizens? I do not think we should do that.

Let me concede, as my friend, the gentleman from Texas did, that I do not believe that governments bring frivolous lawsuits, but they do bring lawsuits against companies just like individuals do, and they ought to have the same rules apply to them as will apply to citizens in this case, and if Members believe as I do that we are reforming this law for the right reasons, they should vote against this amendment. If they do not, then they should vote for the amendment and vote against the bill.

Mr. KLINK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the full 5 minutes, but there are a couple of points that I think need to be made on this amendment. Again let me say that I am proud to cosponsor this amendment with the gentleman from Michigan [Mr. DINGELL].

As for the previous speaker, the gentleman from California [Mr. COX], I agree with much of his intent, but as to his point about having two classes, the fact that there is one set of laws for governments and one for citizens, the fact if that government is citizens. The government has no money. The only money that the government has is that which the citizens send to us.

Now, I would put it this way: When a normal citizen makes an investment, that citizen has the responsibility for that decision, and whether or not they are going to be able to sue, whether

that suit is frivolous, we ought to address that in some form. But normal taxpayers do not very often have much of a say in how moneys are invested on their behalf by their local governments.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield on that point?

Mr. KLINK. Yes, I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, citizens invest in money market funds that make investments, just as they invest in pension funds that are run by governments and by private entities that make investments. There is no difference.

My question to the gentleman is this: Why should we say to a citizen that chose a private investment fund to make his investments, ''You're going to have a set of laws that relate to you, but if you invest in a government pension fund, you get a different set of laws that apply to you''? That is what is wrong.

Mr. KLINK. Mr. Chairman, I think, to answer the gentleman's question, there appears to be, with this whole derivative thing, the fact that things are changing from moment to moment and from hour to hour. Every time we pick up a newspaper something new has happened, and we are learning something new about it all the time. If I may respond to one of the comments that I think the gentleman from California [Mr. COX] made, he mentioned the fact that this carve-out did not exist and the Dodd-Domenici language did not exist in his bill, but I think things have changed dramatically.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I would like to finish my thought, and then I would be glad to yield to the gentleman.

The fact of the matter is that things are changing all the time in this regard. So what we are saying is, let us not create two separate bodies of law. But the amendment delays the effect of this bill on State and local governments for 3 years, and that is the same period of time that currently is the statute of limitations for securities fraud.

□ 1500

I think it is unfair to require State and local governments to risk taxpayers' money in a loser-pay system. That is one of the problems.

Let me just finish with this, and that is I have a letter here from the mayor of Philadelphia, Edward Rendell. The first paragraph of the letter says, ''The city of Philadelphia,'' and this is like other municipalities, some are much larger and some are smaller, ''The city of Philadelphia is responsible for proper administration of over $2 billion in public pension funds for its workers and its retires. Like other private and public institutional investors, the city is completely dependent on a strong Federal system of securities laws and remedies to ensure probity in the financial marketplace and to deter would be wrongdoers.''

This next sentence is what really bothers me. He says, ''We are deeply concerned by the incidence of fraud in securities markets, and most particularly by the fact that many questionable investment schemes seem to target municipalities and government entities.''

They find themselves being targeted because they are not up-to-date, and they are talked into these investments, and just like Mr. COX's Orange County, CA, all of a sudden something bad happens.

I will tell you that I think large and small municipalities across the State, not wanting to bring frivolous lawsuits, not wanting to spend taxpayers' money in pursuing frivolous cases, they are shocked by what happened in Orange County, CA, they are shocked when they look at what happened in San Jose and in States across this Nation.

We simply say let us delay it for the statute of limitations. Let us not have different sets of rules for other municipalities than we have for Orange County.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. I asked him to yield to make this point. Any municipality or pension fund that thinks they have been defrauded under any kind of investment, be it a derivative or something else, has that right to file that suit today. These lawsuits are cranked out normally up to 2 hours after the stock prices fall. If somebody has a case on that list that we were shown this morning, they can bring that suit today under the old law. They can bring it next week under the old law. Until this law goes into effect, they can file this suite.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, yes, they can file a lawsuit today, but what we are finding out about derivatives is as this instrument spins around the world and its consequences, this is like peeling an onion. The fact is this law may become law before people realize the extent to which they have been damaged. A lot of these investments are very indirect investments. They join pools. State laws require it. We are talking about the money of school boards.

The CHAIRMAN. The time of the gentleman form Pennsylvania [Mr. KLINK] has expired.

(By unanimous consent, Mr. KLINK was allowed to proceed for 2 additional minutes.)

Mr. KLINK. I yield to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, in the California example, people who really had very little say over the investment of their money, school districts, water districts, sewer districts, citizen boards, without this kind of experience, and they were indirectly part of this arrangement and now they want to unravel that and assert their rights, we ought to let time for that to happen.

This is like the early days of the S&L scandal. There are a lot of people that do not know today that they are going to be affected by this because something else that goes wrong in the market triggers the vulnerability into this investment pool fund or instrument that looks safe today or looks safe 3 months from now, but may not turn out to be safe a year from now.

Mr. TAUZIN. If the gentleman will yield further, I would say to my friend from California [Mr. MILLER] that we just had that debate. We agreed not to exempt derivative lawsuits from this bill. That is another debate. But my point is this amendment covers more than investments in derivatives, does it not?

Mr. KLINK. Yes, it does.

Mr. TAUZIN. It exempts the city in all of its suits. So if the city, county, or pension board wants to bring a suit against a small company, under this amendment they would be exempted from this bill, would they not be?

Mr. KLINK. Mr. Chairman, reclaiming my time, I think this is an instance where we just have to agree to disagree. I understand that.

My point is this: If it is fair for Orange County, CA, to go under the old rule, then I think we need to take the statute of limitations, and I do not think that is being unreasonable, and say for not the period of enactment, but for the period of the statute of limitations, while this is being shaken out.

Mr. TAUZIN. If the gentleman will yield further so I may make one final point, just to clarify it, the gentleman is saying this statute of limitations will apply to new claims that might arise during the 3 years. The gentleman is not saying you are extending the statute of limitations for claims that already exist, are you?

Mr. KLINK. No.

Mr. TAUZIN. No, you are actually extending this law for 3 years applied to new claims. So it is not an extension of the statute of limitations, is it?

Mr. KLINK. Mr. Chairman, reclaiming my time, the gentleman is correct. I am saying extend it for the period of time of the statute of limitations. The gentleman is correct. I think this will give us time to see how this is shaking out. Again, there is a lack of confidence across this country because of what happened in the gentleman's area in Orange County, CA.

Mr. COX of California. Mr. Chairman, I ask unanimous consent to proceed for 3 additional minutes.

The CHAIRMAN. Without objection, the gentleman from California [Mr.

COX] is recognized for 3 additional minutes.

There was no objection.

Mr. COX of California. Mr. Chairman, we actually have had testimony on this very subject, on the application of this bill as presently drafted to Orange County, and the testimony came in a letter addressed both to the testimony came in a letter addressed both to the chairman and to the ranking member of the Subcommittee on Telecommunications and Finance. It comes from John M.W. Moorlach, who will soon be nominated and sworn in as the new Treasurer of Orange County to pick up the pieces where Bob Citron left off.

Here is what his testimony said:

The taxpayers of Orange County will suffer severe financial repercussions resulting from its longtime former treasurer's investment strategy. Now lawyers may victimize our taxpayers a second time by extorting multimillion dollar settlements under rigged rules that stack the deck against the county. This will further compound our already tragic financial losses. As a certified public accountant, I'm well aware that members of my profession for years have been victimized by strike suits brought by a handful of unscrupulous lawyers. These unethical few neither know nor care whether their so-called clients have actually been victimized. They simply bring cases for their extortion value and settle them without trial on the merits. As a result, accountants and companies innocent of any wrongdoing end up paying out millions of dollars to get rid of nuisance suits, while entire classes of victims of real fraud may only get pennies on the dollar for their claims. The biggest share by far goes to the lawyers.

Now, here is where we get to the point of this amendment.

This game has already started in Orange County. Whatever the rights and wrongs of these cases, the only certainty is that under the current system, only the lawyers will get rich. Justice will not be done, not for the plaintiffs who will receive a percentage on the dollar as their lawyers benefit from handsome fees, and not for Orange County's taxpayers, who may have to take another multimillion dollar hit that will be as unnecessary and destructive as Citron's investment strategy itself.

Mr. Moorlach's point is that the County of Orange, already suffering, and you have seen the layoffs, 11,000 people, already suffering from the consequences of the Citron strategy, may now itself be the target of strike suits. And, yes, some of these suits may be brought by unscrupulous lawyers who are lucky enough to land as a client any one of the municipalities or subdivisions that invested in this pool.

Lawyers have great sway over their clients. We want to make sure that the clients always have rights against the lawyers, that they have the right to control the litigation, and that litigation device is not abused. If it were to be abused, then Orange County, read ''the taxpayers,'' would end up paying the damages.

John Moorlach concludes,

The Contract With America bill will stop this legalized embezzlement farce. It will strengthen the rights of real victims of fraud, while preventing frivolous cases from victimizing responsible people. It will be good for the country and for Orange County. I wish you well as you consider this important legislation.''

So the point is that when municipalities are suing municipalities, it is just as likely that lawyers can get out of control as when lawyers are representing someone else. We want to make sure that Orange County's taxpayers are protected to the extent that Orange County might be a victim of lawsuits that are brought for their settlement value, because it is the taxpayers, not Bob Citron, that will end up paying those damages. And we want to be sure that the municipalities who are plaintiffs have all of the protections against conflict of interest, protections for lawyers to drive the litigation so that the lawyer does not do it, protections against lawyer-driven litigation that are part of this bill. Stripping all of those protections out of this bill just because it is the taxpayers who are the clients and the taxpayers who would otherwise get those protections makes no sense at all.

So I hope at least in the context of my home county, having heard from the people who are handling that, that we would understand just how destructive this amendment might be.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, that is the point I made a moment ago. Your home county has already been taken care of. They have already filed their Federal case under the lower standard. Now you are raising the standard for the rest of our communities.

Mr. COX of California. Reclaiming my time, the gentleman is aware that the statutes of limitation that apply to what went on in Orange County are sufficiently long so that people can file lawsuits after this legislation. It is my sincere and fond hope that this legislation will apply to as much of the litigation that might arise out of Orange County as is possible, for precisely the reasons that John Moorlach, the soon-to-be Treasurer of Orange County, just pointed out.

Mr. BRYANT of Texas. If the gentleman will yield further, the gentleman just verified what I just said in a long round and about way of saying it.

The second question I have for the gentleman is, inasmuch as all this amendment does is say we are not going to apply the standards of this bill to the cities and counties and public institutions for the next 3 years, can you name a city or county or public institution that has been accused of filing a frivolous securities case?

The question has already been answered, and the answer is ''no.''

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. DINGELL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. DINGELL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 248, answered ''present'' 1, not voting 6, as follows:

[Roll No. 212]

AYES—179

Abercrombie	Furse	Olver
Ackerman	Gejdenson	Ortiz
Andrews	Gephardt	Orton
Bachus	Gonzalez	Owens
Baesler	Gordon	Pallone
Baldacci	Green	Pastor
Barcia	Gutierrez	Payne (NJ)
Barrett (WI)	Hall (OH)	Pelosi
Becerra	Hall (TX)	Peterson (FL)
Beilenson	Hamilton	Pickett
Bentsen	Hastings (FL)	Pomeroy
Berman	Hefner	Poshard
Bevill	Hilliard	Rahall
Bishop	Hinchey	Reed
Bonior	Holden	Reynolds
Borski	Hoyer	Richardson
Boucher	Jackson-Lee	Rivers
Browder	Jefferson	Roemer
Brown (CA)	Johnson (SD)	Roybal-Allard
Brown (FL)	Johnson, E.B.	Rush
Brown (OH)	Johnston	Sabo
Bryant (TX)	Kanjorski	Sanders
Cardin	Kaptur	Sawyer
Chapman	Kennedy (MA)	Schroeder
Clay	Kennelly	Schumer
Clayton	Kildee	Scott
Clyburn	Kleczka	Serrano
Coleman	Klink	Skaggs
Collins (IL)	LaFalce	Slaughter
Collins (MI)	Lantos	Spratt
Conyers	Laughlin	Stark
Costello	Levin	Stokes
Coyne	Lewis (GA)	Studds
Cramer	Lincoln	Stupak
de la Garza	Lipinski	Tanner
DeFazio	Lofgren	Taylor (MS)
DeLauro	Luther	Tejeda
Dellums	Maloney	Thompson
Dicks	Manton	Thornton
Dingell	Markey	Thurman
Dixon	Martinez	Torres
Doggett	Mascara	Torricelli
Doyle	Matsui	Towns
Duncan	McCarthy	Traficant
Durbin	McDermott	Tucker
Edwards	McHale	Velazquez
Engel	McNulty	Vento
Eshoo	Meehan	Visclosky
Evans	Menendez	Volkmer
Farr	Mfume	Ward
Fattah	Miller (CA)	Waters
Fazio	Mineta	Watt (NC)
Fields (LA)	Mink	Waxman
Filner	Moakley	Williams
Flake	Mollohan	Wise
Foglietta	Murtha	Woolsey
Ford	Nadler	Wyden
Fox	Neal	Wynn
Frank (MA)	Oberstar	Yates
Frost	Obey	

NOES—248

Allard	Bonilla	Chrysler
Archer	Bono	Clement
Armey	Brewster	Clinger
Baker (CA)	Brownback	Coble
Baker (LA)	Bryant (TN)	Coburn
Ballenger	Bunn	Collins (GA)
Barr	Bunning	Combest
Barrett (NE)	Burr	Condit
Bartlett	Burton	Cooley
Barton	Buyer	Cox
Bass	Callahan	Crane
Bateman	Calvert	Crapo
Bereuter	Camp	Cremeans
Bilbray	Canady	Cubin
Bilirakis	Castle	Cunningham
Bliley	Chabot	Danner
Blute	Chambliss	Davis
Boehlert	Chenoweth	Deal
Boehner	Christensen	DeLay

Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—6

Gibbons
McDade
McKinney
Meek
Rangel
Sisisky

□ 1527

Mr. BACHUS changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

□ 1530

AMENDMENT OFFERED BY MR. TAUZIN

Mr. TAUZIN. Mr. Chairman, I offer an amendment, the Mineta-Tauzin amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. TAUZIN: Page 26, beginning on line 1, strike section 37 through page 28, line 2, and insert the following:

''SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) SAFE HARBOR IN GENERAL.—In any private action arising under this title based on a fraudulent statement (as defined in section 10A), a person shall not be liable with respect to any forward-looking statement if and to the extent that the statement—

''(1) contains a projection, estimate, or description of future events; and

''(2) refers clearly (or is understood by the recipient to refer) to—

''(A) such projections, estimates, or descriptions as forward-looking statements; and

''(B) the risk that such projections, estimates, or descriptions may not be realized. The safe harbor for forward-looking statements established under this subsection shall be in addition to any safe harbor the Commission may establish by rule or regulation.

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For the purpose of this section, the term 'forward-looking statement' shall include (but not be limited to) projections, estimates, and descriptions of future events, whether made orally or in writing, voluntarily or otherwise.

''(c) NO DUTY TO MAKE CONTINUING PROJECTIONS.—In any private action arising under this title, no person shall be deemed to have any obligation to update a forward-looking statement made by such person unless such person has expressly and substantially contemporaneously undertaken to update such statement.

''(d) AUTOMATIC PROCEDURE FOR STAYING DISCOVERY; EXPEDITED PROCEDURE FOR CONSIDERATION OF MOTION ON APPLICABILITY OF SAFE HARBOR.—

''(1) STAY PENDING DECISION ON MOTION.—Upon motion by a defendant to dismiss on the ground that the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section and that the safe harbor provisions of this section preclude a claim for relief, the court shall stay discovery until such motion is decided.

''(2) PROTECTIVE ORDERS.—If the court denies a motion to dismiss to which paragraph (1) is applicable, or if no such motion is made and a party makes a motion for a protective order, at any time beginning after the filing of the complaint and ending 10 days after the filing of such party's answer to the complaint, asserting that the safe harbor provisions of this section apply to the action, a protective order shall issue forthwith to stay all discovery as to any party to whom the safe harbor provisions of this section may apply, except that which is directed to the specific issue of the applicability of the safe harbor. A hearing on the applicability of the safe harbor shall be conducted within 45 days of the issuance of the protective order. At the conclusion of the hearing, the court shall either dismiss the portion of the action based upon the use of the forward-looking information or determine that the safe harbor is unavailable in the circumstances.

''(e) REGULATORY AUTHORITY.—The Commission shall exercise its authority to describe conduct with respect to the making of forward-looking statements that will be deemed not to provide a basis for liability in private actions under this title. Such rules and regulations shall—

''(1) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

''(2) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

''(3) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 of this title will be deemed not to be in violation of this title. Nothing in this section shall be deemed to limit, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under other statutes under which the Commission exercises rulemaking authority.''.

Mr. TAUZIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. TAUZIN. Mr. Chairman, I yield to the gentleman from California [Mr. MINETA].

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

Mr. MINETA. Mr. Chairman, the amendment that the gentleman from Louisiana [Mr. TAUZIN] and I are offering addresses the issue of the safe harbor for forward-looking statements—statements made by companies and others about the future prospects of earnings, products, technologies or the like.

Mr. Chairman, if a company fails to meet analysts' earnings projections—or other projections—because of changes in the business cycle or a change in the timing of an order or contract, the company often finds itself faced with a lawsuit. In fact, more than one out of every two companies in Silicon Valley have been subject to a class action securities lawsuit. Many of these lawsuits are based upon forward-looking information.

Once a company experiences a drop in stock price or if earnings fail to meet expectations, plaintiffs' lawyers use the discovery process as a fishing expedition to find any statements or records within a company that could support an allegation of fraud. Quite often, they base their charges of fraud on what they allege are false and misleading past statements of future expectations. Technology companies are prime targets for this type of senseless litigation because of the nature of the technology industry. By definition, forward-looking statements in the high tech industry involve a future product, innovation, or technology. Failing to meet one expectation or another is often inevitable.

Why is a safe harbor for forward looking information important? Because the threat of costly and disruptive litigation has a chilling effect on the willingness of companies to make disclosures in the marketplace. And over the long term, less information results in a less efficient marketplace. According to a recent study, technology companies are sued far more frequently than any other industry, and pay the highest settlements of any industry—averaging over $9 million per

case. A National Venture Capital Association study of over 200 publicly traded entrepreneurial companies found that 71 percent reported being more reluctant to discuss company performance with analysts or the public. To all of these companies, the SEC safe harbor rules have proven to be legally nonexistent.

Let me offer you two Silicon Valley examples:

John Adler, CEO, Adaptec, a Silicon Valley high technology company. Mr. Adler says Adaptec has adopted a ''no communications'' policy, which ''means they say nothing beyond what they must disclose by law.''

Scott McNealy, CEO, Sun Micro-systems, spoke of his company's policy of offering only ''limited guidance'' to Wall Street analysts. Concluding that the legal risks of providing earnings and revenue projections to Wall Street analysts are too high, the company no longer releases this information and refuses to comment directly on analysts' projections.

Mr. Chairman, technology companies are popular targets for class action lawsuits because of several industry-wide factors which provide grist for the securities litigation mill: First, they have many new cutting edge products, which sometimes do not succeed in the marketplace; second, their earnings and stock price are volatile; and third, they have a custom and practice of paying officers and employees in part with stock or stock options.

These factors are seized upon by plaintiffs' lawyers over and over again to create a false picture of fraud by technology companies, where none in fact exists. For example, if a company announces that earnings during the quarter were negatively affected by various external market factors, plaintiffs' lawyers proceed to sue the company, accusing it of fraud for having failed to predict the adverse effects of price competition, and so forth. These cases involve nothing more than fraud by hindsight, the basic theory of which is that the company should have known, or must have known, that the future would not be as predicted. The safe harbor rules have proven ineffective to stop this type of abusive litigation.

Faced with a barrage of suits alleging fraud by hindsight, it is no wonder that technology companies have become reluctant to provide forward-looking information to the market.

Another phenomenon which is almost universally experienced by technology companies, and is predominantly a function of customer behavior, is the extremely uneven pattern of bookings during a particular quarter. Many technology companies will experience a significant percentage of bookings in the last few weeks of a quarter—the so-called hockeystick—as a result of customers waiting until the end of the quarter to negotiate the best deal. The hockeystick pattern makes the task of predicting revenues and earnings extremely difficult, particularly for technology companies selling higher-priced products and equipment, where the loss of just a few orders will make or break the quarter.

A number of recent class actions have been brought against companies which missed the quarter, but did not know that would occur until just a few weeks—or in some cases, days—before the end of the quarter. Nevertheless, under the fraud by hindsight theory, these companies have been sued for not having predicted the future, and for giving supposedly baseless statements of optimism at the beginning of the quarter. The safe harbor rules have utterly failed to protect these companies from abusive shareholder litigation.

Mr. Chairman, the litigation risks associated with making forward-looking disclosures also have been compounded in recent years by two key developments in the caselaw: First, the so-called duty to update, and second, the judicial refinement of the bespeaks caution doctrine.

Very frequently, companies provide soft forward-looking information to the market, such as ''demand should continue to be strong for our products.'' The duty to update would authorize a claim, even when the original statement was true when made, if the company does not timely inform the market when demand no longer is strong. Under this rule, the requirement to track all forward-looking statements given to the market, including soft information, and continually update it, can quickly overwhelm the abilities of even the most dedicated of companies. Further, companies cannot reasonably rely on risk factor disclosures, since plaintiffs may argue that a company disseminated literally dozens of cautionary statements to cover all the specific risks and contingencies it sees in its futures business. In short, companies continue to proceed at considerable peril in making forward-looking disclosures.

Mr. Chairman, my amendment is intended to promote maximum disclosure by corporate executives by providing a safe harbor for forward-looking statements if, and only if, certain requirements are met. Only statements involving projections, estimates or descriptions of future events are covered. In order to be protected the statements must be referred to clearly as forward-looking statements or be understood as forward-looking statements. Second, the risk that such projections, estimates or descriptions may not be realized must also be clearly stated.

This approach has broad support in the business community.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(At the request of Mr. MINETA and by unanimous consent, the gentleman from Louisiana, Mr. TAUZIN, was allowed to proceed for 2 additional minutes.)

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I continue to yield to my colleague, the gentleman from California.

Mr. MINETA. Mr. Chairman, it is supported by the American Business Conference, the American Electronics Association, the Association of Publicly Traded Companies, the Business Roundtable, the National Association of Manufacturers, the National Venture Capital Association, and the American Institute of Certified Public Accountants.

More importantly, Mr. Chairman, this approach has broad support among recipients of forward-looking information—the investment community. The California Public Employee Retirement System [CALPERS] stated ''We recommend that the existing safe harbor rule be amended to provide a safe harbor from private actions to any issuer who adequately couches its projections in cautionary language.''

This amendment is also consistent with the recent testimony of the executive director of the Council of Institutional Investors, representing hundreds of local, State, and labor pension funds.

Finally, this amendment would not prevent the Securities and Exchange Commission from bringing an enforcement action against any person on the basis of a forward-looking statement. It would only curb ''fraud-by-hindsight'' alleged in private, speculative strike suits. So, Mr. Chairman, this amendment will finally provide some clear guidance to companies in the area of forward-looking statements; it will maximize disclosure and improve the efficiency of the market, and most importantly it will provide investors with the ammunition they need to make sound decisions based on maximum information.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first and foremost, I want to congratulate my good friend, the gentleman from Louisiana [Mr. TAUZIN] and my good friend, the gentleman from California [Mr. MINETA] for offering this good amendment. It is an amendment that I plan to support. I encourage all of my colleagues to do so. In fact, on this side of the aisle, we have examined the amendment, and we would be more than happy to accept it.

I represent a community in my district that has a very high biotechnology presence, in Woodlands, TX. I am told constantly by these companies that they have to be very careful in what they say and how they disclose information. It is very difficult for them to communicate, particularly when they are trying to raise capital.

I think what the gentleman from California [Mr. MINETA] does in his statement is goes in a direction that provides that safe harbor, gives protection, and certainly puts investors on notice as to what is a forward-looking statement.

Let me also say that I believe this is a pro-investor, pro-disclosure amendment. I support it, because it is clear that if we do not provide an effective safe harbor for forward-looking information companies who disclose only boilerplate information specifically required by the Securities and Exchange Commission, in that instance, the investors does not win.

We have seen the study cited by my colleague. The threat of litigation has a chilling effect on disclosure of forward-looking information. In the end,

investors are deprived of valuable information.

Mr. Chairman, we should face it, investors want company officials to talk about their future prospects. Investors want to hear the opinions of company officials, analysts, and others. The SEC has said this kind of information is important to investors, but company officials cannot know with certainty what the future actually holds.

That is so true for my companies in the Woodlands. When they in good faith respond to questions from analysts, or when they talk or write about trends and future uncertainties, they risk being sued by some plaintiff's lawyer at some point in the future.

The Securities and Exchange Commission itself has recognized that it needs to provide a safe harbor for this kind of information or companies will never in fact disclose that information. However, the rules the SEC wrote years ago just do not work.

The area of the gentleman from California [Mr. MINETA] is an example: 19 of the 30 largest companies in Silicon Valley have been sued since 1988; the aggregate settlement cost was $500 million. A National Economic Research Association study found that high-tech companies were involved in almost one-third of the settlements analyzed, making the industry a disproportionate target of securities suits.

A National Venture Capital Association survey found that 62 percent of responding entrepreneurial companies that went public since 1986 had been sued by 1993, so there has got to be change, Mr. Chairman. We think that the safe harbor provisions of this bill are strengthened by this Mineta amendment. It offers the companies and others the certainty that they need.

The amendment also gives investors that information they need. It ensures that investors will understand that statements about projectsions, estimates, and future events are just that, projections, clearly identified as such. It requires that clear warnings are given that these projections may not be realized.

If these requirements are met, and only if these requirements are met, the safe harbor will be available. This is the Speakes caution doctrine, which courts have recognized. This is hardly a radical or new idea. We have had far too many lawsuits based on fraud by hindsight after people of good faith have made forward-looking statements, or for reasons beyond their control, fell short.

This amendment would curb those abusive private actions, but it does not affect the SEC's enforcement powers in any way. If the SEC has found any company has attempted to take advantage of the safe harbor by committing fraud, it could bring an injunctive action against the company, impose civil fines, impose sanctions on its officers or directors, refer the matter to criminal authorities, and get a court to order disgorgement of any illegal profits.

The range of enforcement powers of the SEC are simply not effective, so any suggestions that fraud would go unremedied are unfounded. This would also make it clear that the SEC has the authority to write additional safe harbor rules.

This is especially important because this amendment applies only to actions brought under the Exchange Act.

I want to conclude by complimenting my good friend, the gentleman from California, who has been a leader in this particular area, and also I want to compliment my good friend, the gentleman from Louisiana [Mr. TAUZIN].

□ 1545

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Mineta amendment. It will take only a minute of my time, but I want to clarify for my colleagues what the amendment will do and what the amendment will not do. This amendment will result in greater disclosure of information to investors. It will encourage corporate officials to give investors useful information about their future plans. It will prevent the ''fraud-by-hindsight'' lawsuits that are crippling our high-technology industries.

The bill will not give corporate officials a license to lie, because the authority of the SEC, the State regulators, the Justice Department and other law enforcement agencies will not be affected. It will not permit brokers or others to make promises about the company's prospects, because it clearly does not cover statements that are promises or assurances and it will not change the law of insider trading. If corporate insiders try to hype their company's stock and bail out before the investors know the real facts, they can be sued by the investors as well as by the SEC.

This amendment simply says that when company officials talk about the future, the statements must be taken in context, and when they give clear warnings that their projections or estimates may not come true, they cannot be sued by private actions.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FARR. Mr. Chairman, I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding. I asked him to yield for only one purpose and that is indeed to congratulate the gentleman from California for the excellent amendment.

This amendment has the unique advantage of being supported by both the high-technology community, which is the subject of many of these lawsuits, and by many investor groups. For example, CALPERS, the California public employees investment group, is in support of this approach. The executive director of the Council of Institutional Investors, a group of large corporate and labor union pension funds, has endorsed this approach. It is the right approach, it brings us closer to the bill the gentleman from California [Mr. MINETTA] himself has cosponsored and filed in this session and in former sessions of the Congress. I want to congratulate him again for this fine work and urge adoption of the amendment.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I too want to join in congratulating my colleague, the gentleman from California [Mr. MINETA], for offering a very constructive proposal on safe harbor. It is in fact part of the legislation that we had intended to change in the committee but because of our deadline to bring the bill to the floor, we determined that it would be best accomplished on the floor of the House. But I do not want anyone to think that because this amendment is being made on the floor that it has not been carefully discussed and thoughtfully considered.

It has had the complete benefit of analysis by every member on our Committee on Commerce, and I think the gentleman from California, who is not on the committee, is to be congratulated for broadening that discussion and that debate and the support for this amendment to be on the committee.

This amendment does a number of things that is really long overdue in the area of forward-looking information. It codifies the ''bespeaks caution'' doctrine in effect, something that we have found very workable in the common law, and now we are making it very clear as a matter of congressional policy, very clear as a matter of statute, that we intend to do that in the securities laws themselves, in the positive law.

A very important part of this amendment is that it will permit people who project honestly and diligently the future as best they can with the limited tools that all of us have to prognosticate, permit them to avoid a lawsuit on the basis of those statements.

CALPERS testimony was just referred to by my colleague the gentleman from Louisiana. I want to read just briefly from that testimony. This is of course a huge investor of pension funds. Their view is from the investor standpoint.

They say, ''By definition projections are inherently uncertain.''

''The more such statements are based on assumptions susceptible to change, the less useful they are in assessing prospective performance. Investors recognize this and appropriately discount the importance of such information when making investment decisions. We see no reason why investors should then be allowed to rely upon such statements in an action for fraud after the speculative nature has been fully disclosed.''

That is precisely the basis for this amendment. What my colleague the

gentleman from California does in his amendment is put into law a clear, understandable and readily accessible procedure to automatically stay discovery and to avoid all the rest of the lawsuit while the court takes a look at whether the safe harbor applies and we do not get ourselves mixed up in long months and years of discovery on the general lawsuit itself until first we dispose of this question of the safe harbor. It makes it truly a safe harbor.

This is very much the approach that I think we ought to take. For some time, we have asked the SEC to help us with rules in this area. But as we worked on this legislation, we discovered that the SEC itself did not want the responsibility of writing the court procedures for early dismissal of an action, the court procedures to stay discovery, because that would put an independent agency of the Federal Government in the business of writing rules to govern the article 3 courts. It is appropriately the role of Congress to do that in the statute.

I think what we have got here, in sum, is a safe harbor provision that will work, it is clear and easy to understand for all of the people, not just the issuers of securities but people who talk about securities, for their business, the analysts, the people on the telephone and so on, people will not be afraid to talk about the future anymore for fear of a lawsuit; and we have satisfied the concerns of investors who desperately want this information.

Right now, we have something of a black market in forward-looking information. Nobody wants officially to state for the record, least of all CEO's speaking to the press, what might happen in the future of their company because they know they might be sued if they are wrong, if they guess wrong about the future. But investors all want this information. They are interested mildly in the track record of a company, what has happened in the past, but what they really want to know is what is going to happen if I buy this security, if I buy this stock or this bond today, tomorrow and the next day, what will happen in the future, is this a good investment or not?

It is that future information that matters the most, that is what the market demands, and the market gets it after a fashion right now, they get it in whispered conversations, under the table, it is a black market, it is not the best information, it is not the highest quality information, and we would like it to be. That will be the effect of this amendment. It has been adequately demonstrated, I think, to everyone's satisfaction that this will help investors in that fashion, it will help issuers, it will stop frivolous and abusive lawsuits, which is precisely the centerpiece of this bill.

I heartily endorse it. I congratulate my colleague the gentleman from California for bringing it, and I am happy to support it.

Ms. HARMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, I am pleased to join in the bipartisan effort to clarify and improve upon the safe-harbor language contained in the securities litigation reform bill.

Investors, the SEC, and securities analysts all agree that forward-looking information, that is, information about a company's future prospects, is critically important to investors. Such information is particularly important to investors of high-technology, high-growth companies, whose very existence pushes the boundaries of technology that are essential to our economy's future growth.

By their very nature, the statements of these companies involve a future product, innovation, or technology whose performance is subject to the vagaries of the economy.

By their very definition, projections of performance are inherently uncertain and it is often inevitable that the company will fail to meet one or more analysts' expectations.

When these companies fail to meet analysts' expectations, they often face abusive lawsuits, which sap resources that could otherwise be used for research, product promotion, and market development.

As a consequence, corporate executives have been increasingly reluctant to make forward-looking statements. They are unwilling to put scarce assets at risk if a product is delayed or an earnings estimate is not met.

A study by the National Venture Capital Association of more than 200 publicly traded entrepreneurial companies found that 71 percent reported being more reluctant to discuss company performance with analysts or the public.

While the immediate loser of such practices are the companies dependent on raising capital in the markets, the ultimate loser is the investor, for whom these statements are invaluable sources of information.

Thus, it is not surprising that the safe-harbor language offered by my friend from Silicon Valley is supported by the investment community, the recipients of forward-looking information.

One of the largest institutional investors, the California Public Employee Retirement System said that ''a revision to the safe harbor is warranted in order to better balance the dual objectives of maintaining efficient capital markets and promoting investor protection.'' The safe-harbor amendment achieves this balance.

I urge its adoption.

I yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I thank the gentlewoman for yielding.

I want to congratulate her on her statement. It is exactly correct. The adoption of this amendment not only furthers the cause of this legislation, which is to encourage good disclosure, but certainly to make it clear that forward-looking statements, particularly when they are carefully framed the way this amendment requires them to be so that investors are warned in advance that these projections may not be realized, is the way in which to protect against both these kinds of lawsuits, and at the same time encourage information to come forward above the table, not under the table.

I congratulate the gentlewoman on her statement.

Ms. HARMAN. I appreciate that.

I would make one additional point, that is, the bottom line from this amendment is more information, not less, to investors, and everyone wins from that practice.

Mr. TAUZIN. The gentlewoman is correct.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the subject matter on the floor at this time is an extremely sensitive one, because it deals with the public materials made available to investors in this country, and upon that information, investors make their decisions as to whether or not they should put their money into any particular company in this country.

If you are CALPERS, that is, this huge institutional investor, you do not have to worry. You are able to hire dozens of extremely sophisticated analysts to give you all the information you want. So it would make sense for CALPERS to sign up on something like this. I think they are wrong. I think they should be embarrassed, because they know that the ordinary investor does not have the same kind of access to information. Perhaps they are looking for more people to sign into CALPERS as their agent to do this kind of analysis. But for the ordinary investor, they are dependent upon the prospectuses, upon the annual reports, upon the registration reports, upon the quarterly reports of publicly held companies.

Now, a forward-looking statement under historical definition is one which the company makes projections about what they think is going to happen. Inside the contours of that statement, they have to be respectful of the truth as opposed to absolute outright conjecture.

For example, you cannot say today in your forward-looking statement, ''And over the next year, we expect to find the cure for AIDS. And we expect to see our stock increase in value 1,000 percent.''

''And, by the way, the cure for cancer could come in one year, but that might be a two-year project and then we expect to see yet a doubling again of our stock.''

That kind of forward-looking statement historically has not been allowed, unless you know that is going to happen, because people might think that you are asserting that you are going to find a cure for AIDS, or for cancer, or some other breakthrough in some other area of American entrepreneurial endeavor.

You can, however, make a forward-looking statement about what you think looks reasonable for the future, reasonable.

What we have in this amendment is for all intents and purposes not a safe harbor. A safe harbor is something we can all support and historically we do, and the Securities and Exchange Commission right now is in the process, as the experts in this field, of drafting new safe harbor legislation, new regulation for this country.

□ 1600

But if this particular amendment passes, we are going to have to change the old statement to be amended to ''lies, damn lies, and forward-looking statements'' because you will be able to say whatever you want and you will be protected.

And here is the language in the amendment that makes that possible, it is pretty simple:

> A person shall not be liable with respect to any forward-looking statement if the risk that such projections, estimates, or descriptions may not be realized is made part of the statement.

So you just have to say after 30 pages of describing the cure for AIDS and the cure for cancer, psoriasis, and baldness and then put in one sentence that says, ''the risk that such projections, estimates, or descriptions may not be realized,'' that is it, that could be a footnote, but it will be in there after 30 pages.

Now if you are CALPERS you will find it. You are hiring summa cum laudes from Stanford or Harvard Business School to read these things for you. You are investing billions of dollars. But what about the tens of thousands of individuals who are just going to be relying upon a prospectus? They are going to be reading this statement without any real knowledge that in fact this one little sentence is the disclosure, the inoculation against suit after you put your life savings in this company thinking they are guaranteeing.

So I do not have any problem with forward-looking statements. As a matter of fact, I could even construct this amendment.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unanimous consent, Mr. MARKEY was allowed to proceed for 1 additional minute.)

Mr. MARKEY. I can even imagine a situation where we draft something that allows for even those kinds of statements to be made. But of course we would have to put some kind of skull and crossbones around it and inside of the statement so we differentiated it from the facts ma'am, nothing but the facts in terms of what the actual condition of the company is.

So this is, in my opinion, a very dangerous amendment. We can change the forward-looking statement regulations of this country. I do not have any problem with doing that and I think a lot of CEO's in this country need some relief, and I think we can work with them to do it. But the way this is drafted right now, the single worst, most unscrupulous business executives in this country will be free to make any kind of misstatements they want and by just making this very simple disclaimer that the estimates may not be realized, they are off the hook. And they will hire the fanciest law firms in America to draft a 30-page statement with this one line in it and it is caveat emptor out in the marketplace, running completely contrary to our long history of disclosure and protection for investors.

So this is not a safe harbor, this is a safe ocean of fraud, and the SEC will have to wage a two-ocean struggle with limited resources to keep track of all of the fraud and misrepresentation that will be possible. I sincerely hope that the Members would reject this amendment. I think it can be drafted in a way which does in fact comport with the needs to reform the forward statement conditions under which we are now operating, but this is not that amendment.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from California.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has again expired.

(At the request of Mr. MINETA and by unanimous consent, Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. MINETA. Mr. Chairman, under the example the gentleman gives, it seems to me that the SEC would still be able to bring an action against the individual, or there are State regulations or there is common law fraud that would still subject the maker of those kinds of statements to action.

Mr. MARKEY. If I may reclaim my time, it is not the SEC we are talking about in this particular legislation, it is the investor, him or herself who will be limited in their ability to sue to get money back for themselves.

Mr. MINETA. In my opinion, if my friend would further yield, it seems to me that again in those instances, the gentleman used the example of CALPERS as a number of us did, it seems to me that whether they are sophisticated individuals who are investors, or the grandmother who wants to buy stock for grandchildren, that they would still be subject to the provisions of this bill and that they are going to be subject to suit.

On the other hand, let me also mention where the gentleman said the SEC is drawing rules on this right now, as I understand it they are just looking at the issue. They have done nothing to get into rulemaking or even holding a hearing on this issue.

Mr. MARKEY. If I can reclaim my time, the SEC comment letter to the committee on it said:

> Because the Commission is in the midst of a rulemaking proceeding, it would be inappropriate to take a position on the substantive safe-harbor provisions. The most appropriate solution to the issue, from the Commission's perspective, would be a provision directing the Commission to complete its rulemaking proceeding and report back to Congress.

So they are in the midst of doing the rulemaking on this issue right now and they have been, and again, the point is that we are stripping individuals from their ability to sue, not the SEC to bring an enforcement action. We want some ordinary person who has put $50,000 or $100,000 of their own money into a company, maybe even $1,000 of their own money into a company under completely, or almost fraudulent, not almost, but actually a fraudulent set of misrepresentations made by the company.

Mr. WHITE. Mr. Chairman, I move to strike the requisite number of words, and I rise to speak in favor of the amendment.

