United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, THURSDAY, MARCH 9, 1995 No. 44

House of Representatives

The House met at 10 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

In this brief moment of quiet, O gracious God, direct our hearts and minds to those themes that are at the center of our stewardship. We pray that we will be worthy of the high calling to public service by serving people with honesty and courage and by committing ourselves to the virtues of justice and peace and reconciliation. May our eyes not only be focused on what must be done in the coming hour or the day, but may our vision also grasp the great responsibilities to which we have been called. May we ever heed the words of Your prophet Amos: ''Let justice flow down like waters and righteousness like an everflowing stream.'' 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 gentleman from Michigan [Mr. KILDEE] come forward and lead the House in the Pledge of Allegiance

Mr. KILDEE 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.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair announces that there will be 10 1-minutes on each side.

REPUBLICAN CONTRACT WITH AMERICA

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

Mr. HOKE. 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.

It continues 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; commonsense legal reform to end frivolous lawsuits—we are doing this now; 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.

Mr. Speaker, this is also a contract with our Founders for our future.

This is our Contract With America.

INFANT FORMULA AND THE WIC PROGRAM

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

Mr. KILDEE. Mr. Speaker, in the debate about child nutrition in the Committee on Economic and Educational Opportunities we witnessed the triumph of ideology over practical public policy and the best interests of our children.

The Republicans, who espouse a free-market economy, recently rejected my amendment to require States to use competitive bidding when purchasing infant formula for the WIC Program.

Only one Republican had the courage to vote for my amendment.

The only winners from this action are the big three infant formula companies. The losers are pregnant women and infants, many of whom will suffer from malnutrition or anemia, and the taxpayers who will get less efficient use of their tax dollars.

Some would say that the States will continue to use competitive bidding. I would point out that fewer than half the States used competitive bidding prior to passage of the 1989 Federal law that required them to do so. When this amendment was adopted we found that it saved over $1 billion a year and enabled us to serve 1½ million more pregnant women and infants a month. The committee voted to drop this requirement.

Weakening cost containment measures will mean a less efficient, less effective program that gives taxpayers less return for their dollars but helps the three infant formula companies improve their balance sheets.

Mr. Speaker, this program was designed to help poor women and children, not a few

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

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major corporations. Let us not take food out of the mouths of babies.

IN SUPPORT OF H.R. 956

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

Mr. TIAHRT. Mr. Speaker, today we are going to address H.R. 956, common sense product liability reform. In the last 40 years we have passed one product liability reform bill. What has it done? It was passed for single-engine aircraft. And in the Fourth District of Kansas it has created 7,000 jobs, thanks to the vision of Russ Meyers who heads up Cessna Aircraft.

In 1977, we were building over 13,000 aircraft in the single-engine aircraft business. And Cessna was building over half of those. By 1986 they had to quit building aircraft because of lawsuits. By 1994 they were down to 600 single-engine aircraft and many of them were built overseas.

Product liability reform works and the choice is clear. If you protect trial lawyers who are getting rich from lawsuits—they get over 50 cents of every dollar in the cost of a lawsuit—or you created jobs. It is lawsuits or lunch buckets. I support more lunch buckets and less lawsuits. Let us pass H.R. 956.

REPUBLICANS AND TERM LIMITS

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

Mr. GUTIERREZ. Mr. Speaker, yesterday, in a move that demonstrates the gulf between the rhetoric about the Contract With America and the reality of what it means for Americans, the majority ducked a vote on term limits.

And they did it for a simple reason. They know they are not serious about it.

For all of their talk about citizen legislators, their term limit bill is really about one thing—protecting their power. So I say to the Republicans: Stop hustling the American people. If what you really want is term limits and not limitless headlines, send us a real bill.

If letting the American people decide every 2 years who should represent them doesn't sit too well with Mr. GINGRICH and Mr. ARMEY and Mr. MCCOLLUM—three term limit supporters who have now been citizen legislators for a total of 44 years—then I say give us a real term limits bill.

Make it retroactive.

If you want the headlines, then clean out your desks and head for home the day we pass the bill. When the citizen legislators who have been here for decades show me they are that serious about term limits, then I am with you.

TORT REFORM

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

Mr. CHABOT. Mr. Speaker, I rise to make a confession. There was a time in my life when I was a member of both the American Bar Association and the Association of Trial Lawyers of America. But I resigned from both organizations some years ago when I came to realize that the interests of the legal elite do not always coincide with the public interest. I am happy to say that redemption is possible, and I am here to urge courage in the fight for legal reforms.

Now, I can also tell my colleagues that not all trial layers are bad, at least most of them are not. They serve a necessary function in our society and no one here is arguing to put them out of business. Granted there are some lawyers who are convinced that their lifestyle depends upon defending every excess of the tort system, no matter how senseless, no matter how much it adds to the cost of everyday goods and services. But we are on the side of the ordinary people of this country, the consumers.

Maybe our response to the lawyers who do not like these reforms is: If you do not like it, sue us.

IT'S THE TRADE DEFICIT, CONGRESS

(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, the value of the dollar is so low, the dollar could walk underneath a closed door with a top hat on. And it is not really all that cerebral. The problem in America is a trade deficit and Congress has the blinders on.

For the last 15 years we have had trillions of dollars floating around overseas. The supply is so great, the dollar is not in demand, and the dollar is dropping. It is the trade deficit, Congress. Not budget deficits. We cannot separate the two.

And to tell my colleagues the truth, we have a trade program that is so misdirected, if we threw it at the ground it would probably miss.

We will not balance the budget, Congress, with minimum wage jobs and highly skilled American workers in unemployment lines. Think about that. I think the whole country is saying, ''Beam me up.''

Congress, get at that trade deficit and we will solve the budget deficits in America.

PRODUCT LIABILITY'S CHILLING EFFECT ON MEDICAL RESEARCH

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

Mr. BURR. Mr. Speaker, I want to bring to my colleagues' attention an article from Sunday's Washington Post entitled ''America, the Plaintiff.''

The story starts out like this. Suppose for a moment that a small drug company miraculously discovers a vaccine that can prevent cancer. Suppose that the drug is cheap, easy to administer and has a single, albeit serious, drawback: One in 10,000 people who take the drug may experience acute vision loss. Should the company bring the product to market, figuring that a relative handful of people may go blind, so that millions of lives can be saved?

This is a question that pharmaceutical manufacturers ask every day. Each day they must weigh their hopes to save human lives against the threat of being punished over an FDA-approved product. How many times will we miss the opportunity to have a cure for cancer, or AIDs, or even the common cold, because a manufacturer knows that one product liability suit will jeopardize the future use of the product and possibly the company.

I hope you will keep this story in mind when you consider your vote today in our lifesaving bipartisan amendment to encourage manufacturers to market FDA-approved products.

REPUBLICANS TAKE APPLES AND MILK AWAY FROM CHILDREN

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

Mr. BARRETT of Wisconsin. Mr. Speaker, when the Republicans announced that they were going to close down the school lunch program and fold it into a block grant program, I went to my favorite expert in my district, my wife, who is a schoolteacher, to ask her what she thought.

She said, I think we should have welfare reform and I understand why people are upset with the Food Stamp Program, but this is the food that these kids eat every day. It is not like they take this food out onto the street and sell it. There is no black market for school lunch programs. Why do the Republicans want to take apples and milk away from 6-year-olds in the United States?

Why could I not answer that question for my wife? In the Halls of Congress I am still waiting for the answer. Why do the Republicans want to take milk and apples away from 6-year-olds in the United States of America?

THE FACTS ON REPUBLICANS AND NUTRITION PROGRAMS

(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, I will depart from my prepared text directly

to answer my good friend from Wisconsin. First of all, my friend, you know it is an out and out falsehood; we will not take apples nor milk nor any food out of the mouths of the children of this country.

Once again, let us engage in some elementary mathematics. We propose, as Republicans, to up the budget spent, to up the allocation to $200 million over what President Clinton asked for in the food program. We propose an increase of 4.5 percent for next year.

We propose giving the power to feed these children to people on the front lines fighting the battle. I wish my friends on the other side would stop this demagoguery and deal with the facts, Mr. Speaker. Those are the facts and that is the difference we will make for America.

TRYING TO HAVE IT BOTH WAYS

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

Mr. MILLER of California. Mr. Speaker, in 1993, the Ethics Committee explicitly cautioned Speaker GINGRICH to avoid using congressional resources in conjunction with his course on American civilization. He rejected that advice and promoted the course from the House floor.

Now that he is being challenged on that he is trying to use the Constitution to defend his speech on the House floor.

The Speaker cannot have it both ways.

The same Speaker that barred the gentlewoman from Florida, Congresswoman CARRIE MEEK, from discussing the Speaker's book deal on the House floor is now saying that a Member can say virtually anything on the House floor because it is protected speech under the Constitution.

Speaker GINGRICH said yesterday in his press conference: ''It is totally legitimate for a Member of Congress to stand up on the floor of the House and say virtually anything. Nothing the Ethics Committee advises can supersede the constitutional provisions of speech and debate.''

The speech and debate clause of article I of the Constitution, however, is solely designed to protect Members of Congress from being questioned in any other place, meaning that a Member cannot be prosecuted or held liable for anything he or she says on the House floor. We all know the House has rules that explicitly forbid Members of Congress from doing this, as the Speaker was advised by the Ethics Committee in promoting his book.

□ 1015

OVERTURN EXECUTIVE ORDER ON STRIKER REPLACEMENTS

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

Mr. BARRETT of Nebraska. Mr. Speaker, with the stroke of a pen, President Clinton yesterday shattered more than 50 years of labor law by issuing an Executive order to prohibit the hiring of permanent replacement workers for companies with Federal contracts.

For 50 years Congress has maintained a careful balance between the powers of labor and management at the bargaining table. We have often fought long and hard on this floor to ensure that neither side had an unfair advantage.

The long arm of organized labor—which represents less than 12 percent of the private labor force—now has privileged status among American workers—something Congress has fought hard to avoid. Some might even say that it is payback time for organized labor, since they gave campaign contributions to Democrats versus Republicans by a ratio of 9 to 1.

Mr. Speaker, the President yesterday slapped the face of Congress, and I am ready to settle the matter as a gentleman. I urge my colleagues to cosponsor H.R. 1179 that would nip this Executive order in the bud by making it null and void.

FARM BILL AWAITS WHILE POST OF SECRETARY OF AGRICULTURE REMAINS VACANT

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

Mr. EWING. Mr. Speaker, President Clinton nominated Dan Glickman to be his Secretary of Agriculture on December 28, 1994, over 2 months ago. Here we are in the first week of March, and no hearings have been held on Mr. Glickman's nomination and it could be many weeks before the Secretary is confirmed.

News reports indicate that the nomination is stalled because of unanswered questions. This is unfortunate as there is no proof of any wrongdoing.

This Congress will begin holding hearings on the 1995 farm bill in the next few weeks, and the Clinton administration has nobody in charge of its agriculture policy. In fact, it would appear that agriculture policy generally is of minor concern to the administration. How can we write a fair and reasonable farm bill or establish agriculture policy when the lights are out in the Agriculture Secretary's office?

IN SUPPORT OF FUNDING FOR LIHEAP

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

Mr. DOYLE. Mr. Speaker, I rise today in strong support of continued funding for LIHEAP, the Low-Income Home Energy Assistance Program. LIHEAP is a block grant that provides funding for programs that assist low-income households with heating during the winter months. On February 22, the House Appropriations Committee voted to eliminate funding for the entire program. Lack of funding for this program would effectively destroy the ability of 5.8 million American families to pay their energy bills. Cutting LIHEAP would effectively put people—children, seniors, disabled, and the working poor alike—out in the cold. In my State, Pennsylvania, 466,000 households would be affected.

At a time when the crux of all the rhetoric coming from the other side of the aisle is the need for input and control for those on the State and local level—why is it that LIHEAP, a successful block grant providing an outstanding example of a Federal-State partnership with the built-in flexibility that allows States to design programs to respond to the heating needs of their citizens being decimated? The irony of this situation is rich, Mr. Speaker, but irony will not keep you warm—at anytime—and especially not during a Pennsylvania winter. The constituents of western Pennsylvania did not send me to Washington to participate in ideological shell games that employ a bait and switch mentality. All of us were sent here to ultimately improve the quality of life for those we represent.

I urge for continued funding for the proven successful Low-Income Home Energy Assistance Program.

CONGRESS MUST CORRECT THE PROBLEM OF FRIVOLOUS LAWSUITS

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

Mr. LATOURETTE. Mr. Speaker, as a lawyer, I am the last person to suggest that everybody in my profession is a money-grubbing, scum-sucking toad. The actual figure is only about 73 percent.

Ha ha, I am of course just pulling the Speaker's honorable leg. The vast majority of lawyers are responsible professionals, as well as, in many ways, human beings.

But we really do need to do something about all these frivolous lawsuits. We have reached the point where a simply product such as a stepladder has to be sold with big red warning labels all over it, telling you not to dance on it, hold parties on it, touch electrical wires with it, hit people with it, swallow it, and so forth, because some idiot somewhere, some time, actually did these things with a stepladder, got hurt, filed a lawsuit—and won.

My feeling, Mr. Speaker, is that anybody who swallows a stepladder deserves whatever he gets. And I am sure the vast majority of the American people would agree with me. The minority would probably sue.

REQUESTING THE NAMES OF SOCIALISTS ON NEWSPAPER EDITORIAL BOARDS

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

Mr. FROST. Mr. Speaker, I read with interest comments by Speaker GINGRICH which appeared in yesterday's newspapers about the editorial boards of many of our Nation's newspapers.

The Washington Post reported that Speaker GINGRICH told a group of business executives Monday night that many newspaper editorial boards contain Socialists. Speaker GINGRICH has been accused recently of exaggerating the truth or making plain misstatements of facts.

Quite frankly, I do not know whether the Speaker is telling the truth in this instance or not. But I am willing to give the Speaker the benefit of the doubt. According, I call on Speaker GINGRICH to name names. Who are the Socialists on the editorial board of the Dallas Morning News? Who are the Socialists on the editorial board of the Fort Worth Star Telegram? Who are the Socialists on the editorial board of the Houston Post? Who are the Socialists on the editorial board of the San Antonio Express News? Who are the Socialists on the editorial board of the Austin American-Statesmen? Who are the Socialists on the editorial board of the New Orleans Times Picayune? Who are the Socialists on the editorial board of the Daily Oklahoman?

If you are telling the truth, name names, Mr. Speaker. We are all waiting.

WELFARE THAT WORKS

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

Mrs. WALDHOLTZ. Mr. Speaker, our current welfare system reminds me of the old adage about a certain road that was paved with good intentions. My home State of Utah decided to create its own new program that has gone from good intentions to good results.

In order to create its own program, Utah had to get 48 Federal policy waivers, which allowed the State to design a program that fits our citizens, gives innovation a chance, and promotes learning and independence. Utah's program, SPED—the single parent employment demonstration project—moves the focus of welfare from income maintenance to increasing family income. And let me tell you, it works.

In Salt Lake City alone, after 18 months under this new program, the average AFDC grant went from $352 per month down to $149 per month while the average family income has climbed from $697 per month to $795 per month. And 35 percent of all participants have left the system due to increased earnings.

This program works because it is based on the belief that the State is the most effective tool for providing these services. I hope Congress will give other States the flexibility to find programs that work for them as well as SPED works for Utah.

LET US BALANCE THE BUDGET WITHOUT PLAYING POLITICAL PROMISING GAMES WITH TAX CUTS

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

Mr. ROEMER. Mr. Speaker, yesterday Alan Greenspan testified before Congress and said that the dollar plunged to historic lows due in large part to the Federal budget deficit. We in the House passed a constitutional amendment to balance the budget.

We need to make the courageous decisions to help balance that budget, but tax cuts, further taking away from lunch programs for hungry children across America, taking food out of their mouths to pay for a tax cut, is not the way to go.

Recently before the Committee on the Budget such economists as Stephen Roach and Roger Brinner both said tax cuts are a bad idea. Let us make the courageous decisions and provide all American people with the best tax cut we can. That is to reduce the deficit. That will create better interest rates to buy a new home, to refinance a home, and to buy a car.

Let us not play political promising games with tax cuts. Let us make courageous decisions to balance the budget.

NOW IS THE TIME TO BALANCE THE BUDGET

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

Mr. BASS. Mr. Speaker, the Committee on the Budget yesterday heard from Federal Reserve Board Chairman Alan Greenspan, and when he was asked by the chairman of the Committee on the Budget why it is important that we balance the budget, he said, and I quote ''I would say * * * in the short run * * * that there would be some strain leading to a period in which I think their,'' meaning the people of this country, ''real incomes and purchasing power would significantly improve, and I think the concern, which I find very distressing, that most Americans believe that their children will live at a standard of living less than they currently enjoy, that that probability would be eliminated and that they would look forward to their children doing better than they.''

Mr. Speaker, we have heard a lot of talk this morning about children and the welfare of children. If we really care about the future of the children in this country, in whose millions of little hands the future of this country will lie, then we will move as a body to balance our budget, and balance it by the year 2002.

This is spoken by the Chairman of the Federal Reserve Board. If there was ever a need to move forward, the time is now.

LET US NOT QUESTION PARENTS FIGHTING FOR THEIR CHILDREN'S NUTRITION

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

Mr. MENENDEZ. Mr. Speaker, on Monday, demonstrators protesting the Republican cuts in school lunch and child nutrition programs raised their voices in opposition loud enough to scare the Speaker away.

What was most interesting however, was not that the Speaker refused to confront his critics, but what the Speaker's later comments revealed about the way his mind works. With regard to the protesters, the Speaker asked, ''Why weren't they at work?''

I have never heard the Speaker ask why bankers, who visit Washington to lobby for deregulation, were not at work.

I have never heard the Speaker ask why high rollers who come to lobby for capital gains tax cuts were not at work.

I have never heard the Speaker ask why the people who pay $50,000 for an exclusive fundraising dinner for one of his pet projects were not at work.

Mr. Speaker, you gave us a rare look at your darkest, most privately held thoughts with that comment. Chanting with bullhorns may not qualify as dialog, but neither do comments such as yours.

Let us not question those parents fighting for their children's nutrition.

FEDERAL FOOD ASSISTANCE

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

Mrs. CLAYTON. Mr. Speaker, from Tuesday morning into the wee hours of yesterday morning, the Committee on Agriculture marked up title V of the Personal Responsibility Act.

That bill is now poised for consideration on the House floor.

Leadership of the committee is to be commended for eliminating the mandate for block granting the Food Stamp Program.

A State option on block grants, however, remains and will be an issue on the floor.

Also, during markup, the committee accepted my amendment which requires those who must work for food stamps to be paid at least the minimum wage for their labor.

The Agriculture Committee was also wise to take that course.

But, with action by other committees, the block grant issue continues to loom large and

will be hotly contested during floor consideration.

I urge my colleagues to stand up against nutrition program block grants. Welfare reform without that reform will hurt the poor.

EXTENSION OF WAIVER OF APPLICATION OF EXPORT CRITERION OF THE ATOMIC ENERGY ACT—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 International Relations and ordered to be printed.

To the Congress of the United States:

The United States has been engaged in nuclear cooperation with the European Community (now European Union) for many years. This cooperation was initiated under agreements that were concluded in 1957 and 1968 between the United States and the European Atomic Energy Community (EURATOM) and that expire December 31, 1995. Since the inception of this cooperation, EURATOM has adhered to all its obligations under those agreements.

The Nuclear Non-Proliferation Act of 1978 amended the Atomic Energy Act of 1954 to establish new nuclear export criteria, including a requirement that the United States have a right to consent to the reprocessing of fuel exported from the United States. Our present agreements for cooperation with EURATOM do not contain such a right. To avoid disrupting cooperation with EURATOM, a proviso was included in the law to enable continued cooperation until March 10, 1980, if EURATOM agreed to negotiations concerning our cooperation agreements. EURATOM agreed in 1978 to such negotiations.

The law also provides that nuclear cooperation with EURATOM can be extended on an annual basis after March 10, 1980, upon determination by the President that failure to cooperate would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security, and after notification to the Congress. President Carter made such a determination 15 years ago and signed Executive Order No. 12193, permitting nuclear cooperation with EURATOM to continue until March 10, 1981. Presidents Reagan and Bush made similar determinations and signed Executive orders each year during their terms. I signed Executive Order No. 12840 in 1993 and Executive Order No. 12903 in 1994, which extended cooperation until March 10, 1994, and March 10, 1995, respectively.

In addition to numerous informal contacts, the United States has engaged in frequent talks with EURATOM regarding the renegotiation of the U.S.–EURATOM agreements for cooperation. Talks were conducted in November 1978; September 1979; April 1980; January 1982; November 1983; March 1984; May, September, and November 1985; April and July 1986; September 1987; September and November 1988; July and December 1989; February, April, October, and December 1990; and September 1991. Formal negotiations on a new agreement were held in April, September, and December 1992; March, July, and October 1993; June, October, and December 1994; and January and February 1995. They are expected to continue.