Mr. Chairman, I am new to Congress and new to the Commerce Committee. I would like to say in the very short period of time I have been on the Commerce Committee I have developed a great deal of respect and even admiration for the gentleman from Massachusetts. I think he does a very good job of explaining his points to us. But I have to say he is absolutely dead wrong on this issue because this is a case where it is the ordinary investor not the large investor that will benefit from this amendment.

The securities laws as they exist now are an example of laws that are distorted by our legal system to work against the purposes for which they were actually intended. These laws were designed to promote disclosure, and yet the threat of liability is so great, the uncertainty is so great, that companies are restrained and prevented from disclosing information that they would like to disclose.

It is not the large investor who suffers. The large investor will figure out that information. They do have staffs, they can get that information on their own, but the small investor, precisely the person who needs to have this information and who would benefit from a little bit greater information flow, does not get this information.

Mr. Chairman, I spent the last 15 years or so representing small companies in the Seattle area, and in that area we have hundreds and hundreds of small technology companies, biotechnology companies, just the sort of companies that would love to disclose lots of information to the public. They

do not do so because of the threat of liability that exists under the current law.

It is absolutely essential for the ordinary investor to get this information, and this amendment is long overdue to allow that information to be disclosed.

So I would urge every single one of my colleagues to vote for it.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I appreciate the gentleman yielding because it is important to focus this debate again on companies that have actually been affected, and the fact that the safe-harbor language that is currently in place does not work.

Netrix, a typical small company located in Virginia went public in September 1992, and in 5 months the company's stock doubled in value. In February the company announced that the first quarter earnings for 1993 would be disappointing. The stock fell and the company was immediately hit with a lawsuit. In the weeks following the filing, Netrix had to produce 50,000 documents and 200,000 electronic messages to plaintiffs' attorney. The company estimated that to defend the suit would cost $250,000 and possibly millions more if it lost in an extended court battle. They settled the suit for $975,000. The lawyers got 33 percent plus expenses, shareholders were left with what amounted to about $400 per person.

Silicon Graphics, a California computer company, has been hit by four class action lawsuits in the past 3 years. In 1991 the company was hit with a lawsuit. The CEO, Ed McCracken, decided to fight the suit. After 1 year of legal dispute, the judge dismissed the suit. Two other law firms sued the company again. After another year of dispute, they settled for an undisclosed amount, perhaps close to $1 million. By that time the company had spent more than $1 million in legal fees.

Legent, a Virginia software firm, was sued within hours of acknowledging in July 1993 that its quarterly earnings would be lower than expected. Over the next 8 to 10 weeks the company had to provide 290,000 pages of documents to respond to plaintiffs' subpoenas. The CEO of the company spent nearly 90 percent of his time preparing the company's defense. Legent wanted to settle but was outraged by the amount. A Federal judge finally dismissed the charges, but by that time the company had spent $2 million in legal fees.

Mr. Chairman, this is abusive, particularly when you realize that the vast majority of the suits are against these high-technology developing, emerging companies.

We need the amendment offered by my good friend from Louisiana [Mr. TAUZIN] and the amendment offered by the gentleman from California [Mr. MINETA]. This is necessary for this legislation.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I thank the gentleman for yielding. I want to concur with the gentleman's earlier assessment that the safe harbor protects investors of all sizes. There is certainly no reason to think that the same investor who in one of the litigations that is covered in other parts of this legislation, who would be relying upon the fraud-on-the-market doctrine, would not rely for the same effect on what CALPERS or other large investors are doing when they assess information.

The market price, according to the fraud-on-the-market doctrine reflects knowable information enacted in a liquid market, and if we have big institutional investors that are pouring over all these prospectuses, reading all of the press releases and so on, if they are the big market makers and traders, of course, that gets translated to the price under what we call efficient markets theory as quickly as can be.

The CHAIRMAN. The time of the gentleman from Washington [Mr. WHITE] has expired.

(At the request of Mr. COX of California and by unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. COX of California. Mr. Chairman, would the gentleman yield?

Mr. WHITE. I am happy to continue to yield to the gentleman from California.

Mr. COX of California. Once that market price then reflects the assessment that CALPERS or some other institutional investor has made of forward-looking information, an individual who does not read the prospectus is put in the position of benefiting from that expertise. That is how the fraud-on-the-market doctrine works. That is why we were asked to put it into the legislation.

So it really does not do to say that the individual investor is left only with the prospectus, because as the gentleman knows, most individual investors, would that it were otherwise, do not read those prospectuses. It would be a much better market if everybody did, but just as shoppers go into grocery stores, and so many hasty shoppers like I used to be before I had kids, I would hurry myself down the down the supermarket aisle and just grab things, and go down the checkout and I would depend on all of the other shoppers actually looking at the prices in the supermarket and that is what kept the supermarket honest. It was not CHRIS COX when I was moving down the aisle that quickly.

But it is the same way with individual investors who would buy so many shares of stocks. They are not for such a trivial investment going to read the prospectus and read everything available to the investors, but somebody is, and it is in fact the case that the market is capable of discounting forward-looking information.

What is most important about this amendment is that the quality of forward-looking information that we have not got under the current rules is defective and it is injuring investors. Bad information is being traded on because it is the only information in many cases. When companies know things that could be of use to investors they are sitting on it because it may affect the future and they are afraid to say yes or no, here is what is going to happen. And we have material event disclosure already. We have to talk about things as they occur, but what about having a best estimate of the future? That is what investors want to know and that is what this amendment will get out to the marketplace.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment.

Mr. Chairman, I am going to try and make this simple enough so that all of my colleagues can understand, and so that a Philadelphia lawyer is not needed to interpret what is about here.

□ 1615

This does not deal, the amendment, with the authorities of the SEC. It deals, however, with the authorities of the ordinary citizen to go to court, to sue over matters in which he has been deceived, hoodwinked, or in which he has been taken advantage of my someone who has made a forward-looking projection or statement, provided that meets certain tests. Those tests are really very simple. They say that the disclosures are forward-looking statements and, second, it refers to the risk that the projections made may not be realized.

Once those two tests are met, no rascality, no deceit, no duplicity, no outrage, no falsehood, no misleading statement is of a character which would ban a citizen to go to court to seek redress for the fact that he has been deceived and that he has lost money because of that condition. That is all it says.

This is an immunity bath for wrongdoing so long as the disclosures say that they are forward-looking statements; and, second, that it refers to the risk that the projections may not be realized. If those conditions are met, this is an immunity bath, and any kind of rascality, any kind of deceit is fully justified.

This is an amendment which would have been loved by Mr. Ponzi, who was the builder of enormous fiscal undertakings which were bottomed on fraud, holding companies, and other kinds of misbehavior. This is the kind of proposal that would have been loved by Mr. Insull, who built himself an enormous empire of electrical utilities through devices which would have been sanctified under this by simply the use of the two devices which are set forth in the language of the amendment.

It will only be a little while if this is adopted into law that Members of Congress are going to have people saying, ''Why is it that you permitted this kind of behavior to go forward?'' And we are going to have to address our constituents as to why it is we have taken from the American investing public the protections which they now have with regard to truth, fairness, honesty, and integrity in the marketplace and in reporting and disclosures. It has all been done on the thesis there are a bunch of slippery lawyers out there forming a large number of citizen suits which I happen to think is occasionally a very good idea, but it is important that they keep in mind one thing: the end result of this is going to be that citizens are going to be less able to protect themselves from wrongdoing, and the protection that we have built up over prospectuses and other things is going to be shrunk significantly by the unfortunate language of this amendment.

Mr. HASTERT. Mr. Chairman, I rise in support of the amendment by the gentleman from California.

This amendment, to provide a true safe harbor, strikes a balance between the need to encourage companies to provide information to the marketplace and the need to protect investors.

The amendment requires companies to include a cautionary statement in their prospectus for investors. This statement, describing activities expected to be undertaken by the company, would make it clear to investors that the statement is forward-looking and inherently subject to risk because the statement may not come to pass.

If investors are properly warned, then the company will not be subject to suit for the statements made. This provides a true safe harbor for companies that want to reveal as much information as possible.

The amendment will also make clear that the SEC has the power and flexibility to provide other safe harbors.

The safe harbor provisions offered up to this point do not provide clear definitions, so they still leave companies vulnerable to lengthy and expensive litigation. It's not really a safe harbor if the jagged rocks and sandbars of continued litigation threaten to run U.S. companies aground.

Therefore, I urge my colleagues to adopt this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. TAUZIN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WYDEN

Mr. WYDEN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WYDEN: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly).

SEC. 6. FINANCIAL FRAUD DETECTION AND DISCLOSURE.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by inserting after section 13 (15 U.S.C. 78m) the following new section:

''SEC. 13A. FRAUD DETECTION AND DISCLOSURE.

''(a) AUDIT REQUIREMENTS.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission, the following:

''(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

''(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

''(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern over the ensuing fiscal year.

''(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

''(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting any audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(A)(i) determine whether it is likely that an illegal act has occurred, and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

''(B) as soon as practicable inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

''(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

''(A) any such illegal act has a material effect on the financial statements of the issuer,

''(B) senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to such illegal act, and

''(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement,

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

''(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors has received a report pursuant to paragraph (2) shall inform the Commission by notice within one business day of receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished the Commission. If the independent public accountant making such report shall fail to receive a copy of such notice within the required one-business-day period, the independent public accountant shall—

''(A) resign from the engagement; or

''(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) within the next business day following such failure to receive notice.

''(4) REPORT AFTER RESIGNATION.—An independent public accountant electing resignation shall, within the one business day following a failure by an issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

''(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

''(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C of this title, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b) of this section, then the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination whether to impose a civil penalty, and the amount of any such penalty, shall be governed by the standards set forth in section 21B of this title.

''(e) PRESERVATION OF EXISTING AUTHORITY.—Except for subsection (d), nothing in this section limits or otherwise affects the authority of the Commission under this title.

''(f) DEFINITIONS.—As used in this section, the term 'illegal act' means any action or omission to act that violates any law, or any rule or regulation having the force of law.''.

''(b) EFFECTIVE DATES.—As to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S–K (17 CFR 229.302(a)) of the Securities and Exchange Commission, the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1996. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1997.

Mr. WYDEN. Mr. Chairman, this amendment stipulates that if there is a major fraud perpetrated at a corporation and corporate management refuses to correct the abuse, the corporation's accountant would be required to report the fraud to government regulators. This amendment is important to the legislation we are working on, because fraud and abuse often result in securities litigation. By providing new tools to root out financial fraud, Congress can help prevent securities lawsuits from ever being filed.

Now, we all know that it is simply impossible to wave a wand and prevent greed. The taxpayers and investors have a right to expect that corporate management, to whom they entrust their savings, will not go out and steal from them, and our citizens have a

right to expect that those that they rely on to alert them to outright egregious cases of fraud, the public accountants who audit the corporate financial statements, will be at their post and ready to blow the whistle on a rogue executive. The Resolution Trust Corporation estimated that 40 percent of the savings and loan failures were attributable to fraud, but yet time after time the public accountants either did not know what was going on or simply did not tell anyone. The files now bulge with examples of companies that were shut down after receiving a clean audit.

For example, the General Accounting Office found that 28 of 30 savings and loans went bankrupt in California in 1985 and 1986 after receiving clean audits shortly before they went under. A most notorious example involved Mr. Keating and Lincoln Savings and Loan. The judge, when this case went to court, issued a blistering opinion and asked, ''Where were the professionals when these clearly improper transactions were being consummated? Why didn't any of them speak up or dissociate themselves from the transactions?''

Had the accountants blown the whistle when they should have, Mr. Keating could have been shut down much earlier and taxpayers and investors could have been saved a lot of money.

This amendment will provide the investing public with a truth serum for the corporate financial statements. The fun-house mirror that is used by ripoff artists and those with fraudulent intentions can be shattered. The word ''public'' in the title ''certified public accountant'' means that the auditors work for the public and not for management. They are not paid to compile a company's financial statements. That is the job of the internal auditor. The public auditor is paid to certify to investors and creditors that the statements that are compiled by the firm are accurate.

Let me close by saying that the Securities and Exchange Commission and the State securities regulators have long supported this amendment. To their credit, the accounting profession is now in support of the legislation.

I think that the staff on both sides, both the majority and the majority, probably can recite the language of this amendment by heart. We have worked cooperatively on this for many years.

Mr. Chairman, I yield to my friend, the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS of Texas. Mr. Chairman, I appreciate the gentleman yielding, and he is absolutely correct in the work that has been done through the years, the labor that he has put into this particular amendment.

I support the amendment, because it provides a more efficient mechanism for an auditor to report the discovery of acts of questionable legality to management, the board of directors, and, if necessary, to the Securities and Exchange Commission.

The current practice requires an auditor to resign if illegal practices are not addressed by the company. This can create an obvious disincentive to an auditor doing the right thing and pursuing his discovery up the corporate chain of command until it is addressed.

This amendment is the same legislation our committee and the House have reported out before, and I urge my colleagues to support the gentleman's amendment.

Mr. WYDEN. I thank my friend for his very gracious statement. He is absolutely right. We have passed this from our committee unanimously on several occasions.

Mr. Chairman, I would conclude by asking unanimous consent that debate on this amendment and all amendments thereto be limited to 15 minutes, equally divided, with the time I have already consumed to be counted against our side.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The CHAIRMAN. Is any Member opposed to the amendment?

If not, the Chair will allocate the remaining time by unanimous consent.

Mr. FIELDS of Texas. Mr. Chairman, if it is possible, we would like the time divided at this point. I do not have any requests for time, but I never know when someone might come on the floor, and I would ask if the gentleman would mind dividing the time equally.

Mr. WYDEN. I would be happy to do that, Mr. Chairman.

The CHAIRMAN. Without objection, the gentleman from Texas [Mr. FIELDS] controls 7½ minutes.

There was no objection.

Mr. FIELDS of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, I thank the gentleman very much for yielding. I asked him to yield only because this is going to be a consensus, and the gentleman from Oregon has already consumed most of his time, and I would like to have an opportunity to hear him again before the amendment is put to the House.

The Wyden amendment is consistent with H.R. 1058's goal of curbing the explosive growth of securities fraud lawsuits. It requires frauds to be detected, reported, and corrected before they become lawsuits.

The Wyden amendment will restore the confidence of the investing public in the integrity of financial disclosures made by public companies. It requires that audits include procedures designed to detect fraud and related-party transactions as well as to evaluate the issuer's ability to continue as a going concern.

It deters frivolous lawsuits against accountants by precluding private rights of action against accountants for any finding, conclusion, or statement expressed in the fraud reports made to the SEC by the accountant or by the accounting firm.

The amendment has already been reported unanimously twice by the full House, three times by the full Committee on Commerce. It is based on a solid record of 34 days of hearings conducted since 1985. It is a voluminous set of reports which covers just about every case from ESM to the American Savings & Loan Association case to the Home State Savings, the Z.Z. Best, Mission Insurance, Transit Casualty, the whole range of issues that have been raised over the last decade.

The gentleman from Oregon [Mr. WYDEN] has synthesized it into a single amendment with a set of recommendations which we believe go a long way toward insuring that there will be early and adequate detection of fraud by the accounting firms of this country, while inoculating them against suit in any of the activities which they undertake pursuant to the amendment which we are now considering.

Mr. FIELDS of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I, too, want to say not only a good word in favor of this amendment but in favor of its author. The gentleman from Oregon [Mr. WYDEN] has been a stalwart advocate for the proposition that when accountants do detect fraud that they make it known; they have a public responsibility, even though they are working for a private firm. His efforts in the last Congress to pass this amendment as a bill and move it into the Senate are well known by his colleagues on the Committee on Commerce, and I just want to make sure that the American public also is aware of his tremendous efforts to do that.

His efforts, combined with this bill, I think, will produce a combination that says when the public gets information it is going to be good information. When accountants detect fraud, it is going to get reported. We will have a better system that leads to fewer lawsuits and much more accurate information and hopefully many less of the problems that have engendered the debate we have had today.

The gentleman has been an extraordinary advocate of this proposition. I have been pleased to join with him in the past in favor of this bill.

I am pleased to say to the accountants' association, who have worked with him and I on this bill, and in deep support of it, and are anxious to see it become law, they, too, have recognized their public responsibility in this area as the gentleman has pointed it out so many times in the past.

I think we have come to closure on this issue. We begin to build a much better system with fewer lawsuits, hopefully fewer problems for investors, fewer problems for all of us who do not want to see problems settled in court,

but want to see good investments made with good information, and I again want to congratulate the gentleman and thank my friend from Texas for yielding.

Mr. WYDEN. Mr. Chairman, I yield myself such time as I may consume.

Let me just say that over the last 6 or 7 years under the leadership of the gentleman from Michigan [Mr. DINGELL] and the gentleman from Massachusetts [Mr. MARKEY], our subcommittee has held more than 20 hearings to examine the kinds of fraud that this amendment deals with.

□ 1630

That has been the bipartisan tradition in the Committee on Commerce. I want to thank the gentleman from Texas [Mr. FIELDS] for continuing that bipartisan tradition. I think this is going to help reduce the kind of problems that make for securities litigation.

Mr. Chairman, I yield back the balance of my time.

Mr. FIELDS of Texas. Mr. Chairman, I want to compliment our friend, the gentleman from Oregon [Mr. WYDEN], for this amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. WYDEN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BRYANT OF TEXAS

Mr. BRYANT of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BRYANT of Texas: Page 18, beginning on line 6, strike subsections (b) and (c) and insert the following (and redesignate the succeeding subsections accordingly):

''(b) PLEADING REQUIREMENT.—In any action arising under this title in which the plaintiff may recover money damages only if it proves that the defendant acted with scienter, the plaintiff must allege in its complaint facts suggesting that the defendant acted with that state of mind.

Mr. BRYANT of Texas. Mr. Chairman, one of the most, I think, difficult to understand portions of the bill before us today is the portion that has heretofore not been focused upon, regarding the requirements for pleading the case when a person might file if he has been defrauded by someone in the business of issuing securities.

The requirements of H.R. 1058 will, in simple statement, be impossible for real-life plaintiffs to meet because they require that investors who bring securities fraud cases must make specific allegations which, if true, would be sufficient to ''establish,'' which word comes from the bill, to establish that the defendant had acted knowingly or recklessly. That means prior to discovery when it is virtually impossible for plaintiff to establish the facts that would be necessary to meet this new requirement that would have to be known and filed with the case in the beginning or you could not even proceed.

I want to quote now: Plaintiffs would be required ''to make specific allegations, which, if true, would be sufficient to establish Scienter as to each defendant at the time the alleged violation occurred.''

That is to establish a knowing element on the part of the actor, the defendant, at the time the defendant committed the alleged violation.

Obviously, no defrauded investor could pursue a claim for fraud unless that plaintiff is lucky enough to have the clearest proof of each defendant's state of mind before filing suit.

State of mind is one part, but in spite of the specificity requirements of the Federal rules, state of mind is one part of the case that you cannot know, cannot prove in the beginning. Prof. Arthur Miller of Harvard University testified that an excessive pleading such as proposed in this bill is totally unrealistic. It is only in the rarest cases that this type of evidence exists in the beginning.

So, not only are we raising in this bill the bar so high that it would be almost impossible to win, not only are we making it impossible for average person to file cases because of the loser-pays provisions, but we are now saying that their filing must, in effect, allege, specifically cite so much evidence that you could prove the state of mind of the defendant from the very beginning.

Financial claims are complicated, more so than other types of cases. In many cases it is difficult to even understand the basic transaction. It can take years of work, reading documents and questioning witnesses to be able to put together the case to determine the defendant's state of mind.

Obviously, corporate defendants are not ignorant. They know not to make statement up front that can be used in this fashion. so it leaves the defendant or the plaintiff in a very, very difficult situation.

We had the director of the securities division of the Utah Department of Commerce, Mark Griffin, who testified on behalf of the State regulators, that,

This new pleading requirement would go well beyond what are current acceptable standards of pleading fraud with specificity. For example, plaintiffs may not know at the pleading stage information about a defendant's state of mind, which is usually not within a plaintiff's knowledge until after discovery.

No Federal court currently requires a pleading standard that is anything like the provision in this bill. Our distinguished former colleague, Judge Abner Mikva, now counselor at the White House, said it is very hard indeed, and almost impossible, for a plaintiff to know such things about a defendant's state of mind before his lawyers obtain documents and testimony in discovery.

In addition to the stat of mind requirement, this bill has a second flawed pleading requirement. Again, at the beginning of the case the plaintiff would have to set forth ''with specificity all information,'' they have to give all the information in advance that forms the basis for the allegations of the plaintiff, meaning any whistle-blower within a securities firm involved would have to be uncovered in the pleadings in the very, very beginning.

Third, a further deficiency in this bill is the language limiting the plaintiff to one amended complaint. That is, you file your complaint, and you had better comply with the specificity requirements I just mentioned and you only get one chance to amend your complaint.

Now, let me compare this, for example: In the suite filed against Charles Keating, talking about the civil suit filed by the defrauded bondholders in southern California, it was necessary for them to amend their securities complaint six times as new facts were discovered.

In the ZZZZ Best case, a notorious fraud in which the perpetrator and 10 others were convicted of crimes, there were 5 amended consolidated complaints before the case was allowed to stand.

As currently written, the bill would have prevented these cases from going forward, simply put.

My amendment would replace with the language my good friend from Louisiana [Mr. TAUZIN] set forth in H.R. 417, as introduced in the 103d Congress, with 180 cosponsors. The gentleman from Louisiana's [Mr. TAUZIN] language is better than what is in the bill today. What it simply says is there would be a heightened pleading requirement that goes well beyond current law with respect to fraud, but it is not so high as having to establish fraud without hard evidence.

My amendment would require that plaintiff alleged facts suggesting that the defendant acted intentionally or recklessly. It is the same language the gentleman from Louisiana [Mr. TAUZIN] used, the same language as cosponsored by the gentleman who is offering this bill today.

It is a heightened pleading requirement which was acceptable last year, and I would hope it would be acceptable this year. For goodness' sake, after all the other barriers raised in this bill, do not make it impossible for them to even file the case.

I urge support of the amendment.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, again I can appreciate the sincerity with which my colleague from Texas comes to the well. But pleading with specificity is something that every attorney should be prepared to do. Otherwise, the burden is unfairly required to guess what that person did wrong, what the defendant did wrong in a given set of circumstances.

H.R. 1058's provision is plain common sense. It requires a complaint to specify the statement alleged to be misleading. You have to ask the question: Is that unreasonable? Should not a defendant be told what he said or did not say that was misleading or fraudulent or that there was intent? The complaint must also specify the allegations which, if true, would be sufficient to establish scienter. Is it unfair to say to a plaintiff who wishes to sue for fraud that that plaintiff must plead the facts that, if they are later proven, would establish the case for fraud? To do otherwise is to sanction lawsuits where the plaintiff forces the defendant to guess how the defendant felt instead of merely producing evidence to defend himself.

Mr. Chairman, we talk about this all day, but what we are really aiming at in this legislation is to stop the frivolous lawsuit, not to stop the lawsuit, where there is a fraudulent statement made directly or indirectly by the defendant. We do feel that the defendant—it has to be shown that the defendant made such statement knowingly or recklessly and that the defendant possessed the intention to deceive, manipulate, or defraud. If we do not have a more specific pleading requirement in this statute, then you are going to see continued what has already been discussed today, and that is people watching to see stock prices fall, coming in with a very general pleading, going into protracted discovery where all types of information is required, tying up the efforts and the resources of offices and directors of that particular corporation.

We do not think it is too much to require that, under this particular type of lawsuit, there be better and greater specificity.

Mr. BRYANT of Texas. Will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentle for yielding.

Mr. Chairman, I would just like to point out that the language which is in my amendment is exactly the same amendment which Mr. TAUZIN introduced in the bill last year and which I suspect the gentleman from Texas, Mr. FIELDS, probably cosponsored, because 180 Members did. That was the bill to address the problem that this bill is addressing today, reportedly. Why would not the standard be as good as when it was introduced last year?

Mr. FIELDS of Texas. Mr. Chairman, we had the opportunity, first, to work on that piece of legislation. Second, the dynamics in this House and the Senate have changed. If you look at the requirements for explicit pleadings of scienter in our particular statute, I do not see that as being too burdensome for a plaintiff or a plaintiff's lawyer. It basically says he probably would add to subsection A, referring to scienter, section 10A applies to complaints,

> * * * shall specify each statement or omission alleged to have been misleading, and the reasons the statement or omission was misleading. The complaint shall also make specific allegations which, if true, would be sufficient to establish Scienter as to each defendant at the time the alleged violation occurred. It shall not be sufficient for this purpose to plead the mere presence of facts inconsistent with the statement or omission alleged to have been misleading.
>
> If an allegation is made on information and belief, the complaint shall set forth with specificity all information on which that belief is formed.

We do not believe that is a terrible burden for someone to carry as they walk into the courtroom door. That is the reason we have added the section.

Mr. BRYANT of Texas. Mr. Chairman, the principal point of my amendment is to point out what all lawyers agree to; that is, you can allege with specificity as required under the rules the violations of the law and the wrongdoing, but you cannot allege the facts which prove the state of mind of the wrongdoer.

The gentleman's bill requires someone to allege that in the very beginning, which cannot be done. Legal scholars agree it cannot be done. I am simply saying if you do that, that means no one can file a case. So why not make it higher than that presently, but make it a reasonable standard which can be met so that people can file these cases?

The gentleman's bill also says you only get one amended complaint. In the Keating case, they had to amend the complaint six times, as I said a moment ago, in order to get it together because they kept on discovering more and more detail.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

Mr. BRYANT of Texas. Mr. Chairman, I ask unanimous consent that there be a limit on debate of 20 minutes on the remainder of the consideration of this amendment, equally divided and controlled by both sides, and that request would go to any amendments to the amendment as well.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas [Mr. BRYANT]?

There was no objection.

The CHAIRMAN. The time is to be controlled equally by the gentleman from Texas [Mr. BRYANT] and the gentleman from Texas [Mr. FIELDS].

Mr. BRYANT of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL].

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

Mr. DINGELL. Mr. Chairman, I commend the gentleman for his amendment. The hard fact is that this legislation, as now drawn, makes it impossible to win without having both an attorney, a psychiatrist, and probably a psychic, because you must plead to prove the state of mind of the defendant in this litigation. And the way the language on this section is drafted, it also requires, for example, that you submit a witness list because you must literally, in your pleadings, include the names of confidential informants, employees, competitors, Government employees, members of the media, and others who have provided information leading to the filing of the case. And even where they have requested anonymity, ofttimes out of fear of retaliation you must submit those names.

This is not something which has been approved by the bar or by scholars. Bar groups, academics, and regulators have all opposed heightened pleading requirements. Arthur Miller, the Bruce Bromley Professor of Law at Harvard Law School, testified in 1994:

> The proposal seems to suggest that at the outset of the case, plaintiffs have the burden of proof of each individual defendant's state of mind. But this is totally unrealistic. It is not only in the rarest of cases that this type of evidence exists, under the best of circumstances requiring plaintiffs to plead defendant's state of mind generally calls for the drawing of subtle inferences from facts available prior to the institution, a task that is highly treacherous. It would be impossible in the vast majority of cases in which these facts are simply unavailable prior to the lawsuit.

Mark Griffin, director of the securities division of the State of Utah Department of Commerce, had this to say:

> This new pleading requirement would go well beyond what are currently acceptable standards of pleading in fraud with specificity. For example, plaintiffs may not know at the pleading stage information about a defendant's state of mind, which is usually not within a plaintiff's knowledge until after discovery. Therefore, such information could not be included in a complaint. It should be pointed out that this provision would appear to directly overrule, to directly overrule, rule 9B of the Federal Rules of Civil Procedures.

Beyond this, it must be observed there is something else here which has to be addressed, and that is a matter of very legitimate concern to those of us in this body. It is a fact that under this proposal, only one amendment of the pleadings would be permitted. Now, how do we compare that with existing law? Let us take the Lincoln Savings & Loan, the Keating fraud.

□ 1645

Plaintiffs were required to amend their complaint not once, but six times, before it met all requirements for defendants. The case ultimately led to recovery of $240 million for thousands of elderly victims who had been victimized. With that requirement, Mr. Chairman, there would have been no recovery in the Keating Lincoln Savings & Loan case. In the WPPSS scandal, where thousands of victims of fraud ultimately recovered over $750 million, Mr. Chairman, plaintiffs were required to amend their complaint several times before it met the requirements of all the defendants.

This proposal changes it. It keeps a requirement, a reasonable requirement for scienter, but it requires a reasonable number of occasions in which the pleadings may be reformed and may be amended. It is clearly fair. It is clearly proper. It protects the concerns of legitimate complaints, and it does not trammel or unfairly amend the provisions for existing Federal rules of civil procedure.

I urge the adoption of the amendment. The gentleman is wise in having offered it, and he deserves accommodation of the House. The amendment should be adopted.

Mr. FIELDS of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I was just, during the debate, refreshing my recollection about Dodd-Domenici. It is now S. 240 introduced January 18, 1995, for Mr. DOMENICI, Mr. DODD, who I need not remind people is now the chairman of the Democratic National Committee, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, on and on. It is a completely bipartisan group.

The provisions of Dodd-Domenici on specific pleading are a heck of a lot tougher than what we have in our bill because over in the other body they have recognized the problems that are created when someone launches a lawsuit which can take years and years and consume a whole lot of money on both sides with just vague conclusory allegations.

We have heard some horror stories, or not really horror stories because they never happened, but we have heard horror future fiction about what would have happened in old cases that were successful if the new rule had been put in place. We are told, for example, in one case they had to amend their pleading six times. Well, right now the current rules are sufficiently lax that nobody bothers a great deal when they file the complaint. In the very abusive cases we know they just roll them right off the word processor. The worst that can happen to them after all, since one can amend one's complaint nearly an infinite number of times, is that some judge will make them go back and amend it.

It is very difficult these days to get knocked out on the pleadings because one can simple amend. It is only when, even after amendment, people cannot state a cause of action. They end up losing on the pleadings, but it is not a logical form of argument to say that a case that was filed under the old rules where one could freely amend their complaint would have not make it if they could not have amended it so often. They simply would have taken more care in investigating the facts and bringing those cases to begin with, and what we heard about those cases is that the facts were on their side, that eventually they got it right even in their complaint.

The other thing we need to point out here is we are not asking anyone do anything other than allege. We are asking people to make an allegation. That is they can charge something. They do not have to prove it until later. But they have to know what it is they are charging. The definition of a fishing expedition lawsuit is one in which somebody does not know what they are after at first. They want to start the lawsuit to get the civil discovery tools to figure out their cause of action as they go along. They sort of make it up as they go along.

That is exactly the abusive kind of litigation we are trying to stop. This is the centerpiece of the bill that will permit us to stop it.

The language that is in Dodd-Domenici is:

> The complaint shall allege specific facts demonstrating the state of mind of each defendant.

Now we had a lot of complaint about that language on our side because people said, ''Well, you would have to be a mind reader in order to demonstrate the state of mind of each defendant.'' So now our bill no longer says that. It says that the complaint shall specify each statement or omission alleged to have been misleading. Those are objective facts and the reasons that the statement or omission was misleading. That is factual as well, and of course one only has to allege it.

The complaint shall also make specific allegations which, if true, would be sufficient to establish scienter. So one only has to allege things which, if true, if they were proved later, would add up to a case that meets all the requirements of the existing law.

Then we go on to say it shall not be sufficient for this purpose to plead the mere presence of facts inconsistent with a statement or omission. If an allegation is made on information and belief, the complaint shall set forth with specificity all information on which that belief is formed. These are all things that are within the capacity of anyone initiating a lawsuit to comply with.

So, we are left with the fact that the Bryant amendment is probably directed at the language that people have complained about in Dodd-Domenici, which I point out again is sponsored by some of our most liberal Democrats in the U.S. Senate. This is a bipartisan agreement that fishing expedition lawsuits are a bad thing and we should stop them.

I also should point out that we have heard that the bill that we are amending here would overrule 9(b), but in fact Federal Rules of Civil Procedure 9(b), rule 9(b), requires that one pleads fraud with particularity. Since these are fraud cases, Mr. Chairman, that is exactly what we are requiring here, and we do flesh out in greater detail precisely what we mean so we can avoid litigation on this subject.

Ironically the amendment is completely inconsistent with Federal Rules of Civil Procedure 9(b) because, while it requires that one pleads fraud or particularity, the Bryant amendment would let a costly lawsuit go ahead if the complaint only, quote, suggests that fraud may have occurred. This is a hunting license for aggressive lawyers and frivolous lawsuits.

Finally the Bryant amendment is inconsistent with court decision after court decision which have said that, when the plaintiffs cannot state what statements are false, they cannot proceed.

So, Mr. Chairman, we are on solid ground here, and I hope that we will reject the Bryant amendment.

Mr. BRYANT of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think, and perhaps in this debate more than most, it is just a question of who to believe. Mr. COX's characterization of this amendment is in my view completely incorrect, and I think that a careful study of it would cause most Members to agree.

When it comes to alleging fraud, Mr. Chairman, one must plead with specificity in order that the defendant might know what he is being charged with. The difference though is not with regard to alleging fraud. It is in the bill that is before us today, ''You must, as well, allege what's called scienter,'' which means there was a knowing element on the part of the defendant, and one must allege the specific facts which prove the knowing element.

That is why the gentleman from Michigan [Mr. DINGELL] said a moment ago, ''For the first time you're going to have to have a psychiatrist in your office if you're going to figure out a way to file one of these cases, and frankly even that wouldn't work. Basically they're raising the bar so high that nobody could file the case.''

I have taken in my amendment the same standard which these fellows over here all supported last year and which the gentleman from Louisiana [Mr. TAUZIN] introduced last year in his bill. It raises the standard from where it is today, but it does not go bananas, go to the extremes, that make it impossible for anybody to file a case, and the second thing the amendment will do is it would eliminate the portion of their bill which for the first time says, ''You can only file one amended complaint.''

I ask, ''Why would you want to stop a plaintiff from being able to file amended complaints?''

As the point was made by me and the gentleman from Michigan [Mr. DINGELL] together a moment ago in the Keating case, they had to file five or six amended complaints in order to finally get the case right because they kept on discovering things.

Let me show my colleagues one of the things they discovered right here. This is a blow-up of a document that

was given out to their bond sellers that was used to tell them what they ought to emphasize in order to sell those bonds. It says at the top up there, ''Capitalize on this,'' and then it goes over a series of sales points.

Look at the last one. Look at the last sales point on the second page of this memo. It says, ''No. 13, and always remember the weak, the meek and the ignorant are always good targets.'' Now that is what they found in their discovery efforts in the Keating case.

Under the bill brought forth today by the gentleman from California [Mr. COX], this would not have been allowed to have been pled in the Keating case because, after the first amendment, one cannot amend anymore, so they could not have amended their complaint based upon the finding of this document. These documents are not waiting around for plaintiffs to find them. In the beginning they have got to find them through discovery.

What my amendment would say is that we are going to require, continue to require, specificity in pleading in allegations made with regard to fraud. But we do not go so far as to say, ''You've got to plead the specific facts that prove scienter (that is knowledge) because nobody can get those facts. You can't file them,'' and under the bill before us today, if it has not been filed that way, they are going to be out court. So a person whose pension has gone down the drain, whose personal investments have gone down the drain, a person who has been defrauded, who has very few resources, even if he had a case, is not going to be able to get a lawyer to take the case because under the standard being brought to us today they could not win the case.

For goodness sakes. Let us at least go with the standard that these fellows said was the one we should go with last year rather than go with the standard of the new revolution in the House, which is go to enormous extremes.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Massachusetts.

Mr. MARKEY. As my colleague knows, the problem with this provision in the legislation is that it requires each person who has been defrauded, knows they have been defrauded, every bone in their body tells them that this financial advisor, this banker, this person that sold them this stock that has gone sour, defrauded them. But if they are going to sue, they have to be like Carnac. They have to be able to know exactly what was in the mind of the person who defrauded them, exactly on that night, December 18, 1993, when that person sold them or concocted the concept of defrauding the individual with the life savings losing investment which the person made as a result.

I say to my colleagues, you couldn't sue Charlie Keating. You couldn't sue anybody because, as the other person, absent the psychic Carnac-like powers, you're left to the marketplace to have a strong sense that you, in fact, have been defrauded, know that all of the circumstantial evidence points in that direction, but not be able to plead with the specificity that satisfies this Mount Everest of burdens which has been constructed.

And we have everyone from Anthony Lewis in the New York Times who has said it is very hard, indeed impossible for a plaintiff to know such things about a defendant's state of mind. We have Judge Abner Mikva who was an experienced Federal judge and is now counsel to the President who has spoken out against this smoking gun pleading requirement in the bill. This just creates insurmountable obstacles to an ordinary person being able to bring an action.

And remember the pleadings standard in the Bryant bill is identical to the Tauzin bill of last year. All we have done is taken the language that the gentleman from Louisiana [Mr. TAUZIN] had in his bill and brought it out here on the floor for those of my colleagues who supported the Tauzin bill last year.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

The Chair recognizes the gentleman from Texas [Mr. FIELDS] for 4 minutes.

Mr. FIELDS of Texas. Mr. Chairman, I yield myself such time as I may consume.

□ 1700

Mr. FIELDS of Texas. Mr. Chairman, since we spent most of today talking about intent, let us talk about what our intent is in this pleadings section. Let us also talk about what the effect is of our pleadings section.

Does the legislation as it is currently drafted, and particularly the pleadings section as it is currently drafted, bar a plaintiff or plaintiff class harmed by an untrue statement or material omission which was knowingly made and relied upon? Absolutely not.

In fact, we believe that the specificity of the pleading of facts required in this legislation should promote faster recovery at lower plaintiff cost; that the plaintiff should actually see a higher return when those type lawsuits are brought.

But it is important again to point to the facts, to constantly point to the facts that small and medium-sized companies alone have paid out nearly $500 million during the last 2 years, and we all recognize that settling a case is oftentimes cheaper and quicker than defending in court, and the problem is getting worse.

In the last 5 years the number of strike suits have tripled. The intent here is to stop the frivolous lawsuit, to stop the fishing expedition. If people do not think that happens, then I would be glad to refer them to a letter from a Mr. Dick Egan of Hopkinton, MA, dated January 16, 1995, this year.

In the body of the letter Mr. Egan talks about the two class action lawsuits filed against him. But let me just read down in the body of the letter where he says, ''Our second Strike Suit came in 1991 when we pre-announced that we would not meet analysts expectations.'' The expectation of analysts. ''We just weren't going to have a loss. In fact, we were (and still are) quite profitable. We just weren't going to meet the numbers someone else said we would.

''The stock tanked,'' to use his words, ''and we were sued by a law firm that makes a business by initiating strike suits against high-tech companies. They sued us within 48 hours on behalf of two Planitiffs which together owned only 300 or 400 shares* * *

''Of course the lessons we learned from the 1988 suit were not forgotten and now being a larger company and knowing we did not do anything wrong to mislead sharehoders, I decided to fight this one out.

''I am pleased to report that the Judge's verdict was rendered in our favor and contained the comments that 'this case was dead on arrival' and he would not 'allow a continuance of this fishing expedition.' Certainly it did not help the Strike Suit Lawyers case when we pointed out their motion contained throughout the name of a prior plaintiff.''

''Of course,'' Mr. Egan goes on, ''we still had to pay our legal costs which were over $100,000 and while I never estimated the cost and time lost through the discovery process, I'm sure it was it was twice as much.''

I will present this letter to anyone as an example of the type of fishing expedition, frivolous lawsuit this legislation is intended to stop.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I would just point out the language in the bill is much improved over the language last year that the gentleman from Texas [Mr. BRYANT] and I offered. If the language we had in the bill was so good last year, I want to know why we did not get a markup on the bill. This language is much better, much more specific. It is the kind of language that would prevent fishing expeditions. We ought to reject this amendment and pass this good bill.