I believe that it is essential that cooperation between the United States and EURATOM continue, and likewise, that we work closely with our allies to counter the threat of proliferation of nuclear explosives. Not only would a disruption of nuclear cooperation with EURATOM eliminate any chance of progress in our negotiations with that organization related to our agreements, it would also cause serious problems in our overall relationships. Accordingly, I have determined that failure to continue peaceful nuclear cooperation with EURATOM would be seriously prejudicial to the achievement of U.S. nonproliferation objectives and would jeopardize the common defense and security of the United States. I therefore intend to sign an Executive order to extend the waiver of the application of the relevant export criterion of the Atomic Energy Act until the current agreements expire on December 31, 1995.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

COMMUNICATION FROM THE HONORABLE EDWARD J. MARKEY, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable EDWARD J. MARKEY, a Member of Congress:

Washington, DC, March 7, 1995.

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

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L(50) of the Rules of the House that a staff person in my office has received a subpoena for testimony and documents concerning constituent casework. The subpoena was issued by the Middlesex County Probate and Family Court of the Commonwealth of Massachusetts.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

EDWARD J. MARKEY,
Member of Congress.

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COMMUNICATION FROM THE HONORABLE KWEISI MFUME, MEMBER OF CONGRESS

The SPEAKER pro tempore (Mr. SHAYS) laid before the House the following communication from the Honorable KWEISI MFUME, a Member of Congress:

Washington, DC, March 8, 1995.

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

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L (50) of the Rules of the House that a member of my staff has been served with a subpoena issued by the United States District Court for the Eastern District of Virginia for materials related to a civil case.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

KWEISI MFUME,
Member of Congress.

PROVIDING FOR FURTHER 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 109 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 109

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 further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes. No further general debate shall be in order. The bill shall be considered for amendment under the five-minute rule. In lieu of the amendment recommended by the Committee on the Judiciary, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of H.R. 1075. That amendment in the nature of a substitute shall be considered as read. No amendment to that amendment in the nature of a substitute shall be in order except those specified in the report of the Committee on Rules accompanying this resolution. Each amendment may be offered only in the order specified in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. 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, today we continue our historic debate that will restore sanity to our legal system. Over the next 2 days, we will take the first crucial steps toward limiting the significant costs on the U.S. economy that continue to force manufacturers to fire workers and withdraw products from the market, including medical devices and medication available in most of the world, sadly resulting in preventable deaths. For too long, this Nation has capitulated to the power of Ralph Nader and the trial lawyers. It is high time that we level the playing field. The full consideration of H.R. 956 will allow this body to consider a wide range of issues designed to bring common sense and personal responsibility back to our courts.

The modified closed rule reported by the Rules Committee will allow the House to fully consider the significant issues raised by the bill H.R. 956. Yesterday's rule already provided for 2 hours of general debate. Today, House Resolution 109 first provides for consideration under the 5-minute rule of an amendment in the nature of a substitute consisting of the text of H.R. 1075. This bill represents the combined efforts of the Judiciary Committee and Commerce Committee to create a comprehensive, consensus bill that moves our legal system toward more rational behavior. In addition, the rule makes in order 15 amendments designated in the Rules Committee report. Each of these amendments is debatable only for the time specified in the report, equally divided and controlled by the proponent and an opponent of that particular amendment.

Finally, the rule provides a motion to recommit, with or without instructions, which will give the minority an additional opportunity to offer any amendment which complies with the standing rules of the House.

No Member is ignorant of these proposals to save our legal system, and it is not as if these proposals have been designed overnight. The common-sense legal reforms were presented on September 27, the bill was introduced on the opening day of this Congress, both the Judiciary and Commerce Committee held days of hearings, and many of these proposals have been studied and under consideration in Congress for decades.

Mr. Speaker, this rule is a fair rule. The Rules Committee received 82 amendments, many of which were duplicative and overlapping in their scope. House Resolution 109 allows for 15 amendments which will thoroughly address every major issue presented by this bill. I also believe that the Rules Committee has been extraordinarily fair and prudent in that minority amendments outnumber majority amendments by a count of 8 to 6, with one bipartisan amendment.

As I stated, many duplicative amendments were offered to the Rules Committee, and I am pleased that 15 distinct amendments to this bill will be considered on the House floor in the coming days. Chairmen HYDE and BLILEY, and many minority members, asked for sufficient time to debate the important sections of H.R. 956. That is exactly what we have done under this rule.

Almost one dozen amendments were presented to the Rules Committee that either increased the cap on punitive damages or deleted the cap entirely. The rule adequately provides for debate on the Furse amendment which would strike the cap on punitive damages. I would also add that the minority will have an additional chance to offer an amendment on punitive caps during the motion to recommit.

A number of Members expressed concerns about the increased standards in the burden of proof in the law of evidence, and the rule allows the gentleman from North Carolina [Mr. WATT] with an opportunity to strike the new clear-and-convincing-evidence standard.

Minority Members also argued that the provision to eliminate joint liability for noneconomic damages in product liability cases would harm certain plaintiffs. While I personally believe that we protect plaintiffs and enact reasonable reforms in this provision, the rule enables the gentlewoman from Colorado [Mrs. SCHROEDER] the opportunity to delete that section.

The rule also provides for meaningful debate on significant issues ranging from:

An amendment offered by Mr. SCHUMER that prevents the sealing of court documents in product liability cases.

An amendment offered by Mr. GEREN to clarify liability rules for persons who rent or lease products.

An amendment offered by Representatives OXLEY, BURR, and TAUZIN that exempts medical device manufacturers from punitive damages when the product in question has been approved by FDA.

After consideration of 14 amendments, those Members who wish to limit the scope of the bill will have the opportunity to vote on an amendment offered by Mr. SCHUMER that would put a 5-year sunset on titles I through III.

As attested to by the number and extent of amendments made in order, this is an equitable rule that permits more minority amendments that—if passed by the House—would extensively alter the original bill. I urge my colleagues to save our legal system, end the punitive tax on the American people, and support this rule.

Mr. Speaker, I have a rather unusual step, an amendment to the rule, and I want the other side to listen closely. It has come to my attention that the gentleman from Texas, Mr. PETE GEREN, and the gentleman from California, Mr. COX, both of whose amendments were included in the rule, have expressed their interest in revising their amendments.

First, my amendment to the resolution makes a technical change to clarify the definition of product seller in the amendment numbered 1 in the report, offered by Mr. GEREN.

Second, my amendment allows for a more substantive change in the amendment numbered 12 in the report which was offered by Mr. COX. This amendment, as it currently reads, would cap noneconomic damages at $250,000 for all civil cases. The revised amendment which I am offering to the House provides for a cap on noneconomic damages at $250,000 and limits its application to health care liability actions only.

The reason for this is that shortly before the Rules Committee meeting, a copy of a revised version of the Geren amendment No. 25 was received by the Committee. Since the change could be considered a substantive one, Representative GEREN's staff was advised instead to seek unanimous consent on the House floor to modify his amendment.

Shortly after the Rules Committee ordered the rule reported, a request was received from Representative COX's office that he be allowed to offer a modified version of the Cox amendment No. 51. Again, Representative COX was advised to seek unanimous consent in the House to offer a modified version of the amendment.

However, it became clear from the tone of the debate on the first rule on H.R. 956 that the climate on the floor would not be hospitable for any such unanimous-consent requests.

Consequently, after consulting with the majority leadership, a decision was made to offer an amendment to the rule that provides for the consideration of both the Geren and Cox amendments in their modified forms. In both instances, the modifications are germane and no special waivers are required.

To repeat, the Geren language has been changed to more precisely identify a renter or leaser and the Cox amendment was made to narrow the scope of noneconomic awards in civil actions to those dealing with medical malpractice only.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. LINDER. I yield to the gentleman from New York.

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

Mr. SOLOMON. I thank the gentleman for yielding. I would just say that we have a Committee on Rules meeting starting in just a few minutes on term limitations in the Committee on Rules at 11.

I commend the gentleman from Georgia [Mr. LINDER], such a valuable member of the Committee on Rules, and the gentlewoman from Ohio [Ms. PRYCE], because a lot of work has gone into trying to structure a rule that would allow us to have a free and fair debate on these issues.

The gentleman has outlined that we have covered all of the specific areas in the bill. There were 82 amendments filed to the bill and the fact is that working with the Democrats and, as the gentleman has alluded to, even with the gentleman from Texas, Mr. PETE GEREN, who had sought a modification in his amendment since he came to the Committee on Rules too late to request that, we certainly have taken all these into consideration.

I would just hope that every Republican votes for the amendment that the gentleman is offering even though it is a bipartisan amendment, and I hope that they vote for this rule. It is terribly important that we get this legislation on the floor today and that it pass by 3 p.m. on Friday.

Again, I repeat, I urge every Republican to vote for this amendment to the rule.

Mr. LINDER. Mr. Speaker, I thank the gentleman.

Mr. Speaker, the amendment is at the desk, it has been made available to the minority side, and I reserve the balance of my time.

The SPEAKER pro tempore. Does the gentleman from Georgia offer the amendment?

Mr. LINDER. Yes, Mr. Speaker.

AMENDMENT OFFERED BY MR. LINDER

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

The Clerk read as follows:

Amendment offered by Mr. LINDER:

Page 2, line 11, insert the following before the period: '', provided that the amendments numbered 1 and 12 printed in that report shall be considered in the forms specified in section 2 of this resolution''; and

At the end of the resolution add the following:

SEC. 2. (a) The amendment numbered 1 in the report accompanying this resolution shall be considered in the following form:

Page 7, insert after line 3 the following:

''(c) Notwithstanding any other provision of law, any person, except a person excluded from the definition of product seller, engaged in the business of renting or leasing a product shall be subject to liability pursuant to subsection (a) of this section, but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.''.

(b) The amendment numbered 12 in the report accompanying this resolution shall be considered in the following form:

Page 19 redesignate section 202 as section 203 and after line 19 insert the following:

SEC. 202. LIMITATION ON NONECONOMIC DAMAGES IN HEALTH CARE LIABILITY ACTIONS.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In any health care liability action, in addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as pain and suffering and emotional distress. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the health care injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any health care liability action brought in any Federal or State court on any theory or pursuant to any alternative dispute resolution process where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages. This section does not preempt any State law enacted before the date of the enactment of this Act that places a cap on the total liability in a health care liability action.

(d) DEFINITIONS.—As used in this section—

(a) The term ''claimant'' means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term ''economic loss'' has the same meaning as defined at section 203(3).

(c) The term ''health care liability action'' means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, an entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim (including third party claims, cross claims, counter claims, or distribution claims) based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

Page 17, line 10, insert ''AND OTHER'' after ''PUNITIVE''.

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

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. MOAKLEY. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Clerk completed the reading of the amendment.

□ 1045

Mr. FROST. I yield myself such time as I may consume. It is my intention to yield in just a few seconds to the ranking member of the Committee on rules since he has to then go up to the committee for a hearing. After he completes his statement I will reclaim my time because I would like to give the traditional opening statement.