The CHAIRMAN. All time having expired, the question is on the amendment offered by the gentleman from Texas [Mr. BRYANT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BRYANT of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 168, noes 255, answered ''present'' 1, not voting 10, as follows:

[Roll No 213]

AYES—168

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chambliss
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Cooley
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Engel
Evans
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McCollum
McDermott
McHale
Meehan
Menendez
Mfume
Miller (CA)
Minge
Mink
Moakley
Mollohan
Murtha
Nadler
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—255

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barton
Bass
Bateman
Bereuter
Bevill
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Farr
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
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Houghton
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Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
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Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Mineta
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
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Quinn
Radanovich
Ramstad
Regula
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Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
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Scarborough
Schaefer
Schiff
Seastrand
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Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—10

Bartlett
Bilbray
Clay
Gibbons
Hayes
McDade
McKinney
Meek
Neal
Rangel

□ 1721

Mr. MCCOLLUM changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MANTON

Mr. MANTON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MANTON: Page 7, beginning on line 19, strike subsection (c) through page 11, line 8, and insert the following:

''(c) AWARDS OF FEES AND EXPENSES.—

''(1) AUTHORITY TO AWARD FEES AND EXPENSES.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a default, a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether—

''(A) The complaint or motion is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

''(B) the claims, defenses, and other legal contentions in the complaint or motion, taken as a whole, are unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

''(C) the allegations and other factual contentions in the complaint or motion, taken as a whole, lack any evidentiary support or would be likely to lack any evidentiary support after a reasonable opportunity for further investigation or discovery; or

''(D) the denials of factual contentions are unwarranted on the evidence or are not reasonably based on a lack of information or belief.

''(2) AWARD TO PREVAILING PARTY.—If the court determines that the losing party has violated any subparagraph of paragraph (1), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the losing party violated any such subparagraph shall be made on the basis of the record in the civil action for which fees and other expenses are sought.

''(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

''(4) SANCTIONS AGAINST ATTORNEY.—The court—

''(A) shall award the fees and expenses against the attorney for the losing party unless the court determines that the losing party was principally responsible for the actions described in subparagraph (A), (B), (C), or (D) of paragraph (1); and

''(B) may, in its discretion, reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

''(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

''(6) DEFINITIONS.—For purposes of this subsection, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the king and quality of services furnished.

Mr. MANTON. Mr. Chairman, virtually all of the evidence assembled by the Commerce Committee during its consideration of the securities litigation reform issue indicated that Congress can and should take reasonable steps to reduce or eliminate frivolous securities lawsuits while at the same time protecting—rather than diminishing or even wiping out—the legitimate rights of defrauded individual investors to seek redress in our courts.

My amendment, based on rule XI of the Federal Rules of Civil Procedure, strikes that balance. This amendment provides that Federal courts *must* shift the cost of attorney's fees to the losing party if the court finds that the loser's arguments were frivolous or presented

in bad faith. Furthermore, this amendment would also require the court to impose sanctions on attorneys who bring these cases.

This is a tough standard but, and this is critical, it's also a fair standard.

The amendment responds directly to the concerns about frivolousness and abuse that underlie the legislation we have been considering.

The purpose of the legislation before us today is to deter those who exploit the otherwise effective laws Congress has enacted to protect the investor.

We have been told that securities lawsuits with virtually no merit, but which are expensive to defend, force companies into settlements.

According to many companies, these cases are sometimes brought in bad faith by lawyers whose sole interest is in securing a lucrative award or fees.

My amendment corrects this problem because it sends a clear message to Federal judges about their role in overseeing securities fraud cases.

It informs these judges that the Congress is dissatisfied with the discretionary approach to fee shifting adopted by the Supreme Court and the Administrative Office of the Courts, and wants fees and expenses imposed whenever a case is found to be frivolous or brought in bad faith.

My amendment also sends a message to overzealous plaintiffs' lawyers, because it will require the Court to impose the defendants' legal fees on them or the individual investor if the case is frivolous or brought in bad faith.

The approach of my amendment is superior to the fee shifting language contained in H.R. 1058 because my amendment does not mandate that judges require class action plaintiffs to post a bond before they can bring their case to court.

While I strongly support the concept of securities litigation reform, I cannot support a proposal to require ordinary people to pay for the right to have their day in court.

I understand my colleagues view that requiring undertakings from class action plaintiffs will curtail the number of suits which unscrupulous lawyers may bring. Fortunately, section 11(E) of the Securities Act of 1933 already grants judges the discretionary power to require class plaintiffs to post a bond.

This discretionary power allows judges to distinguish between the so-called professional plaintiffs and those plaintiffs who are professional, hard working Americans.

While I share my colleagues' interest in eliminating strike suits, the bill's reach is simply too broad, and would result in too great of a disincentive to plaintiffs with meritorious cases.

The approach taken in this amendment is vastly superior to the philosophy underlying the loser almost always pays rule contained in H.R. 1058.

□ 1730

Mr. Chairman, despite the so-called bipartisan support for this bill, I want my colleagues to be aware that virtually all witnesses with a reasonable claim to being objective and impartial strenuously oppose H.R. 1058's severe proposal to shift attorney's fees to investors.

The Securities and Exchange Commission opposes it. The group regulating the securities regulators from all 50 States oppose it. The group representing the officials in State and local governments who issue municipal bonds oppose it. The AARP, the National Association of Senior Citizens, and the Gray Panthers oppose it.

Consumer Reports, the Consumer Federation of America, and a host of other consumer groups oppose it. At least 65 of the Nation's leading corporate and securities law professors oppose it.

And the Economist, for years one of the world's leading voices in support of conservatism and the free market, believes that this type of fee shifting offends one of the most basic principles of a free society, and threatens to expel the middle class from the courts. The Economist concluded that this issue has by itself undermined the legitimacy of the entire British civil justice system. I can think of no reason why we would want to adopt any such rule in the United States

Make no mistake, my amendment is necessary to ensure that H.R. 1058 does not require average citizens to pay, that is, to post a bond, before they can have their day in court after they have been defrauded.

In a nutshell, this bill will require plaintiffs in a class action, who have lost the value of their nest egg because of corporate fraud, to put up good money after bad in order to simply earn the privilege of entering the courtroom.

My amendment clarifies Congress' intention with regard to whom this bill is designed to affect. It makes clear that it is only those cases which are frivolous or brought in bad faith which we want to discourage.

By eliminating meritless securities suits, we will serve to protect industry, but, and this is equally important, we will ensure that cases of actual securities fraud get the undivided attention of the public and our courts that they deserve.

Finally, I want to point out that I voted in favor of reporting securities litigation out of the Committee on Commerce. I suggest and recommend to all of my colleagues that if this amendment is defeated, they vote against the bill. I certainly will.

Mr. TAUZIN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, let me first commend my friend, the gentleman from New York [Mr. MANTON] for his attempt to, in effect, rewrite rule XI of the Rules of Federal Procedure in a way that is much better than rule XI, and to suggest that it be part of this act.

If this were the only chance we had to improve upon the condition of allocating the cost in a lawsuit, it would certainly be better than the existing law. His amendment is better than rule XI in two major respects, because it does make imposition of the fees mandatory and it does cover four clauses, not just the one clause covered under the current rule XI.

However, there is a better provision in the bill today than rule XI, and even this improved version of rule XI. The provision in the bill that is before us literally says that fees are going to be shifted in one of these cases only, and only under the following conditions:

First, that the position of the losing party was never substantially justified; that is to say, not only did he lose the case, not only did he dismiss the case, not only did he perhaps lose it on a motion for summary judgment, but that he never should have brought it in the first place. There was no substantial justification for bringing that case;

Second, that imposing the fees on the party who brought the suit with no substantial justification would not create an injustice, so the court has to make that substantial, substantive judgment;

And, last, that the cost of the fees on the prevailing party, the party who was sued unjustly, that the cost of those fees on that prevailing party indeed would be substantially burdensome and unjust, so the court has to make three findings.

Now, the Committee on Commerce did one additional thing in our effort to reach out to broaden support for the bill, and to make it clear that the court should use this fee-shifting arrangement only when these three things are proven. We put the burden of proof on all three of the things on the prevailing party.

In other words, if I bring a suit under this 10(b)(5) section of the law, I sue you and your company, and I lose that suit, and I lose it either on a judgment or a motion to dismiss, or I voluntarily dismiss it at some point, under our bill it would be your burden of proof to prove that I did not have a substantial, justifiable reason to bring that case. You have to prove the negative.

Second, you have to prove that it would not be unjust to make me pay your expenses in defending a suit I should not have brought.

Third, you have to prove that it would not be too much of a burden on me to pay my own expenses in defending that lawsuit.

What I am saying is, Mr. Chairman, that when we shifted the burden of proof to the prevailing party, we made it extremely difficult, I think, for the fee shift ever to occur.

Let me tell the Members two other reasons why the Manton amendment needs to be defeated.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, in layman's terms, as I interpret the amendment, and I agree, I respect the proponent of the amendment, the gentleman from New York, but as I read this bill, it cuts the losers-pay provision of the bill, because as I read this, it replaces the losers-pay language with language that would seem to make the attorneys of the party filing frivolous claims accountable.

Mr. TAUZIN. The answer is it could, because under rule XI the fees can be imposed on the attorney. However, my problem with it is bigger than that. The problems are the following:

First, rule XI does not allow sanctions in discovery proceedings. In fact, you cannot have sanctions where discovery proceedings have been conducted without justifiable cause. Rule XI, for example, permits the withdrawal of your suit or voluntary dismissal of your suit in order to avoid fee shifting.

Let's say you brought a suit against me you never should have brought. You have made me hire attorneys, you have kept my company in all kinds of legal trouble for a year or 2 years. Then it becomes clear that you should not have brought suit in the first place. The judge is about to impose sanctions on you, so you immediately withdraw the case. Under that scenario, under the Manton amendment, the judge could not impose sanctions, could not shift fees over to the party who should not have brought this suit.

In short, while it is an improvement over the existing law, and I must commend my friend for doing a good job in offering a solution that is better than existing law, the provisions of our bill are much better, much better, and this amendment should be defeated.

Mr. DINGELL. Mr. Chairman, I rise in support of the Manton amendment.

Mr. Chairman, I commend the gentleman from New York [Mr. MANTON] on his amendment on fee shifting. I rise in support of that amendment. As reported by the committee, H.R. 1058 would provide for fee shifting when the court determines that the loser's case was not substantially justified.

The bill, however, would require the court to order a bond from a plaintiff in a securities case. These are high hurdles in front of the courthouse door for any person, including those who have legitimate claims.

Let us talk first about the bond requirement. This section provides no guidance to the court on the amount of the bond or the form of the bond. It appears to me that a judge could require a middle-class plaintiff to post his or her house as collateral, or their retirement account, or the children's college savings as collateral. That is a high admission fee to the Federal courts.

I would remind my colleagues, the requirement for the bond is mandatory. It is absolute. The ''substantially justify'' test, as we are told, comes from the Equal Access to Justice Act. This act requires Government agencies to pay back attorney's fees to small businesses they sue when their case is not substantially justified. That is, I would note, however, a quite different case, Government against a small defendant.

Here we are talking about a little investor against a large and wealthy wrongdoer who has every incentive to run up the costs of the litigation. When the SEC brings a case, it does so only after it completes an investigation. That investigation involves the use of the investigative authority, including the subpoena power, which is possessed by the SEC.

Middle-class citizens have no such abilities. They do not possess subpoena powers. They should not be held, then, to the same standard as the SEC, nor should they be held to the same standard as the Federal Government.

Prof. Arthur Miller of Harvard Law School, who is perhaps the foremost expert in the area of civil procedure, has testified that fee shifting is almost invariably an intimidation device against plaintiffs. It is used to intimidate device against plaintiffs. It is used to intimidate plaintiffs and to preclude them from proceeding with the protection of their rights, using the courts as they properly should.

This is especially true in the class action cases where one investor, the class representative, could find himself responsible for the fees incurred by huge corporations defending against the claims of the entire class. Remember, these corporations use enormous numbers of lawyers to litigate. Whole floors of hotels are peopled with attorneys whose sole function is to run the plaintiff out of money and out of resources.

Who could then afford to bring an action against Merrill Lynch or Charles Keating or Baring Bank or the people who brought the Orange County debacle if, at the end of the day, there was not just a chance but an almost certainty that the investor would be required to foot the entire legal bill for a corporate defendant, if it were certain that he had to post a bond amounting to enormous sums of money to assure that his lawsuit was not frivolous, and that he would be able to pay if the lawsuit went against him?

Here we see a significant difference between a suit that is unsuccessful and one that is frivolous. We are all opposed, I think, in this body to frivolous lawsuits, and indeed, we should be. The Manton amendment makes a clear distinction. Not all lawsuits are successful, and many that are not should have been.

It does not have to be done to American citizens this way. We do not have to have unfair, harsh, and restrictive bonding requirements. We do not have to impose enormous burdens on American citizens seeking to use their courts to protect their rights against wrongdoing and against the loss of assets taken from them by malefactors of great wealth.

I urge my colleagues to support the Manton amendment. I urge them to be fair to the little people of this country.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the last word.

Mr. Chairman, once again, I appreciate the manner in which my good friend, the gentleman from New York [Mr. MANTON], brings this amendment, but it is our opinion that the language of the amendment as it is currently drafted does not write rule XI of the Federal Rules of Civil Procedure into the law.

The current system that this statute is dealing with makes it easy for entrepreneurial plaintiffs' lawyers to file speculative suits simply for their settlement value. There is little risk. Plaintiffs' lawyers take these cases on a contingency basis, and since over 90 percent of the cases settle, they are basically guaranteed a recovery.

That is why we have come in with the language that we have. It is essential that reforms to the system must change the incentives so plaintiffs' lawyers will weigh the merits of the lawsuit before racing to the courthouse.

The language that is in the statute is not an automatic loser-pay type of situation. Judges retain ample discretion under the statute as it is drafted. The court may impose attorney fees only when a party pursues a case that lacks substantial justification, and imposing the fee on the loser or making the winner pay his own fees would not be unjust.

These will not be shifted in close cases, only those that should never have been brought. That is the purpose of this particular section of the statute.

The court has discretion to require all or part of the winner fees to be paid by the loser's attorney, rather than the losing parties themselves. This discretion allows the court to avoid undue hardship, while still sending the message that bringing frivolous litigation will result in penalties.

Armed with the knowledge that their fees are recoverable, defendants will have greater resolve to resist settling what many have begun to call nuisance lawsuits. Plaintiffs who prevail will not lose any of their rightful damages in paying huge attorney fees because the defendant will be forced to pay for having chosen to fight the plaintiff's meritorious claim.

Mr. Chairman, I would also like to go to the statute for just a moment, because much has been made of the undertaking required. I want to read this section of the bill that is labeled ''Security for payment of cost in class actions.''

It says in the statute that,

> In any private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both in such proportions and at such times as the court determines are just and equitable for the payment of the

fees and expenses that may be awarded under paragraph 1.

□ 1745

We believe, Mr. Chairman, that this statute grants wide latitude and great discretion to that trial judge. We did that for a very important reason. Because there are cases in which the judge may come in and say that stock is put up to satisfy that undertaking, or perhaps a dollar. So that is why that was built into this particular statute. By striking this, I think it makes the effort that we have mounted today defective and therefore I urge rejection of the Manton amendment.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank my friend for yielding. He stated very well the case against this amendment. If the case against this amendment were ever made perhaps even more eloquently than my friend from Texas, it would have been the judge in the 1989 decision entitled Necklin versus Weatherly Securities, Inc. In that case the judge held, and I quote, plaintiffs have not alleged a single fact which supports an inference of fraud.

He dismissed the case. But he declined to impose sanctions. The bottom line is that even in a case where the judge found that there was not even an allegation of an inference of fraud, he declined to impose sanctions under rule 11. I know the gentleman makes it mandatory under his amendment. The problem is that rule 11 has been terribly ineffective and even codifying it is not going to work. The provisions we have adopted out of the Committee on Commerce in this bill are much stronger and at the same time they give the judge great discretion to do what justice requires. If someone brings a lawsuit and they should not have brought it, not even substantially justified, but it would still be unjust for the judge to impose costs on them, when he dismisses the suit, he can do so.

But the gentleman knows as we have discussed this thing even further, there is even one greater reason to oppose the gentleman from New York's amendment, and, that is, if you want to avoid the deterrent sanction of this bill, under the gentleman from New York's amendment, all you have to do is hurriedly dismiss your suit right before the judge imposes the sanctions, because his amendment lets you do that. Under our amendment, you cannot get away with that.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 2 additional minutes.)

Mr. FIELDS of Texas. I asked for 2 minutes so that I could first of all compliment the gentleman from New York and just say how much I appreciate the gentleman's sincere efforts in working out this section. I appreciate that deeply. I wish that we could have come to closure, but I did want to make this statement that the gentleman has made an honest attempt. I wish we could have come to closure.

Mr. MANTON. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from New York.

Mr. MANTON. I thank the gentleman for his kind words, Having the time, I would direct the question to the gentleman from Louisiana, referring to the case he just cited, if I understood correctly, in that case the judge found that the plaintiff's case was not meritorious, but if I understand the legislation before us that I am attempting to amend, you have to put the bond up in advance, it is a precondition before the judge decides anything. Am I correct?

Mr. TAUZIN. If the gentleman from Texas will yield, the judge may impose the requirement of a bond under the bill. He may impose the bond at $1, $1,000, whatever he thinks——

Mr. MANTON. If the gentleman will yield, that has been the rule since 1933, on both sides, both the plaintiff and the defendant could be subjected to having to put up an undertaking.

Mr. TAUZIN. If the gentleman would further yield to me so I can respond, this legislation does say now that we are providing a method by which the judge can impose fees upon the losing party if in fact the suit never should have been brought if it would not be unjust to do so and if it would not be undburdensome for the winning defendant to carry those fees.

He has got to find all three things. It does allow the judge to do that. Therefore, the requirement is that a bond be established, the lawyer can put up the bond if he has got an indigent plaintiff or the client can put up a bond, the judge determines how much of a bond, and the bond satisfies the requirements if it is ordered.

Mr. FIELDS of Texas. If I could reclaim my time, I just point out to the gentleman from Louisiana, the defendant is not there voluntarily.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has again expired.

(At the request of Mr. MANTON and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 1 additional minute.)

Mr. MANTON. I have one last question from the gentleman from Louisiana if I could have the time.

Mr. FIELDS of Texas. I yield to my friend the gentleman from New York.

Mr. MANTON. I ask the gentleman from Louisiana, is it not a little unfair that the legislation that I am seeking to amend has the word ''shall'' when it refers to plaintiffs before they file suit, put up a bond, it makes no mention as does the old rule 11–E that everybody's familiar with that goes back to 1933, that has been in the act from the very beginning, it gave the judge discretion to impose a bond on either the plaintiff or the defendant.

Yet in this legislation, it says plaintiffs ''shall'' before there is any indication that this might be a spurious lawsuit or might be one without merit. Does that not seem a little unfair, a little one-sided to the gentleman?

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. The answer is that the judge has discretion to fix that undertaking. He can fix it at $1, $1,000, $2,000 $10,000 whatever it requires to guarantee that in effect the losing party is going to be able to respond to his order to shift the fees if it should occur and the judge still maintains a great deal of discretion.

Mr. MANTON. Should not the judge also say to the defendant, because it might be that the prevailing party might be the plaintiff who would then seek costs. Why is it that only the plaintiff class has to put up a bond, and it does say ''shall,'' whereas no mention at all is made of the defendants who might not be the prevailing party?

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 30 additional seconds.)

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. The answer is that plaintiff has brought the lawsuit and has incurred those costs upon the defendant in a case where the judge has found the lawsuit never should have been brought. That is what fee shifting is all about.

If the plaintiff wins the case, the judge has the capacity to award the plaintiff such damages as the plaintiff incurred, and in many cases that includes much of his expenses.

It is only in the case where the judge says you never should have brought this case and it would not be unjust for you to have to pay the fees of a person you made hire an attorney and go through all this mess for nothing that we require the bond.

Mr. ROTH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will attempt to be brief. I want to say that I respect our friend the gentleman from New York in introducing this amendment, but I am opposed to this amendment because as I interpret this amendment, it guts the loser-pay provisions of the bill and that is one of the key provisions of this bill. It would replace the loser-pays language with language that when you look at it would seem to make the attorneys for the parties filing frivolous claims accountable. However, its conditions would be so numerous that very few attorneys, if any, would ever be penalized.

To analyze just a couple of these conditions: It would require that the defendant prove that the plaintiff's complaint was meant to harass or to increase the cost of the litigation. That is a whole new standard of proof.

This amendment is a poor substitute for discouraging frivolous claims. It shifts the burden of responsibility on attorneys, not to the parties filing the frivolous claims. Those filing the frivolous claims should be held accountable.

A major purpose of this bill is to discourage frivolous strike lawsuits that are costing American businesses billions of dollars in unnecessary expenses and billions of hours in wasted time.

Worse still, the costs of the legal liability are passed on to the consumers. That is, you and me and all the people that we represent wind up paying more than is necessary, and the legal costs make American products less competitive overseas. That is the real reason I took these few minutes to speak on this bill, because as chairman of the Subcommittee on International Economic Policy and Trade, I have been working to strengthen American exports and this amendment will not help in that endeavor. When American products cost more, fewer companies can export. My friends, we already have a $150 billion trade deficit. How much more do we want?

Further, according to the Rand study, 90 percent of all American companies can expect to become parties to litigation. I want to repeat that. According to the Rand study, 90 percent of all of American companies can expect to become parties to litigation. Already 15 percent of American companies lay off employees out of fear of excess liability.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. ROTH. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. The Rand study says 90 percent of these companies will be parties to litigation, but not tort litigation and not securities litigation. It is commercial litigation. Give the House the full benefit of the Rand study.

Mr. ROTH. Let me take back my time.

You are correct, the Rand study does say that 90 percent of all American companies can expect to be parties to litigation. That is just nuts. We cannot continue to operate that way. That is why the American people are out there screaming and asking this Congress to do something about reform. Too many jobs are being lost and too many people are being harmed. How long can we continue to let this happen? No wonder the American people are demanding reform.

Yes, the gentleman who offered this amendment is a nice guy, but this is a terrible amendment. We cannot vote for this amendment. The securities litigation reform bill is more than legal reform. That is the point. It is not only legal reform. That is the point. It is not only legal reform, this should be a job creation bill. That is what we have to vote on.

For that reason, I would hope that the Members would vote against the amendment.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. If the Chair might, the gentleman was correct in suggesting that there be alternating recognition. The gentleman from Wisconsin had been on his feet when no one else was standing at the time. The Chair had thought earlier that the other colloquy had ended. The Chair wants to make sure the gentleman understood that.

Mr. BRYANT of Texas. I thank the Chair. The Chair has done a fine job in presiding. I appreciate his remarks.

The CHAIRMAN. The Chair was trying to be fair.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite numbers of words.

Mr. Chairman, the comments by the previous speaker I think really say a great deal about yesterday's bill, today's bill and the one we are going to take up tonight and tomorrow. The Rand study was quoted, when he said 90 percent of all companies are going to be a party to the litigation. Yes, they are going to be a party to the litigation, commercial litigation. Not securities litigation like we are talking about today or tort litigation like we are going to be talking about tonight and tomorrow, but commercial litigation. I think it is incumbent upon us to stick with the facts. If the real purpose of this bill is to get rid of frivolous suits and that was the only purpose, first we would have some evidence, some kind of scientific evidence, economic evidence, something to show us that there really was a growing number of frivolous lawsuits against securities dealers, and second, we would have the Securities and Exchange Commission down here talking in favor of this bill and they are not doing that.

I think it is important for us in this last amendment to get this thing in perspective. What has the gentleman from New York [Mr. MANTON] proposed? What he has proposed is a reasonable standard for shifting the cost of the lawsuit to the plaintiff. If the lawsuit was found to have been brought by an improper purpose, or if the lawsuit was found to have been rewarded by existing law, or if the lawsuit lacked evidentiary support or would be lacking any evidentiary support after an opportunity for further investigation, or denials of factual contentions are unwarranted on the evidence, any four of those could work. If that happens, what does the judge do? The judge on motion shifts the costs of the case to the plaintiff.

This is rule 11, but it is rule 11 made mandatory and it is rule 11 including the shifting of fees, not just sanctions. It is a reasonable approach. What does it replace? It replaces the standards in this bill which really, I think, is a fitting end to this debate today. Hardly anything now is actionable any longer. Almost anything a securities dealer wants to do now, he can do and get away with. This bill has eliminated the ability to recover. The final provision we are debating in the bill today eliminates the ability of a person even to go to court. Why?

Because nobody has the money to post a bond in advance which the bill requires, or to face the possibility that they might have to pay the enormous fees of these firms.

I would just point out to the Members of the House here what The Economist, perhaps the most respected British journal, says about the British system which ha rules like these fellows would like to put into law. It is interesting that the Republican bill here would sort of take us back to the royalist way of doing things. It says that the worst aspect of Britain's civil justice system is that it denies access to justice to huge numbers of people. Only the very wealthy can afford the costs and risks of most litigation. This offends one of the most basic principles of a free society. The best way to open the doors of the courts to everyone is to learn from a county whose legal system is closely modeled on that of Britain, America.

That was written in January 1995 by the Economist, hardly a liberal socialist fuzzy-headed group of theorists.

I would just conclude by saying that to rewrite the law so that the securities dealers always win, to rewrite the law so that a plaintiff or a class of plaintiffs or a city or a county or a pension plan or somebody who has lost their life savings cannot win a case against a securities dealer who has all the resources in the world at his disposal is bad enough, but to add into this bill a loser pay rule which says you have got to post a bond before you go to court and that you do not dare take your case to court because you might lose your home, your savings, everything you put aside for the kids' college, your farm or your ranch, that in my view is absolutely reprehensible.

□ 1800

The gentleman from New York [Mr. MANTON] has done a fine job of bringing this amendment forward and I urge Members to vote for the amendment.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, I would like the gentleman to go back to the Rand study again. Do you mean as presented by the last speaker that the Rand study is saying that 90 percent of the businesses that get sued or involved in suits that would involve the collection of debt between businesses, for example?

Mr. BRYANT of Texas. Of course.

Mr. DOGGETT. It has absolutely nothing to do with this bill, does it?

Mr. BRYANT of Texas. That is exactly right.

Mr. DOGGETT. Yet it is the kind of statistic that has been brought out every day this week and I guess we will hear it tonight and tomorrow also. It is totally and completely misleading, and this bill is going to do nothing about that statistic. Any business that is out there that has a commercial dispute with a supplier, either trying to collect a debt or because it thinks it has a legitimate defense to a debt, those suits are going to go on. And of that 90 percent, the vast majority of them will not be touched by one bill that is being considered on the floor of this House this week.

Mr. BRYANT of Texas. The gentleman's point is very well-taken; that is exactly right.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Is it not true that out of the 270,000 cases in Federal district court that this bill is only going to touch 300 of them, which only affects 125 companies per year, and yet the number of tens of thousands we are talking about a half of a half of a half of 1 percent of all of the law cases brought in Federal court in the course of a year? And the gentleman from Wisconsin is completely wrong in his statistical representations.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

(On request of Mr. ROTH, and by unanimous consent, Mr. BRYANT of Texas was allowed to proceed for 30 additional seconds.)

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, if 90 percent of the business being sued is not high enough for the gentleman, does he think we should say have it 100 percent, if I say if you go into business you are absolutely automatically a criminal?

Mr. BRYANT of Texas. Of course not. The gentleman follows the point we are making, and he got up and quoted a figure that has no relevance. Eighty percent of the courts have commercial suits, and the Rand study the gentleman quoted was talking about commercial suits and he knows it.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will just pick up where this discussion has left off because I think the gentleman from Wisconsin is right on point when he talks about the litigiousness of our society, the crowded dockets, et cetera, in our Federal and State courts and the sense that every American is left with, that the civil justice system is not for them. They know when they go to the Federal courthouse near me in the Southern District of California, downtown Los Angeles, that they are looking at the second most crowded docket in America. They wonder why it takes them 5, 7 years to get to trial. Maybe all they have got is a case to collect a debt, but they have to wait in line behind these mammoth class action litigation suits that are taking years to resolve.

The fact of the matter is one out of every eight companies traded on the New York Stock Exchange has been hit with a strike suit. That is according to Vincent O'Brien and Richard Hodges in their study of class action securities fraud cases from 1988 to 1993 published in Law and Economics Consulting.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield on that point?

Mr. COX of California. Yes, I yield to the gentleman from Louisiana.

Mr. TAUZIN. I think a more important statistic, if the gentleman wants to argue statistics, is that the regime of law that they are defending they do not want to change today, according to that Vincent O'Brien-Richard Hodges study, found that investors received an average of 6 cents on the dollar in this legal dispute system under 10(b)5.

The only people making money are the attorneys. The investors get 6 cents on the dollar and that is the system being defended down here, the system people do not want to change. I suggest that is the most important statistic that has ever been quoted on the floor in this debate.

Mr. COX of California. I thank the gentleman for that elucidating point. What the Manton amendment does is merely import the requirements of rule XI of the Federal Rules of Civil Procedure into our bill and takes the post-December 1993 version of it, except it makes the imposition of fees mandatory as they were in the pre-December 1993 rule XI.

I went down and spoke at the American Bar Association winter meeting of their litigations sections, several hundred lawyers, and we talked in some detail about this legislation. We also talked about other pending legislation, legal reform, and when it came to rule XI, which is not part of our bill, the lawyers who were there to argue for and against every single one of these issues were unable to do so. The fellow who got up to argue the pro cases for rule XI, and he was just assigned the job, said I know I am a layer; I can take both sides of every issue, usually, but in this case rule XI, there is not any argument in favor of it. It does not work.

And that is what we know about rule XI. It has been tested and it does not work. It has been field tested, it has not accomplished its purpose.

Unlike the bill as it is presently written, the Manton amendment would permit the reduction of awards to the extent that the prevailing party unreasonably delays, but the Manton amendment requires imposition of fees on the attorney unless the court determines that the losing party was principally responsible for violation. In contrast, the bill as written leaves the issue of who to impose the sanction on in the discretion of the court. One of the reasons that all of those folks at the ABA meeting did not like rule XI was this very element of what the gentleman from New York [Mr. MANTON] would be introducing into the bill.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Washington.

Mr. WHITE. I think the gentleman is making an excellent point. It is clear to all of us that rule XI is virtually never invoked in court. That is why we need this legislation so badly.

I also would like to point out we do not need to get caught in the minutia of this bill; we are coming to the end, I think it is important to realize what is at stake.

I come from a suburb of Seattle that represents the future of the United States economy. It is home to Microsoft, McCaw Cellular, home to hundreds and hundreds of other small companies who are affected by these sorts of lawsuits, and I can tell you this bill is for them.

That is what this bill is all about. It is designed to allow our future economy to prosper without the sort of sword of Damocles of this sword hanging over them.

If I could, for just 1 minute I would like to read a letter I got from the founder of one of these small companies in my district, because I think it points out exactly what is at stake here. This comes from Mr. Darland, founder of Digital Systems in my district, a company that did not exist 10 years ago but was started in Mr. Darland's garage and has grown to be a very successful company.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Massachusetts [Mr. MARKEY] is recognized for the balance of the time.

Mr. MARKEY. Mr. Chairman, I rise in support of the Manton amendment. The Manton amendment seeks to prevent the scrapping of 200 years of American law being used to ensure that plaintiffs can bring cases where they feel they have been wronged in the financial marketplace. The English rule in this bill creates a burden on a plaintiff, a set of obstacles on a plaintiff that are higher than the set of obstacles that were in yesterday's loser-pay bill that was out here to be considered in diversity cases. It is an even stricter burden.

Loser pays is un-American. It is something that is completely outside of the traditions of the American jurisprudential history. It is absolutely impossible to imagine a situation where an investor who has lost only $5,000 or $10,000 or $15,000 would even consider

bringing a case against a major financial institution, against a large company, if they feel that they have been defrauded; and if they lose the case, not lose the case and be out of court, but then have to prove that in fact the case was substantially justified, not just that it was not frivolous, but have to go through an entirely new proceeding to avoid having all of the costs that have been assumed by the large financial institution, by the large corporation, and hiring the largest law firms in New York or California or Boston to represent them.

It is un-American. The Manton amendment seeks to preserve the American tradition, where individuals can go to court and ensure that their case can be heard and not risk losing their house, losing everything they have saved in trying to fight to restore that which they have been wrongfully defrauded.

So this is a critical moment again for the House. It is once again going to vote on whether or not we want to impose the English rule, the loser-pay standard, upon American investors.

My heartfelt recommendation to every Member who is about to come out here and to vote is to continue, those who stood against loser pay yesterday to stand with the Manton amendment, to ensure that we retain that 200-year tradition of giving every American the right to go to court, the right to vindicate themselves before the bar of justice, without having to risk everything that they have ever earned in their life in paying the legal bills incurred by large corporations in trying to defend themselves against average Americans.

The CHAIRMAN. All time for consideration of the amendment has expired.

The question is on the amendment offered by the gentleman from New York [Mr. MANTON].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MANTON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 167, noes 254, answered ''present'' 1, not voting 12, as follows:

[Roll No. 214]

AYES—167

Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Buyer
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
King
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Moakley
Mollohan
Murtha
Nadler
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Studds
Stupak
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Wise
Woolsey
Wyden
Wynn
Yates

NOES—254

Abercrombie
Allard
Andrews
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Farr
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Mink
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Tucker
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—12

Archer
Bilbray
Gibbons
Jefferson
McDade
McKinney
Meek
Neal
Rangel
Seastrand
Stokes
Zimmer

□ 1828

Mr. FAZIO and Mr. DEUTSCH changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. POMEROY. Mr. Chairman, I rise today in opposition to the bill, H.R. 1058.

Before coming to Congress, I served 8 years as North Dakota's insurance commissioner. I was the State's chief regulator for insurance and came to know the job of protecting consumers very well.

It is with this background that I place great importance on the position of the State and Federal securities regulators with regard to this legislation. They unequivocally oppose H.R. 1058. The sole purpose of these regulators is the protection of investing consumers, and their opposition to this bill comes directly from that purpose. They believe it deals an unfair blow to the investing public.

Regulators have no financial stake in this legislation and I weigh their position as highly credible. We have regulators to provide a check in the system—to make sure someone is looking out for the consumer. In considering legislation like this, I believe it is imperative that we listen to their expertise. While I approve of the goal of H.R. 1058—to deter frivolous claims or curtail strike suits—this bill goes too far and limits the ability of aggrieved investors to pursue just recovery from fraud.

I regret the committee did not work with the financial regulators to devise a carefully tailored response to this important issue.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in opposition to H.R. 1058, the Securities Litigation Reform Act. This legislation, as was the case with the ill-conceived Attorney Accountability Act we just had before us, would slam the doors of justice on hard-working Americans who unwittingly fall victim to corporate misconduct and fraud. H.R. 1058's anti-consumer, pro-big-business, special-interests-at-any-expense outlook falls right in line with the rest of the GOP Contract With America.

I believe all of us in this Chamber recognize that there continue to be isolated cases in which meritless securities class action lawsuits

are brought and we should take steps to deter such behavior. But the GOP's approach on this issue, as with all other issues during this first 100 days of the 104th Congress, has been to isolate instances of meritless suits, blow them out of proportion, and then attack them with a sledgehammer rather than with the laser-beam specificity they deserve. This is irresponsible politicking, not sensible legislating, Mr. Chairman.

H.R. 1058 couldn't offer a more favorable climate for corporate misconduct. The number of egregious provisions in this legislation is overwhelming. For starters, H.R. 1058 would require defrauded investors, prior to the discovery stage of a suit, to establish the fact that a defendant acted knowingly or recklessly. This is an almost impossible task that goes way beyond the already stringent judicial standard now in place that requires investors to allege facts providing a strong inference that they were wronged.

However, the bill perpetrates an even greater miscarriage of justice by allowing parties against whom suits are brought to employ an ''I forgot to obey the law'' defense. You got it—all a defendant in a securities fraud case will have to do if this bill passes is to say ''Oops, I'm sorry, I just didn't remember to disclose that pertinent information,'' and they will be excused from prosecution. You can bet that this provision alone is making a whole bunch of unethical corporate wolves out there salivate at the prospects of an easy way out in cases of fraudulent activity.

Yet most distressing, as we have heard for a couple of days now from several Members, is the fact that H.R. 1058 imposes loser-pays requirements forcing a losing small investor in a securities fraud suit to shoulder the legal fees of the investment banking houses, accounting firms, megacorporations, and so forth. I don't want to tell my constituents who lose their life savings that they had invested in mutual funds, IRA's, or pension plans because of a fraudulent action that they must then risk their homes and whatever else they may have left to have even a chance of recovering a small portion of what they lost. Do you think these investors will pursue any suit? Get real, Mr. Chairman.

Conspicuously absent from this bill are provisions which would effectively balance the scales of justice in securities cases such as a restoration of aiding and abetting liability standards, restrictions on secret settlements and protective orders, and mandated preservation of evidence to name a few.

The fact remains that private securities lawsuits have been a powerful deterrent to fraud and have been invaluable in supplementing and enhancing Securities and Exchange Commission [SEC] enforcement of Federal securities laws. The Lincoln S&L debacle and the Drexel Burnham disaster were just two high-profile cases of many that were initiated as a result of private investor action. It is not justifiable to throw the baby out with the bath water in the name of so-called reform.

Mr. Chairman, the SEC is strongly opposed to this legislation. SEC Chairman Arthur Levitt testified before the Commerce Committee last year on this issue that ''in the balance between the interests of investors and the interests of a better system, a better system is important, but it can't be at the expense of those investors.'' In follow-up comments this year the SEC reiterated that their first priority is ''the rights of American investors and the integrity of the American capital markets,'' something this legislation is weak in addressing.

Obviously my Republican friends don't agree with the No. 1 priority of the Commission. Otherwise, we would not be debating the misguided legislation we have before us today.

I urge my colleagues to vote ''no'' and prevent what will amount to a grave injustice to our Nation's consumers and small investors should H.R. 1058 pass.

Mr. REED. Mr. Chairman, I believe legislation is needed to deter the meritless strike suits that are siphoning resources away from so many of our innovative bio-technology and high-technology companies. I also strongly support the sections of the bill dealing with proportionate liability for defendants who did not act knowingly. In fact, I have been a cosponsor of bills to correct these problems with securities litigation that were introduced by the gentleman from Louisiana [Mr. TAUZIN] in past Congresses.

However, I am troubled by some of the extraneous provisions that have been included in the legislation before us today. I am particularly concerned about the redefinition of the recklessness standard. Initially, section 204(a)(4) of the bill would have allowed any defendant to escape liability by asserting they genuinely forgot or that disclosure did not come to mind. Fortunately the drafters of this provision realized this sentence created a giant loophole for wrongdoers. Unfortunately, instead of deleting this absurd provision, a hastily drafted amendment was adopted that, to my mind, confuses the issue even further.

There are other troubling provisions. For example, the bill limits the plaintiff to only one amended complaint: there were six amended complaints in the suite against Charles Keating. An amendment to exempt municipalities from some of the bills restrictions was defeated. Municipalities are hardly the professional plaintiffs we are attempting to stop and should not be barred from protecting their—and the taxpayer's—interests.

As Arther Levitt, the chairman of the Securities Exchange Commission, has said, ''Our markets are the best in the world, partly because our securities laws are the best in the world. We tamper with the securities regulation system at our peril.''

If this bill comes back from the Senate in a more reasonable form, I intend to support it. But I cannot support it as it now stands. Responsible legislation is needed to stop frivolous lawsuits. But we should not hinder our ability to police future calamities like the savings and loan frauds, the Orange County bankruptcy, and an increasing number of derivatives scandals.

Mr. BAKER of California. Mr. Chairman, I rise today to express my support for H.R. 1058, the Securities Litigation Reform Act.

As a member of the leader's task force on legal reform, I am particularly pleased that we are passing the second of three major legal reform bills in this the first 100 days of the Contract With America.

The Securities Litigation Reform Act will limit the practice of frivolous strike suits against companies merely because their stock prices experience sudden fluctuations.

Under current law, we have witnessed the emergence of a cottage industry of attorneys who prey upon companies with volatile stock prices. To correct the problem of professional plaintiffs, H.R. 1058 restricts these unlucky investors from filing more than five class action suits within a 3-year period.

Additionally, the bill imposes loser-pays sanctions where the court determines that the position of the losing party was not substantially justified. In such cases, the loser is responsible for paying all court and legal fees. This provides a disincentive for litigants to flippantly file suits without merit.

Finally, H.R. 1058 creates a safe harbor from frivolous lawsuits to protect companies that publish market predictions. This forewarns potential investors of risk inherent in investing.

In my home State of California, and the bay area in particular, there are many small, high-growth, high-technology firms which are volatile by nature. These firms are often victimized by frivolous securities litigation.

For the good of the bay area, the State of California, and the entire United States, I am proud that the House of Representatives is passing this monumental legislation.

Mr. CARDIN. Mr. Chairman, there is no question that the securities litigation system can be improved. Too often, class actions are filed which result in each investor receiving a check for an insubstantial amount such as 50 cents while the attorney who filed the case reaps inordinace fees.

Changes to our securities laws must encourage innovation and investment, while at the same time deter white-collar crime and ensure the integrity of the financial markets. It must target frivolous lawsuits and other problems in the litigation process without impairing the ability of defrauded investors to sue.

While I support reasonable reforms, time has demonstrated that taxpayers and honest business people can suffer greatly from fraud and improper behavior. Although I supported final passage of H.R. 1058, there were some provisions—were too extreme. I voted in favor of the Securities Litigation Reform Act in order to show support for reform and to push the process forward. However, if the bill returns to the House, in the same form as it is presently drafted, I would find it difficult to support this legislation.

My concerns regarding H.R. 1058 include: Elimination of recklessness as a cause of action in securities fraud cases, enhanced pleading requirements which force plaintiffs to establish, before the discovery process occurs, that the defendant acted with the intent to deceive or defraud, requirement for class plaintiff to post a bond covering the legal fees and expenses of the defendants should the class plaintiffs not prevail and severe limitation of cases based on a fraud on the market.

Mr. Chairman, we must create reforms which control outrageous securities litigation without hurting investors. I am hopeful that a good compromise bill can be reached in conference with the Senate and that the House of Representatives will have an opportunity to vote on a bill that is reasonable but strong security litigation reform.

Mr. BILIRAKIS. Mr. Chairman, today we are considering an important piece of legislation, H.R. 1058, the Securities Litigation Reform Act. This bill reforms Federal securities law to stop the proliferation of strike lawsuits—suits filed by class-action attorneys on behalf of

shareholders whose stock investments have failed to live up to their expectations.

Prior to the full Commerce Committee markup, I received numerous phone calls from constituents who were concerned that the Securities Litigation Reform Act would limit the ability of stockholders to sue if they are the victims of fraud. Normally, constituent communication is one of the most important sources of information that I rely upon to represent my district. However, in this particular case, I am not sure that the phone calls I received truly represent the views of my constituents.

Whenever Congress debates a controversial issue, all of my congressional offices are inundated with phone calls from concerned constituents. However, my district offices did not receive one phone call on this bill.

In fact, many of the calls my Washington office received were not even generated directly from individuals in my district. Rather, groups opposed to this legislation called my constituents and transferred their calls to Washington. These organizations instructed my constituents to say they were opposed to securities litigation reform. In many instances, my constituents were given very little information regarding this important legislation.

I find this practice abhorrent and misleading, Under the circumstances, I find it hard to believe that my constituents were presented with all of the facts regarding this legislation.

Over the last 5 years, the number of securities fraud suits has tripled. One of every eight companies traded on the New York Stock Exchange has been hit with a strike suit, and the most frequent targets of strike suits are small, fast-growing companies. In many instances, lawsuits are filed just hours after the news of a stock price decline with no evidence of wrongdoing.

Opponents of H.R. 1058 argue that investors will be hurt by the reforms included in this legislation. However, current law hurts victims of real fraud in several key ways.

First, individual shareholders who are part of the class action do not reap anywhere near the full amount of damages that are claimed in the suit. A study by the National Economic research Associates showed that the average investor recovers only seven cents for every dollar lost in the market, prior to the award of attorney's fees.

Second, current law encourages lawyers to file as many suits as possible and to settle them quickly, regardless of their merit. The sheer cost of going to trial is enough to compel most companies to settle out of court, even if they have done nothing wrong. Approximately 90 percent of companies sued eventually decide to settle.

In many cases, the plaintiffs would be better off going to trial but the cases are settled because a settlement guarantees a significant attorney's fee and eliminates any risk of failure to recoup funds already invested in the case.

To correct these shortcomings, H.R. 1058 creates plaintiff steering committees that are appointed by the court to make sure that class action lawyers act in the best interests of their clients.

This legislation will also make it easier for plaintiffs to understand a settlement agreement reached on their behalf. H.R. 1058 requires that class action plaintiffs receive a simple, easy-to-understand summary of the proposed settlement terms, including the full amount of attorney's fees and costs.

The present system shortchanges victims of real fraud because even successful plaintiffs must pay their own attorney's fees out of their judgment, thus ensuring that victims of fraud do not recover all they are owed. In some cases, victims of fraud must pay as much as one-third of the compensation they receive to their own lawyers.

H.R. 1058 allows prevailing parties to recover their attorney's fees from the losing side, ensuring that victims of fraud recover everything they are entitled to receive.

Under H.R. 1058, the court may impose attorney's fees only when a party pursues a case that lacks substantial justification and imposing the fees on the loser would not be unjust. The court also has the discretion to require all or part of the winner's fees to be paid by the loser's attorney rather than the losing parties themselves.

The bottom line is that strike lawsuits hurt investors by diminishing the value of their holdings. Investors lose when the stock price declines because of litigation, and they lose again when the company has to deplete its assets for defense fees and settlement costs.

Moreover, strike suits harm the economy. Instead of spending money on research and development, hiring more employees or reducing the cost of their products, companies end up spending a great deal of money on strike suit insurance and legal fees.

Mr. Chairman, I urge my colleagues to support H.R. 1058. I believe this is an important piece of legislation which will benefit both companies and investors.

Mr. DELAY. Mr. Chairman, today we consider legislation to end widespread abuses in our legal system—to end a litigation tax on many of the most productive companies in America.

The securities litigation reform bill before us today—H.R. 1058—will restore common sense to the Federal securities laws. When Congress wrote these statutes 60 years ago, the private right of action that H.R. 1058 addresses was not even contemplated. But 60 years of judge-made law have created a system that Congress never anticipated and that no one can defend. Today, the Federal securities laws are compensating defrauded investors little, but are making plaintiffs' lawyers rich.

The consensus for reform is overwhelming—SEC Chairman Arthur Levitt, pension fund managers from some of our largest cities and States, investor representatives, issuers, auditors, academics, business leaders, entrepreneurs, Democrats and Republicans—all agree that meaningful reform is necessary. And this is the legislation to do it.

Mr. Chairman, H.R. 1058 is a good bill that will protect jobs and stimulate economic growth—particularly for high-tech companies that are frequently the targets of these securities strike suits. It will end the legal extortion practiced today against many of America's most promising companies. It will free-up resources for investment in R&D, business expansion and job creation—rather than in lawyers and litigation expenses.

H.R. 1058 is a compromise bill that has been amended since its introduction to address many of the concerns expressed by our friends on the other side of the aisle.

And it is a bipartisan bill that includes among its original cosponsors my good friend from Louisiana and enjoys the support of many of my colleagues from the Democratic Party.

Mr. Chairman, Congress has avoided its responsibility to fix the securities litigation system for 60 years. But today we have the opportunity to act. Today we have the opportunity to restore the Federal securities laws to their intended purpose—to protect investors and keep America's securities markets the safest and most liquid in the world.

I urge my colleagues to pass H.R. 1058 and put an end to abusive securities litigation.

Mr. BILBRAY. Mr. Chairman, a core component of the American Dream is that hard work, creativity, and innovation is encouraged, and more often than not, rewarded with success. Unfortunately, for a vast number of small, fast-growing high-technology and biotech companies in southern California, the Silicon Valley, and elsewhere around the country, this dream has turned into a nightmare. A small fraternity of attorneys have discovered that exploitation of loopholes in our existing securities laws can be extremely lucrative, and they have elevated the cunning application of meritless class action lawsuits to an art form.

Class action lawsuits, or strike suits, have had a devastating effect on biotech and high-technology firms, whose traits—volatile stock prices, rapid product development, and constantly evolving technology—make them an easy target for strike suits. If a company's stock shifts abruptly in one direction or another, or quarterly earnings are less than projected, it is likely to be targeted by a strike suit filed by plaintiffs' attorneys alleging fraud. Often, these suits are filed within hours of the stock fluctuation.

These suits have the effect of draining massive amounts of time and money from some of America's most competitive industries. A perverse result of these situations is that once hit with a strike suit, for many small companies it is cheaper to settle out of court—despite their innocence—in order to avoid a prolonged and costly court process. This amounts to legalized blackmail, and makes a mockery of that quaint concept of innocent until proven guilty.

Far from benefiting investors—on whose behalf these suits are ostensibly filed—these settlements typically recover only pennies on the dollar for investors, while the attorneys who brought the suit recover an average of 30 percent from large pretrial settlements. Investors are also penalized in the long run, as another side effect of strike suits is to reduce the incentive for voluntary disclosure of forward-looking information by a given company.

From my district in San Diego, up the State to the bay area, and elsewhere across the United States, these predatory strike suits have hamstrung some of our most competitive and growth-oriented industries, with predictable results. If a company is fortunate enough not to have to downsize or lay off employees, it is often forced to divert its resources from R&D, or product improvement.

In many instances, these companies are researching cures for such diseases as Alzheimers', AIDS, or breast cancer, or are developing medical implant devices which can help prolong or improve the quality of life for the ill and the elderly. If such research is discouraged, as it now is, and these products are kept from the market, as many have been, who is actually benefiting? Certainly not the little guys whom the strike suit attorneys claim to represent. A cursory review of the average

fees garnered by strike suit attorneys indicates exactly whose interests are truly being furthered.

The bottom line is that American people are being taken for a ride under the current system—here's how:

First, new drugs and medical products that American consumers need and want are being priced out of reach, or kept from the market altogether by meritless strike suits;

Second, American taxpayers are footing the bill for the lengthy trial and appeal processes forced by these meritless strike suits; and

Third, America's competitive advantage in high-technology and biotechnology markets is being crippled by meritless strike suits, which adversely affect local and regional economies through lost jobs and business opportunities, in addition to hamstringing our ability to compete in the international markets.

H.R. 1058 will address these abuses, making rational, substantive, and fair changes in our system. It will benefit our economy, our competitiveness, and most importantly, the American people. Mr. Chairman, I urge my colleagues to rise in strong support of the Securities Litigation Reform Act; it's been a long time coming.

Mr. GANSKE. Mr. Chairman, I rise today in strong support of H.R. 1058. We must end the abuse that is eroding our legal system.

As so poignantly stated by SEC Chairman Arthur Levitt:

> Private actions are intended to compensate defrauded investors and deter securities violations. If the current systems fails to distinguish between strong and weak cases, it serves neither purpose effectively.

I couldn't agree more. Unfortunately, this is precisely what we are left with today—an ineffective system.

The changes mandated by the Securities Litigation Reform Act currently before the House help restore responsibility and respectability to our court system.

First, the provision that imposes the loser-pays rules when the court determines the position of the losing party was not substantially justified. This prevents the consummate race to the courthouse. Plaintiffs with have to weigh the merits of their case before filing suit.

Opponents claim this will have a chilling effect on a plaintiff's right to sue. This simply is not the case. The modified loser-pays provision will only result in fee shifting in cases which should not have been brought in the first place. The only thing chilled by this provision will be meritless suits, which I believe deserve to be put in the deep freeze.

Second, as for the definition of recklessness, the current law is vague and uncertain. Parties may engage in nearly identical conduct, yet courts will reach completely different results. The vagueness and uncertainty of the current standard has led to a great deal of inconsistency, confusion and unfairness in our judicial system. I think all of us would agree that by creating consistency, we increase fairness and decrease the possibility of injustice in our legal system.

In general, strike suits under current law do more harm than good. Reform is needed for two main reasons. No. 1, proper plaintiffs must have a place to redress valid grievances in a system ensuring fraud victims recover their losses and not merely the estimated pennies on the dollar.

Number two, the securities industry must be allowed to get back to its intended functions. We must help foster a market that allows the industry to do its job and not spend all of its time defending meritless strike suits.

H.R. 1058 accomplishes both of these goals. I urge my colleagues to support this legislation which protects both the securities industry and individual investors.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. MCINNIS) having assumed the chair, Mr. COMBEST, 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. 1058) to reform Federal securities litigation, and for other purposes, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

□ 1830

The SPEAKER pro tempore (Mr. MCINNIS). Under rule the previous question is ordered.

Is a separate vote demand had on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman from Massachusetts opposed to the bill?

Mr. MARKEY. I am opposed to the bill in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Markey moves to recommit the bill, H.R. 1058, to the Committee on Commerce with instructions that the committee report the bill back to the House forthwith, with the following amendments:

Page 7, beginning on line 19, strike subsection (c) through page 11, line 8, and insert the following:

''(c) AWARD OF FEES AND EXPENSES.—

''(1) AUTHORITY TO AWARD FEES AND EXPENSES.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a default, a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether—

''(A) the compliant or motion is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

''(B) the claims, defenses, and other legal contentions in the complaint or motion, taken as a whole, are unwarranted by existing law of by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

''(C) the allegations and other factual contentions in the complaint or motion, taken as a whole, lack any evidentiary support or would be likely to lack any evidentiary support after a reasonable opportunity for further investigation or discovery; or

''(D) the denials of factual contentions are unwarranted on the evidence or are not reasonably based on a lack of information or belief.

''(2) AWARD TO PREVAILING PARTY.—If the court determines that the losing party has violated any subparagraph (1), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the losing party violated any such subparagraph shall be made on the basis of the record in the civil action for which fees and other expenses are sought.

''(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, non appealable judgment in the action submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

''(4) SANCTIONS AGAINST ATTORNEY.—The court——

''(A) shall award the fees and expenses against the attorney for the losing party unless the court determines that the losing party was principally responsible for the actions described in subparagraph (A), (B), (C), or (D) of paragraph (1); and

''(B) may, in its discretion, reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

''(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

''(6) DEFINITIONS.—For purpose of this subsection, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnished.

Page 28, line 12, insert before the period the following: '', except that this Act and the amendments made by this Act shall not apply to any action commenced by any State or local government, or any agency or instrumentality of any State or local government, before the date which is 3 years after such date of enactment.''.

Mr. MARKEY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] is recognized for 5 minutes.

Mr. MARKEY. Mr. Speaker, this recommittal motion contains two of the worst elements of the legislation which is pending before the House right now and seeks to correct those two portions of the legislation.

The first part of the recommittal motion deals with the issue of the English rule versus the American rule. That is the question of whether or not a plaintiff, when they file a case and lose, should be subject to having to pay the legal bills of the prevailing side.

The English rule is completely outside the traditions of American jurisprudence. What we seek to do in the recommittal motion is to insure that there is a correction made that does not in fact impose upon plaintiffs who happen to lose cases which they have brought against large financial or industrial institutions in this country the responsibility of shouldering the legal bills of those financial or industrial firms.

The Manton amendment, which we just considered, dealt with this issue extensively in debate. We are sure all the Members understand this issue. We debated a similar form of this ''loser pays'' proposal all day yesterday on the floor of this House.

The second part of the recommittal motion deals with the Dingell amendment, which was made unsuccessfully earlier this evening. The Dingell amendment seeks to deal with the reality that no municipality, no mayor, no city council in this country has ever been charged with bringing a frivolous action in a case where they believe that the municipality has been defrauded.

As a result, the Dingell amendment sought to insure that there is a 3-year period in which the onerous burdens of this legislation are not imposed upon a municipality, that those municipalities can still bring actions up to 3 years based upon financial irregularities. So the heart of the Dingell amendment was that any State government, any municipality, any county in the United States can sue under existing law without the much higher burden which is imposed by the bill which is now pending before the House.

This measure insures that those mayors, those Governors, those city councilmen, those county commissioners who have never had a single charge levied against them that they ever brought a frivolous case, can continue to bring actions under the existing law. So, if the case exists where the derivatives, where fraudulent financial instruments have in fact been sold to municipalities, to State governments, to county governments, that they in fact are able to continue to bring lawsuits under the existing standard which had served our country well for the last 60 years in this country in securities fraud cases.

So this is a very simple case. The National Association of Mayors support the Dingell amendment and want the language in the existing bill to be deleted. The National Association of Government Securities Officials want this language to be deleted from the language. The recommittal language sends back to committee the portions which deal with ''loser pays.''

This bill is a much harsher version of the English rule than the ''loser pays'' rule that was voted on yesterday. Under this bill, if the 3-part test of not substantially justified, imposing fees and expenses on the losing party or its attorney would be just and the cost of the fees to the prevailing party is burdensome or unjust, then the loser must pay all of the attorney fees for the entire case.

In contrast, yesterday's bill just required the loser to pay that part of the attorneys' fees occurring after an offer of settlement was made and rejected or if the verdict was lower than the offer. The Manton language, in contrast, would require the losing party to pay the winner's fees if the case was frivolous or brought in bad faith. This responds to exactly the concern that the Republicans are complaining about.

If you are serious about wanting to penalize the attorneys when they have brought frivolous cases, then vote for this motion.

If you want the investors who have just lost their life savings to bet the house and put up a bond at the beginning of the case, then that would be incredibly intimidating. It would have a chilling effect on the willingness of investors to sue.

The recommittal motion seeks to insure that we do not establish insurmountable barriers to investors to be able to sue large industrial and financial powers in this country and insures the State, county, and municipal elements have the same laws they have always been able to use in order to protect their rights in court.

I hope there is an affirmative vote by this House to send this recommittal motion successfully back to committee so we can have an inclusion of these matters.

Mr. FIELDS of Texas. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas [Mr. FIELDS] is recognized for 5 minutes.

Mr. FIELDS of Texas. Mr. Speaker, I will try to be very brief.

Both portions of the motion to recommit we have already voted on. The Dingell amendment, we do not want to see a dual standard: one standard that applies to municipalities and cities, and another standard that applies to everyone else.

In regard to the Manton amendment, we do not want to see the ''loser pays'' provision weakened.

What we do want to see, Mr. Speaker, is H.R. 1058 should not be changed as it was brought to the House because it revolutionizes the standard by which disputes arising under the securities laws are litigated.

This truly is a historic moment. This legislation will introduce for the first time the concept of proportional liability into the Federal securities laws. A defendant may be liable for joint and several damages only if found to have acted knowingly. Defendants found liable for recklessness will be held proportionately liable. Arguably, this is the most significant development in private securities litigation in the 61 years since the Securities Act was passed.

The bill also provides that the losing party, his attorney, or both, will pay the prevailing party's legal fees if the court enters a final judgment against them. The court has the discretion not to award fees if the losing party establishes that its position was substantially justified. The court will require the attorney, class, or both to post security for costs to insure that funds are available to pay the legal fees if they are awarded.

The Manton amendment would strike this out.

Mr. Speaker, I know the hour is late, and I will stop at this particular moment other than to say this is an historic moment for those who believe that we need commonsense legal reform.

Mr. Speaker, what I would like to do, for a moment, is to yield to the gentleman from Louisiana [Mr. TAUZIN], who has played such an important role not only in this Congress but in previous Congresses in moving a very important piece of legislation.

Mr. Speaker, I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank my friend for yielding. I will be brief. I do ask him to yield just to say a word thanks, a word of thanks not only to the chairman, who has been extraordinarily cooperative, the gentleman from California [Mr. COX], and others who have worked with us to moderate this bill, but also, more importantly, to Members of this body who are original cosponsors of this effort 4 years ago and have remained faithful to this effort to bring this bill to a conclusion. Members like Mr. PARKER, like Mr. HALL, Mr. MONTGOMERY, Mr. SHAW, Mr. MORAN, Members like Mr. RUSH, Mr. TOWNS, and Mr. BROWN, who have helped bring us to this point. I think we are about to pass a good bill. Defeat this motion to recommit, and we can pass this very historic bill.

I want to again thank all of those who persevered for 4 years to bring us to this point.

Mr. FIELDS of Texas. In closing, Mr. Speaker, I just want to thank the gentleman from Oregon [Mr. WYDEN] for his improving amendment regarding accounting reform. Also, Mr. MINETA for his amendment regarding safe harbor.

Mr. Speaker, with that, I urge my colleagues to vote down this motion to recommit and then vote for passage.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken, and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 172, noes 251, answered ''present'' 1, not voting 10, as follows:

[Roll No 215]

AYES—172

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hastings (FL)
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—251

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Farr
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—10

Bilbray
Gibbons
Hoke
Johnston
McDade
McKinney
Meek
Neal
Rangel
Velázquez

□ 1901

Ms. ESHOO and Mr. EDWARDS changed their vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 325, noes 99, answered ''present'' 1, not voting 10, as follows:

[Roll No. 216]

AYES—325

Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kennelly
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lucas
Maloney
Manzullo
Martini
McCarthy
McCollum
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Meehan
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Mineta
Minge
Molinari
Montgomery
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Rush
Sabo
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent

Tanner	Upton	Weller
Tate	Vento	White
Tauzin	Visclosky	Whitfield
Taylor (NC)	Volkmer	Wicker
Tejeda	Vucanovich	Wilson
Thomas	Waldholtz	Wolf
Thornberry	Walker	Wyden
Thornton	Walsh	Young (AK)
Tiahrt	Wamp	Young (FL)
Torkildsen	Ward	Zeliff
Torricelli	Watts (OK)	Zimmer
Towns	Weldon (FL)	
Traficant	Weldon (PA)	

NOES—99

Abercrombie	Gonzalez	Obey
Becerra	Gutierrez	Owens
Beilenson	Hall (OH)	Pastor
Berman	Hastings (FL)	Payne (NJ)
Bonior	Hilliard	Pelosi
Borski	Hinchey	Pomeroy
Boucher	Jacobs	Poshard
Brown (CA)	Jefferson	Rahall
Brown (FL)	Johnson (SD)	Reed
Bryant (TX)	Johnston	Reynolds
Clay	Kanjorski	Rivers
Clayton	Kaptur	Roybal-Allard
Clyburn	Kennedy (MA)	Sanders
Collins (IL)	Kildee	Scott
Collins (MI)	Klink	Serrano
Conyers	LaFalce	Stark
Costello	Lantos	Stokes
Coyne	Levin	Studds
DeFazio	Lewis (GA)	Stupak
Dellums	Luther	Taylor (MS)
Dicks	Manton	Thompson
Dingell	Markey	Thurman
Dixon	Martinez	Torres
Doggett	Mascara	Tucker
Durbin	Matsui	Velazquez
Engel	McDermott	Waters
Evans	Mfume	Watt (NC)
Fattah	Miller (CA)	Waxman
Filner	Mink	Williams
Flake	Moakley	Wise
Foglietta	Mollohan	Woolsey
Ford	Murtha	Wynn
Gephardt	Nadler	Yates

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—10

Bilbray	McDade	Neal
Coleman	McKinney	Rangel
Dickey	Meek	
Gibbons	Moorhead	

□ 1911

Mr. TAYLOR of Mississippi changed his vote from ''aye'' to ''no.''

Mr. MEEHAN changed his vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. FIELDS of Texas. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, the Clerk be authorized to make technical corrections and conforming changes to the bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. FIELDS of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous material, on H.R. 1058, the bill just passed.

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

There was no objection.

REMOVAL OF NAMES OF MEMBERS AS COSPONSORS OF H.R. 56

Mr. ARCHER. Mr. Speaker, I ask unanimous consent that the following Members be removed as cosponsors of H.R. 56: Messrs. WELLER, FUNDERBURK, MINGE, HOLDEN, CRAPO, KNOLLENBERG, MCDADE, BRYANT of Tennessee, BASS, and OXLEY, and Mrs. WALDHOLTZ.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, for the benefit of the Members, the next order of business is the rule and general debate only on H.R. 956. This is an agreed-to rule. We do not expect a vote on it. Thereafter, we would go right to general debate. The gentleman from Missouri [Mr. VOLKMER] just shook my hand and agreed to this, so I think we can safely say there will be no further votes tonight.

Mr. WISE. Mr. Speaker, if the gentleman will yield so I can speak out of turn for 1 minute, let me just say I do not pretend to speak from great knowledge, but I would advise members that I have been informed that that assurance may not be able to hold up as to no votes. I just do not want Members to leave here. That is not coming from me.

Mr. SOLOMON. Mr. Speaker, I would just point out that the rule that is about to be debated provides for 2 hours of general debate. This is not a rule dealing with the amendment process. That rule will not come on the floor until tomorrow. I wanted to make that clarification.

Mr. WISE. Mr. Speaker, as the gentleman is aware, any Member on either side can call for a vote on even this uncontested rule.

FURTHER LEGISLATIVE PROGRAM

(Mr. ARMEY asked and was given permission to address the House for 1 minute.)

Mr. ARMEY. Mr. Speaker, I wish to address the House for the purpose of announcing a schedule change.

Mr. Speaker, last week I announced that the House would be considering term limit legislation on Monday and Tuesday, March 13 and 14. After meeting with the term limit supporters, we have decided to move term limits to the end of the month to maximize public debate and to give our constituents the opportunity to express their views on this historic legislation.

Mr. Speaker, a byproduct of this schedule change, one that I know Members will be particularly interested in, is that there will be no votes on next Monday, the 13th.

Mr. Speaker, on Tuesday the House will convene at 12:30 for morning hour. Business will begin at 2 o'clock, and there will be no votes before 5 o'clock on Tuesday next.

PROVIDING FOR CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 108 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 108

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 956) to establish legal standards and procedures for produce liability litigation, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed two hours equally divided among and controlled by the chairmen and ranking minority members of the Committee on the Judiciary and the Committee on Commerce. After general debate the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

□ 1915

The SPEAKER pro tempore (Mr. EWING). The gentleman from Georgia [Mr. LINDER] is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas [Mr. FROST], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 108 provides for 2 hours of general debate on H.R. 956, the Common Sense Legal Standards Reform Act. Such time is to be divided equally between the chairmen and the ranking minority members of the Judiciary and Commerce committees, after which time the Committee will rise without motion.

Mr. Speaker, this is a rather simple rule which will not require a great amount of discussion. The House has completed 3 days of dialog on the first two components of legal reform, and House Resolution 108 simply assures a full discussion of H.R. 956.

This rule is designed to allow the House to continue this week's historic discussion over how to restore sanity to our Nation's legal system. These critical reforms will benefit virtually

every phase of American life, and I believe that 2 hours of general debate provides ample time to discuss these reforms that will limit the devastating legal costs on the U.S. economy and the American work force.

The Committee on Rules had delayed reporting the second component of this rule until earlier this afternoon in order to provide more time to consult with the minority and the leadership. It has been our intention to present the minority with every opportunity to offer and vote on amendments to the principal sections of this bill, and the Rules Committee wanted to guarantee an additional day of discussions to provide Members on both sides of the aisle with this opportunity.

The majority has supported, these measures in the past, and I am pleased that House Resolution 108 was reported favorably from the Rules Committee yesterday by voice vote. I urge my colleagues to support this rule, and I look forward to a thoughtful and deliberative debate on all of the significant issues raised by this bill.

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

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

Mr. Speaker, I will not oppose this rule, but I must take this time to express my strong opposition to this so-called reform of product liability. Mr. Speaker, I am joined in my opposition to this bill by a variety of groups including, to name but a few, the Consumer Federation of America, the Consumers Union, the American Association of Retired Persons, the National Conference of State Legislators, and the YWCA.

Mr. Speaker, these groups oppose this legislation because it is an assault on American consumers—the very American people the Contract With America seeks to assist by getting government off their collective backs. This bill does get something off someone's back, but what the bill really does is provide immunity to manufacturers and industry. The bill does it by making it very difficult for injured consumers to seek redress in the courts and thereby insuring that dangerous products remain on the market.

Mr. Speaker, this legislation will dismantle 200 years of State common and statutory law. This bill ignores the fact that at least 45 States have undertaken significant reform in response to the perceived problems in local civil justice systems. If we are to undertake civil judicial reform, such reform should complement, not undo, the efforts of the States. This legislation does not do that.

My Republican colleagues contend we must pass this legislation because of an explosion of product liability litigation. Mr. Speaker, there is absolutely no evidence to support this claim. In fact, Mr. Speaker, product liability claims filed in Federal courts have actually declined by 36 percent between 1985 and 1991 and they represent only 4 percent of all tort filings in State courts. The National Center for State Courts reported last year that since 1990, the national total of State tort filings has decreased by 2 percent. They estimated that if this trend continues, in the next 10 years State courts will experience a decline of 10 percent in State tort filings. This, Mr. Speaker, is hardly an explosion. Quite the opposite in fact.

My Republican colleagues contend that this legislation is required because juries are making outrageous and excessive punitive damage awards that damage American business, both large and small. My Republican colleagues contend that the only way to protect business and insure its competitiveness is to cap punitive damage awards.

But the fact of the matter is, Mr. Speaker, punitive damages are only rarely awarded—39 States already do not permit them or severely limit their size. These limits have been imposed at the State level in spite of the fact that consumer products are responsible for an estimated 29,000 deaths and 30 million injuries each year. In fact, between 1965 and 1990, punitive damages were awarded in only 353 product liability cases, 91 of which were asbestos cases. Three hundred and fifty-three in 25 years hardly add up to excessive number of awards.

Mr. Speaker, the GAO has reported that the size of damage are closely related to the severity of the injury and the economic harm suffered by the victim. Is it excessive or outrageous to award punitive damages in the case of a severely burned 4-year-old when her pajamas catch fire? Is it excessive or outrageous to award punitive damages when an oil tanker runs aground and bespoils a large portion of the coastline of Alaska? I think not.

Mr. Speaker, the Rules Committee met earlier this evening to consider amendments to this bill. The recommended rule severely restricts the number and scope of those amendments which will be debated on the floor. My Republican colleagues have long complained that the process in the House was closed and did not permit open debate on critical issues facing this Nation. If this issue is so critically important, the Rules Committee majority should have seen fit to open the process when we consider this legislation for amendment tomorrow. I would hope the American people deserve at least that much.

I noted that the majority leader just a few moments ago announced that we are not going to have votes on Monday and that we will not have votes on Tuesday until 5. And yet we were told in the Committee on Rules that we just do not have enough time to consider all these amendments that Members want to offer. They cannot have it both ways. They cannot cancel, effectively cancel 2 days of votes and then tell the Members that we do not have enough time to vote. There are a number of speakers on my side who wish to be heard on this matter.

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

Mr. LINDER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON], chairman of the committee.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman from Georgia for yielding me the time.

Mr. Speaker, I rise in strong support of this rule for H.R. 956, the Common Sense Legal Standards Reform Act of 1995. The rule provides 2 hours of general debate equally divided between the chairman and ranking members of the Committee on the Judiciary and the Committee on Commerce.

This is part 1 of a two-part rule which will provide Members adequate time to debate the principles associated with product liability reform as well as a large number of both Democrat and Republican amendments to this bill.

Recognizing the merits of this rule, the Rules Committee favorably reported this rule by a voice vote.

The rule will allow a fair and open debate of the important issues associated with this bill.

Mr. Speaker, our legal system needs reform. It has been reported that Americans file a lawsuit every 14 seconds in this country. This litigation explosion has been most evident in the area of products liability lawsuits.

Between 1973 and 1988, as courts liberalized product liability laws, the number of product liability cases increased by 1,000 percent. The cost of these suits has been estimated to be as high as $80 billion a year—this is greater than the combined profits of America's 200 largest corporations.

The cost of these frivolous lawsuits is devastating to America's businesses, consumers, and families. Today, our excessive reliance today on a patchwork quilt of conflicting State statutes and common law relating to product defects burdens interstate commerce, discourages innovation, exacerbates liability insurance costs, compromises American competitiveness, and forces Americans to pay higher prices.

H.R 956 will establish uniform Federal rules by which manufacturers and consumers alike will be able to abide as they engage in interstate commerce. The commerce clause of the Constitution reserved this right for the Federal Government and I believe it is time for the Federal Government to correct this area of our legal system. This bill must be passed to prevent the further growth of these burdens.

I urge my colleagues to support fair rule and the bill.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentlewoman from Illinois [Mrs. COLLINS].

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Speaker, I rise in opposition to this rule and I do so for a number of reasons, first and foremost of which is the fact that H.R. 1075 is far from the commonsense reform that it purports to be. While this legislation is bolstered by a good deal of Republican rhetoric it is supported by little empirical need.

My GOP colleagues insist there is an explosion of product liability litigation and punitive damage awards which is negatively impacting American competitiveness and stifling business growth in this country. This is pure bunk, Mr. Speaker.

Product liability cases represent less than one-half of 1 percent of all civil filings in the State courts. In addition, a mere 355 awards for product liability punitive damages have been given out over the last 25 years, and those few awards have served to not only hold obviously negligent manufacturers accountable but also increase consumer safety. Ironically, there has been a 232 percent explosion commercial litigation between corporations over the same time period which H.R. 1075 doesn't even address.

Moreover, liability costs to American industries represent less than 1 percent of total operating costs and the fact remains that all companies, both foreign and domestic, are subject to the same laws in each State as well as abroad. What the current product liability system has done is increase American innovation and our reputation for safe and reliable products—something in which we can take pride and must continue.

Mr. Speaker, H.R. 1075 represents an absolute Federal power grab in an area that has historically been the province of the States. As a popular phrase in my city of Chicago states, ''Stick around and the weather is bound to change,'' it seems a similar phrase could be used to refer to the manner in which my friends on the other side of the aisle continue to legislate with respect to State's rights.

H.R. 1075 will not create uniformity in product liability laws, as the National Conference of State Legislatures has testified. H.R. 1075 will not improve the functioning of our civil justice system. The only thing H.R. 1075 will do is preempt those State laws that effectively allow for injured consumers to be properly compensated for the harm caused them in favor of protections for the GOP's negligent, corporate, fat-cat contributors. This sure is not common sense to me or my constituents Mr. Speaker.

Before my colleagues cast a vote on this rule, I would ask them to consider the following:

A recent national telephone survey asked registered voters what they want, and don't want, as well as the kinds of things they mean when they think about common sense reforms.

Seventy-three percent said that the regulation of the civil justice system is just more of the same old big Government solution from Washington. Sixty-eight percent said the Federal Government shouldn't tamper with a justice system that lets citizens hold wrongdoers accountable, and 66 percent said politicians shouldn't tamper with a system that holds large corporations accountable to any individual.

Seventy-five percent of the respondents believe that ''The only way corporations will stop making dangerous products is if they know they can be sued.''

Eight out of 10 agree that ''Corporations should be held accountable for their actions when they injure someone even if it is an accident.''

Over 75 percent said that the current system should either remain the way it is, or be tilted more in favor of those injured in accidents.

Sixty-six percent of all people, and 72 percent of women believe that the ''award a jury gives to the accident victim should not depend on how much the victim earns.''

The survey also shows that there are some common sense legal reforms that people want. They include requiring court records to be open and available for reference rather than kept secret) a change I support and hope to accomplish along with Representatives SCHUMER and DOGGETT should H.R. 1075 proceed forward.

This is kind of thing the public thinks about when they hear the term ''common sense legal reforms.'' It is pretty clear that what they don't think about are the unnecessary and draconian provisions such as those embodied in H.R. 1075.

I urge my colleagues to vote no on this rule and support the innocent victims of corporate misconduct, not the perpetrators of such activity.

□ 1930

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

Mr. Speaker, there are corporate fat cat contributors on both sides of this, I suspect. The trial lawyers contributed $2 million to the folks on the other side.

Mr. Speaker, for purposes of debate only I yield 5 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Speaker, much has been said about the Contract With America. I think it has served most Americans well. I think most Americans are embracing it warmly.

That is not to say that I endorse all of the provisions of the contract. In fact, I have some problems with the bill that will be before us tomorrow. I do intend, however, to vote in favor of the rule now before us.

Mr. Speaker, as a member of the Committee on the Judiciary, I voted in favor to bring this bill to the full House because this issue deserves to be debated fully and openly in the House, not in the insular environs of a committee. This bill, as we all know, has been adeptly denied admittance to this floor for years.

Many times in the House, Mr. Speaker, Members who have no interest in legislation will indifferently reply ''I have no dog in that fight.'' I have nothing but dogs in this fight, friendly dogs all: the insurance community, the business community, the medical community, the trial lawyers, and individual constituents throughout my district; this compounds the complexity of this issue, parties with whom I enjoy harmonious relationships, but who find themselves at odds with each other on this issue.

Mr. Speaker, I am troubled by what we are proposing here, because it is my belief that the law of torts and surrounding issues thereto which usually involve the insurance industry directly or indirectly are more appropriately addressed in the 50 State legislatures and/or the 50 offices of State insurance commissioners. I am not comfortable, Mr. Speaker, extending the tentacles of the Congress into an area that has traditionally been administered and regulated at the State level.

I, too, am uneasy about the proposal of capping the amount of damages. The awarding of damages, in my opinion, is best determined by the juries, the tryers of the fact in lawsuits. When we begin tampering with damages, this inevitably constitutes an invasion of the province of the jury. That province should be invaded only very infrequently, and only under extremely rare circumstances.

There are extreme examples of jury awards that are applied in defense of each side of this argument, Mr. Speaker, but extreme examples do not serve as valid reasons for dramatic change, nor for immediate reform.

Finally, during debate in the House Committee on the Judiciary it was implied that this issue pits rich against poor. That was indeed unfortunate, because this is not opulence on the one hand and poverty on the other. There are wealthy, poor, and middle class represented on each side of this very emotionally charged issue.

Perhaps some adjustment, some fine-tuning, if you will, is needed, but I fear the steps proposed by the bill at hand are giant steps when deliberate baby steps might be more appropriate.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Michigan [Mr. CONYERS].

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

Mr. CONYERS. Mr. Speaker, I begin by commending the gentleman from Texas [Mr. FROST] for a valiant effort that nonetheless has produced the most grievous rule that I have had to work on in my career in the Congress.

On the matter of product liability, not discussed in this Chamber for many years, we now are presented with a modified closed rule, 6 hours of debate, 15 amendments designated by name,

limited by amount of time, none being given over 40 minutes, none, and under these circumstances it makes legislating almost a travesty. I want this body to know that I have never felt so badly about the way that we have been treated in the Committee on Rules, not just this side, but the whole Congress, in taking up this measure.

Mr. Speaker, right off the bat, we are not going to be able to do much about the preemption of State laws, because we are putting caps on punitive damages on State laws.

In New Jersey, the damages, punitive damages that are now available against sexual predators will now be capped by this law. In Minnesota, a victim injured or killed by a driver under the influence of drugs or alcohol, the punitive damages will be capped under this law. In Illinois, punitive damages that are available to any person who sells or transfers an illegal drug to a child will be capped under this law.

This is absolutely outrageous, that we would be taking a few minutes to quickly run through a bill in a contractual effort to keep within a time limit.

Mr. Speaker, I ask my friends on the other side, and I have raised this a couple of times, if this is not friendly legislation to big business, then we do not know where we are and what we are doing. If you need the Wall Street Journal to help you out, here it is: ''Big business is striking it rich in the GOP contract.'' I could say that, and I do, but they said it.

Just in case Members want to pretend that this is consumer-friendly or friendly to working people, it is not. It is an outrage.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Speaker, I rise in strong support of this rule and in strong support of the bill.

Mr. Speaker, this rule or this bill is the kind of legislation that article 1, section 8 of the Constitution cries out for, the commerce clause, which says that the United States Congress has the power to regulate commerce between the States.

There is such a hodgepodge of legislation that exists in this country from State to State with respect to product liability legislation that we are in a situation where we absolutely need, we require, we must have a bill such as this that will standardize the way that product liability is dealt with in every State.