I would point out, Mr. Speaker that what we have just witnessed is one of two things. Either it is incomplete staff work on the part of the majority side because of the enormous pressure, time pressure being put on their staff by the majority Members, or it is bait and switch. I do not know which it is. But we are under a very unusual procedure where we are being asked to amend on the floor a rule granted in the Rules Committee yesterday.

Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. MOAKLEY], the distinguished ranking member of the Rules Committee.

Mr. MOAKLEY. Mr. Speaker, I would like to have the attention of the gentleman from New York [Mr. SOLOMON]. I know that the gentleman has got scheduled hearings on the term limit bill up before the committee this morning. Since we are not going to take it up until the end of the month, and we are discussing two major amendments to the rules that are taking place here on the floor, does the gentleman not think we should be on the floor making sure this thing comes out right this time rather than going up to the committee to take evidence and term limits where we have so much time in order to put it together?

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from New York.

Mr. SOLOMON. The gentleman's points are well taken. We will delay the Committee on Rules meeting until 1 minute after the final vote on final passage of this rule. Is that fair, sir?

Mr. MOAKLEY. I think this is very nice. I thank the gentleman.

Mr. SOLOMON. And we will notify everyone involved.

Mr. MOAKLEY. Mr. Speaker, again, this rule is the ultimate closed rule. They say that they allowed 8 Democratic amendments to be part of the rule, but they picked out the 8; we did not. That would be like the Republican Party picking the Democratic Members to serve on the Committee on Rules. I think we have to balance this thing out.

I think that the Speaker, NEWT GINGRICH, on November 11, 1993, said and I quote, ''We very specifically made the decision early on in our Contract With America that we would bring up all 10 bills under open rules.''

I do not know where they are. We know the definition of rules has been changed this year from the definition that we had last year. So I would like to just put Members on notice to listen

quickly and if the Committee on Rules had enough time to do the job assigned to it up in the rules Committee we would not have these two major amendments to the rule here on the floor. This is a highly complicated bill and should have been treated in the committees of authorization or else on the Committee on Rules.

So I urge my colleagues to defeat the previous question and make in order the McCollum-Oxley-Gordon amendment. This amendment by two Republican subcommittee chairmen and one moderate Democrat will raise the cap on damages to $1 million, and as the Republican leadership knows very well, will ultimately pass if it is made in order.

Mr. Speaker, Republicans are breaking their promises to do open rules on all of the contract items and to do 70 percent open rules in general.

Mr. Speaker, I agree with most Americans that we have too many lawsuits in this country, but I am not aware of some huge product liability crisis in the United States. I know we have a big, huge, crime problem out there. I know our health care system needs work. I know American Children need school lunches, but I have not heard anyone say there has been a product liability crisis in the United States.

The fact is juries rarely award punitive damages. In the 25 years between 1965 and 1990, punitive damages were awarded in only 355 cases. So why the cap, particularly since my colleagues have been so eager to defend the States, rights? My Republican colleagues said that we needed to empower the States but today's bill preempts the States. So, which is it? Do the Republicans want to empower the States or do they want to empower the Federal Government?

Mr. Speaker, in terms of Republican consistency, the only consistent Republican effort is to give Wall Street a handout at the expense of Main Street.

My colleagues are quick to point out the trial lawyers and name them as the bad guys. But let us make sure we also remember the people that are represented by the trial lawyers, the elderly, women, and middle-income Americans.

Mr. Speaker, I have very serious concerns about the effect this bill will have on those people and I hope they will be resolved. But that will be difficult, Mr. Speaker. Republicans have broken their open rule promise again. I understand my colleagues' hurry to finish the contract and start that April recess, but I think the American people will support us if we stay just a little bit longer and allow Members to have their input into this very serious legislation.

I may add, Mr. Speaker, that just 2 days ago my dear friend from California, Mr. DREIER, stood on this floor and said that Republicans imposed time caps on bills because they did not want to pick and choose among amendments. Today, they have picked and chosen between amendments. What a difference a day makes.

It looks like Republicans are taking very seriously Ralph Waldo Emerson saying ''a foolish consistency is the hobgoblin of little minds.'' They are as consistent as the water rates in Massachusetts and they are still breaking promises.

Mr. Speaker, I would urge my colleagues to defeat the previous question and make the McCollum-Oxley-Gordon amendment in order.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume, and I would like to at this point continue my opening statement.

Mr. Speaker, I rise in strong opposition to this rule.

Mr. Speaker, this is a closed rule. This rule doesn't meet the standards set by the infamous Contract With America, nor does it meet the promises of the Speaker or the chairman of the Rules Committee. We were promised free and open debate in the House. This rule doesn't even come close to meeting that promise.

Mr. Speaker, I would like to read from the January 4, 1995, CONGRESSIONAL RECORD quoting the Speaker of the House, Mr. GINGRICH, on the first day of the session, Page H6,

> We then say that within the first 100 days of the 104th Congress we shall bring to the House floor the following bills, each to be given full and open debate, each to be given a full and clear vote, and each to be immediately available for inspection.

Words of the Speaker of the House.

Mr. Speaker, I am sure my Republican colleagues will protest my characterization of this rule and will complain that when the Democrats were in the majority that the Rules Committee cut off debate through the use of modified or closed rules.

Mr. Speaker, that argument is not the point. The point, Mr. Speaker, is that the Republican party promised—promised—that debate in the House of Representatives would be open.

Mr. Speaker, the Rules Committee majority voted down 17 amendments to the chairman's mark last night. The majority on the Rules Committee even denied the gentleman from Tennessee [Mr. QUILLEN] the opportunity to offer an amendment to this legislation. The majority opposed giving the House the opportunity to vote on amendment relating to punitive damages in the case of manufacturers or product sellers who were aware of an existing defect in that product. Mr. Speaker, is this free and open debate?

Mr. Speaker, 82 amendments were submitted to the Rules Committee for inclusion in the rule. Fifteen—15 amendments, Mr. Speaker—were made in order by the Rules Committee majority. The gentleman from Georgia explained during our hearing last night that a sincere effort was made to include every major issue in the rule. Our distinguished chairman opposed including any additional amendments in the rule because the House must finish consideration of this legislation, which is a major upheaval of our civil court system in the country, by 3 o'clock tomorrow afternoon. Mr. Speaker, this does not strike me as an open process.

And, Mr. Speaker, I have yet another example of how this rule has been shut down. An amendment which both the chairman of the committee of jurisdiction, Mr. BLILEY, and the gentleman from Massachusetts, Mr. MARKEY had agreed would be included in the rule, was not on the list presented to the Rules Committee members last night. Chairman SOLOMON explained to us that it was missing because of negotiations between staff—between staff, Mr. Speaker—and that he intends to ask unanimous consent to permit its consideration.

Mr. Speaker, I not only oppose this rule, but I will oppose the previous question. If the previous question is defeated, it is my intention to offer an amendment to the rule which will permit the consideration of two amendments relating to punitive damages caps. I will offer an amendment to include the McCollum amendment which raises the cap to $500,000 and the Oxley-Gordon amendment to raise those limits to $1 million.

Mr. Speaker, I urge defeat of the previous question.

Mr. Speaker, I include for the RECORD a chart of floor procedure on rules in the 104th Congress as follows:

FLOOR PROCEDURE IN THE 104TH CONGRESS

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 1	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 2	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.

FLOOR PROCEDURE IN THE 104TH CONGRESS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 7	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 729	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on suspension calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; waives all points of order; Contains self-executing provision.	1D.
H.R. 830	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. time cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment, waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.
H.R. 1058	Securities Litigation Reform Act	H. Res. 103	Restrictive; 8 hr. time cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germanes against it.	1D.
H.R. 988	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive; 7 hr. time cap on amendments; Pre-printing gets preference	N/A.
H.R. 956	Product Liability and Legal Reform Act	H. Res. 109	Restrictive; makes in order only 15 germane amendments and denies 64 germane amendments from being considered.	8D; 7R.

Note: 75% restrictive; 25% open. These figures use Republican scoring methods from the 103rd Congress. Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

Mr. Speaker, I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time and I especially want to commend his integrity because he knew that I sought this time to criticize the proposed rule from the Committee on Rules. However, I do have to say that although I am critical of the rule, I still intend to vote for it for this reason: I think the issue of legal reform is very important. I think it needs to get moving in the House of Representatives, and the issue with which, the matters with which I take issue can be addressed elsewhere in the process. Any bill that begins has a long way to go before it ever is proposed to the President for signature.

I want to say I do not criticize the rule because it simply does not include an amendment that I offered. I offered an amendment to the balanced budget amendment which was not accepted by the Committee on Rules. Nevertheless, they proposed a fundamentally fair and open exchange of views on the balanced budget amendment which I think was perfectly appropriate even if it did not happen to include an amendment that I offered.

□ 1100

In this particular case, however, as I look at the amendments which have been made in order in this bill, it appears to me that amendments have been allowed which either the Committee on Rules believes will not be accepted by a majority in the House of Representatives or they do not care if a majority in the House of Representatives adopts these amendments. And those rules, those amendments which might change this bill in a way that the Committee on Rules does not wish it changed were not even allowed to be offered on the House floor.

There has already been reference to a proposed amendment from the gentleman from Tennessee [Mr. QUILLEN]. There has been references to a bipartisan amendment that would deal with raising the damage caps on punitive damages, not taking the caps away, which I think the majority will not support, but simply raising the caps, which I think a majority would support.

Here is where I believe my proposed amendment is highly relevant. This bill is being argued in terms of a products liability bill, but it is only products liability in part. Section 1 of this bill deals with products liability. Title II, dealing with punitive damages, is not limited to products liability. In fact, it is not limited to anything.

According to title II of this bill, as it is now written, the Federal Government is going to take over the State courts with respect to punitive damages in every single case, no matter what is the subject of the case.

In other words, if two individuals get into a first fight on the front lawn between their houses, Federal law is going to govern how that lawsuit that might arise out of that takes place. Now, particularly to my Republican colleagues, let me say first I think that violates philosophically everything we have been arguing for the last 2 months. We have said the States can handle police grant block grants, we have said the States can handle child nutrition programs and now we are saying the States for some reason cannot handle the court system.

Further, we set the precedent that running the courts should be a Federal issue. And some day a Congress of a different philosophic bent can say there will be a Federal law on punitive damages which is there will be no caps on punitive damages anywhere and we will overrule and take away those existing punitive damage caps which now exist. If you can do one, you can do the other.

My amendment will simply have said the punitive damages proceedings, whatever it is, applies only to products liability.

I want to conclude with one respectful exception to the opening statement of the gentleman from Georgia [Mr. LINDER] which has been said by a number of our leaders, which makes reference to Mr. Ralph Nader and the Trials Lawyers Association. That approach reminds me very much of the others side's saying we have to pass certain laws to send a message to the National Rifle Association. I just want to say on this floor that I have voted for and against the trial lawyers' positions and voted for and against the National Rifle Association position. We should pass laws that are good laws and not based on whether or not they are supported or opposed by any particular group.