The reason for that is that in fact everything that is manufactured in this country is manufactured in a way that it flows immediately in interstate commerce. There is clearly justification, rationale, and frankly, the necessity of dealing with this problem at a congressional level for the entire Nation.

Mr. Speaker, this is a genuinely proconsumer bill. It may not be what the trial lawyers want, it may be anti-trial lawyer. Members may describe it that way; I am not sure that I agree with that, but it is clearly pro-consumer, because what it is saying is that we will not allow a lottery to be thrown any more to find out in what State or at what situation a particularly persuasive, a particularly eloquent, a particularly loquacious and compelling attorney will be able to bring forward a judgment that could never be brought if it were a criminal situation, bringing a fine against a particular defendant.

That is really one of the things that is at stake here, is that we have to remember that when we are talking about punitive damages, when we are talking about the awarding of punitive damages, we are talking about awarding damages in addition to economic damages, in addition to noneconomic damages. It is after the plaintiff, the damaged person, the aggrieved party, has actually been compensated, been compensated for all of the economic losses that they have incurred and all of the noneconomic losses they have incurred.

What this bill does is it says that punitive damages will be either a maximum of $250,000, or three times the economic damages that have been incurred. The reason that that is important is because we have something in this country called a Criminal Code, and the Criminal Code is designed to punish people for their wrongdoings, for their criminal acts.

If we have a sexual predator in New Jersey violating criminal statutes, then that is when the Criminal Code should be used and that person should be sanctioned, should be found guilty, and should be thrown away, but that is not the purpose of punitive damages.

Mr. FROST. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, people watching this debate at home on television may wonder what in the world is going on here. Let me take just a moment to explain.

Mr. Speaker, under the procedure imposed by the majority for the consideration of this bill, there are two rules, one rule tonight providing for two hours of general debate, and there will be another rule tomorrow, proffering a certain number of amendments, only five hours and 40 minutes to deal with all the amendments in the bill.

The second rule is so outrageous that Members who want to be able to speak against the bill must take time during the consideration of the first bill, because of the fact that the majority has so severely limited the opportunity to offer amendments. That is why Members are standing up and speaking on the merits, on the outrageous provisions of this bill, during consideration of the first of these two rules.

Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, this whole process is absolutely ridiculous. Let us talk about what we are doing here. We are taking the tradition of this country that has been in effect since this country began, and we are just throwing it up in the air and starting all over. We are doing it with one hearing, in which everybody was allowed 5 minutes to question witnesses, it was a huge panel of witnesses, and now we are not allowed any real amendments tomorrow.

There are all sorts of amendments, but they have been filed way, way down. I was not allowed to present mine, and many others were not allowed to present many of theirs. They have put real strict time limits on it.

I think most people in this body have no idea what they are doing. However, before people at home say ''Oh, there they go again, they are all whining; don't the Democrats sound terrible,'' let me tell the average American how they are affected by this.

If you go into a drugstore and you go to buy some drugs, you assume that they have been looked at by the Food and Drug Administration, and you assume a certain safety level. You can forget that, because last week we did away with all that through risk assessment and regulatory reform and all the other stuff, because we wanted to lighten up on the pharmaceuticals.

Then you say ''Okay, as an American, if I did buy something and it did not work, I can always hold the company accountable by suing them.'' Guess what, now we are taking on the other bookend tonight. That is what we are going to be talking about the next 2 days, taking away your right to sue, severely limiting your right to sue.

Therefore, the two things that Americans have relied upon, the little guy, the little guy, to hold the big guy accountable in this great system that we have, so we did not have Bhopal, and so we did not have those kinds of things, have really been radically changed in this contract. I am saying tonight ''Wake up, America.''

When you also look at what we are doing with punitive damages and preempting State laws, it is absolutely amazing.

□ 1945

The prior speaker, the gentleman from Michigan [Mr. CONYERS], our leader, was pointing out all the different laws there are. We could go on and on and on.

How about this one? Any agency that recklessly or willfully makes a mistake while transferring electronic funds.

You want to know how the average American could be messed up by that anymore? New Jersey would allow unlimited punitive damages in that case if you proved that they willfully did it.

''Hey, wrong. We're taking that away from them.''

These things are very clearly on point.

How about Virginia where somebody can have unlimited punitive damages or there are no caps right now if an award is made available from a person who is injured or killed if someone is driving intoxicated? Someone like the *Exxon Valdez* or someone driving a train or a bus.

Under this, ''No, we're going to cap it.''

There are all sorts of issues in here for women and for children. This is another women-and-children-first bill, because noneconomic damages do not count. That means that if you are a parent that stays at home, you know what your value is? Zero when it comes to noneconomic value, because you did not get a paycheck. If you are a child, the same thing.

If it is about your reproductive organs or if it is about a fetus, the amendment I wanted to offer went to those issues, because women have seen over and over and over again the drug industry play fast and lose with them, whether we are talking about toxic shock syndrome, whether we are talking about IUD's, DES, or any number of things.

To say to women that the value of your reproductive organs are nothing unless I guess you have a job as a surrogate mother, then I suppose you would have economic damages, but that is not the average woman in America and we are not even allowed to present that amendment, the one that I think was the family-friendly amendment.

I hope people realize that we are not yelling to yell. We are yelling because we are throwing up hundreds of years of tradition in this country and this is the night where the little guys did not have the money to put in the legislative machine so the legislative machine is getting ready to roll right over them.

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

In response to the gentlewoman's comment that we are taking away the right to sue, only in Alice in Wonderland does that kind of language suffice. It reminds me of the character in one of those Alice-in-Wonderland stories that said, ''When I use a word, it means exactly what I want it to mean.''

Mrs. SCHROEDER. Mr. Speaker, will the gentleman yield?

Mr. LINDER. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. What does the gentleman mean, that I am Alice in Wonderland?

Mr. LINDER. The language the gentlewoman used, that this is taking away the right to sue, has an Alice-in-Wonderland quality about it.

The gentleman from Michigan who says this is the most egregious rule he has ever seen has a very short memory, because less than a year ago on the assault weapons ban, no amendments were allowed from either side at any time, a totally closed rule, an up-or-down vote.

As a matter of fact, this is not a 6-hour debate, this is a 12-hour debate. We have taken out the time for voting which your side has consistently asked us to do in the Committee on Rules. Six hours of actual debating on amendments.

Let me just say that the gentleman from Michigan was debating not this rule. This rule is about 2 hours of general debate. He was debating tomorrow's rule. Tomorrow's rule, he was speaking about with the time frames. As a matter of fact, tomorrow's rule has eight amendments in order from Democrats, six from Republicans and one bipartisan. I think it was just about March or May of last year when we were given the choice of voting up or down on the assault weapons ban with no opportunities for amendments. I think this is hardly more egregious than that.

Mr. Speaker, for the purpose of debate only, I yield 5 minutes to the gentleman from North Carolina [Mr. HEINEMAN].

Mr. HEINEMAN. I thank the gentleman from Georgia for yielding me the time.

Mr. Speaker, I stand in strong support of the rule and the bill itself. Why? Because meaningful tort reform is of great importance to all Americans, not just big business as the trial lawyers would have you believe. By limiting runaway punitive damage awards, we have the opportunity to help a myriad of local groups, such as the Little League, and the Boy Scouts, the Girl Scouts, cities and town governments, entrepreneurs, small business, doctors and nurses, and other providers of service.

Americans pay billions of dollars a year in litigation and higher insurance premiums resulting from product liability and personal injury cases. These litigation costs are prohibitive and stifle necessary innovation and research and development.

In a recent survey, 47 percent of U.S. firms said they withdrew products from the market for fear of litigation. Twenty-five percent had discontinued some form of research and development. Fear of litigation, that is what it was, a fear of litigation.

Frivolous litigation even threatens Little League. The astronomical cost of litigation and fear of being sued scares away volunteer coaches, umpires, and even the families of kids. Little League has seen its liability insurance skyrocket, up 1,000 percent from $75 a league to $795 a league.

Unbearable litigation insurance costs and fear of being sued unnecessarily is a common problem to all nonprofits. That is why the Common Sense Legal Reform Act will provide the predictability and proportionality in all civil tort cases.

Passage of the Common Sense Legal Reform Act is a vital step forward to provide equity throughout our civil justice system for all Americans.

Let's rein in those who are abusing the system and are negatively impacting small business, the YMCA, the United Way, the Boy Scouts, the Girl Scouts, and the Little League.

I strongly urge my colleagues to support the Common Sense Legal Reform Act.

Mrs. SCHROEDER. Mr. Speaker, will the gentleman yield?

Mr. HEINEMAN. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I thank the gentleman for yielding.

I just wanted to ask the gentleman about the State statutes that do allow civil recovery of punitive damages in the incidents of sexually abused children and so forth. I am sure the gentleman would agree with me that we should not be capping those in here, yet the attorneys we have talked to have all said that is what we are doing, whether it is sexually abused children or whether it is any number of these other things where States have allowed civil suits.

What do we do about that? I think it is terrible that we are not allowed to have a debate on that.

Mr. HEINEMAN. As the gentleman from Ohio [Mr. HOKE] had spoken before, he said that punitive damages are a surcharge and the meat and potatoes of litigation addresses itself to economic and noneconomic damages.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. HEINEMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding. I happen to enjoy working with the gentleman. I know of his career as a law enforcement officer.

I do not believe that you would approve of us preempting the State law's punitive damages on sexual predators that are found guilty in any State. That is not a law enforcement position, it is not a civil rights position. It should not be your or my position. Right?

Mr. HEINEMAN. No, I do not believe so. I believe that what we are talking about are Federal tort cases, cases that are brought before the Federal Government. As far as punitive damages are concerned, punitive damages happen to come about by the fact that people go overboard in their conduct, in their premeditated conduct almost as much as the law says in this bill.

Mr. CONYERS. The gentleman is against punitive damages for sexual predators when the State law provides it and we are capping it in this bill? Please.

Mrs. SCHROEDER. If the gentleman would yield, I think it is very clear——

Mr. HEINEMAN. Excuse me. Let me reclaim my time. We are talking about the replacement of State law by Federal law. Federal law is to address itself to product liability as well as all other civil cases as the bill states.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 5 minutes

to the gentleman from California [Mr. BERMAN].

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. I just want to cite the law to the other side so there is no confusion. Title II, Punitive Damages Reform, section 201(c). ''Except as provided, in any Federal or State court on any theory where punitive damages are sought.'' Applicability and Preemption.

This preempts State laws where punitive damages are concerned, no question about it. Maybe that is the reason that the gentleman made the response that he did to me on that question.

I thank the gentleman for yielding.

Mr. BERMAN. Mr. Speaker, I rise not in opposition to this rule. This rule is only to deal with the general debate issue. I rise, and I hardly ever do, in opposition to a rule, the rule that is being filed tonight, because I am so outraged by what it has done. Let's talk for a moment about what the Republican majority is doing.

On a bill which is different in many, many respects from the bill passed either out of Energy and Commerce or Judiciary, in other words, a bill unilaterally changed, we are being asked now to debate, without any kind of committee record on a number of its provisions, with a rule that will be offered tomorrow that will authorize amendments which were never raised in committee and which massively expand the scope of the bill. But neither one of those points I think are that critical.

I have not been one of the people who have been decrying the Republican decision to limit the time. You have to limit the time in House with 435 Members. I am not even one who decries doing a modified closed rule.

The balanced budget amendment I though was a fair rule. You gave the Democrats the change to take the shots they wanted to and the amendments that they had. But in this case, you are doing exactly and in the most outrageous and egregious form what you accuse the Democrats of doing. You are denying the Democrats the chance to participate in choosing their amendments and you are carefully selecting out of a large number of amendments that have been offered those amendments which would moderate this bill and the amendments which would moderate the excessive provisions of this bill and which have a chance of passage, which are in many cases being proposed by members of you own party, you are denying them the chance in allowing the amendments that are the most extreme, that raise the issue in the most clearer fashion and which are destined to lose.

You are determining the results of the legislation by the process of the rules. It is just what you ran on in November and said you would never do. It is just what the Speaker said he would never do, after the election, in his acceptance speech, what you at every press conference scream about and in every rules debate scream about. You are denying the amendments.

I am going to give a couple of examples. Punitive damages: There is a cap on punitive damages. The gentleman from New Mexico [Mr. SCHIFF], a Republican, proposes an amendment to limit that cap on all punitive damages just to product liability. He proposes another amendment to raise the cap to 3 times all damages, not just noneconomic damages.

The gentleman from Florida [Mr. MCCOLLUM], a Republican proposes an amendment to raise the cap from $250,000 to $1 million and from $250,000 to $500,000. You deny each and every one of those amendments and every other Democratic amendment, except one, the amendment, which I think is a good amendment, but it is an amendment which has no chance of passage, by the gentlewoman from Oregon that eliminates the cap entirely, because you cannot stand the test of a suggestion that something less extreme than what you are proposing but which still addresses the problem of runaway punitive damages might be offered on the floor, might win.

It is patently unfair, indefensible. I am waiting to hear the explanation for why the Schiff amendments, the McCollum amendments, the other Democratic amendments were not allowed, so you could allow the most far out amendment, an amendment that I plan to vote for, by the way, but an amendment that would totally wipe out any cap on punitive damages.

Let's talk about joint and several liability. You allow no amendment to strike joint and several, the change in joint and several liability. You do not allow my amendment to say that the minor tort-feasors no longer have joint liability but the major tort-feasors do. And you allow a Cox amendment never offered in either committee to extend the elimination of joint liability to every tort case in the country. A little automobile accident case in a rural county in Montana is now preempted by the proposed Cox amendment which you allow, never offered, and allow no amendments to modify.

□ 2000

You do not allow the Frank amendment which would have put a 20-percent limit on joint liability for both economic and noneconomic damages. It is an outrage, and I think tomorrow I am going to repeat this speech and I am going to find even better examples because you should have to face that you have betrayed everything you have been saying in this rule.

Mr. LINDER. Mr. Speaker, for the purposes of debate only, I yield 5 minutes to the gentleman from Florida [Mr. GOSS].

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

Mr. GOSS. Mr. Speaker, I thank the distinguished gentleman from Georgia, my colleague, Mr. LINDER, for yielding me this time, and I congratulate him on his handling of this rule.

I think it is very important that we bring the debate back to what we are here about tonight. What we have, as the gentleman from Texas has properly said, is the first of two rules. This evening's rule I think we could call the starter rule. It is designed to begin the discussion of product liability reform, and we want to have enough time over the next 2 days to consider all of the amendment proposals, but offered by Members from both sides of the aisle.

It was clear from our mini-marathon Committee on Rules meeting yesterday which lasted about 6 hours as we will recall, that Members acknowledge both the significance and complexity of product liability reform because we had 82 or so amendments. The two committees of jurisdiction, Judiciary and Commerce, worked diligently to present the House with a solid product. The combined bill we expect to consider in the coming days starting tomorrow and the next the day, under a carefully structured and I believe fair rule, takes important steps to bring about consistency and fairness in product liability law, while setting the parameters for consideration of damage claims.

Now, there is going to be disagreement on some of that. This is not an easy subject, but I think it is important to point out that the gentleman from Michigan who got up and said that he was feeling bad about this rule tonight is feeling bad a little prematurely because when I went back and took a look at some of the problems, this is a mighty good rule. There is no problem with this rule. And if he is concerned about the rule that is coming tomorrow, then I would suggest that we do a little comparison, reminding Members that we had 15 amendments made in order out of 80-some submitted. Eight of those happen to be Democrat amendments. One happened to be bipartisan, and 6 happened to be Republican.

Let me make a comparison with that and some of the rules, the modified and closed rules of the 103d under the other leadership. At that time we had the Reinventing Government Act. That came through with 34 amendments submitted to the Committee on Rules; 3 allowed, zero Republican.

How about campaign reform, 35 amendments submitted upstairs in the Rules Committee, 1 allowed? How about Motor Voter, 19 amendments submitted to the Committee on Rules, 1 allowed?

Omnibus Budget Reconciliation, 51 amendments brought before the Committee on Rules, 8 allowed, 7 Democrat, 1 Republican. The RTC Completion Act, 12 submitted, 1 allowed.

Now I ask Members when they bring a performance standard like that against what we are going to propose for the second staging of this rule which we will be happy to discuss with the Members tomorrow, I suggest they

might want to go back and refresh their memories about how it was in the 103d and how much more open and how much fairer it is in the 104th in the way we are handling these things.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. GOSS. I am happy to yield to the gentleman from California because he is going to ask if the Democrats were allowed selection. They were invited to participate always, and my friend from California, Mr. DREIER, is going to speak in just a moment. I think if the gentleman will save his question for the gentleman from California [Mr. DREIER], he will find the gentleman from California [Mr. DREIER] is going to answer that question. I am happy to yield to the gentleman from California.

Mr. BERMAN. I might just add on that point that was not going to be my question.

Mr. GOSS. Well, I hope the gentleman is going to ask that question.

Mr. BERMAN. That is directly contrary to what the ranking member of the Rules Committee and the ranking member of the Judiciary Committee have told me.

Mr. GOSS. Present ranking? Ranking last year, ranking this year? I would be very happy, I am not sure which ranking members the gentleman is talking about. But I guess I could further complete my statement by saying all these egregious closed rules that we complained about so mightily last year, and I just read the gentleman's statistics, the very people who are complaining about this relatively open rule compared to them all voted for those egregiously closed rules and the RECORD is clear on that.

So I think it is a little bit disingenuous to say the sky is falling on this very important subject when we have made in order 15 amendments, have got all kinds of debate time out there. We have taken out, as we have been asked to do in the Committee on Rules, the walking time, the voting time and we have it adjusted down to pure debate time.

The gentlewoman from Colorado, who is rising, who I will yield to in a moment, complained she did not have all of her amendments made in order, but I believe she does have one of her amendments made in order if I am not mistaken.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GOSS. I am happy to yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for yielding.

First of all, there were 60 germane amendments as I understand that were not made in order. The ones made in order have very severe time limits on them, and the only thing I wanted to ask the gentleman about his analogy in prior years is I cannot think of any piece of legislation that was preempting all of this jurisdiction from the States in such a radical new direction and that is a very different kind of legislation.

Mr. FROST. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the gentleman from Florida [Mr. GOSS] is a friend of mine, and an honorable person. However, he has engaged in this just extraordinary double negative. That was, it was bad in the last session, and so that justifies doing bad things in this session.

This is not what his party ran on in November. His party ran on open rules and open process, and now he is trying to justify an extraordinarily closed process that would rewrite 200 years of civil law in this country by saying what was done in the last Congress was terrible; this is not quite as terrible; but we are justified in doing this because of terrible things that were done in the previous Congress.

Mr. GOSS. Mr. Speaker, will the gentleman yield briefly?

Mr. FROST. There will be ample time as it goes on. I only yield myself 1 minute.

Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, I would say to the gentleman from Florida [Mr. GOSS] that the sky is falling when your party takes two bills that came out of committee and rewrites them, and sends them out here and, lo and behold, we find out what they do is they take, put a cap on punitive damages for somebody who sexually abuses a child. I would say the sky is falling. That is a curious position for your party to take. They put a cap on punitive damages for somebody that is killed or injured by a drunk driver or somebody who is on drugs. I would say the sky is falling if your bill does that.

I would say the sky is falling if you put a cap for punitive damages for somebody that sells drugs to a kid. And that is what the Republican bill does that has been sent out here, that you rewrote after it came out of committee.

An very interesting about this rule you are talking about here for tomorrow, you are bragging about it, and we are going to hear some more bragging here about it in a minute I guess, the gentleman said he spent 6 hours in the Committee on Rules rewriting the rule but there are less than 6 hours of debate on the whole bill, and we are not even going to be working on Monday now, apparently, a bill that wipes out 200 years of common law.

I looked at these amendments. The gentleman knows what he said, that he has an open rule here, he has been fair and so forth like that. Sixty percent of the time in the rule for tomorrow is set aside for the very Republicans that wrote the rule in the committee, the bill in the committee, and then rewrote the bill when it came out of the committee.

There is only 2 hours and 20 minutes set aside for amendments from Democrats that disagree with the bill. Do not tell us it is a fair rule. At least you ought to get out here and admit you just tried to rig it so you are not going to be embarrassed by meaningful amendments.

The fact of the matter is you have a bill out here for which there is no empirical data to support the allegation that will underlie the philosophy of the bill. You are trying to tell the American people, the gentleman from New York [Mr. SOLOMON] ought to pay attention to what I am saying here because I am talking about what he said a minute ago, he said all of these tort filings are up and so forth. You do not have any study that says that; I do not know where you guys get the facts except I guess you all just talk to each other at the country club and you just agree, ''Ain't it awful, ain't it awful what is happening?'' and talk about what the facts are.

The facts are that the National Center for State Courts found that product liability cases are only 4 percent of all tort filing. Tort filings in turn are only 9 percent of all civil filings, and civil filings are only 27 percent of all filings, which means product liability cases represent 36/100ths of a percentage point of the civil caseload and 97/1000ths of a percentage point of the total caseload in the State courts.

In addition to that, the studies indicate that the total number of these cases is going down, not up, and the Rand Corp.'s study indicates that only 10 percent of people who are injured ever use the tort system to seek compensation for their injuries in the first place.

Look, you guys are doing your corporate buddies a big favor out here. That is what is going on. You have written the rule in such a way we cannot offer amendments. The bill is a bad bill, and when we start taking up amendments tomorrow, the bill is going to be made even more bad when it comes to final passage. And we have so little time to talk about it and offer amendments that we are having to get up on the rule tonight, the first rule and 2 hours of debate and use the time to talk about the contents of the bill.

What does the bill do? The bill lets sexual abusers and drug abusers and people that sell drugs to kids off the hook.

It also says if I commit an intentional tort, if I get a baseball bat and come over to your house and beat the stuffings out of you with it, or if I burn your house down because I do not like you, there is a cap on punitive damages, you cannot get but $250,000 in punitive damages if I do that to you or three times your economic damages, which would not be much of a factor in this situation.

You guys are on the side of wrongdoers, not just corporate wrongdoers but every other kind of wrongdoers, and you are saying States cannot do anything about it because you have a cap in here which, despite what was said by one of the speakers a while ago,

applies to the State courts as well as to the Federal court.

This is an outrageous procedure. It is an outrageous bill. It is not based upon any factual data whatsoever. But to bring it to the floor with a rule like this where we have 2 hours and 20 minutes of debate and amendments brought by the other side, by opponents of the bill, and is an embarrassment and humiliation, and you have forever forfeited your ability to stand on this floor or anywhere else and criticize the Democrats for the way in which they write rules.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from California [Mr. DREIER].

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

Mr. DREIER. Mr. Speaker, I would like to take just a couple of moments to address one particular item that was raised in the debate earlier, and that has to do with the attempt made by the majority, those of us on the Republican side, to listen to and get some input from Members of the minority when we came to discussing not the rule that we are going to be voting on in just a few minutes, but tomorrow's rules because the one we are voting on in just a few minutes is simply calling for 2 hours of general debate. So it is interesting we have begun debating a rule that we are not considering now on the House floor.

I am very happy to see my good friend from south Boston, the former chair and ranking minority member of the Committee on Rules [Mr. MOAKLEY] here, and of course my friend from Glens Falls, the distinguished chairman of the Committee on Rules. I was standing in the back of the Chamber when a discussion took place between the chairman and the ranking minority member. Now my hearing is awfully good, I had a hearing test downstairs. I could not hear exactly what was being said, but I got a report from the chairman and the chairman told me that an offer was made to the minority to come forward by 2:30 this afternoon with recommendations as to what amendments we might consider making in order, and it was not until we met at 4 o'clock this afternoon and gave a 10-minute break at the request of the minority to look at the amendments that were made in order that we heard anything at all about what ideas we wanted to have considered.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I am more than happy to yield to my friend, the gentleman from south Boston.

Mr. MOAKLEY. Actually, the gentleman is partially correct. I had a conversation with the chairman and I said, ''What have we got to look at; have you got a draft?'' And he says, ''No, I do not have a draft yet.'' I said, ''We would like to see what you have so we could talk about it.'' He says, ''Well, why don't you see what you can do and then come back and we will talk?''

But in the meantime the Committee on Commerce came down and other people from the committee came down and said that your committee was getting information from them.

Mr. DREIER. I expect I sort of became the intermediary here.

At this point, with the indulgence of my friend from south Boston I think Glens Falls ought to be represented.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I am glad to yield to the distinguished gentleman from Glens Falls, NY, the chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Chairman, I thank my good friend for yielding. But to my good friend from Massachusetts, [Mr. MOAKLEY] he has had an alphabetical listing of 82 amendments. Fifty-one of those amendments are Democrat amendments, and I simply said give us a list of your priority amendments and let us consider them. And at 2:30 I expected to get those so we could sit down and caucus, talk about the amendments, and try to be fair. When no list came, we simply went through the list, picking out all of the issues throughout all of the titles and then had to make the decisions ourselves.

Mr. DREIER. And we ended up making eight Democrat amendments in order, five Repbulican amendments and two bipartisan amendments.

Mr. SOLOMON. The gentleman is absolutely correct.

Mr. BERMAN. Mr. Speaker, will the gentleman yield on this?

Mr. DREIER. I yield to the gentleman from California.

Mr. BERMAN. Mr. Speaker, I thank the gentleman very much for yielding. I do not even want to get into the debate about what was said or who chose what because I was not there for any of the conversations.

Mr. DREIER. I was simply repeating a discussion I had.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. MOAKLEY. Mr. Speaker, I yield to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. The question of the number of amendments that are Democratic and the number of Republican is all nonsense.

Address the issue of why you allowed the amendment that was the most extreme and none of the amendments by Republicans or Democrats that sought to refine the bill. I submit, and you will have to show me why it is not so, that you went through a systematic process of making sure no amendment that might moderate this bill, that could win, could be offered, and only amendments that could not win would be allowed.

You rigged the process, until you show me otherwise, and that is the real outrage of this rule.

Mr. MOAKLEY. Reclaiming my time, in answering to my dear friend from New York, the chairman of the committee, our side did not have that list until 4 o'clock. I never saw that list until 4 o'clock when I walked into that committee room.

Mr. SOLOMON. If the gentleman will yield, you had that yesterday all day long during the hearing; during the hearing you had the list of amendments, 82 amendments as we went through the testimony.

Mr. MOAKLEY. This was not the list you and I were talking about. I mean, that was matters that were going on then, and it was my understanding that somewhere we would have met and sat down rather than go up and then see our choices already picked by you on the schedule to be voted out.

Mr. DREIER. I am just sorry I was not there for the conversation.

Mr. MOAKLEY. You have got good ears.

Mr. LINDER. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE].

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

Mr. HYDE. Mr. Speaker, I have watched a lot of debate in my life on television usually between Senatorial candidates. Sometimes the hyperbole gets pretty extreme. One phrase I have heard pretty often, ''You are shameless, you are shameless.'' I would never bring that word to bear here in this Chamber. I must say I advise my friend from Texas of an old equitable doctrine called clean hands. You do not come to court complaining of somebody's dirty hands unless you have clean hands yourself. That is the problem, the fatal flaw with your argument. There are eight Democratic amendments made in order, six Republican, on this legislation, and your complaint is we are only five times as generous as you were.

Now, I look at the motor voter bill. That was a big one, one amendment, one. Assault weapons. Did that reach into the States and the cities and the communities? Zero, zip, nada, no amendments at all. My God, and you have the chutzpah to complain that you have got eight amendments here? How do you do it? What do you drink? What do you eat that gives you that?

How about reinventing government? How many Republican amendments on that one? Zero. How about campaign reform? There is a big one. How many Republican amendments did you permit in your Committee on Rules? Zero. Motor voter, assault weapons, omnibus budget reconciliation, one Republican amendment. Thank you, thank you very much. One Republican.

It is just too much, to take all of this moaning, and weeping, and gnashing of teeth, with your record.

Clean your hands, please.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I say to the gentleman from Illinois [Mr. HYDE], the thing that just bothers me is that all of the speakers that are complaining here, that are squawking, every one of them voted for every single restricted rule in the last 2 years.

Mr. HYDE. We need an analysis of these rules. This is just cursory. This is off the top of my head. Let us go into this in depth.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield myself 30 seconds.

I would remind my good friend, the gentleman from Illinois [Mr. HYDE], and my good friend, the gentleman from New York [Mr. SOLOMON], that it was their party that ran for office last year, promising open rules, not promising partially open rules, not promising modified rules, promising open rules.

I would raise a question about the cleanliness of the hands, I say to my good friend, the gentleman from Illinois [Mr. HYDE]; your contract and your Speaker promised open rules. That is not what we have here today.

Mr. Speaker, for purposes of debate only, I yield 1½ minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Speaker, I hate to disagree with colleagues on both sides of the aisle. I do not think it is tremendously important to the American people, you know, who allowed more amendments when.

The question is: What does this bill do to or for the American people? This Corporate Liability Shield Act which we will take up tomorrow I heard earlier described as pro-consumer, and I heard some discussion of Alice in Wonderland. If you think this bill is pro-consumer, you have stepped through the looking glass.

The next time the Ford Motor Co. knowingly puts out a defective product and keeps it on the road and people burn to death, they will have a little different equation to deal with. It will be easier to keep it on the road, because they know the punitive damages are going to be limited next time around. That is pro-consumer?

Is it pro-consumer to preempt the States, 200 years of State law, to preempt every jury in every State in America with your judgment and cap damages? I do not think that is pro-consumer.

And how about the special provision for the wealthy? You know, if you get punitive damages under this bill, you are going to enshrine something into Federal law. You can get three times your monetary damages, generally including your wages. So if you are an electrician and you earn $30,000 a year, you are limited, but if you are a fat cat and you earn $250,000 a year, you can get three times that amount. That is pro-consumer?

Well, I suppose that is pro-consumer if the people you think of as consumers are the wealthiest people in America.

This sticks it to average Americans, again, like every other bill this week.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield the balance of our time to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, there may well be some debate about which of the various pieces of legislation considered this week is the most outrageous. Is it the reversal of 200 years of American law with reference to the way attorneys are handled in our society? Is it the potential for bilking those who invest our pension funds in securities in this country? Or is it denying the rights to those who are injured across this country from defective products?

There may be debate about that. But there can be no debate about what is the most outrageous rule for consideration of any of these measures, because we are tonight part of a double whammy, a double whammy to deny the people of America through a gag rule on this Congress the opportunity to discuss the full dimensions of this issue of taking away the States rights at the same time we take away the rights of victims.

We know full well there is ample time to debate the dimensions of this piece of legislation. We have just had the distinguished majority leader come to the floor of this House and tell us we have all day Monday, be it to play golf, be it to be wined and dined by the great corporate lobbyists who are so interested in this piece of legislation, but we have no time, not 1 minute, to spend on Monday discussing the rights that are being destroyed of the American citizens through this piece of legislation.

We have courts all over this land, we have State capitals all over this land struggling with the issues involved. Let them struggle on without the Federal Government taking over these issues and doing it in a way that is not actually debated on the floor of this House.

It deserves more than one evening, it deserves more than one day when you trample on the rights of our citizenry in the way this is being done.

Mr. LINDER. Mr. Speaker, I yield myself the balance of our time.

Mr. Speaker, I realize that it is fun and interesting to debate the bill while discussing the rule, and tonight we debated tomorrow's rule instead of tonight's rule about which I will make just a couple of references.

It is a fact that the minority was offered an opportunity to prioritize their amendments and tell us which ones, in their judgment, were most important. They did not do that.

It is also true that of the 82 amendments that were printed on our desks for roughly 2 days both during the hearing and during the markup of this bill, there were eight to nine substantive idea differences. We had many amendments offered changing the cap, abolishing the cap; we had many amendments offered changing joint and several. We made a sincere effort to find in each of the areas where there were substantive differences and ideas to find the amendment to be voted on at that time, to debate it and vote on that idea.

If the amendments that are put forth, the 14 amendments or 15 amendments, 8 Democrat, 6 Republican, and 1 bipartisan, if they pass, it will dramatically alter this bill if it passes and goes to the Senate. The changes are substantive. They are sincere, and they are real. The debate will be long tomorrow and the next day on the substance of the amendments. The opportunity for the amendments to be voted on is rather unique, in my experience here, because we did not have opportunities in the last Congress to offer many amendments at all.

I urge my colleagues to remember just this: The rule we are voting on tonight says this, tonight there will be 2 hours of general debate on the bill, divided between the ranking members and the chairmen of the two committees, Judiciary and Commerce. That is it. That is hardly, hardly a difficult rule to take, and I urge my colleagues to support the rule.

The SPEAKER pro tempore (Mr. EWING). Without objection, the previous question is ordered on the resolution.

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–72) on the resolution (H. Res. 109) providing for further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR SUNDRY COMMITTEES AND THEIR SUBCOMMITTEES TO SIT TOMORROW DURING 5-MINUTE RULE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Committee on Banking and Financial Services; Committee on Commerce; Committee on Economic and Educational Opportunities; Committee on Government Reform and Oversight; Committee on International Relations; Committee on National Security; Committee on Resources; Committee on Science; Committee on Small Business;

Committee on Transportation and Infrastructure; Committee on Veterans' Affairs; and Select Committee on Intelligence.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

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

Mr. DOGGETT. Mr. Speaker, reserving the right to object, we have consulted with the ranking member of each of those communities, and I believe this is by agreement.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 108 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 956.

□ 2029

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 956, to establish legal standards and procedures for product liability litigation, and for other purposes, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 30 minutes, the gentleman from Michigan [Mr. CONYERS] will be recognized for 30 minutes, the gentleman from Virginia [Mr. BLILEY] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. DINGELL] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

□ 2030

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

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

Mr. HYDE. Mr. Chairman, I rise in strong support of the Common Sense Legal Standards Reform Act of 1995.

Mr. Chairman, this is an historic debate. After more than a decade of work by Members on both sides of the aisle, product liability and legal reform legislation is finally being considered on the floor of the House for the first time. For too many years discussion and debate was blocked by Members who are unsympathetic to the goals of this legislation.

Mr. Chairman, this legislation is directed at some basic fundamental problems with our civil justice system. It is intended to address the serious problems of lawsuit abuse. Lawsuit abuse saps our economy, eliminates jobs, pits neighbor against neighbor, injures our country's global competitiveness. In the words of former Attorney General William Barr, ''Our civil justice system is slow, expensive, uncertain, and capricious.''

Mr. Chairman, lawsuit abuse is harming American industry and American workers. The uncertainty and unfairness of the present system discourages employers from investing capital, making better and more innovative products, and creating new jobs.

Lawsuit abuse undermines our international competitiveness. Our companies pay liability insurance costs which are 20 to 50 times higher than foreign competitors. Those higher costs translate into higher prices for U.S. products, which in turn reduce our exports and job opportunities, they otherwise would provide.

Lawsuit abuse slows research efforts to find cures for many serious diseases. According to Science magazine, many of America's leading medical research and pharmaceutical companies have decided to abandon, or to avoid altogether, products that would be extremely helpful to America's health system. Numerous other life-saving medical products are not reaching the market because of liability concerns.

Lawsuit abuse means higher prices for consumers. Higher liability costs necessitated by the current legal atmosphere, and the lack of clear national standards, are ultimately passed on to consumers in the form of higher prices for products and services. Our legal system acts like a hidden tax, a ''litigation tax'' on the American consumer and too little goes to the injured victims.

The U.S. Department of Commerce has estimated only 40 cents from each dollar expended in product liability suits ultimately reaches injured victims. The tort system is too costly. The current system imposes a staggering cost on the United States. The annual cost of this tort system is estimated at $117 billion. It is the most costly system in the world.

Mr. Chairman, no single State can effectively resolve these problems. Frequently, a product is manufactured in one State, and sold in another State, while the alleged injury occurs in a third State. On average, over 70 percent of the goods manufactured in one State are shipped out of the State and sold elsewhere. So, the fundamental interstate character of this area of the law gets a uniform national solution.

Mr. Chairman, excessive, inflative punitive damage awards have effects far beyond the borders of one State. They affect the investment decisions of large and small businesses. They hamper job creation, and they discourage new products from going on the market. They affect the present and the future of virtually every American. In an increasingly global economy our confusing, crazy-quilt, patchwork of 50 separate State liability laws presents roadblocks to America's economic growth and job creation.s

Opponents say we should not preempt State law. Opponents of this legislation ironically talk of interference with states rights, but many of these same persons are quite comfortable preempting State law, and allowing expansive Federal regulation, in numerous other areas with the EPA, FDA, OSHA, Consumer Product Safety Commission, Equal Employment Opportunity Commission, NLRB, FTC, FERC, FCC, Securities and Exchange Commission, CFTC; and, who knows how many other Federal agencies regulating virtually every segment of the American economy?

It is ironic that the multibillion-dollar litigation industry should be one aspect of the economy, but they believe the Federal Government should not touch. The truth is that they are for the status quo.

This bill will not result in any new Federal spending, no new Federal department or agency will be created, no new Federal program will be established, no new Federal regulations will be issued, no new Federal court jurisdiction is created, and no new costs to the Federal taxpayer. Instead, what we will have are constant, and consistent, legal standards governing civil actions brought in both Federal and State courts. Instead of the uneven patchwork of 50-plus, confused, and inconsistent State laws, there will be basic uniform rules and legal standards that everyone will understand.

PUNITIVE DAMAGES REFORM

Importantly, in the area of punitive damages, this bill goes beyond product liability suits and extends punitive damage reform to all civil actions.

SEVERAL LIABILITY REFORM

We will hear more about this as we go along, but we have adopted the California rule, which is working very well out there.

PRODUCT SELLER FAIRNESS

We distinguish between a seller and a manufacturer, something that should have been done a long time ago; and, very importantly, we initiate a statue of repose, a uniform statute of 15 years on all goods. A statute of repose specifies the period of time after manufacture of a product during which a lawsuit relating to a product may be brought. Thus, manufacturers cannot be sued for products 15 years after their delivery. This is an important concept already recognized in Federal law because last year we passed the General Aviation Revitalization Act of 1994.

ALCOHOL AND DRUG DEFENSE

This bill includes language that would prevent a claimant from recovering in a product liability action if that person was more than 50 percent

responsible for the harm because of the use of alcohol or drugs.

Mr. Chairman, the American people overwhelmingly support reforms in our current legal system. Why is that? Well, when the Girl Scouts of America have to trudge door to door in our neighborhoods to sell tens of thousands of boxes of cookies just to raise the funds necessary to protect themselves from liability, the American people know that something is seriously wrong with our legal system. When Americans see breakthrough work on medical devices and medical vaccines that could save lives halted because of the fear of lawsuits, the public is rightfully outraged. In a society where lawyers, not the injured victims, receive over half of every dollar spent on product liability litigation, it is time for change. Under our current system consumers lose, workers lose and businesses lose.

Mr. Chairman, as part of the Contract With America the Republican Party made a commitment to end lawsuit abuse in America and return fairness and common sense to our legal system. Mr. Chairman, H.R. 956 is at the core of this pledge and deserves the support of every Member of this body.

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

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CONYERS] for 30 minutes.

Mr. CONYERS. Mr. Chairman, I yield myself 4 minutes.

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

Mr. CONYERS. My colleagues, we have reached the moment in the frantic 104th Congress where we will begin consideration of product liability reform, the conceded centerpiece of the new majority's contract with corporate America. But we should carefully study the signatories to this contract provision: the party of the first part, the Republican Party; the party of the second part, corporate America.

But where are the American people?

They are nowhere to be found.

So, Mr. Chairman, let us be clear at the outset of this debate. What masquerades under the arcane title of product liability reform is nothing less than a frontal assault on consumers, on the courthouses and the juries of the 50 States, and on the continued safety of products found in our grocery stores, at our schools, and, yes, at our very homes.

Not to be allowed to be considered is joint and several liability which has now been severely reduced.

Not to be considered are various amendments on punitive damages, to raise the limit at least to a million dollars and to include noneconomic damages.

Not to be considered is the Federal preemption of State laws that include sexual abuse violations, drug violations and even, yes, regular assaults on individual to individual.

There is no way to change the law under this very strictured debate. I say to my colleagues, ''Prepare yourselves for a journey into a dream-like world where proponents of this legislation are unable or unwilling to distinguish myth from reality for the myths have grown way out of control.''

Mr. Chairman, this bill is all about the rights of States, and I do not stand as a States righter, but for over 200 years each State developed its own law; my colleagues know that. We have developed tort law at the State level by citizens, by their courts, by their legislatures, and they have done a great job. The laws kept apace of striking the proper balance between citizens rights and business interests. In the past decade alone over 45 States have modified their tort laws in various ways where they needed correction, but this bill is a move to federalize all State tort law so that corporate lobbyists can get from the Federal Government what they could not get from the States.

The pressure by corporations to do this in the first 100 days of this Congress has been enormous. It had to be to make the Republican majority turn its back and swim upstream from the central theme of the Contract With America which is, obviously, returning power to the States and to the people. I ask, ''Remember that theme that we had only a few weeks ago? Remember it?'' Well, it is history now, at least for the next few days.

In this bill the new majority is saying. ''Welcome back to the world of the Great Society where the Federal Government will tell you how to run your courts, your juries, your business and your home.''

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

The CHAIRMAN. The Chair recognizes the gentleman from Virginia [Mr. Bliley] for 30 minutes.

Mr. BLILEY. Mr. Chairman, I yield myself such time as I may consume.

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

Mr. BLILEY. Mr. Chairman, I rise in strong support of H.R. 956, the Common Sense Product Liability and Legal Reform Act. While many amendments will be offered to this bill from both sides of the aisle, I am confident that H.R. 956 represents the best compromise possible from the communities of jurisdiction.

The bill before the House today is the culmination of almost two decades of grappling with the issue of tort reform system under control, particularly in the area of products liability. I am especially proud to have the opportunity to bring this bill to the floor as chairman of the Commerce Committee.

While I am not a lawyer and do not profess to comprehend all of the finer points of legal discourse, I do know that today's tort system has grown into something that no one ever intended.

Today, people seem to talk to their lawyers more than they talk to one another. For every problem, the answer seems to be another lawsuit. It used to be that when you drank a case of beer and fell of a ladder, you were drunk and stupid. Now you sue the ladder company because the ladder was somehow defective. The only people who have profited from this change in attitude are the lawyers. Americans everywhere want this profiteering to stop.

That is why product liability is such a bipartisan issue. In the Commerce Committee, where my predecessor and good friend, the gentleman from Michigan, has historically championed the cause of meaningful product liability reform, we have held well over a dozen hearings and nearly 20 days of markup on product liability reform legislation. We reported out product liability reform legislation not just once, but twice, with significant bipartisan majorities. H.R. 956 is the ultimate product of those efforts, and there is a lot for Members on both sides of the aisle to support.

This bill injects some rationally into how punitive damages are awarded. It lifts the burden placed on interstate commerce by 51 separate jurisdictions. And it gives manufactures a small degree of predictability about what they face when they put their product on a truck bound for this marketplace we call America. However, there is nothing in this bill which impairs the ability to legitimately injured people to collect damages from the people or companies who injured them. That is what the tort system was designed to do and no one wants to take that away.

There will be a great many amendments offered to this legislation over the next several days. Some of these amendments will improve the bill while others are designed to gut it. I trust that Members will look at each amendment and listen to the debate carefully. And in the end, I hope that Members will make the right decision and vote for a more rational and measured product liability system rather than for the trial lawyers.

☐ 2045

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

Mr. TAUZIN. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. DINGELL], the honorable ranking Member of our Committee on Commerce.

Mr. DINGELL. Mr. Chairman, I thank the distinguished gentleman from Louisiana for yielding.

Mr. Chairman, I have supported product liability reform for over a decade. In 1988 I presided over the infamous ''torts class from hell'' when the Committee on Energy and Commerce spent 10 long days in a markup to report a product liability reform bill. Regrettably, that bill died when other committees failed to take action. Since then, I have repeatedly cosponsored other major legislation on this subject

and have sought to see to it that it was enacted into law.

I observed that this is a painful process to me because it is my view that the bill is being rammed through the House. Unlike previous efforts, there has been little meaningful attempt to work out a bipartisan piece of legislation, fair and balanced. The rush to judgment has produced a number of defects, inconsistencies, and errors, and indeed it has been fraught with what I view as being procedural errors and failures. Despite my misgivings about the process and certain provisions, I voted in favor of the Committee on Commerce bill. I did so because the core of the bill was consistent with those that I had previously supported and because there were assurances made at the markup that some of the bill's shortcomings would be corrected.

I will note, however, that under the probable rule, opportunities to correct some of the defects which I seek will become much smaller and much less opportune, but before the ink on the Committee on Commerce bill was dry, Chairman HYDE and Chairman BLILEY introduced yet another bill, H.R. 1075. This new bill differed significantly from the bill I voted for in committee.

One major change is the punitive damages provisions of H.R. 1075. They apply to all actions for harm, not just product liability actions. I am curious why this is so. It is possible it is motivated by any of a number of reasons, one, to protect all wrongdoers from punitive actions and two, to open up the bill so perhaps more extreme legislation unrelated to product liability reform might be considered. I hope that that second course will not be followed. The idea of limiting punitive damages and product liability actions is something I am willing to consider carefully but I do not believe that this legislation should be use to enact wholesale changes to all of our Federal and State law with regard to civil actions in the courts of the Federal Government or the several States.

I am particularly concerned about the amendments that might arise to limit medical malpractice liability and to put severe limits on noneconomic damages in all civil cases. I believe that something should be done about medical malpractice liability, but I believe it should be done carefully and with consistency in terms of good practice of the kind that we have seen over the years. This bill should be about product liability reform, not about rewriting liability laws for all State and Federal cases.

Amendments that go to key provisions in this bill on product liability reform should be debated on and they should be voted on and sufficient time should be given. If the bill becomes an attempt to rewrite all civil liability law without hearings, without consideration in the committees of jurisdiction, and without proper notice and opportunity to participate for all Members, it will certainly diminish bipartisan support for the bill and threaten support for product liability reform. That would be a shame because we worked too long to try to achieve reform of what is a serious economic, social, and other problem.

I will participate in the debate allowed by this rule. I intend to listen to the arguments on all sides. I hope that fair and balanced debate will lead to fair and balanced product liability reform legislation, as I have for many years. But this bill cannot become a vehicle for another attempt to deal with issues outside the needed reform.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. I thank the gentleman from Illinois.

Mr. Chairman, when the evidence is in, we hope that the American public acting as the jury of us all will be able to render a final verdict in favor of what we are attempting to do here, and exhibit A among the evidence that we are going to present the American people is title III, for instance, in this bill.

Here is the situation, and I ask the public to weigh this. We have an individual who is suffering from severe heart disease. The doctors who were attending this individual insist that the only way that life can be saved or life made better for this individual is for a valve of some sort to be implanted in the body of this individual. It has come to pass that medical devices that are intricately prescribed for this kind of condition have become scarce on the market, not because the innovative spirit of the scientists and doctors and practitioners and inventors who are involved in this field do not have new products and new ways of doing things, but because suppliers of the raw materials that go ultimately into the manufacture of these medical devices have found themselves liable to suits in which they have been found not to be culpable in the long run, but which has caused them millions of dollars in expenses for litigation, not to mention the time expended away from their ordinary business to defend a suit that ultimately ends up on their favor, but because they do not want the hassle of this kind of liability, they are leaving the marketplace, and that leaves the individual with the heart disease, the consumer, if you will, because this is a pro-consumer tenet that we are advancing here on this products liability bill, that consumer no longer has access to a heart valve that is important to saving that individual's life. That is what this is all about, and we can expand this type of example to hundreds of other examples in the marketplace which prevent, because of liability suits and the reluctance of companies to advance new products, depriving the consumer of lower prices, of a better selection, of new innovation devices and, in the example that I have offered to you here tonight and which is supported by many people in this room here tonight, the consumer, the consumer that we most want to benefit, the patient, the heart disease patient, the brain-damaged individual, the one who requires a hip joint or any other kinds of medical devices that can save lives or produce a better quality of life, the marketplace is shrinking because we do not have the type of legislation which we offer here tonight.

Mr. CONYERS. I am delighted to yield 4 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Michigan for yielding.

Mr. Chairman, I think the way to frame this bill is this is the Washington-knows-best bill, and, for the life of me, I cannot figure out why we are doing this. We are here upsetting over 200 years of tradition and we are doing it after almost everyone has gone home. Let's face it, only the committees are here debating and this whole thing has been ramrodded through.

We are beginning to see now what people who contributed to the campaign are getting. The fat cats are going to get their tax cuts and they are going to get a huge liability shield, because that is what we are really constructing here is a shield for them against any liability.

It is almost like saying the Congress has now decided that the highest value in America is making money, making money at any cost. I mean, we want these fat cats to not have to deal with regulation, heaven forbid, because they might have to make something safe, and then, if you have taken the regulation away, you have got to change the legal rules, because otherwise, they are going to get sued.

So if we can take away the regulation and take away the legal rules, wow, and America will be out there and we will be competitive again. I guess this is the new trickle down thing. So the employers will all be happy because they will have more money and hire more workers if the workers do not happen to get hurt. But if they do, it is too bad.

I find this really, really surprising, because this has very severe limits on damages. We are saying to all the State legislatures, we know better than you. Of course not in school lunch. We are going to take school lunches and give it back to the State legislature. They are nutritional experts but they do not know anything about product liability or torts or whether or not they want to put punitive damages on sexual abusive people and so forth and so on. We are going to take all that away from them and they get to do nutrition, which I think is really interesting.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I would be happy to yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I do not want her to suggest

that our friends on the other side are indifferent to the fate of these children at the Federal level. Is it not true that if everything they want goes through, while the school lunch program would be in the hands of the State and they would decide without competitive bidding who would be the suppliers, if a child in fact were to have an untoward incident in what he or she ate, they would sue under Federal law so it would be a State administered law but it would be a Federal lawsuit?

Mrs. SCHROEDER. You got it. And then, of course, the child, not having a wage, would have a lot of trouble because of noneconomic damages, and children are certainly, most of them, I think the child labor laws are still in effect, but I have not looked, is that in the contract too, because a child does not have a job, they come out on the short end of the stick because they fall under the noneconomic damages that we are talking about.

I just find this something that is very drastic, and it really is changing the course of what we thought government was for. I thought government was to help protect the little guy from the big guy. Now we are finding out the government is helping protect the big guy from the little guy.

Well, most of the big guys I know have done a pretty good job of protecting themselves and I must say, I am very, very saddened by this.

□ 2100

Mrs. SCHROEDER. As I stand here looking at things that States have done that make sense to me, I am saddened. When you see people saying we ought to get kingpin drug dealers that are out pushing drugs to young kids and we ought to be able to get them in civil court, where obviously the standards are not as high, and we ought to be able to hit them with punitive damages, we are going to come in tonight and say no, we do not think so. We do not want kingpins to pay more than $250,000.

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

Mrs. SCHROEDER. I yield to the gentleman from Virginia.

Mr. BLILEY. Is the gentlewoman a lawyer?

Mrs. SCHROEDER. Yes, I most certainly am.

Mr. BLILEY. Is the lady's husband a lawyer?

Mrs. SCHROEDER. Yes, he most certainly is.

We know what punitive damages are, and what we are doing tonight is we are putting a cap on punitive damages. Now, the $250,000 might be a lot to us, but to a kingpin drug dealer it is not very much.

Mr. BLILEY. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. OXLEY], the chairman of the subcommittee.

Mr. OXLEY. Mr. Chairman, I rise in support of the Common Sense Product Liability and Legal Reform Act. Product liability reform has occupied the Subcommittee on Commerce, which I chair, for almost two decades. It is testimony to the strength of the opposition that never before has this House considered comprehensive liability reform, but a new day has dawned. Let those who wish to defend the status quo do so, but my sense is that the American public is far ahead of them on this very important issue. Members of both the majority and the minority parties have worked hard for many years on product liability reform, and at least success is in sight.

Our bill comes to the floor today under the able leadership of Chairman BLILEY, and I commend him for his efforts. I thank the ranking committee member, my friend from Michigan, Mr. DINGELL, for his leadership on this issue over the many years. I know he is frustrated by both the pace and the process of this bill, but I commend the gentleman for his commitment to reform, which has remained constant through these years.

I also want to thank the gentleman from Louisiana [Mr. TAUZIN], my ranking member, again for his excellent work in this area. I also want to thank the Committee on Energy and Commerce staff who has worked long and hard, Doug Bennett, Robert Gordon, and Hugh Halpern for the majority, David Tittsworth for the minority, for their constant and hard work as well.

My colleagues on both sides of the aisle know that the product liability system in America costs the people of this country dearly. We pay more for products, we are denied life-saving medicines, we force companies to lay off workers, and we suffocate innovation. Just listen to the numbers.

Because of product liability exposure, 47 percent of American manufacturers have withdrawn products from the U.S. market; 39 percent have decided not to introduce new products; 25 percent have discontinued new product research. These decisions hit consumers, and it hits them hard. The Conference Board reports that again as a direct result of existing product liability laws, 36 percent of American manufacturers have stopped some manufacturing; 15 percent have laid off workers; and 8 percent have closed plants. What does our product liability system offer American workers? Lost jobs and lost opportunities.

Mr. Chairman, opponents of this legislation have portrayed the bill as anticonsumer. Nothing could be further from the truth. The status quo is anticonsumer and antiworker. America's liability system is a huge liability to American and its workers.

The bill before us today is effective, it is fair, and it is long overdue. It protects the right of those injured by defective products to recover all damages, both economic and noneconomic. It puts an end to the abuse of punitive damages and provides a reasonable statute of repose.

Manufacturers will be encouraged to innovate and compete and sellers of products will no longer face unlimited punishment for sins they did not commit. H.R. 956 loosens the self-imposed strangled hold our liability system places on the American economy.

Mr. Chairman, I do not want to take a lot of time, so I will close with the words of Francois Castaing, vice president of engineering for Chrysler Corp.

> It is well understood that product liability laws have a purpose. They are supposed to compensate for injury, promote safety and penalize gross negligence. If a corporation is irresponsible, it should be held accountable. But the situation in the United States has gone beyond punishing gross negligence. Now punishment is meted out for many risks that simply cannot be avoided when a product is produced and sold to a public that has wide discretion in how it chooses to use that product. When no distinctions are made in assigning responsibility for risk and all companies are held responsible—and penalized—for all risk, the ability to innovate, engineer, and compete is compromised.

Mr. Chairman, I am in strong support of this legislation. We have worked on this for a number of years in our committee. I think the efforts by the Committee on the Judiciary and our committee have brought us here today, where we can pass an outstanding bill with a good, strong, bipartisan support.

I would say to those who would continue to defend the status quo, that the burden of proof is on you to prove that the current system is not inimical to the American worker.

Mr. TAUZIN. Mr. Chairman, would it be useful for the Chairman to summarize how much time remains for each of the parties?

The CHAIRMAN. The gentleman from Louisiana [Mr. TAUZIN] has 26 minutes remaining; the gentleman from Virginia [Mr. BLILEY] has 22 minutes remaining; the gentleman from Illinois [Mr. HYDE] has 19 minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 22 minutes remaining.

Mr. TAUZIN. Mr. Chairman, I yield 5 minutes to my friend, the honorable gentleman from Texas, [Mr. BRYANT].

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT].

The CHAIRMAN. The gentleman from Texas [Mr. BRYANT] is recognized for 6 minutes.

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding.

I would say to the gentleman from Ohio [Mr. OXLEY], yes, Chrysler Corp. ought to be quoted in this debate. They have had the best 5 or 6 years of the company's history. They are doing extremely well. I own two of their products. So is Ford and so is General Motors. They are doing better than ever. Products liability cases have not kept them from doing well. They are doing extremely well.

I will say to the gentleman from Virginia, [Mr. BLILEY] who said a moment ago at the beginning of his remarks

that this is the end of 20 years of working on products liability reform, the truth is, this is the culmination of 20 years of these big companies campaigning for products liability reform. Not based possible upon any empirical data, because there is not any to support your case; not based upon any economic studies, because there is not any to support your case.

You called the witnesses before your committee, Mr. HYDE, and you called them before your committee, Mr. BLILEY. You all set up these hearings, and I was at both of them. And I asked the question, do any of you guys have an empirical data to show that there is a products liability crisis in terms of the increase in the number of cases or increase in the size of the verdicts? And they all said no, we do not have any data like that.

In fact, the data is just the opposite. The National Center for State Courts finds that product liability cases are only 4 percent of all tort filings; tort filings are only 9 percent of all civil filings; civil filings are only 27 percent of all cases; which means that product liability cases represent a mere .36 percentage point of the civil caseload. Thirty-six hundredths of a point of the civil caseload.

In addition, in recent years the number of product liability filings has been steadily declining. If you challenge me, I will quote the studies for you. Steadily declining.

There is no data to support the movement you are asking this House to take in this bill. The fact is this is the culmination of a 20-year campaign that goes on, on the radio as we speak. One of the cases that you all like to talk about and be derisive of and they like to talk about on the radio all the time is the McDonald's coffee case.

Well, we found out the other day why you had not heard the other side of the McDonald's coffee case, because the lady who filed the case has a secrecy order imposed upon her. She could not talk about it. While McDonald's was talking about it, she could not talk about it. What were the facts? McDonald's was warned 700 times by complaints from people saying they had been burned by this super-heated coffee.

The average temperature of the coffee was 180 to 190 degrees. You are warned not to keep your hot water heater over 135 degrees because it might scald your children. Yet McDonald's continued. Here are pictures of three cases that you did not read about right here. You did not hear about these cases.

Here is an 11-year-old boy from South Carolina. The coffee he was holding spilled, causing horrible scalding. Tests conducted during the trial showed that the coffee was 180 degrees when spilled, even though it was poured 15 minutes earlier. That is what happened to that 11-year-old kid.

I have a picture here of a 3-year-old child. She was burned when she was 1½-years-old. The same situation. McDonald's coffee, they were warned but they did not do anything about it. Other folks in the coffee business have not had this problem.

This woman, this is a tragic case. She was critically burned when a cup of McDonald's coffee burned down the front of her body in Las Cruces, NM. She spent the following months in the hospital, remained wheelchair bound after the discharge, the wounds never completely healed, and she died 2 months after being released from the hospital.

Now, you can make fun of these cases if you want to, but what are these people supposed to do, Mr. HYDE? What are these people supposed to do, Mr. BLILEY? Just take it? They complained and nothing was done. The only way you get corporate America to move is tell them if you do not do something about it, you are going to be sued or you are going to lose money one way or the other. How else are they to deal with it?

You can make fun of these people if you want to, but they were burned, they were hurt. So they took the case to finality. You did not hear about these cases. You heard about the so-called $2.7 million verdict which that lady got. You know what? She got it because the jury heard this company had 700 times been warned and still did not change their behavior. The jury got mad and stuck them with a big giant punitive verdict. Of course, it was cut down to $400,000 by the judge later.

That is what goes on, and that is what you are trying to prevent. You have put a cap now on punitive damages in this bill. What a curiosity. Your cap on punitive damages now says that even if a person is found guilty in court of sexually abusing a child, now the Republican bill is going to put a cap on the punitive damages.

I think what I have said speaks for itself. This is a bad bill. You ought to be ashamed for bringing it before the House.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Texas.

Mr. DOGGETT. Let me ask the gentleman if the lack of any data to support this bill is why these special interests are hiding behind the skirts and the little league outfits of the Girl Scouts of America, and whether you are aware of the fact that the Girl Scouts of America have repudiated this ad that is on television?

Mr. BRYANT of Texas. I am aware of it. It is an outrage. That is exactly why they are hiding behind it. They have no empirical data to back that bill up.

Mr. DOGGETT. For every one of these so-called horror stories they tell us about, there is a real live horror story, just like you told us about at McDonald's.

Mr. HYDE. Mr. Chairman, I yield myself 30 seconds to tell the gentlemen on the other side I have 3 pages of studies here. I know they are not familiar with them, but if they want to see them, we will get them Xeroxed and have them sent to their offices.

Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I thank the gentleman for yielding, and I thank the gentleman for his leadership in bringing this bill to the floor. It has been a long time coming. I would say to my friends on the other side of the aisle, first of all, that I personally sat in a meeting in which the executive director of the Girl Scouts of America for Washington, DC, told an entire group of people in a public place that they had to sell 87,000 boxes of Girl Scout cookies just to pay their insurance premiums; that they no longer can use diving boards in their pools, they can no longer rent cars, they no longer can have horses in the summertime in their camps, because of their problems with liability insurance.

The other thing I would say is, what I really want to talk about is exactly what they are concerned about, and that is special interests, because the fact is that there are Democrats in this House that are working overtime to defeat these reforms to end lawsuit abuse. And it is an ugly side of American politics that is rarely talked about. But you have got to follow the money if you want to figure out what is really going on.

What you find out when you follow the money is that in the 1993–94 cycle, 341 Democrats were given money by the American Trial Lawyers Association. Ninety-four percent of all of the contributions that that PAC, that special interest political action committee gave were to Democrats. Thirteen out of 15 Members, Democrat Members of the House Committee on the Judiciary received substantial contributions, up to $12,000. We are talking about $114,500, $2 million given in the last cycle, the 1993–94 cycle, to Democrat candidates.

While it is lovely to talk about that this is for the women and this is for children and what we are really doing is protecting consumers, I thank you have to ask yourself who is really being spoken for in this regard.

Mr. Chairman, just to sum up, the fact is if you want to take a look at politics in America, it would be very disingenuous, you would be missing the point, if you did not also look at the money. When it comes to money, the trial lawyers have purchased themselves an awful lot of time in this Congress. They have made tremendous investments over a long, long period.

□ 2115

And when you are going to see this debate, you will see this debate couched in the terms of consumers versus anticonsumers, of prochildren versus antichildren, of prowomen versus antiwomen. That is not what this debate is about. It is pro-trial lawyers against proconsumers, people who are

really trying to make the system work for American workers once again.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, we are seeing over these next couple of days one of the most complete degradations of the legislative process I have ever been sorry enough to witness. I am a supporter of product liability reform. I voted in the last Congress for medical malpractice reform. I voted for caps. I was prepared to support a good product liability bill, but the procedure and the substance to which we are going to be subjected over the next couple of days are so degraded and degrading and I cannot be part of it.

In the first place, we have the great inconsistency of people talking about States' rights. And the gentleman from Illinois said, Well, we are being inconsistent. No, most of us have not claimed to be either consistently for States' rights or Federal rights. Many of us have said, You look at it issue by issue and you see what makes the most sense.

The Republican Party that has clothed itself in States' rights garb until and unless their corporate allies decide they want it differently and then they change. And when the corporate allies say, Do not let States experiment with single-payer health insurance, don't amend ERISA, they say, OK. And when we federalize tort law, they say, OK, especially when it has nothing to do with manufacturing.

We heard a great rationale from the Chairman of the Committee on the Judiciary. This is all about manufacturing. The gentleman said in the Rules Committee, This is about exports. We don't export Little Leaguers. Sometimes they play the Taiwan but they come back. They are not an export.

The amendments that are about to come—and this is all preordained, these amendment will pass—the amendments that are going to come will put limits on the amount of noneconomic damages that can be awarded into virtually any civil case in America. So this argument that this is justified because manufacturing is an economic activity is nonsensical. The Girl Scouts do not manufacture.

There may or may not be a case for covering the Girl Scouts or the Little League or every other lawsuit, but we are are not talking about manufacturing. We are also not talking about anything that resembles a respectable legislative process. In the Committee on the Judiciary controversial amendments on medical malpractice, et cetera, that were offered were withdrawn so they couldn't be debated. They will now come forward here.

I have voted in the past for medical malpractice reform. I have voted for limitations, and I say to my friends who are pressing for that, if you make a pact of this sort to take legislation and give it no hearing in this Congress and no markup in committee, if it is withdrawn and then pulled back, and then it comes up to be debated for a grand total of 40 minutes in the House, do not expect those of us who conscientiously agree with you to vote with you.

We have a list of amendments, 40 minutes, 20 minutes, 10 minutes, extending this legislation to virtually every civil lawsuit in America, expressing the contempt the majority apparently feels for the jury system, because what they say is the jury does not count.

We got an example of the intellectual level of the argument when the gentlewoman from Colorado was interrupted by the gentleman from Virginia. The gentlelady was nice enough to yield and the gentleman said, Are you a lawyer and is your husband a lawyer? That is third-grade type of debate and this is what we are getting in this complex legislation.

If you only have 40 minutes to talk about it, I suppose that is what you get. And it comes from someone who has been supportive of malpractice reform and who wants to support product liability reform. I say to those of my friends who want it, if you are serious about it, you will break this alliance with people who show such disrespect for the legislative process, such disrespect for your intellects, such total disrespect for the jury system, and decide because they have raw numbers, people who will vote however they are told, then they will win. They will win a short-term victory and and they will discredit the important cause of product liability reform and those of us who really want to see it will in fact be suffering, because what will happen is by this unfair, overloaded, under-debated bill, they will bury the good.

Mr. BLILEY. I yield myself 1½ minutes.

I will point out to the gentleman on the other side that between 1973 and 1988 product liability suits in Federal courts increased 1,000 percent. In State courts, the increase was between 300 and 500 percent. One estimate of the total cost of these suits is $132 billion a year, a sum equal to the combined profits of the Nation's 200 largest corporations. And I stipulate that that is the reason that we are here debating this.

To the gentleman from Massachusetts I would say, when we were accused today in a bill that we passed overwhelmingly with bipartisan support for securities litigation reform, that we were bringing this because we were rewarding our fat cats, maybe some of us might beg to say that the gentleman on the other might be trying to defend them.

Mr. Chairman, that may be one of the reasons that they so vociferously defend the current system is that one of the heaviest contributors to their campaign coffers are the trial lawyers of the United States.

Mr. Chairman, I yield 3 minutes to the gentleman from Colorado [Mr. SCHAEFER].

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

Mr. SCHAEFER. Mr. Chairman, I thank the gentleman for yielding time.

PARLIAMENTARY INQUIRY

Mr. BRYANT of Texas. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BRYANT of Texas. Do the rules prohibit implying a motive or the improper motive on the part of your adversary in debate for presenting legislation?

The CHAIRMAN. The rules of the House prevent Members from engaging in personal attacks.

Mr. BRYANT of Texas. I thank the Chair. But my further inquiry was, do the rules prohibit you from implying a prohibited motive, unsavory motive for offering amendments for advocating legislation?

The CHAIRMAN. The rules do not prohibit Members from engaging in discussions of political motivation.

Mr. BRYANT of Texas. What about motivations that relate to your personal occupation or your personal sources of income?

The CHAIRMAN. The rules prohibit Members from engaging in personal attacks.

Mr. BRYANT of Texas. I thank the Chair.

Mr. SCHAEFER. Mr. Chairman, I rise today in strong support of the Common Sense Product Liability and Legal Reform Act of 1995.

Members of the House, frivolous litigation has become a fact of American life whether we like to recognize it or not. Too often bringing people to court has taken the place of personal responsibility. Much of this behavior is due to the distorted incentives built into our current product liability laws.

Today, many people no longer look at themselves first to blame but instead search out the easiest way for a big court settlement. Overzealous litigation costs consumers literally billions of dollars every year. This price inflation comes in the form of liability insurance costs built to price products and services, estimated to be approximately $1,200 per person each year.

This litigation tax, as you might call it, is extremely regressive, raising the price of products to those that least can afford them. Unfortunately, the Committee on Commerce and Committee on the Judiciary have crafted a piece of legislation that restored sanity to the Nation's liability system. I would like to address one portion of that and that is the biomaterials access provision, and my good friend the gentleman from Pennsylvania [Mr. GEKAS] did hit on that but I would like to expand a bit.

One of America's leading industries is the biomaterial device field. These products literally save and enhance

lives everyday from pacemakers to artificial heart valves to cataract replacements. These products provide recovery and allow people to continue their lives.

The suppliers of base materials oftentimes provide the manufacturer with elements of the device that are too costly to produce except in mass quantities but alone have no implant value or purpose. Unfortunately, in recent times these suppliers have been named as codefendents in lawsuits, and in almost every case they are cleared of wrongdoing or negligence. Nevertheless, in the process they are forced to expend financial resources to achieve exoneration and to provide insurance.

The litigation risk has caused many supply companies to simply stop providing base materials for these lifesaving devices. Consequently the inability of device manufacturers to obtain the needed base supplies is causing the death of the biomaterials industry in this country.

The biomaterials section addresses this tragic consequence of overzealous litigation. This language will ensure that simply unless the supplier is negligent in the design specification requested by the device manufacturer or if the supplier is also a party in the overall manufacture or marketing of the device, the supplier is cleared of liability.

Mr. Chairman, I urge my colleagues to support this long overdue legislation, the Common Sense Product Liability and Legal Reform Act, which will help put an end to frivolous litigation while preserving each person's right to seek out compensation for real injury.

Mr. TAUZIN. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, let me return the very fine compliments of the gentleman from Ohio [Mr. OXLEY] the chairman of our subcommittee, for the work that was done in our Committee on Commerce on this bill.

I should also quickly acknowledge the extraordinary efforts put in over the last 12 years of the former chairman of our committee, Mr. DINGELL, who spoke earlier tonight. Mr. DINGELL has been committed to the issue of product liability reform for many, many years. This was in 1988 when our committee finally agreed upon a product liability reform bill and produced it for the House, that bill unfortunately never made it to the House floor because it could not come out of the other subcommittee of jurisdiction. As a result, the product liability reform bill that Mr. DINGELL and our committee fought so hard for in 1988 died its unnatural death in Congress and it has never until this day had a chance to be debated again.

The bill we have before us is in many ways like that bill of 1988 and in many substantial ways very different. It is a bill that does, in fact, divide standards of liability between economic and noneconomic damages.

Joint and several liability for economic losses, the losses you can put your finger on, the ones you can put an easy dollar equation on, and several proportionate liability for noneconomic losses, losses that are harder to estimate, the pain and suffering, the mental anguish and such that jurors very often award in numbers that surprise us.

The bill also deals, as our bill did in 1988 with punitive damages, also it deals with them very differently and with a statute of repose although it deals with it very differently.

I want to for a minute talk about those differences. In the statute of repose that we produced in 1988, a statute, a section of the bill that was designed to end liability for products that were manufactured many years ago, the statute of repose time was set at 25 years. This bill sets it at 15. We are told the reason it is set at 15 is to coincide more nearly with State statutes of repose which are generally in the 10- to 12-year range. But the big difference is that this statute of repose extends beyond capital goods, the goods that are normally depreciated, heavy machinery, and now extends to all products. That is a big change and one that we will want to debate I am sure when we get to the amendments on that section and on the bill.

On the punitive damages area, there are two very—three very large differences as we look at the bill as it arises on the floor. The first large area of difference is the fact that the punitive damage cap, which is set in this bill which was apparently not in the bill in 1988, is set not only at $250,000 on products but it now is made to apply to all tort law and all civil suits, both State and Federal law, in civil actions for harm where plaintiffs, in fact, prove by a clear and convincing evidence conduct that was specifically intended to cause harm, intentional harm.

□ 2130

There are two other differences. In the bill that we produced in 1988, we clearly said that the provisions on statute of repose did not apply to any plaintiff who did not have their medical bills paid. That bill, that provision, is still included in this bill, but I understand there will be an amendment from the other side to delete that language. I hope that does not occur, I hope we have a chance to debate the reason why that provision was in the 1988 bill and is currently contained in this statute.

In the punitive damage area, there was an exemption from punitive damages for drugs that were previously approved by the FDA. That exemption has been deleted from this bill. There will be an attempt, I will join in that attempt, to reinstate that exemption. The reason is, punitive damages are designed in our civil procedure as a quasi-fine. How ludicrous it is to find a company for producing a product that we ourselves as a government approved. If that product causes some harm, it makes sense to make sure the harm is repaid, the harm is made whole, but should the government punish someone in a civil action or in a regulatory or criminal action for an action that the government itself approved? We are going to debate that tomorrow and I hope frankly we can come to the conclusion that that exemption ought to be returned to the bill as it did apply to the bill in 1988.

As I said, the major difference in the punitive damage section is a cap in this application to all civil suits. We will debate that. I personally have a problem with punitive damages in civil suits, so capping them is not as severe a problem for me as it is for other folks.

But I want to make a point that I hope we get a chance to make in debate tomorrow. I am disappointed frankly when I see the list of amendments that will be offered that we will not have an opportunity to offer more amendments in this section. Punitive damages are designed to punish a defendant who put us all at risk. My question is why should those damages go to the plaintiff? My question is why should not a very large percent of those damages go to the general public? If a company, a person, puts us all at risk with a product, the plaintiff obviously ought to receive some benefit for having brought that suit and called that to the court's attention and recovered some measure of damages for the rest of us. But a punitive damage award, a quasi-fine, ought to in fact insure to the benefit of the public at large. Some States have done that in their laws. We will have a chance to look at at least one amendment that does that but I would hope that the majority would permit us to look at different ways of characterizing punitive damages so that the public at large benefits when a fine is levied in a civil case in the form of a punitive damage.

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

Mr. BLILEY. Mr. Chairman, I yield myself 1½ minutes.

I would ask my friends on the other side of the aisle, do they think there is really any coincidence in the fact that for 20 years the Judiciary Committee has refused to allow a bill on this subject to come to the floor for debate and the fact that their members that were there in the majority received overwhelming contributions from the Trial Lawyers Association?

Mr. BRYANT of Texas. Will the gentleman yield?

Mr. BLILEY. On his own time.

Mr. BRYANT of Texas. You asked a question. Let me answer it for you. Do I have the time, Mr. Chairman?

The CHAIRMAN. The committee will be in order. The gentleman from Virginia controls the time.

Mr. BRYANT of Texas. Will the gentleman yield?

The CHAIRMAN. The gentleman from Virginia is recognized.

Mr. BLILEY. Would the Chair ask the gentleman to stop interrupting?

The CHAIRMAN. The gentleman from Virginia controls the time and is recognized.

Mr. BLILEY. I thank the Chair. May we have order?

The CHAIRMAN. The committee will be in order.

Mr. BLILEY. I thank the Chair.

I also would point out that in a recent article in the Wall Street Journal that Creighton Hale, the CEO of Little League Baseball, wrote of a case in which a volunteer coach was sued for punitive damages in pain and suffering after one of his youthful outfielders was beaned by a pop fly. These types of suits lead to skyrocketing insurance costs.

A spokesman for the Girl Scout Council of the Nation's capital tells us that they have to sell an additional 87,000 boxes of cookies annually just to pay their liability premiums.

With that, Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. HASTERT], a valued member of the committee.

Mr. HASTERT. I thank the gentleman for yielding me the time, and I certainly thank him for his great work on the bill on product liability. And certainly the gentleman from Ohio [Mr. OXLEY], our chairman of the subcommittee, has done yeoman's work as well, working the last few years with the gentleman from Michigan [Mr. DINGELL], the chairman of the then majority, in trying to put together H.R. 1910.

I have been involved in trying to work on product liability since I first came to Congress and certainly have looked forward to participating in this debate on the floor for many, many years.

Last year I was the cosponsor with a gentleman from the other side of the aisle by the name of Doc Rowland, a former member from Georgia, who was committed to bringing on the Fairness in Product Liability Act, and along with that we had garnered 126 cosponsors from both sides of the aisle.

I might also add that many of the provisions of this bill came from H.R. 1910, which was that act. It is plain to see that this is a bipartisan issue.

I was also extremely pleased to see that this issue was important enough that it was included in the contract.

As Members know, this issue of product liability reform is a mature issue that has been around for some 14 years. The Committee on Commerce was fortunate to hear from some true veterans of the field that have appreciated the hard work and commitment that many have made to this issue. I know they are just as pleased as I am to see the House is finally considering it on this floor.

Since I first became involved with product liability, I have been amazed at the adverse effects our current system has on American productivity, competitiveness and innovation.

We talk here a lot in Congress about competitiveness. We try to find ways to encourage it through legislation. I can tell Members without a doubt that if we enact this bill, we will boost the ability of American industry to compete. The best news is it will not cost taxpayers a dime.

United States liability costs are 15 times greater than Japan's and 20 times greater than Europe's. These costs represent American dollars not spent for research or development or employee benefits or new job creation. U.S. costs are higher because all manufacturers, U.S. or foreign, sell most of their products at home. Since liability costs per product are based on liability exposure, and exposure is so much less under the legal systems of our competitors, our liability costs are higher than those of other countries.

It seems to me that we should be encouraging American companies to stay in business. But this flawed system under which we currently work has just the opposite effect. We are not saying that you cannot file a suit if you have been wrongfully harmed or a company has been knowingly negligent, but if you pick up your lawn mower to use as a hedge trimmer, then you should not be able to sue the manufacturer. This bill only limits the number of lawsuits that have little or no merit.

If we were only interested in employing lawyers, then maybe we would not need to be concerned about product liability. But American families are paying more for everything they buy, from their air conditioners to their Zenith TV's, because companies must pay billions for meritless lawsuits.

I know some argue that we simply do not need to create uniform standard product liability laws. I have heard the opponents of the bill saying Republicans are doing an about-face, trying to pass laws on States from the Federal level, but the fact of the matter is that the creation of Federal uniform standard laws has been called for twice by the National Governors Association. Humor me for just a minute, but it is my guess that these folks are tuned in to what is needed at the State level.

It is critical that the manufacturers of each of our districts have a good grasp of what their responsibilities are as producers. And our constituents' rights as consumers should not vary widely from State to State.

I am hopeful that we will be able to address this issue, not only Republicans and Democrats as a united front here but as legislators committed to fixing the inequities and inconsistencies that currently exist in our laws.

Mr. TAUZIN. Mr. Chairman, I yield 3 minutes to my friend the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentleman for yielding me the time.

I would say that I think that the gentleman from Illinois [Mr. HASTERT] is speaking out a sincere belief. I would just call upon you and those similarly situated in your position to base those kinds of beliefs on empirical data and there is no empirical data to support the conclusions which you offered to the House in your remarks. That is the fundamental reason why we oppose this legislation.

The gentleman from Virginia [Mr. BLILEY] has talked about campaign contributions. That is an unfortunate topic to get into I think from his standpoint. We could talk about campaign contributions from the cigarette industry which is located in your district, I know. In fact, I think it is the capital of it. But let me say this. I think the gentleman will be for this legislation even if he did not live within a thousand miles of a cigarette factory. I think he believes in it. I am not taking issue with your belief in it. But you suggested that our position is based upon the fact that the trial lawyers make contributions. I think I am typical in saying that many of the Members who have taken a strong position like mine have received as much as $10,000 in campaign contributions in each cycle, every two years, from the trial lawyers political action committee, out of probably $900,000 or so that gets spent. I have received probably $150,000 in campaign contributions from the companies' political action committees that support your position, and that is true of all of us over here, and you know that. There is one American Trial Lawyers Association PAC, there must be 2,000 corporate PAC's out there that agree with you.

I really think it is important, it is more I think accurate of you to base your arguments, your conclusions, your opinions, if you had some data, and I do not think you do, you would base it upon that, but to suggest it is based on campaign contributions I think demeans all of it. I do not think it is based on those from you or based on those from me. But I do question on where you guys are getting your information.

The gentleman from Illinois [Mr. HYDE] waved around a list of studies earlier this evening and he waved them around once in the committee. I would like to get the list. I will come over and get it in just a second.

The ones he read off in the committee were all studies that supported our side of the issue. I read to you from the minority report which made very clear that the number of products liability cases are going down, they are not a significant percentage of the overall cases. Obviously American industry is doing very well and I hope it does better in the future, but for goodness sakes, we have got to pay attention to the fact that we do have situations where corporations behave irresponsibly because they are human beings and all of our laws, all of our jurisprudence is written to deal with the behavior of a minority of every class, not a majority.

I think General Motors, Ford and Chrysler are great assets in our society

but I think that they have in some cases behaved horribly. The Pinto case, all these other automobile cases, with an exploding gas tank, where they flip over, where they have not put a roll bar where they ought to put a roll bar and they cripple people. Look, they are human beings, giant bureaucracies. Some human beings in one corporation do not know what the other human beings are doing. We have no way to protect the public from this except a system of private litigation.