I thank the gentleman again for yielding.

FURTHER MESSAGE FROM THE PRESIDENT

A further message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman from Texas for yielding this time to me.

I am very honored to be able to follow the gentleman from New Mexico because I think he gave a very, very thoughtful approach to this rule.

Look, this bill is doing something very drastic. It is changing the entire legal system of this country as it has worked since the country began. And this bill has been written and rewritten and rewritten, and we do not even know who the final author is.

It has been like a fast-bill breeder reactor and a fast-amendment breeder reactor, and, as you see, they are now changing the rule one more time because they want to change some more amendments.

I think really we must vote down this rule because we do not know what we are doing.

Let me emphasize again what the gentleman from New Mexico said about title II. This goes far beyond product

liability. We are saying in title II the Federal Government knows best and we are going to preempt all sorts of State laws.

You heard some of them last night. In New Jersey they allow punitive damages against any person that sexually abuses a child. Well, if we pass this bill, we are going to put a cap on it. And in all sorts of States, they allow punitive damages for someone who has been killed by a driver under the influence of drugs or alcohol. Do you think we should put a cap on that and say they did not have any idea what they were doing?

Other States have put on punitive damages for people who are selling drugs to children. I am for those things. I do not think we have all the wisdom here. I think it is amazing we are going to run out and give the school lunch program to the States, which a lot of them were not asking for, and we are going to take away all of the things they tried to do if we pass title II here today.

I also must say, when we look at these amendments, there were very many amendments, as the gentleman from New Mexico said, that were not allowed that we know would have passed. And I think that is troubling.

There are other amendments that I certainly hope people listen to today because they are very important: the noneconomic damages, the ''feelings'' amendment, as they are calling it. Let me tell you, if someone's reproductive organs are destroyed, if their capacity to reproduce is destroyed, I think that goes way beyond feelings. And I know very few people who would look very favorably upon someone putting a punitive cap on what they could receive if someone intentionally did that.

We see instance after instance in this bill where we think it is not ripe for decision, where we really do need much more debate. And I think that the people assumed we would have some thoughtful application before we took a system that has been functioning for over 200 years and changed it, and changed it with such haste that we hardly know what we are doing and we are having to change the rule as it goes.

This is massive micromanagement, this is a closed rule. These are serious issues. There are limits on debate, limits on amendments, limits on everything. I hope people vote against this rule.

And I thank the gentleman for yielding the time.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. I thank the gentleman for yielding this time to me.

Mr. Speaker, in spite of the controversy and disagreements on the rule, the bill itself is a good one, and I urge all of my colleagues to support it.

Mr. Speaker, simply put, it is imperative that we bring some uniformity to tort law in respect to product liability. If we hope to compete in an equal marketplace, if we hope to protect our Nation's citizens without hamstringing our industries and our quality of life, we must meet this challenge squarely today.

We come armed with study after study documenting the adverse impact of widely varying State tort laws on competitiveness, innovation, and even safety: it's not working, it's broke and it's long past time to fix it.

Under our current system, we are, in effect, exporting American ideas. With outrageous liability awards hanging over their heads like the sword of Damocles, U.S. manufacturers often dare not bring much-needed, much-requested products to market. Mr. Speaker, our foreign competitors eagerly fill that gap.

They have not burdened themselves with the crushing product liability costs borne by U.S. manufacturers—and, in the end, consumers. Nowhere—not west of us on the Pacific rim nor east of us in the European Economic Community—are liability standards so onerous as they are in the United States.

Not least of all, we need this legislation's single, predictable set of rules to protect consumers—and we should emphasize that. None of us wants to write the common man out of the law, leaving him no redress in the courts. That's not the object of this bill. What we want to do is restore some balance between liability and accountability.

Rather than voiding the commonsense accountability of an injured party, this bill places the responsibility for accident prevention back where it belongs. Indeed, injured parties will have to bear some of that burden if they alter or misuse a product. Employers and employees alike will be encouraged to create a safer workplace.

Also, by bringing some balance back to the system, we free consumers from having to pay for accidents by individuals who abuse illegal drugs or misuse alcohol.

Predictability. Uniformity. Fairness. This legislation will bring a certainty to our tort laws that has been long missing. It will help to stop the erosion of our Nation's competitiveness and protect the consumer.

We can promise nothing more and we should accept nothing less.

Again, I urge support of the bill.

Mr. FROST. Mr. Speaker, for purpose of debate only, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

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

Mr. BERMAN. Mr. Speaker, I urge the House to defeat the previous question, to allow an amended rule which would allow three amendments, all of them Republican amendments.

The gentleman from Florida, Mr. MCCOLLUM's amendment to raise the cap on all punitive damage. The bill does not just restrict punitive damages caps to products liability. It covers every single State's punitive damages remedy that exists, to raise that cap from $250,000 to $500,000. Also, to allow the Oxley-Gordon amendment, which provides a million-dollar alternative cap for all punitive damages remedies. And the Schiff amendment, which limits the punitive damages cap to what every single speaker who comes down here on the majority side talks about, which is product liability.

The bill before us provides a punitive damages cap for everything. If I were to have a product liability bill in title I and nationalize the steel industry in title II and I refused to discuss title II, I would be somewhat disingenuous. I suggest that as Republican after Republican comes down on this legislation and talks about product liability, never discusses the other issues, they are wrong.

What did the Committee on Rules do here? Why is this so objectionable? I do not think you can have a product liability under an open rule.

I know the Republican promise. I think it was silly. I think they should be allowed to change that promise. You cannot consider everything on an open rule. I do not even mind that it is a very modified time-restricted closed rule and the majority of the 82 amendments filed are not considered.

But, in essence, what the Republicans in the Committee on Rules have done, what they are threatening to do if they adopt this rule, is to say, ''Yes, there is the status quo, and some people just want to keep the status quo and do not want to change it.'' I guess that is the position of the trial lawyers.

Then there is what I consider the extreme of this bill and every amendment, which is somewhere between the status quo and the extreme of this bill offered by a Republican which has a chance to win will be denied a chance to be offered.

So that, in effect, what you are doing is what you have been yelling about the Democrats doing; you blocked amendments that could win on the House floor and you were so sanctimonious during the campaign and afterward, the outrage of what the Democrats did. ''We had amendments that could win, but they would not let us offer them.'' That is what Mr. SCHIFF's amendment is, that is what Mr. MCCOLLUM's amendment is, that is what the Oxley-Gordon amendments are; not to let all the Democratic amendments come in, but to let these three amendments come in.

I would urge the body to defeat the previous question and allow that very limited amendment to allow moderate proposals to come in.

When Mr. DREIER spoke yesterday, when my friend from California on the floor, he talked about letting ideas from the left and the right come in. They will not even let ideas from the center come in. And that is what those

amendments are. They should be allowed.

I urge defeat of the previous question so that that amended rule may be offered.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentlewoman from Ohio [Ms. PRYCE].

Ms. PRYCE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am pleased to rise in support of this rule, and to compliment my friend from Georgia, Mr. LINDER, for his excellent description of this legislation.

This is a fair and responsible rule, Mr. Speaker, because it permits the House to consider 15 separate amendments reflecting a wide range of issues which are central to the product liability reform debate. Of those 15 amendments made in order, 8 are sponsored by Democrats, 6 by Republicans, and 1 is offered with bipartisan sponsorship. This rule should be even more palatable to many in this body due to the floor manager, Mr. LINDER's amendment to impose the caps on noneconomic damages to medical malpractice cases only.

On Tuesday, the Committee on Rules sat for nearly 7 hours to hear testimony from Members on a variety of amendments—83 in all—affecting many aspects of the bill, including economic and noneconomic losses, punitive damages, and joint and several liability, to name just a few.

Under this rule, Mr. Speaker, we have attempted to give ample time to the minority, and quite frankly, to the entire House, to discuss all of these critical areas, while eliminating overlapping or duplicative amendments.

Mr. Speaker, not every amendment I supported and fought for was adopted, but I believe that, all in all, the rule is fair.

□ 1115

Mr. Speaker, for nearly two decades Congress has grappled with the issue of products liability reform. Some say we are going too fast and we are going too far, but what we went too fast and too far on are the horrendous unchecked abuses over the past decade. Having been a jurist in my previous life, I can say without hesitation that there is room for commonsense legal reform in our system, especially in the area of product liability law. This bill seeks to restore common sense and fairness to product liability litigation by establishing uniform national standards in place of the patchwork system currently compromise of 50 separate State product liability laws.

Given the significant impact that product liability has upon interstate commerce, competitiveness, insurance cost and the lives of each and every American, the provisions in this legislation and the Federal action it endorses are not only warranted, but also very sound. My colleagues need look no further than the Constitution to see that action taken by this body to regulate interstate commerce is well within Congress' assigned duties.

Mr. Speaker, by adopting this fair and responsible rule, we can continue this week's process of enacting meaningful and reasonable changes to our civil justice system. Mr. Speaker, I urge my colleagues on both sides of the aisle to support this fair and reasonable rule.

Mr. FROST. Mr. Speaker, 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. Speaker, I rise in strong opposition to this oppressive rule and urge Members to defeat the previous question.

It is no secret that this important legislation—that I have worked on for many years—is being grossly mishandled. There was but one subcommittee hearing on an extreme bill introduced 1 week earlier. There was no subcommittee markup—an important step in ensuring well-crafted and defensible legislation. We were given three completely different substitutes in as many days before the committee markup. Even before we received a draft of the committee report, a new bill—H.R. 1075—was introduced last week by Chairmen HYDE and BLILEY.

Before the ink was dry on H.R. 1075, Chairman SOLOMON stood here and announced the Rules Committee would meet this week ''to grant a rule which may restrict amendments.'' It is clear the Republican leadership decided sometime ago they would ram this bill through without adequate debate and without regard to the rights of Members to debate the issues and offer amendments to the bill.

We asked for an open rule, but have been given a closed rule. The Republicans have picked amendments they want to debate and foreclosed the ability of Democrats to offer and debate other important ones. Moderate or bipartisan amendments have been completely excluded by this closed rule.

For example, Mr. OXLEY and Mr. GORDON filed an amendment to raise the cap on punitive damages to $1 million. And the gentleman from Florida, a member of the Judiciary Committee, Mr. MCCOLLUM, has an amendment to raise the cap to $500,000. Instead of making these moderate and bipartisan amendments in order, the Republicans are instead only giving the House the stark choice between an extreme $250,000 cap on the one hand and no cap at all on the other. It seems the Republican leadership was very worried that the Oxley-Gordon or McCollum amendments would pass. I urge Members to defeat the previous question to give the House an opportunity to vote on these middle ground alternatives.