As the point I made a moment ago, I think should be reiterated, that private litigation is a tiny percentage of the overall litigation.

When you guys get up and talk about all the lawsuits, you forget that the lawsuits are commercial cases, 80 percent of them are commercial cases, not personal injury cases.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3½ minutes to the distinguished gentleman from New Mexico [Mr. SCHIFF], a valued committee member.

Mr. SCHIFF. I thank the gentleman for yielding me the time. I particularly want to commend his integrity in giving me this time since he knows full well in advance I do not fully support the leadership position on this bill.

Mr. Chairman, I support a products liability bill. I think the rationale for it is not perfect. I think arguments can be legitimately made against a Federal products liability bill. But I think a case can be made and has been made for the idea that when goods are shipped in interstate commerce and the same good is for sale in different States, that there ought to be a Federal standard for how to handle tort litigation if there is an alleged defect in those goods because it is the same good, whether it is being sold in New Mexico or being sold in Illinois.

However, there is no rationale for the second part of this bill, because as presently written, the first part of this bill deals with products liability, the second part, title II, does not deal with products liability. It deals with all tort litigation, and I am referring specifically to the punitive damages provision.

As written, the bill says that all punitive damages actioned in State court are under the control of Federal legislation. So that if two individuals go out on their front lawns and start a fistfight with each other, Federal legislation will control the punitive damages standard, whatever it might be, in that particular case.

I want to say particularly to my fellow Republicans, it is wrong. It is wrong for two reasons. First of all, it philosophically reverses everything we have been arguing for the last 2 months on everything. From police block grants to child nutrition programs, we have been saying that the States know best how to handle their local problems. Today we are saying, ''But they don't know how to set up a tort system within their courts on cases of simply local application.''

□ 2145

Second of all it is dangerous practically because Federal preemption is a genie that cannot be put back into the bottle once it is released if we exercise Federal preemption with respect to punitive damages in all cases of whatever kind in the State courts and we do so with a policy of limiting damages. A future Congress of a different philosophical mind can use that preemption and reverse it, not only reverse it, but they can say there will be no caps on punitive damages anywhere in the United States and they can preempt all of those States which have in fact already imposed caps on punitive damages.

I offered an amendment to the Committee on Rules which would have allowed this body a vote on changing the punitive damages provision from applying to every single kind of case in the United States of America, no matter what it is, to limiting it to product liability. The rest of the bill is product liability, the argument in favor of the bill is based on product liability. The only problem is it is not what the bill says. I regret to say the Committee on Rules did not make that in order.

I want to conclude by thanking the gentleman again for the time and by commending our Committee on Rules with respect to my colleagues on the democratic side. I have seen more openness and more fairness to rules granted under our Rules Committee in 2 months than I saw in the previous 6 years I was here, but in this particular case I think the Committee on Rules with respect to them made a mistake in not allowing a vote which is important as an issue and is important to the previous votes by our own party.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3½ minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I first want to point out that we obviously do not have enough time to debate the issue. As we have seen, Members do not even have time to yield to each other as is customarily.

Second, I wanted to point out since the Girl Scouts have come up, the information I have is that the conference data base uncovered that only one punitive damage award was ever awarded against Little League, Boy Scouts of America, or Girl Scouts of America. This punitive damage award stemming from a sexual molestation claim was subsequently vacated by an appellate court.

Mr. Chairman, the lawsuits we are talking about are designed to empower consumers who are ripped off, maimed or injured, but with the right to go to court every consumer is somebody. And if a corporation thinks about ripping somebody off or recklessly exposing them to serious injuries, because they want to make a little bit more profit, that corporation has to remember that every consumer has the right to be treated fairly. And they cannot calculate whether or not they can make a little bit more money by exposing someone to serious injuries or danger.

With the changes made earlier this week, Mr. Chairman, we make it harder for individuals to bring suit. Even if they bring a suit and win, if they come in under the amount offered in settlement, a corporation is rewarded by that legislation, but the plaintiff, having had the nerve to challenge a corporate behavior, may end up losing their homes.

Mr. Chairman, there are only a few punitive damage cases in American history. Let me just cite a few which are typical of the kind of cases we are talking about.

We are talking about a 43-year-old teacher who was injured after having being treated with surgical bandages when the company knew that the bandages were contaminated. They had been notified on numerous occasions that the bandages in the warehouse were contaminated. The quality control director had placed a hold on the bandages, and they had nevertheless decided to sell the bandages and dispute the findings of the FDA and others that there was a contamination.

The plaintiff suffered extensive scarring, loss of motion in his back and emotional distress. His medical bills are only $4,200 and that is the kind of behavior that would be protected if we pass this bill. That is Darby versus Western Medical Enterprises, a 1984 California case. And I want to cite that case so we do not get into these wild examples that you can never track down.

Mr. Chairman, in Oglevie versus International Playtex, a significant punitive damage award, they had complied, technically complied with the Food and Drug Administration regulations, but the court found that there was an abundance of evidence that Playtex had deliberately disregarded studies and medical reports linking high-absorbency tampon fibers with increased risk of toxic shock syndrome when other manufacturers were responding to this information by modifying or withdrawing their products. Moreover, there is evidence that Playtex deliberately sought to profit from the situation by advertising their high-absorbency tampons when they knew that other manufacturers were recalling their products.

Mr. Chairman, there are also cases of cotton flannel pajamas that the court found were just about as flammable as newsprint. They were hit with a punitive damage case.

That is the kind of behavior we are trying to prevent.

Mr. BLILEY. Mr. Chairman, I yield myself 30 seconds. I would hope that in the course of this very learned debate some Member on the other side would explain to us since they claim their motives are as pure as the driven snow,

why for 20 years the Judiciary Committee refused to allow any bill to come to this floor for any debate or any vote.

Mr. Chairman, I yield 3 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise today in strong support of the bill before the House. And I commend Chairman HYDE and Chairman BLILEY for their efforts to pass real civil justice reform.

This legislation creates uniform product liability laws. It is no news that juries have been out of control over the past decade in awarding punitive damages far in excess of what is necessary to make a plaintiff whole. Part of the blame rests with the system, because it gives juries very little guidance with which to make such awards.

As Supreme Court Justice Lewis Powell has pointed out—

> Courts simply instruct jurors in punitive damages cases to determine what dollar amount between zero and infinity would appropriately serve the States' interest * * * no act of the legislature guides them, nor do any judicial instructions narrow the range of appropriate punishment.

Mr. Chairman, nobody supporting this bill wants to deny injured individuals access to the courts. Those injured by a defective product should have a proper legal remedy. Nothing in this bill would change that.

Moreover, the bill does not place any limits on the size of economic damage awards. Contrary to what the trial lawyers want Americans to believe, injured individuals could still collect every penny to which they are entitled to make up for lost wages, both past and future. The damages would also include past and future medical expenses for the individual. These awards for economic loss would fully compensate the injured party for all of their out-of-pocket expenses.

Trial lawyers would tell you that the provisions relating to punitive damages will deny fairness to injured parties. They could not be more mistaken. This bill does not ban punitive damages. But they are capped at $250,000 or three times economic damages, whichever is greater. In serious injury cases, in which the plaintiffs would have large medical bills and lost wages, the cap on punitive damages can quickly exceed several million dollars.

Mr. Chairman, as Justice Powell has also observed,

> As recently as a decade ago, the largest punitive damages award approved by an appellate court in a product liability case was $250,000. Since then awards more than 30 times as high have been sustained on appeal. It is long past time to bring the law of punitive damages into conformity with our notions of just punishment.

Mr. Chairman, I urge my colleagues to support this bill.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. GANSKE. I yield to the gentleman from Ohio.

Mr. OXLEY. I want to commend the gentleman for his statement and to point out the fact that we are making these plaintiffs whole; that is essentially the idea behind the law, is to make them whole. And I appreciate his statement because I think it really highlighted exactly why we are here today and I congratulate the gentleman on his statement.

Mr. TAUZIN. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, we live in an age when attorneys are not very popular. That was evident when the movie ''Jurassic Park'' was such a big hit, and the only person eaten by that monster in ''Jurassic Park'' was a lawyer, and audiences stood and cheered. I was in one of the movie theaters and witnessed that awesome event.

Having been schooled in the law myself at LSU Law School in Baton Rouge, and having a deep love and appreciation for the art of lawmaking and the general artistry of well-crafted laws and how they can help order our society and make our lives better when they work right, I want to quickly report that there are many lawyers in this body who do support product liability reform, and I am one of them.

When I was a young state legislator in Louisiana, we had a proposition then before the States called no-fault insurance. I and several other young attorney legislators lead the fight for the adoption of a no-fault insurance bill in our State, a bill opposed generally by the Bar Association and the Lawyers Association of our State. We passed it out of the House; 17 of the 31 attorneys in the House voted for it, a majority.

It died in the Senate on a tie vote; never became law. But nevertheless, it illustrated that an attorney can be and should be the most interested in making sure legal systems work. If anybody has a stake in improving the legal systems of our country certainly those who have been trained in the law, who have come to learn to love it and appreciate it as a working instrument of good in our society, have a major responsibility in correcting bad legal systems and making good legal systems out of them.

That is what this effort is all about, and so I rise again tonight in strong support of reforms in our legal system and certainly in product liability reforms, such as we produced in 1988 and such as we are trying to produce on the floor of the House this week.

But I also rise to sound a note of alarm and concern about some of the amendments that will be offered in this debate tomorrow, amendments that would extend so-called fair-share liability and establish a cap on noneconomic damages to all lawsuits, not just product liability suits.

The combination of those two ideas can be lethal. When you think about a young person, a woman who is a homemaker who does not have economic losses in a lawsuit, or an elderly citizen who is on a fixed retirement income and who gets injured and therefore suffers no real economic losses other than restoration of their medical losses, when you consider the fact that under one of those amendments that person would be limited to several liability to restore their losses for noneconomic damages, and in addition may face a cap on those same damages, you get this kind of a situation. You get a situation where they have not covered any economic losses because they had none, but they have been severely damaged, perhaps incapacitated for the rest of their lives. They may suffer severely both pain and mental distress from a disability for the rest of their lives and yet maybe there is only one defendant standing who may be responsible for only 10 percent, and so they can only collect 10 percent of those damages for pain and suffering and disabilities.

On top of that, an amendment would come forward to put a cap on those damages, so it would be 10 percent of a capped amount.

□ 2200

I would hope my friends on the other side would think very seriously before the combination of those two amendments are adopted. We have adopted a cap on noneconomic losses in our State for medical malpractice, but we allow joint and several liability to make sure that persons can collect the amount of that cap when they have suffered real and severe extended disabilities and pain and suffering and mental distress, and perhaps had no other economic losses.

To combine the loss of joint and several liability with a cap on those noneconomic losses may, indeed, create some real injustice in our society. I would hope my friends on the other side would strongly consider before we adopt those two amendments in tandem.

In short, before we extend these very valuable reforms in product liability to all tort law in America, we ought to think very carefully, and we certainly ought to think about caps and the new system of liability together.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentleman from Washington [Mr. WHITE], one of our outstanding freshmen.

Mr. WHITE. Mr. Chairman, I thank the gentleman, the esteemed chairman of one of our subcommittees, for his excellent leadership on this bill.

I would like to say, Mr. Chairman, that as I have listened to the debate over the last few days, one thing struck me, the fact is nobody is against tort reform from President Clinton down to the lowliest, most junior, humble member of the freshman class in this House, probably me. Nobody is against legal reform. We all recognize the need to make these changes.

But when the bill comes to the floor, that is the time when we have to separate the sheep from the goats, and I am sorry to say that now that the bill is

on the floor and now that we may actually be able to make some of these reforms, we now hear that we are going too far, we are going too fast, we need more empirical data, we need more time.

Mr. Chairman, we have had 40 years for the citizens of this country, who have been crying out for the kind of reform we are hoping to adopt in these next few days. The time is now. We need this bill.

Mr. Chairman, I would like to make one other point: As we listened to the debate, we are told that this bill is for the rich, it is for the corporations, it is not for the average citizen, and I suppose we are going to hear these themes of class warfare for the next several months of this Congress. But, Mr. Chairman, I do not know where these people have been.

I have spent the last 2 years shaking every hand I could find in the First Congressional District of Washington, and I can tell you that the ordinary citizens in my district and probably in all of our districts are begging for this bill, and I will tell you the reason why. It is not because they have got empirical data about how many additional tort suits have been filed over the years, about whether there is an increase or a decrease. They are asking for this bill because they are asking this body to restore some respect for the law of our country. They know and we all know that every day in every court in this country we get results that do not make sense, that offend our sense of right and wrong, and they are asking for us to change that.

Mr. Chairman, the system is out of whack. It desperately needs to be changed. We have an opportunity to do that now, not for the corporations, but for the ordinary citizens of this country, and I hope that every single Member of this House will vote for this bill.

Mr. CONYERS. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. BERMAN].

Mr. TAUZIN. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. HYDE. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

The CHAIRMAN. The gentleman from California [Mr. BERMAN] is recognized for 9 minutes.

Mr. BERMAN. Mr. Chairman, I thank my friend, the ranking member of the Committee on the Judiciary, and I particularly thank the manager for the Committee on Commerce, a committee which I am not on, and to take a position which he does not share, and so I appreciate it.

I would like to follow up on the themes of the last couple of speakers. We have a product liability bill on the floor. Personally I do not find it a bit offensive that the Congress chooses to federalize the whole question of the standards for product liability. I think a very good case can be made for giving the manufacturers uniform rules around the country, it makes sense to federalize it.

I do not even quarrel with all of the features of this bill. A statute of repose, which tells a manufacturer there is a certain period of time after which that manufacturer has procured and sold the product, that will pass, and he will no longer be liable for things that go wrong with that product unless he intentionally misrepresented aspects of that product that he was selling. The Bryant amendment dealt with that slight change in the statute of repose. He was denied a chance to offer that amendment. I think that can make sense.

And I think you can talk about punitive damages in the area of product liability. I personally think once you have left enough incentive for the plaintiff to pursue the punitive damages remedy, the notion that he might get a million or multimillion-dollar windfall is wrong, and that a significant portion of that should be shared with the State or a nonprofit agency or a third party, because the purpose of punitive damages is not to make that person whole. You need enough to go to him to let him have the incentive to pursue it, but the purpose is to punish and deter future conduct, and so amendments which speak to that issue in a fair fashion I find acceptable.

But there are many changes about this bill that make me curious. And first of all, we keep hearing talk about product liability.

The gentleman from Georgia [Mr. BARR] in the committee offered an amendment, findings and purposes, to establish the Federal interest under the commerce clause in doing this. He withdrew that amendment, but the amendment reappeared in a perhaps slightly different form in the bill we are not voting on, and I understand that. That is in title I. But there is not even a plausible effort to provide the constitutional basis for the Federal Government preempting a punitive damages award when Joe Smith hits Bill Jones on the street, and this has historically been a State interest and no Federal interest. All of a sudden the punitive damages for that intentional tort are federalized and capped. There is no premise for this.

I have talked to several constitutional law professors, Professor Van Alstine at Duke and others, since this bill passed out of committee. They think this whole section is of doubtful constitutionality, and the proponents of the bill do not even make an attempt to justify it on any constitutional ground, a little less on a policy ground, a ground that would say we have an interest in what New Jersey's punitive damages award is against sexual predators or what California says for a lawyer who divulges certain kinds of information or a journalist who violates the shield law in some fashion. These are all, and there are dozens of other State remedies for punitive damages for intentional torts that the Federal Government has no interest in, and are not a cause of any particular problem.

I do not understand why this bill has a provision in here which says a civil action brought for commercial loss shall be governed only by applicable commercial or contract law. Why if the parties to a contract provide for four times actual damages as liquidated damages clause, that is OK, when the only loss is commercial, but if a person is injured, they are capped, and they cannot get anywhere near that amount. It is a funny notion to put damage to property on such a higher pedestal than damage to the human body.

I guess I just want to close my comments by dealing with the comments really made; I thought they were somewhat cheap and tawdry comments made by the gentleman from Ohio that essentially impugned the motives of the Democrats who are opposed to this bill for why they are voting against this bill. Like the gentleman from Texas [Mr. BRYANT], I get contributions from the American Trial Lawyers' Association. I get far more contributions from the corporate and association PAC's that support this legislation.

I have no doubt that my perspective on this bill perhaps is shaped by the fact that I was trained in a law school. I do not think the gentleman from Illinois [Mr. HYDE] is doing this because he is in somebody's hip pocket or the gentleman from Virginia [Mr. BLILEY] or the gentleman from Ohio [Mr. OXLEY]. I think we see the world a little bit differently, and that is what this whole place is supposed to be about, people coming from very different backgrounds. We are all affected by our life experiences and our careers, and we come down in different places, and the notion that everything comes down to who is in whose hip pocket debases the whole place, and while outsiders are always going to talk about it, the notion that people who are inside the process and rely on what is essentially a very cheap argument, I think, is not healthy to this process.

I do not understand why the Republicans, who are against this bill, are they motivated by high motives, but the Democrats who are against this bill are motivated by low motives? I do not think anybody seriously believes that.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I do not want to trespass on the gentleman's time. I agree with the gentleman. But it really cuts both ways, and I believe it started on the other side with our camaraderie with corporate America and the economic royalists and all that tone was set, that they were our friends and we were doing this because they were telling us to do it. I agree with the gentleman, let us dispense

with that line of argument on both sides.

Mr. BERMAN. This does sound like another clean-hands argument, but in the end, four dirty hands really do not help the process.

Mr. HYDE. I was talking about the rules. I was talking about your love affair with really closed rules during the entire last Congress and now complaining that we only gave you eight amendments this time.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I want to commend the gentleman for that comment. It is time that we stopped impugning motives to either side in this debate. Our effort ought to be to build a good legal system. If we concentrate on that, perhaps the American public will appreciate this a lot better.

Mr. BERMAN. I want to make one other point. The gentleman from Virginia [Mr. BLILEY] several times, my friend, said that if there was not some interest in this, why did they kill it for 20 years? For the same reason the House Committee on the Judiciary did not pass a balanced budget amendment or a school prayer amendment or a whole variety of things, because the majority of the committee at that time did not like the bill and we did not want to vote for it, and that is why we killed it, and that is why it did not come out to the House floor. It is no big mystery. It is part of the process. We just had a little change now; all of a sudden certain things we never thought of passing are rushing out here. It is part of the process.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. I really am impressed by this recognition that some have gone too far, but to tell us that we should not suggest that business is going to benefit, for the chairman of Judiciary to suggest we should also, as we are washing each other's hands, and finding that nobody is guilty and that we are getting contributions from everywhere, that we also suggest that business is not the beneficiary, the clear beneficiary of some of these matters. That now, I say to the gentleman from Illinois [Mr. HYDE] is perfectly obvious, and I am not prepared at this moment, while I had dirty hands on the Committee on Rules, I do not think I am misinforming anybody to suggest to you that the beneficiaries of these restrictions that are being rushed upon us are not the consumers but are, indeed, the business interests of this country.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Illinois.

Mr. HYDE. I never doubted the business community will benefit from this legislation. I have never said otherwise. But I also do not make the distinction between the common working man and woman and the consumer and corporate America that you do. I think they each need each other, and when one is damaged, the other is damaged, and they should be working together, not at each other's throats.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia [Mr. BARR], a valued member of the committee.

Mr. BARR. Mr. Chairman, I thank the distinguished chairman of the Committee on the Judiciary, the gentleman from Illinois [Mr. HYDE].

I might point out to the gentleman from California [Mr. BERMAN] that the report of the committee of the House on this legislation very clearly indicates that the amendment that I had proposed stayed in, was voted on, was not withdrawn, and the language, as far as I can tell, on findings and purposes which appears in the report is accurate. If he knows otherwise, I certainly would like to know that.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. BARR. I yield to the gentleman from California.

Mr. BERMAN. I agree. It only applies to title I. It does not apply to title II. There is no ostensible constitutional basis for title II.

Mr. BARR. That is fine. I appreciate the gentleman's remarks.

During the debate here this evening, we have heard a great deal of talk, a great deal of sophistry, a great deal of hyperbole about who this legislation, if it is enacted, is going to help. Is it going to help corporations, companies? You bet it is. These are corporations that provide products for consumers. These are corporations and companies, small businesses that provide jobs in our communities. Will it help doctors? You bet it will. Will it help pregnant women? You bet it will.

□ 2215

When I am home, Mr. Chairman, to my district, when I am in my district, I am like the gentleman from Texas [Mr. BRYANT]. I talk with real people. I do not talk with statisticians. I do not review reports. I do not sit down across a table from a constituent who has a problem, who has had to see their business go under because of the exorbitant costs of liability insurance. I talk with them, and I do not demand to see a report of how many cases there have been in court before I listen to their real problems.

The real people who are harmed by our litigation system being out of balance are pregnant women who in my district sometimes have to drive an additional 30 or 40 miles to find an ob/gyn doctor because there is none in their communities because of the high cost, prohibitive cost, the prohibitive risks of being sued and not be able to get insurance. That is a real problem that is not a statistic. That is not something that may be in a report, but is a real problem involving real people that we are trying to help through reforming and bringing balance back to our system.

When I am in my home district, when I am in Marietta, GA, and I talk with a small business person, and when I talk with a Cub Scout leader who is unable to take a group of Cub Scouts from my own neighborhood on a field trip because he cannot get liability insurance to take that group of Cub Scouts downtown, that is a real problem.

Mr. Chairman, those are real problems.

What we are trying to do here today, Mr. Chairman, is not to revamp, or reinvent, or throw out our legal system. What we are trying to do, Mr. Chairman, is bring it back to what it was intended to be. It was intended to be a system of laws and justice open to people who have really been hurt, not who want to look for responsibility, not in their own selves, but somewhere else where it should not lie. We are bringing balance back to a system that sorely needs balancing being brought back to it. We are not closing out the system. We are making it more responsive to the people who really need it.

I say that, Mr. Chairman, not based on some artificial reports, statistic or book. I say it is based on real life problems that we see out in our communities.

This is not the last word on this, Mr. Chairman. This is the beginning of a process. We will listen to people on the other side, listen to people on this side, read those reports as they are forthcoming to see what further changes need to be made to make sure the system stays in balance, but we have to start, and we should start with this bill.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. Mr. Chairman, I thank the gentleman very much for allowing me to simply try to bypass all that has occurred maybe this evening in terms of whose fault, who is responsible, and really talk to the American people, business and consumer alike.

I would not have spent the time in the Committee on the Judiciary attending to detail and working with the entire committee if I did not think, as the gentleman from Louisiana thought, that this is important business. And this business is the challenge for those of us who were trained as lawyers and those of us who are not to propose laws that will work, and, whether or not we have discussed this for some 40 years prior, the key is whether or not this legislation will last 40 years hence and that we can be assured that collectively we have designed legislation that responds to the concern that all of us have raised, the idea of fairness for the litigants who come into the courts of America.

I simply stand here to raise the concerns of women and children, and I dutifully attempted to work through the Committee on Rules to seek an opportunity to raise an amendment that I had raised in committee that talked about exemptions for women particularly with breast implant devices and, as well, children who would have a hard time, as the gentleman from Louisiana, and maybe a homemaker even, of defining or being able to project economic damages because that child obviously has not worked, and I ask my colleagues, ''Even though you might not project it, who would know that someone from an inner city like Houston, possibly in a place that you would not expect would turn out to be the rocket scientist, the President of the United States which doesn't get a lot of money, but therefore would, of course, have the future to earn a certain degree of money that is not projected for that individual?''

But how can I tell Marilyn, who is a loving grandmother in my community, the hometown of Houston, whose faulty silicon breast implants have caused her total disability and agony, that she would be limited in recovery? What about Marilyn's daughter, Theresa, also who suffers from severe neurological disorders that have been passed on to her by her mother? And what about Theresa who has breast fed her three children, and that is Marilyn's 5-year-old granddaughter is now showing symptoms of silicon poisoning, too?

My question, as the gentleman from Louisiana raised, is why we could not come together and deal with issues to respond to the concerns of those who would want to put legislation forward that would last 40 years into the future.

I believe this is not a bashing game because I know, as a former corporate lawyer, that a vast majority of American companies want to do what is right. America's manufacturers have tended to be the very best in the world. They can improve further as we move into the 21st century, but, when we have some 80-some amendments offered in good faith, I would hope, and I realize the Committee on Rules has to work in fairness, and then, out of that, the opportunity to discuss breast implant device?

And then we wind up with eight that does not take into consideration, if my colleagues will, the concerns of children and the inability to measure their economic damages and, of course, women who may be having an ongoing problem with devices like breast implant devices.

I think that we are not coming to the table to address this in the fullest measure that we possibly could, and so I think the challenge we have, noting that there are two amendments that were not in any committee, as far as I understand, and now attempting to cap noneconomic damages, that we have the question raised by the honorable gentleman from New Mexico about preemption and whether or not this law will now intrude into the many States across the Nation who are working in good intention to develop tort reform and to do it well according to their State needs, and then, lastly, would we be able to find out for sure as to whether or not the new device of punitive damages standard and the applicability to all civil liability, or civil litigation, is, in fact, fair and is, in fact, responsive to business and consumers alike.

Let me conclude, Mr. Chairman, by simply saying, ''What about a bifurcated bill that would have worked for businesses in America? Why not do a bill that really works for Americans and is fair?''

Mr. OXLEY. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I was struck with the discussion we have had this evening and hark back to our hearing on the product liability issue in which the representative trial lawyers testified that they were, of course, opposed to Federal legislation in this area. I reminded him of the time when in Ohio, not too many years ago, the Ohio trial lawyers appeared in testimony before the Ohio General Assembly and said that they felt that it was the province of the Federal Government to deal with a national problem like products liability, and indeed the States, if they were to pass 50 different statutes, would be a hodgepodge that would never solve the problem.

It seems to me a rather interesting dichotomy that we hope to address in this Federal legislation. It is imperative, it seems to me, based on what we have heard in the committee, in the committee of the gentleman from Illinois [Mr. HYDE], to really provide a national standard for those goods that are sold in interstate commerce, and indeed over 70 percent of the goods that are manufactured in this country are sold in interstate commerce.

And so it behooves us in the Congress to set those Federal standards, and that is exactly what we propose to do in this particular piece of legislation, and I would urge that my colleagues do likewise.

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

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I think the gentleman from Michigan [Mr. CONYERS] has yielded me such time as I may consume because I have gotten the reputation for talking a long time, but I want to surprise people tonight. I know it is late, and I want to make three concise points and sit down.

I think this has been a good debate, not long enough to do justice to this issue, but certainly a good debate.

The first point I want to make, Mr. Chairman, is that this bill is referred to by my colleagues as the Common Sense Legal Reform Act, and I have seen it go through the process over time through the Committee on the Judiciary, and I suspect tomorrow and the next day on the floor it will cease to be a Common Sense Legal Reform Act and become a Nonsense Legal Reform Act. I think it is nonsense because it is contrary to everything I had thought my Republican colleagues stood for in their Contract With America.

I thought they believed in States rights, but here I find in this bill that we are preempting all State law on punitive damages on products liability, and tomorrow an amendment will be offered to preempt State law in a number of other areas that have been traditionally reserved to the States, and I will remind my colleagues that the folks at the State level cannot want conservatives telling them what their values are and imposing their values on them any more than they want liberals doing that.

I thought my colleagues believed in not mandating things to the States. But in this bill, after they have preempted State law on punitive damages, preempted State law even on the burden of proof, which is a procedural issue, I would submit to my colleagues, they have turned around at the end of the bill and said, ''We deny you the right to the Federal courts even though we have set the standards by which you must comply.''

So I am scratching my head a little bit and wondering if that is not a Federal mandate, then what is?

The second point I want to make is that the chairman of the Committee on the Judiciary, for whom I have the utmost respect, said in general debate earlier that we have the most costly legal system in the world.

☐ 2230

I want my colleagues and the American people to know that not only do we have the most costly legal system in the world, but we have the very, very best legal system in the world; we are the envy of the world. Our jury system is something that every person around the world will tell you works, and despite that, with $6 trillion in GNP, we spend less than 1 percent resolving all of the disputes that take place on this issue. All of our disputes, we spend less than 1 percent.

So I do not think we can take this as a justification for the massive revisions that we are undertaking. The justification, it seems to me, is that we are hurting little people at the same time that we are protecting and upping the standards and protections for wealthy people, and that leads me to the third point that I want to make, and by far the most serious point that I will make on this bill. I raise the question with my colleagues, what will the people do when they cannot get justice in the courts? What is their alternative when there is no justice in the courts?

I want my colleagues to contemplate this issue. People go to court because they feel vigorously about issues. You deprive them of that right, it does not do away with the vigor with which they approach these issues. It just means they must direct it in some other way. They must seek their justice in the streets. We used to, I understand, dual and take out our guns and shoot each other. Heaven forbid if we ever get back to that kind of system.

I will close and tell you that I am deeply troubled by the direction of this bill, and I hope that there will be a process for making it better, but it will not happen.

Mr. HYDE. Mr. Chairman, I am pleased to yield 2 minutes to a valued member of the committee, the gentleman from South Carolina [Mr. INGLIS].

Mr. INGLIS of South Carolina. I thank the gentleman from Illinois for yielding.

I rise tonight in strong support of this legislation and really to make two points. One is a story, and then second, what I believe to be the bottom line of this whole discussion, but the story first.

There is a plant in my district that makes food processing equipment. It is a very successful company that makes very fine food equipment, processing equipment that can grind meat and do all kinds of things like that, high-quality, highly skilled work that is done by very trained people.

Early in my campaign for the Congress of 1992 I visited that plant, and the owner took me on a tour, and he showed me this very sophisticated equipment they can build, and he told me that actually the growth of his business is out of that and into pizza delivery boxes for export to Mexico. The reason, he says, it is a growth industry in Mexico, apparently pizza is selling well in Mexico, but also he cannot afford the liability insurance associated with that food processing equipment. He can no longer afford the multiple lawsuits that are filed against his company, particularly when people alter the product, take off the warnings, and sue him many years later for a product long ago forgotten by his company.

I would submit to my colleagues that that is happening all across this country, and if we want to move out of high-technology, truly specialized equipment, highly sophisticated equipment like this food processing equipment and into making pizza boxes, I guess that is all right, but I think that is the wrong direction to go. We should encourage these manufacturers to make these very skilled products.

The second observation I would make is really the bottom line of all of this, is whether we are a nation that is going to focus on responsibilities and not just rights, and that is really what it boils down to. In this debate, what you are going to hear is a whole lot of discussion about how somebody else is responsible for my actions, somebody else is a guarantor of my health and happiness and that really is not the case.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Kansas [Mr. TIAHRT].

Mr. TIAHRT. I thank the gentleman from Illinois for yielding me the time.

I just want to speak in support of this, Mr. Chairman, because of the impact that has happened in my district, because of the statute of repose or the produce liability for airplanes. In Independence, KS, in April, we are going to break ground for a new plant. Cessna Aircraft is going to build a plant and bring 1,000 jobs into Independence, KS, the Montgomery County area. There will be another 1,000 jobs that are going to be started in Wichita. The spin-off is going to create 7,000 jobs because of product liability for aircraft.

I heard earlier that we were concerned because there was no measurable impact from product liability, that there were no benefits that could be created from such limitations, that it was only going to hamper individuals, but I am here to tell you tonight that in my district of south central Kansas, we are going to see 7,000 jobs over the next 5 years. And we are excited about that.

The industry tells us that there may be a possibility of 25,000 jobs nationwide from product liability on aircraft. Now, if we expand that beyond aircraft, if we go into other products, we are going to see that there will be jobs created. But there will be people working, and it is not the rich people or the corporations that are going to benefit. It is the guy that carries a lunch bucket to work. It is the guy that tries to create a safe environment for his kids, he tries to clothe them and to feed them. Those are the people we are benefiting by product liability.

Mr. Chairman, I just want to consider this legislation, pass it out of here in a quick manner, because it is good for the working people of America.

Mr. TAUZIN. Mr. Chairman, I yield my remaining 5 minutes to the gentleman from Oklahoma [Mr. BREWSTER].

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

Mr. BREWSTER. Mr. Chairman, I rise this evening in support of H.R. 956 and will offer an amendment with my colleagues Messrs. OXLEY, COBURN, BURR, TAUZIN, and STENHOLM.

The enactment of this amendment simply exempts the manufacturer or seller of drugs or medical devices which are FDA approved, from punitive damages.

It is important to note that this amendment does not limit actual or noneconomic damages. But, ensures that companies who have acted in good-faith and received FDA approval will not be hit with punitive damages. When this amendment becomes law, lives will be saved.

This country has the most rigorous drug and medical device approval process in the world. Companies which research and develop new treatments spend millions, and sometimes billions, of dollars on developing and testing new treatments in order to meet FDA standards of approval and make these important treatments available to the public.

The out-of-control tort situation in our country is forcing companies to back away from developing and putting on the market many important new treatments related to illnesses such as cancer and AIDS. This amendment would, to a great extent, remedy this situation.

Mr. Chairman, I would like to make a few remarks on the bill itself. I support final passage of H.R. 956. This bill will establish a unified set of standards and procedures for product liability and civil litigation.

The vast array of product liability laws that face manufacturers, businesses, and consumers have suppressed entrepreneurial creativity for fear of frivolous lawsuits.

H.R. 956 will result in predictable and marketable policies to consumers and manufacturers, and enhance job creation and innovation. I encourage my fellow Members on both sides of the aisle to vote in favor of the Oxley amendment and final passage of this critical legislation.

Mr. HYDE. Mr. Chairman, I am pleased to yield such time as he may consume to the gentleman from Minnesota [Mr. RAMSTAD], who is chairman of a task force on the subject of product liability.

Mr. RAMSTAD. I thank the distinguished chairman for yielding me the time, and, Mr. Chairman, as one who chaired the task force which drafted H.R. 10, the Common Sense Legal Reform Act, I rise in strong support of this legislation which derived from that initial legislation.

I want to commend the respective chairmen of the Committees on the Judiciary and Commerce for ensuring that we honor our pledge to the American people to bring this legislation to the full House for a vote within the first 100 days.

Chairman HYDE, Chairman BLILEY, and Chairman OXLEY deserve a lot of credit for their work, as well as their members.

Now, I recognize, Mr. Chairman, that some Members who support tort reform are genuinely concerned about the Federalism issue; that is, whether the issue of tort reform should be left to the States.

Members with this concern, I believe, should find instructive the counsel of three sources: Judge Robert Bork, State Representative Steve Flowers and last but not least, the American people.

First, Judge Bork is certainly no fan of an expansive reading of the commerce clause, but he readily concludes that these reforms are well within the scope of Congress's authority under the commerce clause. I want to quote from a letter dated February 27 to the Speaker in which Judge Bork concludes that Federal intervention for this purpose is not merely constitutionally permissible. It is very important to vindicate the Framer's constitutional design. Judge Bork's basic argument is that it can no longer be disputed that abusive litigation is having a profoundly adverse impact on interstate commerce.

It is, therefore, necessary for Congress to protect interstate commerce from parochial discriminatory regulation by States and localities.

Also, Members should pay particular attention to State Representative Steve Flowers of Alabama. Representative Flowers once believed that tort reform should be left to the States, but not now. Why?

In 1993, the Alabama State supreme court ruled that the State legislature does not have the authority to impose any cap on punitive damages and struck down the tort reform law that Representative Flowers had authored back in 1987. Even George McGovern in the Washington Post, and most Members, I am sure, agree we should cap punitive damages. Since the Alabama's supreme court's decision, Alabama's punitive damage awards have gone through the roof. Forbes magazine recently described Alabama as, ''the worst place in America in which to be a civil defendant.''

Finally, Mr. Chairman, the American people understand the need for uniformity of liability laws. In a recent survey of 1,000 adults, 84 percent—I mean, 84 percent of the people don't agree whether it is a nice day or not, what the weather is like—but 84 percent of the people agree that because State liability laws often conflict with each other and because so many lawsuits cross State lines, there should be one set of rules for the liability system instead of 50 different sets of rules.

Mr. Chairman, I hope this addresses the concerns of my colleagues regarding Federalism. We must address these national problems, Mr. Chairman, with a national solution and that national solution lies in the legislation brought here tonight. And I urge its support tomorrow.

Mr. BERMAN. Will the gentleman yield?

Mr. RAMSTAD. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I am curious. First of all, was title II of this bill, the preemption of punitive damages in nonproduct liability cases, part of the Republican contract that you were involved in drafting?

□ 2245

Mr. RAMSTAD. Mr. Chairman, it was certainly thought if it applied, the limitation on punitive damages applied to products cases, it should apply to all civil actions.

Mr. BERMAN. Was that in the contract?

Mr. RAMSTAD. The cap on punitive damages was in the contract.

Mr. BERMAN. Was the cap in nonproduct liabilities cases? Because I think the contract was only limited to caps on punitive damages in product liability cases.

Mr. RAMSTAD. The present bill I am sure the gentleman recognizes applies to all civil actions, as it properly should.

Mr. SENSENBRENNER. Mr. Chairman, the current system of product liability law in the United States is detrimental to our Nation's economic prosperity. The cost of insurance and litigation causes manufacturers to increase prices, provides a disincentive for business to create new products, and impedes interstate commerce. Tort liability costs are substantially higher in the United States than any other country and currently represent 2.3 percent of U.S. gross domestic product.

For the past 20 years, the Democrat-controlled Congress has refused to seriously consider obvious problems inherent in our product liability laws. I am pleased that the new Republican majority has made product liability reform a priority and I enthusiastically support H.R. 956, The Common Sense Product Liability and Legal Reform Act.

H.R. 956 will enact several important reforms. It ensures that product sellers will receive reasonable protection against liability for manufacturer error. A plaintiff whose use of drugs or alcohol is partly responsible for an accident will be prohibited from collecting damages from defendants with lesser degrees of responsibility. Limits are established regarding a defendant's liability for non-economic damages to a proportionate share of responsibility. A 15-year limitation for brining most liability actions will also be enacted. The bill also makes important reforms to the system of awarding punitive damages. It addresses burden of proof, proportionality of awards, and bifurcation of proceedings.

In addition, I support the Cox amendment to H.R. 956 which expands the legislation to include reform of the medical malpractice system. Congress has spent a great deal of time debating elaborate proposals that would control skyrocketing medical costs. This amendment provides a simple first step to reducing the cost of medical care. In my State, Wisconsin, the average physician pays $40,000 a year in medical malpractice insurance premiums, and specialists pay more. If you assume that the average doctor works 2,000 billable hours per year and charges $20 per hour, then the first $10, or the average cost of the first half-hour of the office visit, is the patient's share of the medical malpractice insurance premium. Medical malpractice premiums have been the fastest growing component of physician's costs. This amendment will reduce frivolous malpractice suits and the corresponding increases in insurance premiums. In my opinion, reforming medical malpractice is an essential start to reforming America's health care system.

In the coming months, Congress will debate significant cuts in Government spending for research and development, small business programs, and export promotion. Enactment of this legislation will reduce tort liability costs for American companies and enhance American competitiveness in the world marketplace.

Mr. SANDERS. Mr. Chairman, I am very distressed about some of the proposals that have been considered and passed by the House recently. Although one in three Americans will get cancer and one in four of us will die from it, the proposals we have been passing under the Contract With America are making it substantially easier for big corporations to pollute our environment and bodies with toxic chemicals with complete immunity. They make it extremely difficult, if not impossible, for the Federal Government to protect the public health and take away the financial incentives for private industry to use care when manufacturing products.

Forces who think its appropriate to ignore the public health successfully defeated important amendments I offered to the unfunded mandates reform and the regulatory moratorium bills which would have allowed the Federal Government to protect the public health—especially from cancer-causing toxic exposures. On Monday, under the guise of attorney accountability, these same forces successfully passed a provision that would make it extremely difficult to win a suit against a company that manufactures products that cause toxic injuries. It will likely prohibit evidence of newly discovered injuries that we are discovering in the toxic tort area like chemical sensitivity and immune deficiency syndrome. Obviously, attorney accountability only demands accountability to corporate interests and not accountability to the consumer.