Even worse, the rule allows Republican amendments that go far beyond product liability reform. For example, Mr. GEKAS' amendment on medical malpractice and Mr. COX's amendments to severely limit damages for pain and suffering in all State and Federal cases will be in order if this rule passes. There has not been one hearing on these amendments by this Congress. There has not been one day of committee meetings on these amendments by this Congress. No Member has been given adequate notice or time to consider these sweeping changes to our legal system.

This unfair and ill-advised process erodes bipartisan efforts. It produces legislation fraught with defects, inconsistencies and errors. This is not about common sense, as the authors of the bill want us to believe. It is the herd mentality in action.

I stand ready to work with all of my colleagues to craft fair, balanced, and appropriate legislation in this area. But the rule before us denies me and all Members of that opportunity. As all Members of this body know: we are here to legislate, not to punch holes in laminated cards.

We should be working to produce a products liability bill that we fully understand, in which we can take pride, and which we may defend without reservation. Vote ''no'' on the previous question so that we can consider the Oxley-Gordon and McCollum amendments on punitive damages. Vote ''no'' on the rule if the previous question is approved.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

(Mr. BRYANT of Texas asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Texas. Mr. Speaker, Members of the House, simply put, the rule before us today is an outrage. It is a bill that is designed to make sure that we cannot moderate in any way in a very extreme bill. It goes far beyond what any reasonable legal scholar would ever have asked for, and it is part of a 20-year, the culmination of a 20-year campaign, by companies who have repeatedly been sued for putting dangerous products on the market to convince the public that somehow we should ignore the plight of the victims of their outrageous behavior and have sympathy instead for them, and they have been telling people on the radio ads and through their various propaganda sources that there is a big crisis with regard to product liability cases, but the fact is that in the hearings, which had witnesses chosen by the Republicans, we asked the witnesses, ''Do any of you have a study to show that there is a big increase in the number of product liability cases?'' And the answer was, no, nobody had any such study.

''Do any of you have a study to show there's a big increase in the number, in the size, of the verdicts?'' No, nobody had any such study, and in fact the studies that do exist tell us just the opposite.

The fact of the matter is that product liability cases filed represent a mere thirty-six one hundredths of a percentage point of the civil case load and ninety-seven thousands of a percentage point of the total case load in the State courts. In recent years the number of product liability filings has been steadily declining. The objective stories in the press in the last few days have indicated just that. Only 10 percent of the people who were sued, who were injured, ever used the tort system

to seek compensation for their injuries anyway, and, finally, the number of fraud liability cases in Federal court declined 36 percent from 1985 to 1981.

Those are the facts. There are not any other facts, and yet, because the corporate friends of the Republican Party want to see their fondest dream come true, we have a rule before us today that says we are going to pass an extreme bill with no possibility of improving it.

What has been the hallmark of this campaign of propaganda? It has been the McDonald's coffee case. We were told all about what an outrage the McDonald's coffee case was. Well, let me tell my colleagues about a few McDonald coffee cases they did not know about.

This is a picture of an 11-year-old boy from South Carolina. The McDonald's coffee he was holding spilled and caused extreme scalding. The tests conducted during the trial showed that the coffee was 180 degrees when it was spilled even though it was poured 15 minutes earlier. Now their highest recommended temperature for the hot water heater is 140 degrees. That kid was badly hurt.

Here is a 1½-year-old child. This is a scalding of five—a 1½-year-old child that was scalded by McDonald's coffee.

As it turned out, there were 700 complaints of scalding to the McDonald's company. We never did hear about that in these radio ads; did we?

And here is the partial picture of perhaps the saddest story of all. This is a lady that was burned all the way down the front of her body, and in between her legs as well, in New Mexico. She spent the following month in the hospital. She remained wheelchair-bound after discharge and died 2 months later. She had extreme burns over all of her body.

This is a bill that would have prohibited these people from filing these cases. The truth will be told in the debate. I urge my colleagues to vote against the rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. COX], the author of the amendment for which we bent the rule.

Mr. COX of California. Mr. Speaker, I appreciate the opportunity to explain the need for amendment to the rule.

Obviously this amendment will change an amendment offered by one Democrat at the request of that Democratic Member and an amendment offered by one Republican at the request of that Republican.

In my case I have asked to narrow the scope of my amendment so that I can accommodate requests from Members on the other side of the aisle.

The gentleman who just spoke, I take it, is an opponent of tort reform in the Congress for a variety of reasons. He would not, presumably, have voted for an amendment that will cover all torts in all courts in terms of noneconomic damages. Likewise, Mr. Speaker, I imagine he would not vote for an amendment that covers medical malpractice which is a subset. But several Members on that side of the aisle have indicated that they very much share the desire for reducing health care costs by getting at the problem of health care lawsuits, which is a subset of the amendment that I originally offered.

So, Mr. Speaker, for that purpose, to focus the amendment more narrowly on a subject that is of broader concern in our Congress, I have asked to amend the rule to permit me to offer a more narrow amendment, and I appreciate the gentleman from the Committee on Rules offering me the opportunity to explain the purpose of my amendment.

Mr. FROST. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would ask the gentleman who just spoke, the gentleman from California [Mr. COX] a question:

Mr. COX, why did you have to change the language between the time we considered the amendment yesterday afternoon in the Rules Committee and this morning? Why wasn't the language that you really wanted before the Rules Committee when we considered the rule yesterday afternoon?

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

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

Mr. COX of California. As life occurred, I ran into the chairman of the Committee on Rules when I was here on the floor yesterday debating the Securities Litigation Act 15 minutes after the Committee on Rules had concluded their business, and so I just missed the bus. If I had not been on the floor all day yesterday doing the Securities Litigation Reform Act, I would have been up in the Committee on Rules, but it is literally a matter of minutes here that I was unable to learn that the Committee on Rules had already finished business.

Mr. FROST. Mr. Speaker, I say to the gentleman, Well, Mr. COX, you have submitted an amendment to the Rules Committee; isn't that correct? Originally the amendment that we made in order yesterday was one that you had actually submitted?

Mr. COX of California. Yes, not this week, but last week under the deadline that was set by the Committee on Rules. That was preprinted in the RECORD last week.

Mr. FROST. I understand——

Mr. COX of California. And after last week, as a result of conversations with Members on the Democratic side, it was suggested to me that I narrow the scope of my amendment and that I not propose an amendment to Federal law that would cover tort litigation in all the 50 States.

Mr. FROST. Mr. Speaker, I would only ask the gentleman, Mr. COX, our meetings are publicly noticed. Members know when the Rules Committee is going to meet, particularly when we're going to vote to actually take final action on a rule, and other Members have not had difficulty in getting the language of their amendments to us in a timely manner——

Mr. COX of California. I would just respond to the gentleman by saying, ''Of course this took place yesterday in the Rules Committee, and there was only one Member of Congress yesterday who had his legislation on the floor of the House, and it was this Member.''

Mr. FROST. Mr. Speaker, for purpose of debate only, I yield 3 minutes to the gentleman from Tennessee [Mr. GORDON].

Mr. GORDON. Mr. Speaker, I rise today as a support of products liability reform, not only this year, but also in the past. Last year I joined the gentleman from Florida [Mr. BILIRAKIS] and many others in a bipartisan bill, House Resolution 1510, to reform products liability, and that is why I am so concerned today that we are met with this rule that is going to gag a true debate on products liability reform and maybe put it at jeopardy, and why is that?

Mr. Speaker, why is it that the Republican leadership is going to such extremes to break a contract that they had with the American people? That contract said there would be full and open debate on this issue. Why are they breaking that contract?

Are they breaking it because there is not enough time to debate this? Well, no, that cannot be the case because just last night they announced that we are not going to be in session on Friday—I am sorry; we are going to go out of session on Friday at 3 o'clock. We are not going to be in session on Monday, we are not going to be in session Tuesday until 5 o'clock, and we are not going to be in session next Friday. So clearly there is plenty of time to debate this next week. I think we can work more than 2 hours.

Is it because they are trying to stop some partisan shenanigans? No, that is not the case because they are also not allowing some amendments from the gentleman from Ohio [Mr. OXLEY] who is a very capable chairman of the subcommittee that brought forth this bill. They are not allowing amendments by the gentleman from Florida [Mr. MCCOLLUM], their own Member, once again who is one of the subcommittee chairmen in the Committee on the Judiciary—as well as a number of other Republican amendments.

So why are they blocking, why are they gagging, this rule? Well, the only thing I can find out, Mr. Speaker, is they are gagging this rule because it is such an extreme bill that they are afraid to have debate for the American public to hear about it, for their own Members to come forward with their own amendments.

So I think the question today, and I know it is very difficult for Republicans when their leadership clamps down on them and says, ''You've got to toe the line,'' and there may be threats and may be retribution. I know it is tough to be able to step forward. But

today I think it is important because this is such an important bill.

Mr. Speaker, the questions before my friends and colleagues on the other side of the aisle are:

''Are they going to be lackeys for their leadership or conduits for their constituents?''

''Are they going to be robots for their rulers or defenders of their districts?''

''Are they going to be servants for their sovereign, or are they going to be supporters of their citizens?''

We will have that answer today, so I urge a defeat of this rule so that we can come back with a rule with open debate so that Democrats, and Republicans, and the American people can all participate in this and get a products liability reform that this country deserves and needs.

Mr. LINDER. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Speaker, I urge my colleagues to vote for this rule.

As the gentleman from California [Mr. COX] has stated so well, many Members across the aisle, and some on this side, have concerns that this legislation not go too far. One of the changes proposed in this rule will allow a previously allowed amendment to narrow its scope. I believe that there is support on both sides of the aisle for this change. It would seem to me that voting against this rule would actually limit many Members from voting for what they consider to be a better amendment.

I would urge my colleagues to support this rule. This rule is an improvement, not a gag.

Many Members want to debate a medical malpractice amendment because we know how it has added to the cost of our health care system in terms of defensive medicine. This rule will change that, will allow that to happen.

□ 1130

Mr. FROST. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. CONYERS].

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

Mr. CONYERS. Mr. Speaker, I rise in opposition to the rule.

The list of broken promises and pledges of the Republican majority continues to grow with every day.

First the new Republican majority refused to protect Social Security from cuts under the proposed balanced budget amendment contrary to the protection that the new Speaker promised Social Security would receive. The amendment went down as a result in the Senate.

Next, came the promise to return crime fighting tools to the States, a promise promptly revoked in the prison funding legislation which dictated strict eligibility requirements to the States that they could not meet.

And then came the promise for open rules, a promise which has been broken on nearly every major bill coming out of the Judiciary Committee. Sure, strict time limits that include voting time which allow for open amendments, are not quite closed rules. But the strictures of these time limits have repeatedly cut off meritorious amendments not just by Democrats but by Republicans as well.

And now on one of the most important bills affecting every American's right to be free from harm, every American's right to go to court to right a wrong done to them, we have the ultimate in closed rules. A rule that allows only a limited number of amendments on a highly technical and complicated body of law. A rule that irresponsibly allows amendments nongermane amendments limiting rights of medical malpractice victims, an issue which was not properly considered and refined in committee, to be hoisted onto members for a vote of first impression on the House floor.

This rule refused to make in order the vast majority of amendments that Judiciary Democrats requested be made in order. It refused my amendment making particularly egregious conduct subject to criminal liability, amendments dealing with reproductive rights, the statute of repose, making businesses play by the same rules as individuals, requiring insurance reporting.

How ironic it is that such a restrictive rule comes on a bill that is attempting to restrict people's fundamental rights. That's right, this is not a bill to clean up the legal system, as a matter of fact it is doubtful that this bill will cause any reduction in American litigation.

Rather this bill is about depriving people of fundamental rights, of rights to be free from unknowable harms in our midst, in the every day products we consume. This bill is about depriving people of legal rights when they are wronged. This bill is about telling manufacturers that its OK to produce children's pajamas which are flammable, pharmaceutical which will injure rather than cure, household products which will maim, because the deterrent purpose of punitive damages will be so limited that wrongdoers will only have to pay small sums in punitive damages relative to the huge profits they will reap.

And not only does this bill guillotine damages in Federal court, but it does so for State laws as well. That's the ultimate Washington power grab. Folks at home, listen up. This bill will severely limit punitive damages in your State laws for sexual abuse of children, victims of drunk driving, and criminals who sells drugs to children. Women of America, listen close. This bill says a male corporate executive who loses wages because of temporary incapacitation will probably get more damages than you if you're sterilized by defective products in the marketplace.

This bill is about limiting individual rights, particularly for middle income Americans. The rule is about limiting members amendments to expand rights. The bill cuts off the American people's rights to go to court, the rule the right to go to the House floor. Never before has the Contract With America been bolder in its statement that it is really a ''Contract With Corporate America.''

Mr. FROST. Mr. Speaker, I yield such time as she may consume 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 the rule.

Mr. Speaker, I am vehemently opposed to this closed rule on a piece of legislation that threatens to decimate the health and safety of innocent men, women, and children across the United States with its enaction. I urge my colleagues to join me in vociferously voting no.

Tuesday afternoon I testified before the Rules Committee on an amendment I submitted to the bill which would have required manufacturers to retain for 25 years documents that directly relate to the elements of a product liability action. With my amendment, materials concerning design specifications, warranties, warnings, and general product safety would have been preserved and available for use at trial by injured consumers bringing suit.

Unfortunately, and to this moment without presenting me or my staff with a reason, the committee did not rule my amendment in order. I strongly object to this attempt to muffle my ability to effectively represent my constituents. It is wrong and it is unwarranted, Mr. Speaker.

Today, many companies regularly feed documents into shredders, incinerators, et cetera under the guise of ''document reduction'' programs. In reality, however, they are effectively eliminating documents which could be crucial to the merits of a plaintiff's product liability claim. Such practices must be stopped and my amendment would have done just that.

This issue arises in a variety of contexts in product liability suits. The documents obtained during the discovery process help the plaintiff's lawyer to verify the statements of witnesses, refresh the memory of those who have forgotten key details of design and safety, and fill in the gaps from witnesses who have died, disappeared, or are beyond the court's jurisdiction. Where a lengthy statute of repose is involved, as the 15-year statute in H.R. 956, the manufacturer's documents are especially important due to the difficulty in remembering details from so many years before. Most significantly, on matters where the plaintiff carries the burden of proof they must have access to the evidence necessary to present their case.

The importance of providing plaintiffs with access to a manufacturer-defendant's documents is illustrated in a fascinating book written about the Dalkon Shield tragedy. As the author describes:

> Thousands of documents sought by lawyers for victims * * * sank from sight in suspicious circumstances. A few were hidden for a decade in a home basement in Tulsa, Oklahoma. Other records were destroyed in a city dump in Columbus, Indiana, and some allegedly in an A.H. Robins furnace.

This is not an isolated case Mr. Speaker. After an American Airlines DC–10 crashed in Chicago in 1979, one of the most serious aircraft crashes in history, the airline's lawyer instructed the author of an in-house report on the accident to destroy all notes, memoranda, and other data. Many believe that this material could have established the fact that the airline knew of a crack in the engine bulkhead before the accident occurred.

As I stated, to prohibit these practices, my amendment would have required manufacturers to retain for 25 years their documents and other data which directly relate to the elements of a product liability action.

Strong civil penalties would have been imposed by my amendment in instances where evidence was destroyed or concealed. If a court found that a litigant willfully destroyed or altered any key evidence, it could have concluded that the facts at issue did, in fact, exist as contended by the opposing party. Monetary penalties would also have been assessed, as they are a tried and true method for encouraging compliance with the law. A rebuttable presumption would have applied where the documents were nonwillfully eliminated in some other way.

My amendment is necessary for a number of reasons. First and foremost, it would ease backlogs in our court system and shorten the time it takes for cases to be resolved—a primary goal of H.R. 956, or so I thought. Where documents are destroyed or made unavailable, the result is more searching and time consuming discovery because secondary and more attenuated sources of evidence must be used.

In the process, attorney's fees are needlessly increased, limiting the number of claimants who can afford to bring their cases to court. Also, there is a higher likelihood of error by the factfinder by using secondary sources of evidence instead of the essential documents themselves. Thus my amendment would save not only the valuable time of the court and the litigants, but also increase access to our justice system for more citizens as well as promote fairer and more consistent verdicts.

Finally, my record retention amendment would encourage parties to come forward promptly with requested documents to avoid the monetary penalties and adverse presumptions of my proposal. In subsequent cases involving the same product, settlement prospects would be enhanced because manufacturers would not want these negative findings to apply again.

At the very least, my amendment would have encouraged manufacturers to rethink the wisdom of destroying, altering, or hiding vital documents. Under the best of circumstances, it would have forced companies to act in the most responsible manner and take safety precautions or correct defective products where records warn of such hazards. After all, I believe greater product safety remains the bottom line. Obviously the GOP does not.

Mr. Speaker, if anyone doubts the importance of record retention, they should consider two memorable cases. First, what recourse would asbestos victims have had if someone did not locate the Johns-Manville memo showing that the company knew of the health hazards of its product as early as 1930? Second, what compensation would have been awarded to the Grimshaw family if the cost-benefit analysis done by Ford in its Pinto accident cases had not "come to light?" The answer in both cases is little, if anything, and the victims would have been denied true justice.

I am sorry the majority on the Rules Committee don't care much for justice of any kind.

Again, I urge my colleagues to vote no on this ludicrous rule.

Mr. FROST. Mr. Speaker, for the purposes of debate only, I yield 3 minutes to the gentleman from New York [Mr. NADLER].

Mr. NADLER. Mr. Speaker, I rise to deliver a eulogy for a major pillar of the Republican Contract on America. This rule buries perhaps the only part of the contract that justifiably earned the support of most Members on both sides of the aisle.

The Republican majority has entertained us over the past few weeks with moving lectures on the importance of States rights and local autonomy. They have further declared what they describe as a new openness, which supposedly allows unprecedented freedom of debate on important issues on the floor of this, the People's House. How hypocritical and really tragic, then, that on this legislation that obliterates the rights of consumers to be protected against dangerous products and against those cynical corporations that calculate that there is more money to be made by selling exploding cars or medications with life-threatening side effects than by cleaning up their act. The closed rule would severely censure the debate.

I and others, for example, have proposed amendments that would preserve the States' authority over tort law. These amendments were not made in order. Is this the fine print in the contract? Are we to be forced to listen to pious homilies about local control, about an end to the Washington-knows-best attitude, but when it comes to something as important as the rights of consumers who have been injured or killed, local authorities no longer are on the list of the Speaker's approved political vocabulary and it is not even considered important enough to allow it to be debated on the floor of the House?

The State's authority over tort law, over medical malpractice and product liability, is to be consigned to history without even a moment's debate on the floor? What a mockery. What hypocrisy. The Republican leadership is afraid of an open debate on the arrogation to the Federal Government of the entire field of tort law.

For 200 years, Mr. Speaker, tort law and consumer protection have been entrusted to the States. Today an arrogant national government coldly steals that power without a moment's discussion on the floor of this House.

Mr. Speaker, I hope the American people are watching today's vote. I hope they keep track of who supports this political power grab. I hope the American people will remember this vote the next time someone who voted for this closed rule delivers a pious but empty and hypocritical sermon about States rights or about open government.

Mr. Speaker, I urge defeat of this terribly shameful closed rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. SOLOMON], the chairman of the committee.

Mr. SOLOMON. Mr. Speaker, I do not know who the previous speaker was talking about as being hypocritical, but we ought to be a little careful about how we describe other Members.

Let me just say that 72 percent of the American people favor legislation that places tighter limits and restrictions on an individual's ability to sue another person or company; 84 percent favor requiring defendants to pay damage awards according to their percentage of fault, and 78 percent favor limiting the amount awarded in punitive damages to no more than three times the amount of economic damages.

Mr. Speaker, the thing that gets me is that lawyers, with all due respect to them, take 50 to 70 percent of every dollar spent on product liability litigation, driving up the cost of everything. Since 1977 the revenue of the lawsuit abuse industry has compounded at 12 percent per year. That is faster even than the health care industry. And Americans pay $130 billion a year in litigation and higher insurance premiums as a result of product liability and personal injury cases.

Mr. Speaker, our legal system needs reform. It has been reported that Americans file lawsuits every 14 seconds in this country. This litigation explosion has been most evident in the areas of product liability lawsuits. That is what this legislation deals with here today. That is why we need to pass this rule without question and get on with this debate. This Congress has been gagged for 20 years from debating this issue on the floor of this Congress.

Finally, the American people are going to be heard. We are going to debate this issue in a few minutes, and we are going to pass it and send it to the Senate and on to the President. And that President had better sign this bill because the American people want it.

Mr. FROST. Mr. Speaker, let me inquire as to the time remaining.

The SPEAKER pro tempore (Mr. EWING). The gentleman from Texas [Mr. FROST] has 1½ minutes remaining, and the gentleman from Georgia [Mr. LINDER] has 8½ minutes remaining.

Mr. LINDER. Mr. Speaker, I do not have any other speakers at this time, and I will reserve the right to close the debate.

The SPEAKER pro tempore. The gentleman from Georgia [Mr. LINDER] reserves the balance of his time.

Mr. FROST. Mr. Speaker, I want to serve notice that I intend to ask for a rollcall vote on the previous question, as well as on the passage of the rule, if the previous question is agreed to.