But those of us who want to protect the public health are beginning to win the fight. This legal reform bill was amended so consumers harmed by toxic products like the Dalcon shield, DES, breast implants, and asbestos, can sue for compensatory damages. The bill does not allow suits 15 years after purchase of the product. Yet, in committee the time limit provision was changed to exclude injuries that do not ordinarily appear within 15 years of exposure. Although this provision addresses latent injuries like cancer and asbestosis, it is badly written and could leave many seriously injured consumers without legal recourse. Which injuries ordinarily appear more than 15 years after exposure? Which types of cancer? How about AIDS? And chemical sensitivity? What if an injury usually arises within 10 years, what happens to the victims who were lucky enough to have a longer latency period? Will they not be able to sue? Clearly this bill does not adequately protect consumers from cancer-causing and other toxic products.

Mr. Chairman, there is one other serious flaw in this bill I would like to address. It is extremely regressive. The cap on punitive damages is based, in part, on the victim's income. Not only does this allow wealthier victims to win larger recoveries, but it also creates an incentive to use less care when developing and manufacturing products that are typically used by low-income consumers.

This bill is a badly written bill that puts consumers' rights in serious jeopardy and I strongly urge you to vote ''no'' on final passage.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired for general debate.

Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DICKEY) having assumed the chair, Mr. DREIER, 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. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, had come to no resolution thereon.

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

SPECIAL ORDERS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. MORELLA] is recognized for 5 minutes.

[Mrs. MORELLA addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. WYNN] is recognized for 5 minutes.

[Mr. WYNN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. RIGGS] is recognized for 5 minutes.

[Mr. RIGGS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. GUTIERREZ] is recognized for 5 minutes.

[Mr. GUTIERREZ addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. WELDON] is recognized for 5 minutes.

[Mr. WELDON of Florida addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California [Ms. WOOLSEY] is recognized for 5 minutes.

[Ms. WOOLSEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

COMMONSENSE PRODUCT LIABILITY REFORM NEEDED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas [Mr. TIAHRT] is recognized for 5 minutes.

Mr. TIAHRT. Mr. Speaker, I want to carry on with what we talked about earlier this evening. It is natural for each of us to feel sorry for a person who suffers in an accident or mishap. One of our fundamental freedoms is the ability to bring suit in order to receive justice. When big corporations get sued, we often side with the individual against the companies. We think ''big bad corporation'' and ''poor individual.'' And when the big companies pay millions of dollars in settlements, we pretty much shrug and say, ''Well, they can afford it.''

But that is not really true, Mr. Speaker, because the people who pay the price for those big settlements are the working people of America, and they pay it at the cash register. When companies are forced to pay outrageously high settlements, they eventually have to cut jobs, raise prices, and pass the costs on to the American people. This does not affect the rich as much as it affects the hard-working families who have to pay this price.

Mr. Speaker, in 1994 Congress passed the General Aviation Revitalization Act. This act implemented a statute of repose of 18 years on suits involving single engine airplanes, product liability for airplanes. That means that after 18 years, the legal liability of a manufacturer is greatly diminished. This act applies to planes with seating capacity of 20 or less. Cessna Aircraft Co. which is headquartered in Wichita, KS, was for years the world's leading producer of single engine aircraft. But because of aging airplanes and the litigation explosion that followed, America lost its aviation manufacturing advantage.

In 1977, the single engine aircraft industry was producing over 13,000 airplanes per year. But with the onslaught of the legal tidal wave, Cessna completely stopped manufacturing these planes by 1986. By 1994, the entire industry produced less than 600 aircraft, less than 5 percent of what was previously produced, and many of them came from outside America.

Mr. Speaker, this is just not about making fewer airplanes, it is about losing American jobs. When the company is forced to pay sky-high legal judgments in cases where their legal liability is at best suspect, the working families are taking the hit and we are lining pockets of rich lawyers. What has happened to Cessna and other companies was that judges were holding them accountable and liable for aircraft malfunctions that could be reasonably accounted for in pilot error, maintenance failure, or simply just an old airplane

Mr. Speaker, there comes a time when a plane is just old. Those who are flying these old airplanes were simply taking a risk. How can you blame the manufacturer for a properly designed airplane and properly built airplane?

For the last 2 days we have been debating legal reform on the floor, and some have stated that this reform is unnecessary, that the system works fine the way it is. As we talk about product liability, I would like to offer what is happening in Independence, KS, as an example of what could happen in other industries if we could just pass the much-needed product liability reform.

Because we passed the statute of repose containing the General Aviation Revitalization Act in 1994, Cessna Aviation has announced it will build a new manufacturing plant in Independence, KS. Groundbreaking will be this April. Cessna intends to invest over $75 million in this community, and it is all the result of placing a reasonable limit on product liability.

Cessna's production of single engine aircraft was destroyed in 1986, but because Congress took action in the next 2½ years, Cessna estimates they will produce 2,000 airplanes per year. Once again, this is not about more planes as much as about hope for southeast Kansas and for 7,000 people who are going to be employed over the next 5 years. The benefits of this plant will also be felt in Oklahoma and nationally. All told, it is predicted over 25,000 jobs will be created from product liability reform for airplanes. This is just one example that can happen when you rein in the lawyers and give manufacturers a chance to pass laws.

This is clear Congress should pass commonsense product liability reform. Jobs and security for people across the Nation will be the result. People should have the right to sue. That is not the question here. The question is should there be reasonable limits on product liability, and the answer is yes.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island [Mr. REED] is recognized for 5 minutes.

[Mr. REED addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nevada [Mr. ENSIGN] is recognized for 5 minutes.

[Mr. ENSIGN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York [Mrs. LOWEY] is recognized for 5 minutes.

[Mrs. LOWEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GREEN] is recognized for 5 minutes.

[Mr. GENE GREEN of Texas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. KINGSTON] is recognized for 5 minutes.

[Mr. KINGSTON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 5 minutes.

[Mrs. CLAYTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

SUPPORT FOOD STAMP PROGRAM AND COMMODITY DISTRIBUTION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee [Mr. BRYANT] is recognized for 5 minutes.

Mr. BRYANT of Tennessee. Mr. Speaker, I would like to talk about something we did last night on the Committee on Agriculture on which I serve, but first, before I get into that, I would like to address briefly some of the remarks I have heard on the debate this evening concerning the tort reform bill, and particularly the punitive damages aspect of that bill, the claims being made on one side that sexual predators and drug dealers will no longer be subject to punitive damages.

Certainly as an emotional issue as this type of conduct, these types of conduct are, I wanted to clarify from my viewpoint and from my experience as a civil attorney for about 20 years, which included about 2 years as a U.S. attorney as a Federal prosecutor, my experience in the area of punitive damages and this type of conduct which I find was not really connected.

I never saw, in my experience, a sexual predator suit in civil court, but rather the more likely remedy the law has there is a criminal prosecution, the aggressive criminal prosecution of people who sexually pray on children.

Likewise with drug dealers, what we come out there with drug dealers is they are arrested and prosecuted under the criminal law, not suing them civilly, where we put these types of people in jail for their conduct. Certainly in the area of drug dealers' civil forfeiture, that was available to us as prosecutors, to seize the ill-gotten gains that these people had, their assets, their homes and cars, things that were gained through the sale of drugs. It was certainly valid forfeitures. But not again in my experience have I seen the use of punitive damages in either one of those cases, but rather the more appropriate remedies of putting these people in jail.

Mr. Speaker, I would now like to talk about the Committee on Agriculture, on which I serve.

Last night, the House Agriculture Committee passed H.R. 1135, the Food Stamp Program and Commodity Distribution Act.

This legislation is a big first step in the direction of real welfare reform.

For 2 years now, Americans have been waiting for the current administration to end welfare as we know it.

Last night, that process began.

What this legislation will do is give that States the choice to determine how they want to run their Food Stamp Program.

One of the most important aspects of this legislation is that it would require food stamp recipients must work to be eligible to receive food stamps.

The hard-working taxpayers of my district in Tennessee would agree that if an able-bodied person is going to receive food stamps, then they should be required to work to receive them.

It simply is not fair to stay on the rolls and make no effort to better one's self and try to become a productive, tax paying citizen of society.

Another important part of this legislation is that it contains stiffer penalties for those caught abusing food stamps.

The Federal Government will now be allowed to seize property and proceeds from illegal food stamp traffickers without having to go through mountains of red tape.

As a former U.S. attorney, I once prosecuted an individual who tried to purchase a vehicle with food stamps.

So I know firsthand that we must crack down hard on waste, fraud, and abuse in the Food Stamp Program.

Mr. Speaker, the welfare reform process has indeed begun.

The welfare system of the past and present has been a tragic failure.

It has encouraged dependency, discouraged self-reliance, and created a burden for those of us who choose to be productive.

Only until our welfare system encourages work and self-dependence will it be truly beneficial to society.

H.R. 1135 will do this.

I urge my colleagues to support H.R. 1135 when it comes to this Chamber for consideration.

DISCUSSION ON NEWSPAPER STORIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. HAYWORTH] is recognized for 5 minutes.

Mr. HAYWORTH. Mr. Speaker, earlier today it was my privilege to appear on C-SPAN with one of our colleagues on the other side of the aisle from Illinois to discuss the morning newspapers, and a rather lively discussion ensued, and it was very interesting to go over many different articles in the Nation's press.

One article, however, we failed to get to, and I would bring to your attention, Mr. Speaker, and indeed the attention of the American people, on the editorial page of the Wall Street Journal, an article entitled ''Protest, Washington Style.'' Quoting from the article now:

> Newt Gingrich and other speakers were prevented from addressing the National Association of Counties in Washington on Monday after 500 shouting protesters invaded the hotel ballroom and used megaphones to call for higher school lunch funding. Many of the protesters had been bused in from out of town, prompting Mr. Gingrich to ask some pointed questions. Why weren't they at work? Who are they? Who paid them? Well, it turns out the protest was organized by the left wing activist group, ACORN, a frequent recipient of Federal and state grants.
>
> The Washington Times reports that 42 participants in President Clinton's new national service program are working for ACRON at a cost to taxpayers of more than $1.1 million. Several operate out of ACORN's Washington, D.C. offices. We may never know if federally funded 'volunteers' helped ruin meetings for 2,000 county officials, but we hope Congress plans some oversight hearings on the groups involved in Mr. Clinton's service program.

□ 2300

It was interesting today, Mr. Speaker, to see yet more protesters arrive here on Capitol Hill. And I find it especially interesting that it appears that some of these protesters are subsidized with tax money from you and me and from the American people, so now we have really reached a new low in the concept of protest.

And please don't misunderstand. I uphold the first amendment and applaud the first amendment, and certainly people have a right to peaceably assemble and petition the Government for redress of grievances. But the problem comes as certainly there is a cloud of suspicion that what we have now are protesters subsidized with tax money here to champion the tired old policies of the past.

And what is even more true, and I will come back to this fact until the American people have it clear in their minds, all this talk about cutting the school lunch programs, about cutting the Federal nutrition programs, can only be characterized as false.

Again, the numbers speak for themselves. This new Republican majority is willing to fund these programs $200 million in excess of what President Clinton has called for this year. And moreover, we called for increases of 4.5 percent.

Now the guardians of the old order bankrupt of any new ideas come here and march to the will of this House and say, No, no, those are cuts. Again, only in Washington can it be considered a cut when you reduce a future planned increase.

My friends on the other side are upset because the increase will not be 5.1 percent. Instead, the increase is

only 4.5 percent. But I would ask, amidst all of these allegations, amidst the misreading of numbers, amidst this phantom number of $7 billion with imaginary money that is not even there, who has been harmed?

We know who has been scared. Name for me the school children, show me the schools that are being deprived of lunches. They are not there. Again, it is the policy of this new majority to empower people, to enfranchise people and not to hold down people in the form of a permanent underclass but to truly feed the needy and to give the opportunities to feed the needy in the classrooms, the people who really need it, to have that opportunity at the local level. But the money is not being taken away.

And with reference to people coming to lobby us, to come to see us, I thought it was very interesting that in previous weeks folks would come bringing cut-out dolls of this nature and they would list names of very, very small children. Now, look, it is obvious a 3-year-old, precocious though she might be, did not assemble this doll. This was something done by adults, from government bureaucrats who have paid money into political action committees that have funded the tired old order 10 to 1 over Republicans. That is part of the problem. That is the real story. That is what we will move to correct.

The SPEAKER pro tempore (Mr. DICKEY). Under a previous order of the House, the gentleman from Ohio [Mr. STOKES] is recognized for 5 minutes.

[Mr. STOKES addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. HOYER] is recognized for 5 minutes.

[Mr. HOYER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia [Mr. SCOTT] is recognized for 5 minutes.

[Mr. SCOTT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. KAPTUR] is recognized for 5 minutes.

[Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Florida [Mr. SCARBOROUGH] is recognized for 60 minutes as the designee of the majority leader.

[Mr. SCARBOROUGH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from California [Mr. BECERRA] is recognized for 60 minutes as the designee of the minority leader.

[Mr. BECERRA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 60 minutes.

[Mr. DORNAN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BILBRAY (at the request of Mr. ARMEY) after 3:30 p.m. today, on account of illness.

Mr. UNDERWOOD (at the request of Mr. GEPHARDT) for today and the balance of the week, on account of official business in the district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. JACKSON-LEE) to revise and extend their remarks and include extraneous material:)

Mr. WYNN, for 5 minutes, today.
Mr. GUTIERREZ, for 5 minutes, today.
Ms. WOOLSEY, for 5 minutes, today.
Mr. REED, for 5 minutes, today.
Mrs. LOWEY, for 5 minutes, today.
Mr. GENE GREEN of Texas, for 5 minutes, today.
Mrs. CLAYTON, for 5 minutes, today.
Mr. STOKES, for 5 minutes today., for 5 minutes, today.
Mr. HOYER, for 5 minutes, today.
Mr. SCOTT, for 5 minutes, today.
Ms. KAPTUR, for 5 minutes, today.
Mr. OWENS, for 5 minutes, today.

(The following Members (at the request of Mr. TIAHRT) to revise and extend their remarks and include extraneous material:)

Mr. TIAHRT, for 5 minutes, today.
Mr. ENSIGN, for 5 minutes, today.
Mr. BATEMAN for 5 minutes on March 13, 14, and 15.
Mr. TALENT for 5 minutes on March 9 and 15.
Mr. HAYWORTH for 5 minutes, today.
Mr. KINGSTON for 5 minutes, today.
Mr. BRYANT of Tennessee for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Ms. JACKSON-LEE) and to include extraneous matter:)

Mrs. MEEK of Florida.
Mr. KILDEE.
Mr. FOGLIETTA.
Mrs. SCHROEDER.
Mr. UNDERWOOD.
Mr. MENENDEZ.
Mr. DEAL of Georgia.
Ms. ESHOO.
Mr. FILNER.
Mr. SANDERS.
Mr. STOKES.
Mr. ROMERO-BARCELÓ.
Mr. TRAFICANT.
Ms. LOFGREN.

(The following Members (at the request of Mr. TIAHRT) and to include extraneous matter:)

Mr. CRAPO.
Mr. SMITH of New Jersey.
Mr. GOODLING.
Mrs. GALLEGLY.
Mr. GOODLATTE.
Mr. PACKARD in two instances.
Mr. BLILEY.
Mr. FIELDS of Texas.
Mr. BAKER of California.
Mr. STUMP.
Mr. PORTER.
Mr. FOLEY in four instances.
Mr. RAMSTAD.
Mr. DAVIS.
Mr. EMERSON.
Mr. SHAW.
Mr. SOLOMON.
Mr. CHRISTENSEN.

ADJOURNMENT

Mr. HAYWORTH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 5 minutes p.m.), the House adjourned until tomorrow, Thursday, March 9, 1995, at 10 a.m.

EXECUTIVE COMMUNCIATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

493. A letter from the Director of Legislative Affairs, Equal Employment Opportunity Commission, transmitting the Commission's fiscal year 1994 annual report on the operations of the Office of General Counsel, pursuant to 42 U.S.C. 2000e–4(e); to the Committee on Economic and Educational Opportunities.

494. A letter from the President, U.S. Enrichment Corporation, transmitting the Corporation's annual report for fiscal year 1994,

pursuant to Public Law 102–486, section 901 (106 Stat. 2929); to the Committee on Commerce.

495. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11–23, ''Recycling Fee and Illegal Dumping Amendment Act of 1995,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

496. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11–24, ''Litter Control Fine Increase Amendment Act of 1995,'' pursaunt to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

497. A letter from the Chairman, Consumer Product Safety Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

498. A letter from the Chairman, Federal Deposit Insurance Corporation, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

499. A letter from the Secretary, Federal Trade Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

500. A letter from the Freedom of Information/Privacy Officer, Interstate Commerce Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

501. A letter from the President, National Endowment for Democracy, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

502. A letter from the Acting Director of Legislative and Public Affairs, National Science Foundation, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

503. A letter from the Director, Office of Personnel Management, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

504. A letter from the Director, Office of Science and Technology Policy, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

505. A letter from the Librarian of Congress, transmitting the report of the activities of the Library of Congress, including the Copyright Office, for the fiscal year ending September 30, 1993, pursuant to 2 U.S.C. 139; to the Committee on House Oversight.

506. A letter from the Administrator, General Services Administration, transmitting informational copies of prospectuses for three U.S. courthouses located in Jacksonville, FL, Albany, GA, and Corpus Christi, TX, pursuant to 40 U.S.C. 606(a); to the Committee on Transportation and Infrastructure.

507. A letter from the Secretary of Energy, transmitting notification that the report on coal research, development, demonstration, and commercial application activities regarding coal-based technologies is expected to be submitted by June 30, 1995; to the Committee on Science.

508. A letter from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to reduce costs and make improvements in the Medicare Program, and for other purposes; jointly, to the Committees on Ways and Means and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LIVINGSTON: Committee on Appropriations, H.R. 1158. A bill making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes (Rept. 104–70). Referred to the Committee of the Whole House on the State of the Union.

Mr. LIVINGSTON: Committee on Appropriations, H.R. 1159. A bill making supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and for other purposes (Rept. 104–71). Referred to the Committee of the Whole House on the State of the Union.

Mr. LINDER: Committee on Rules, House Resolution 109. Resolution providing for further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes (Rept. 104–72). Referred to the House Calendar.

SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

[Omitted from the Record of March 7, 1995]

The Committee on Commerce discharged from further consideration of H.R. 956; H.R. 956 referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ARCHER:

H.R. 1157. A bill to restore families, promote work, protect endangered children, increase personal responsibility, attack welfare dependency, reduce welfare fraud, and improve child support collections; to the Committee on Ways and Means, and in addition to the Committee on Economic and Educational Opportunities, Commerce, the Judiciary, National Security, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LIVINGSTON:

H.R. 1158. A bill making emergency supplemental appropriations for additional disaster assistance and making recissions for the fiscal year ending September 30, 1995, and for other purposes; to the Committee of the Whole House on the State of the Union.

H.R. 1159. A bill making supplemental appropriations and recissions for the fiscal year ending September 30, 1995, and for other purposes; to the Committee of the Whole House on the State of the Union.

By Mr. BROWDER:

H.R. 1160. A bill to amend the International Code of 1986 to provide that new income tax deductions, credits, exclusions, and other benefits shall be allowed only if the projected Federal budget deficit meets certain deficit targets; to the Committee on Ways and Means.

By Mr. CAMP (for himself and Mr. MCDERMOTT):

H.R. 1161. A bill to amend the Internal Revenue Code of 1986 to provide an exclusion from unrelated business taxable income for certain sponsorship payments; to the Committee on Ways and Means.

By Mr. CRAPO (for himself, Ms. HARMAN, Mr. HASTERT, Mr. SCHUMER, Mrs. MORELLA, Mr. BREWSTER, Mr. SHAYS, Mr. EDWARDS, Mr. INGLIS of South Carolina, Mr. STENHOLM, Mr. KASICH, Ms. MOLINARI, Ms. DUNN of Washington, Mr. ACKERMAN, Mr. FROST, Mr. KLUG, Mr. WELDON of Pennsylvania, Mr. WELLER, Mr. MEEHAN, Mr. MINGE, Mr. POSHARD, Mr. HANCOCK, Mr. LIPINSKI, Mr. ORTON, Ms. ESHOO, Mr. CASTLE, Mrs. LINCOLN, Mr. GREENWOOD, Mr. BURTON of Indiana, Mrs. WALDHOLTZ, Mr. BEREUTER, Mr. BARRETT of Wisconsin, Mr. BUYER, Mr. BROWDER, Mr. BURR, Mr. DEAL of Georgia, Mr. NEUMANN, and Mr. BROWN of Ohio):

H.R. 1162. A bill to establish a deficit reduction trust fund and provide for the downward adjustment of discretionary spending limits in appropriation bills; to the Committee on the Budget and in addition, to the Committees on Government Reform and Oversight, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FORBES:

H.R. 1163. A bill to authorize the exchange of National Park Service land in the Fire Island National Seashore in the State of New York for land in the Village of Patchogue, Suffolk County, NY; to the Committee on Resources.

H.R. 1164. A bill to direct the Secretary of Transportation to convey to the Montauk Historical Society light station located at Montauk, NY; to the Committee on Transportation and Infrastructure.

By Mr. GOODLATTE (for himself and Mr. BOUCHER):

H.R. 1165. A bill to amend the Appalachian Regional Development Act of 1965 to include Montgomery, Roanoke, and Rockbridge Counties, VA, as part of the Appalachian region; to the Committee on Transportation and Infrastructure.

By Ms. LOWEY (for herself and Mr. WYDEN):

H.R. 1166. A bill to require the Secretary of Health and Human Services to develop recommendations for proposed model adoption legislation and procedures; to the Committee on Economic and Educational Opportunities.

H.R. 1167. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for certain adoption expenses; to the Committee on Ways and Means.

By Mr. MONTGOMERY:

H.R. 1168. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax to employers who employ members of the Reserve components of the Armed Forces of the United States and to self-employed individuals who are members of such Reserve components; to the Committee on Ways and Means.

By Mr. MORAN:

H.R. 1169. A bill to amend the Truth in Lending Act to prohibit issuers of credit cards from limiting the ability of Federal,

State, and local government agencies to impose fees for honoring credit cards, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. BONO (for himself, Mr. HYDE, Mr. MOORHEAD, Mr. SENSENBRENNER, Mr. GALLEGLY, Mr. COBLE, Mr. GEKAS, Mr. CANADY, Mr. GOODLATTE, Mr. HOKE, Mr. COX, Mr. MCCOLLUM, Mr. DREIER, Mr. PAXON, Mr. RIGGS, Mr. LEWIS of California, Mr. ROHRABACHER, Mr. SCHIFF, Mr. CALVERT, Mr. PACKARD, Mr. SMITH of Texas, Mr. BAKER of California, Mr. HERGER, Mr. HUNTER, Mr. DORNAN, Mr. THOMAS, Mr. HEINEMAN, Mr. CUNNINGHAM, Mr. POMBO, Mr. INGLIS of South Carolina, Mr. MCKEON, Mr. DOOLITTLE, Mr. KIM, Mr. BUYER, Mr. ROYCE, Mr. FLANAGAN, Mr. BARR, Mr. HORN, Mr. BRYANT of Tennessee, Mr. BILBRAY, Mr. CHABOT, Mr. RADANOVICH, and Mrs. SEASTRAND):

H.R. 1170. A bill to provide that cases challenging the constitutionality of measures passed by State referendum be heard by a three-judge court; to the Committee on the Judiciary.

By Mr. SHAW (for himself, Mr. RANGEL, Mr. CRANE, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. THOMAS, Mr. HANCOCK, Mr. NEAL of Massachusetts, Mr. ENGLISH of Pennsylvania, Mr. SAM JOHNSON, and Mr. HERGER):

H.R. 1171. A bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain leasehold improvements; to the Committee on Ways and Means.

By Mr. SMITH of New Jersey (for himself, Mr. HOYER, Mr. GILMAN, Mr. BONIOR, Mr. MARKEY, Ms. MOLINARI, Mr. WOLF, Mr. ROYCE, Mr. CARDIN, Mr. TORRICELLI, Mr. ROHRABACHER, Mr. MORAN, Mr. WYNN, Ms. DELAURO, Mr. ENGEL, Mr. GALLEGLY, and Mr. MENENDEZ):

H.R. 1172. A bill to terminate the United States arms embargo applicable to the Government of Bosnia and Herzegovina; to the Committee on International Relations.

By Mr. STUMP (for himself, Mr. ROBERTS, Mr. CALLAHAN, Mr. BACHUS, and Mr. EVERETT):

H.R. 1173. A bill to prohibit the expenditure of Federal funds for constructing or modifying highway signs that are expressed only in metric system measurements; to the Committee on Transportation and Infrastructure.

By Mr. UPTON:

H.R. 1174. A bill to provide additional flexibility for the Department of Energy's program for the disposal of spent nuclear fuel and high level radioactive waste, and for other purposes; to the Committee on Commerce.

By Mr. YOUNG of Alaska:

H.R. 1175. A bill to amend Public Law 89–454 to provide for the reauthorization of appropriations; to the Committee on Resources.

By Mr. GOODLING (for himself, Mr. FAWELL, Mr. BALLENGER, Mr. HOEKSTRA, Mr. CUNNINGHAM, Mr. MCKEON, Mrs. ROUKEMA, Mr. GUNDERSON, Mr. BARRETT of Nebraska, Mr. CASTLE, Mrs. MEYERS of Kansas, Mr. SAM JOHNSON, Mr. GREENWOOD, Mr. HUTCHINSON, Mr. KNOLLENBERG, Mr. GRAHAM, Mr. WELDON of FLorida, Mr. FUNDERBURK, Mr. SOUDER, Mr. NORWOOD, Mr. BOEHNER, Mr. STENHOLM, Mr. DOOLEY, Mr. PARKER, Mr. DEAL of Georgia, Mr. BREWSTER, Mr. HANCOCK, Mr. ZELIFF, Mr. ROHRABACHER, and Mr. EWING):

H.R. 1176. A bill to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees; to the Committee on Economic and Educational Opportunities.

By Mr. HILLEARY (for himself, Mr. NETHERCUTT, Mrs. MYRICK, Mr. MCINTOSH, Mr. BRYANT of Tennessee, Mr. GRAHAM, Mr. ROYCE, Mr. LATOURETTE, Mr. KINGSTON, Mr. WAMP, Mr. TATE, Mr. SALMON, Mr. WELLER, Mrs. WALDHOLTZ, Mr. LATHAM, Mr. CHRISTENSEN, Mr. NORWOOD, Mr. BROWNBACK, Mr. BASS, Mr. NEUMANN, Mrs. SMITH of Washington, Mr. THORNBERRY, Mr. LARGENT, Mr. COBURN, Mr. TIAHRT, Mr. HUTCHINSON, Mr. STOCKMAN, Mr. PAXON, Mr. DICKEY, Mr. KLUG, and Mr. PETERSON of Minnesota):

H.J. Res. 76. Joint resolution proposing an amendment to the Constitution of the United States limiting the terms of office of Senators and Representatives; to the Committee on the Judiciary.

By Mr. MCCOLLUM (for himself, Mr. HOKE, Mr. WAMP, and Mr. FOLEY):

H.J. Res. 77. Joint resolution proposing an amendment to the Constitution of the United States with respect to the terms of Senators and Representatives; to the Committee on the Judiciary.

By Mr. GILCHREST:

H. Con. Res. 34. Concurrent resolution authorizing the use of the Capitol Grounds for the Ringling Bros. and Barnum & Bailey Circus anniversary commemoration; to the Committee on Transportation and Infrastructure.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII:

Mr. BARTLETT of Maryland introduced a bill (H.R. 1177) for the relief of Debra Bargeski; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. BUNN of Oregon.

H.R. 78: Mr. BURR and Mr. MCKEON.

H.R. 104: Ms. MOLINARI.

H.R. 110: Mr. SERRANO.

H.R. 120: Mr. PARKER.

H.R. 123: Mr. DEAL of Georgia, Mr. CRANE, Mr. COOLEY, Mr. GRAHAM, Mr. SOUDER, Mr. SANFORD, Mr. GEKAS, Mr. WELDON of Florida, Mr. NETHERCUTT, Mr. ALLARD, and Mr. STOCKMAN.

H.R. 240: Mr. STEARNS and Mr. SMITH of New Jersey.

H.R. 373: Mr. TAYLOR of Mississippi.

H.R. 375: Mr. TAYLOR of Mississippi.

H.R. 394: Mr. RAHALL, Mrs. LINCOLN, Mr. CALVERT, Ms. Lowey, Mrs. SMITH of Washington, Mr. GEJDENSON, Ms. FURSE, Mr. HALL of Texas, Mr. WILSON, Mr. KING, and Mr. LIVINGSTON.

H.R. 398: Mr. FATTAH.

H.R. 470: Mr. SCHUMER, Mrs. ROUKEMA, Mr. NADLER, and Mr. TORRICELLI.

H.R. 580: Mr. DAVIS and Mr. WATTS of Oklahoma.

H.R. 612: Mr. SERRANO.

H.R. 645: Mr. BENTSEN and Ms. JACKSON-LEE.

H.R. 658: Ms. SLAUGHTER.

H.R. 662: Mr. FILNER, Mr. PARKER, Mr. FRANKS of Connecticut, and Mr. BURTON of Indiana.

H.R. 699: Mr. STENHOLM and Mr. LARGENT.

H.R. 709: Mr. PARKER, Mr. FATTAH, Mr. HINCHEY, and Mr. SERRANO.

H.R. 739: Mrs. CHENOWETH, Mr. LAHOOD, Mr. BAKER of California, and Mr. LIVINGSTON.

H.R. 759: Mr. LIVINGSTON, Ms. MOLINARI, and Mr. EHLERS.

H.R. 789: Mr. CHRISTENSEN.

H.R. 791: Mr. FORBES, Mr. KINGSTON, Mr. SKEEN, Mr. BILBRAY, and Mr. PARKER.

H.R. 793: Mr. CLINGER.

H.R. 839: Mr. FORBES.

H.R. 860: Mr. WICKER and Mr. HANCOCK.

H.R. 873: Ms. DELAURO, Ms. LOWEY, Mr. GANSKE, and Ms. SLAUGHTER.

H.R. 882: Mr. MCDERMOTT, Ms. ESHOO, Ms. SLAUGHTER, Ms. PELOSI, Ms. HARMAN, Ms. RIVERS, Mr. WALSH, and Ms. FURSE.

H.R. 930: Mr. ORTON.

H.R. 941: Mr. WAXMAN, Mr. OBERSTAR, Mr. MARTINEZ, Mr. BONIOR, Mr. CALVERT, Mr. HINCHEY, Ms. FURSE, Mr. FOGLIETTA, and Mr. SERRANO.

H.R. 958: Mr. BONIOR, MS. LOFGREN, Mr. WYNN, Mr. FALEOMAVAEGA, Mrs. THURMAN, Mr. SCOTT, and Ms. WOOLSEY.

H.R. 995: Mr. CUNNINGHAM, Mr. WELLER, Mr. MCHUGH, and Mr. CALVERT.

H.R. 996: Mr. CUNNINGHAM, Mr. WELLER, Mr. MCHUGH, and Mr. CALVERT.

H.R. 1021: Mr. CANADY.

H.R. 1023: Mr. TOWNS and Mr. CAMP.

H.R. 1058: Mr. BREWSTER.

H.R. 1077: Mr. SKEEN and Mr. CREMEANS.

H.R. 1085: Mr. WALSH and Mr. LOBIONDO.

H.R. 1094: Mr. MINGE.

H.R. 1111: Mr. TIAHRT.

H.R. 1114: Mr. SISISKY.

H.R. 1138: Ms. DUNN of Washington.

H.R. 1145: Mr. ENGLISH of Pennsylvania, Mr. INGLIS of South Carolina, Mr. BEREUTER, Mr. TOWNS, Mr. KING, Mr. SMITH of Texas, Mr. FROST, Mr. LAHOOD, Mr. CANADY, Mr. MCHUGH, Mr. FRANK of Massachusetts, Mr. HEINEMAN, Mr. BRYANT of Tennessee, and Mr. LIVINGSTON.

H.J. Res. 61: Mr. KING.

H.J. Res. 72: Mr. BUNN of Oregon.

H. Con. Res. 12: Mr. LAZIO of New York, Mr. HYDE, Mr. CLYBURN, Mr. KNOLLENBERG, and Mr. MICA.

H. Con. Res. 23: Ms. FURSE, Mr. FAZIO of California, Mr. GUTKNECHT, Mr. FATTAH, Mr. LAUGHLIN, Mr. GILMAN, Ms. RIVERS, Ms. DUNN of Washington, Mr. METCALF, Mr. VOLKMER, Mr. KING, Mr. SERRANO, Mr. GILLMOR, and Mr. SPENCE.

H. Res. 59: Mr. PALLONE, Mr. DURBIN, Mrs. MINK of Hawaii, Mr. BEVILL, Mr. TORRICELLI, Mr. PICKETT, Mr. FROST, Mr. UNDERWOOD, Ms. RIVERS, Mr. GENE GREEN of Texas, Mr. LIPINSKI, Mr. MILLER of California, Mr. ROMERO-BARCELO, Mr. VENTO, Mr. COLEMAN, Mr. FILNER, Mr. JOHNSON of South Dakota, Mr. TORKILDSEN, Mr. EVANS, and Mr. MCDERMOTT.

H. Res. 98: Mr. FRANK of Massachusetts, Mr. GENE GREEN of Texas, Ms. VELAZQUEZ, Mr. MFUME, Mr. GORDON, Mr. ROSE, and Mr. CLYBURN.

H. Res. 99: Mr. KANJORSKI.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 56: Mr. WELLER, Mr. FUNDERBURK, Mr. MINGE, Mr. HOLDEN, Mr. CRAPO, Mr. KNOLLENBERG, Mr. MCDADE, Mr. BRYANT of Tennessee, Mr. BASS, Mrs. WALDHOLTZ, and Mr. OXLEY.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.J. RES. 2

OFFERED BY: MR. BROWNBACK

AMENDMENT NO. 10: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

''ARTICLE —

''SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives five times shall be eligible for election to the House of Representatives.

''SECTION 2. No person who has served as a Senator for more than three years of a term to which some other person was elected shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

''SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

''SECTION 4. A State may impose term limits shorter than those provided under this article.''.

H.J. RES. 2

OFFERED BY: MR. DEAL OF GEORGIA

AMENDMENT NO. 11: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

''ARTICLE —

''SECTION 1. No person who has been elected to the Senate two times after the date of the ratification of this article shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times after the date of the ratification of this article shall be eligible for election to the House of Representatives.

''SECTION 2. A State may establish limitations on the length of service for Members of Congress from that State that do not exceed the limits set forth in this article.''.

H.J. RES. 2

OFFERED BY: MR. DEAL OF GEORGIA

AMENDMENT NO. 12. Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

''ARTICLE —

''SECTION 1. No person who has been elected to the Senate two times after the date of the ratification of this article shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times after the date of the ratification of this article shall be eligible for election to the House of Representatives.

SECTION 2. A State may establish limitations on the length of service for Members of Congress from that State that do not exceed the limits set forth in this article, whether enacted before, on, or after the date of the ratification of this article.''.

H.R. RES. 2

OFFERED BY: MR. DINGELL

AMENDMENT NO. 13. Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States:

''ARTICLE —

''SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

''SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

''SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

SECTION 4. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

''SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article,''.

H.J. RES. 2

OFFERED BY: MR. DINGELL

AMENDMENT NO. 14: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States:

''ARTICLE—

''SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives three consecutive times shall be eligible for election to the House of Representatives for a fourth consecutive term.

''SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

''SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislature of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

''SECTION 4. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

''SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.''.

H.J. RES. 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 15: Strike all after the resolving clause and insert the following:

''ARTICLE—

''SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.''

''SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

''SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

''SECTION 4. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

''SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.''.

H.J. RES. 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 16: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

''ARTICLE —

''SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives.

''SECTION 2. No person who has served as a Senator for more than 3 years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than 1 year shall subsequently be eligible for election to the House of Representatives more than five times.

''SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.''.

H.J. RES 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 17: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

''ARTICLE—

''SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of

Representatives six consecutive times shall be eligible for election to the House of Representatives.

''SECTION 2. No person who has served as a Senator for more than three years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

''SECTION 3. No election or service occuring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

''SECTION 4. Nothing in the Constitution or law of any State shall diminish or enhance, directly or indirectly, the limits set by this article.''.

H.J. RES 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 18: Strike all after the resolving clause and insert the following:

''ARTICLE—

''SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.

''SECTION 2. Election as a Senator or Representative before this Article is ratified shall be taken into account for purposes of section 1. Any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1.''.

H.J. RES. 2

OFFERED BY: MR. GOSS

AMENDMENT NO. 19: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

''ARTICLE —

''SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.''.

''SECTION 2. No person, upon becoming ineligible under this article shall again be elected or appointed to the House with respect to which that ineligibility applies, until at least 4 years have passed from the end of that person's most recent term in that House.

''SECTION 3. A State may impose a shorter, but not a longer, limit on the terms than that imposed by this article.''.

H.J. RES. 2

OFFERED BY: MR. HALL OF TEXAS

AMENDMENT NO. 20: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States to be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

''ARTICLE —

''SECTION 1. No person who has been elected for a full term to the House of Representatives three consecutive times shall be eligible for election to the House of Representatives for a fourth consecutive term.

''SECTION 2. Service as a Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

''SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

''SECTION 4. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.''.

H.J. RES. 2

OFFERED BY: MR. HEFLEY

AMENDMENT NO. 21: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States.

''ARTICLE —

''SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

''SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

''SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

''SECTION 4. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

''SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.

''SECTION 6. Any judge appointed to a court ordained and established by Congress under article III of this Constitution after the adoption of this article of amendment shall cease to hold office unless reconfirmed by the Senate before the end of each successive 12-year period of service.''.

H.J. RES. 2

OFFERED BY: MR. HILLEARY

AMENDMENT NO. 22: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

''ARTICLE —

''SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.

''SECTION 2. Election as a Senator or Representative before this Article is ratified shall not be taken into account for purposes of section 1, except that any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1.''.

H.J. RES. 2

OFFERED BY: MR. HILLEARY

AMENDMENT NO. 23: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

''ARTICLE —

''SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six times shall be eligible for election to the House of Representatives.

''SECTION 2. No person who has served as a Senator for more than three years of a term to which some other person was elected shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

''SECTION 3. Election as a Senator or Representative before this Article is ratified shall not be taken into account for purposes of this article, except that any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1.''.

H.J. RES. 2

OFFERED BY: MR. LIVINGSTON

AMENDMENT NO. 24: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven year from the date of its submission to the States by the Congress:

''ARTICLE —

''Each State may prescribe the number of terms a person may be elected or appointed to the Senate or the House of Representatives from that State.''.

H.J. RES. 2

OFFERED BY: MS. WATERS

AMENDMENT NO. 25. Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

''ARTICLE —

''SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

''SECTION 2. In the application of section 1 to a Representative whose service as a Representative began after 1990 but before the ratification of this article, ''five'' shall be substituted for ''six'' and ''sixth'' shall be substituted for ''seventh''. In the application

of section 1 to a Representative whose service as a Representative began after 1980 but before 1990, ''four'' shall be substituted for ''six'' and ''fifth'' shall be substituted for ''seventh''. In the application of section 1 to a Representative whose service as a Representative began after 1970 but before 1980, ''three'' shall be substituted for ''six'' and ''fourth'' shall be substituted for ''seventh''. In the application of section 1 to a Representative whose service as a Representative began after 1960 but before 1970, ''two'' shall be substituted for ''six'' and ''third'' shall be substituted for ''seventh''. In the application of section 1 to a Representative whose service as a Representative began after 1950 but before 1960, ''one'' shall be substituted for ''six'' and ''second'' shall be substituted for ''seventh''.

''SECTION 3. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of this article.

''SECTION 4. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.''.