Mr. Speaker, for the purposes of debate only, I yield the remaining time on our side to the gentleman from Rhode Island [Mr. REED].

The SPEAKER pro tempore. The gentleman from Rhode Island [Mr. REED] is recognized for 1½ minutes.

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

Mr. REED. Mr. Speaker, I rise in opposition to this rule.

This is an outrageous rule, and my opposition is not based on any underlying opposition to the bill as it came from the Committee on the Judiciary. I was one of two Democrats who supported this bill as it came to the Committee on the Judiciary. But what has taken place with this rule is that the Committee on Rules has cut off consideration of important amendments.

For example, the gentleman from California [Mr. BERMAN] has an amendment that would clarify the issue of de minimis tort feasors. This amendment received bipartisan support in the Judiciary Committee. It was not made in order.

The gentleman from Florida [Mr. MCCOLLUM] has an amendment to raise the punitive damage ceiling to $1 million. Once again this amendment received bipartisan support in the committee and is not being allowed to be considered on this floor today. That is outrageous. I think the reason is because these amendments do have bipartisan support. They would have likely engaged not only a full debate but they may well have passed and may well have improved this legislation. And clearly, that seems to be the last thing the majority wants to do at this moment, make better legislation or conduct a fair and open debate on these issues.

In addition to these points, they have made matters worse by approving a whole list of amendments which, if they pass, have the potential of making this bill a special interest Christmas tree, not tort reform but a special interest Christmas tree.

Furthermore, they have compounded that by in fact, through the rule, changing amendments that they were adopting in the Rules Committee, and this is a travesty.

Mr. Speaker, we should reject this rule and get on to real tort reform, not rhetoric on the floor.

Mr. LINDER. Mr. Speaker, I yield myself the balance of my time to close the debate.

First, Mr. Speaker, let me address the question of closed rules that keeps coming up from the Democrat side. Not to sound too remedial, but the gentleman from Texas [Mr. FROST] made it clear that the only reference in the contract was to full and open debate, not open rules. The only open rule promised in the contract was on the term limits bill, and it will be open.

The ceilings of $250,000 for punitive damages will tend to be floors in the long run. But that is not the way most of these cases are settled.

The bill also provides for three times economic losses. Judge Griffin Bell, the former Attorney General, was in my office 1 week ago and said that a case he represented, the famous case of a $100 million settlement from General Motors, with this bill, would have been a $6 million settlement, which is about what the family is going to get anyway.

To address a final point about States rights, the gentleman from New York made the case that we are taking away from the States. However, his mayor in a letter to the editor of the New York Times, after pointing out that a jury awarded $18 million to an 18-year-old student who decided to see if he could leap over a volleyball net in gym class and wound up a quadriplegic, awarded $4.3 million to a convicted felon who was caught mugging a 71-year-old. As the thief fled, a transit policeman shot him, leaving him paralyzed. The mugger sued and won.

A jury awarded $1 million to the estate of a drunken woman who had entered a closed city park illegally and drowned in three feet of water.

Then $676,000 went to the estate of a motorist killed after a drunk drove onto an expressway the wrong way and crashed into the motorist's car.

Then the mayor's office in a letter to the editor said this: ''Congress is reviving the principles of single 'federalism' and returning power to the States, cities and other local governments. Toward that end, it should enact this simple measure to give cities like New York more control over their own fate.''

The law department of the city of New York wrote in a memorandum in support of the Common Sense Legal Standards Reform Act: ''I write to ask you to support'' these amendments.

The city of New York has experienced an exponential growth in tort settlements and judgments. In 1984, New York City paid out $83 million in tort cases; this past fiscal year we paid plaintiffs and their lawyers an astounding $262 million. A substantial portion of that amount went for the all too familiar amorphous awards known as 'pain and suffering' damages. Our civil justice system is clearly in need of an overhaul.

Mr. Speaker, I urge my colleagues to support this rule and the amendment thereto.

Mr. DOGGETT. Mr. Speaker, will the gentleman yield?

Mr. LINDER. I am happy to yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Speaker, if I understand it, under the rule you are urging us to adopt, you have put out of order any amendments that would remove control of the States from this and focused it only on the Federal courts, so that the mayor of New York will have to turn to Washington rather than Albany, and the people of my State, instead of going to the State capital, will return to Washington for their product standards? In essence, you rip the tenth amendment apart?

Mr. LINDER. Mr. Speaker, the gentleman may have that opinion if he would like. I am just reading what the city of New York and its mayor said about it. The gentleman can take up his argument with him.

Mr. DOGGETT. Gladly.

Mr. LINDER. Mr. Speaker, I move the previous question on the resolution and the amendment thereto.

The SPEAKER pro tempore. The question is on ordering the previous question on the amendment and on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of agreeing to the amendment and on the question of the adoption of the resolution.

This is a 15-minute vote on the previous question.

The vote was taken by electronic device, and there were—yeas 234, nays 191, not voting 9, as follows:

[Roll No. 217]

YEAS—234

Allard	Dunn	Largent
Archer	Ehlers	Latham
Bachus	Ehrlich	LaTourette
Baesler	Emerson	Laughlin
Baker (CA)	English	Lazio
Baker (LA)	Ensign	Leach
Ballenger	Everett	Lewis (CA)
Barr	Ewing	Lewis (KY)
Barrett (NE)	Fawell	Lightfoot
Bartlett	Fields (TX)	Linder
Barton	Flanagan	Livingston
Bass	Foley	Longley
Bateman	Forbes	Lucas
Bereuter	Fowler	Manzullo
Bilbray	Fox	Martini
Bilirakis	Franks (CT)	McCollum
Bliley	Franks (NJ)	McCrery
Blute	Frelinghuysen	McDade
Boehlert	Frisa	McHugh
Boehner	Funderburk	McInnis
Bonilla	Gallegly	McIntosh
Bono	Ganske	McKeon
Brewster	Gekas	Metcalf
Brownback	Geren	Meyers
Bryant (TN)	Gilchrest	Mica
Bunn	Gillmor	Miller (FL)
Bunning	Gilman	Molinari
Burr	Goodlatte	Moorhead
Burton	Goodling	Morella
Buyer	Goss	Myers
Callahan	Gunderson	Myrick
Calvert	Gutknecht	Nethercutt
Camp	Hall (TX)	Neumann
Canady	Hancock	Ney
Castle	Hansen	Norwood
Chabot	Hastert	Nussle
Chambliss	Hastings (WA)	Oxley
Chenoweth	Hayworth	Packard
Christensen	Hefley	Parker
Chrysler	Heineman	Paxon
Clinger	Herger	Peterson (MN)
Coble	Hilleary	Petri
Coburn	Hobson	Pombo
Collins (GA)	Hoekstra	Porter
Combest	Hoke	Portman
Condit	Horn	Pryce
Cooley	Houghton	Quillen
Cox	Hunter	Quinn
Crane	Hutchinson	Radanovich
Crapo	Hyde	Ramstad
Cremeans	Inglis	Regula
Cubin	Johnson (CT)	Riggs
Cunningham	Johnson, Sam	Roberts
Danner	Jones	Rogers
Davis	Kasich	Rohrabacher
Deal	Kelly	Ros-Lehtinen
DeLay	Kim	Roth
Diaz-Balart	King	Roukema
Dickey	Kingston	Royce
Doolittle	Klug	Salmon
Dornan	Knollenberg	Sanford
Dreier	Kolbe	Saxton
Duncan	LaHood	Scarborough

Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—191

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
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
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
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
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tauzin
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velázquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Wyden
Wynn
Yates

NOT VOTING—9

Armey
Dellums
Greenwood
Hostettler
Istook
LoBiondo
Moran
Rangel
Woolsey

□ 1202

Mr. BROWN of Ohio and Mr. WARD changed their vote from ''yea'' to ''nay.''

Messrs. BASS, DEAL, and TATE changed their vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. EWING). The question is on the amendment offered by the gentleman from Georgia [Mr. LINDER].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MOAKLEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 247, noes 181, not voting 6, as follows:

[Roll No. 218]

AYES—247

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
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
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
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
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
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
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—181

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hamilton
Harman
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
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velázquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—6

Clay
Istook
LoBiondo
Mfume
Moran
Rangel

□ 1212

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LINDER. Mr. Speaker, I ask unanimous consent that all Members

may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

ANNOUNCEMENT BY CHAIRMAN OF COMMITTEE ON RULES REGARDING CONSIDERATION OF AMENDMENTS TO H.R. 1158, MAKING EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS, AND TO H.R. 1159, MAKING SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS

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

Mr. SOLOMON. Mr. Speaker, the Rules Committee is planning to meet on next Tuesday, March 14, to grant a rule which may limit the kind of amendments which may be offered to H.R. 1158, making emergency supplemental appropriations and rescissions and to H.R. 1159, making supplemental appropriations and rescissions.

The rule will, subject to the approval of the Rules Committee, include a provision requiring that amendments not increase the net level of budget authority in the bill. This means that if there is a proposal to add budget authority, it must be offset by other cuts in budget authority. And rescissions would be treated in a similar manner. If an amendment proposes to eliminate a rescission, it would need to include offsetting cuts.

The rule may further provide that the bill will be read for amendment by chapter, which means that any addition to a particular chapter of the bill would have to be offset by increasing rescissions in the same chapter.

New rescissions affecting programs other than those in the bill would constitute legislation on an appropriation and violate the standing rules of the House.

Subject to the approval of the Rules Committee this rule will include a provision requiring amendments to be preprinted in the amendment section of the CONGRESSIONAL RECORD. Amendments should be submitted for printing no later than Monday, March 13, 1995.

Amendments to be preprinted should be signed by the Member, and submitted at the Speaker's table.

The bill may be considered for amendment under the 5-minute rule, with a possible overall time limitation on the amending process.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to be certain their amendments comply with the rules of the House. It is not necessary to submit amendments to the Rules Committee or to testify.

□ 1215

That is certainly optional.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

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

Mr. MOAKLEY. According to our latest information, the House is not in session Monday; is that so?

Mr. SOLOMON. In order to give Members a fair opportunity to prefile their amendments on this very important issue dealing with rescissions, the House is going to be in session pro forma on Monday, which means Members would have that opportunity to prefile their amendments so that they would appear in Tuesday's RECORD. That is very important.

Mr. MOAKLEY. Does the gentleman mean Members are going to come in here to sit for 5 minutes in order that they can file an amendment?

Mr. SOLOMON. No, I think that Members can submit their amendments, they can prefile them like we always do on Monday. You sign your name to it, your staff then drops them in the hopper for you.

Mr. MOAKLEY. How long will we be in session in the pro forma session?

Mr. SOLOMON. That depends.

Mr. MOAKLEY. It does not depend on us, how long we would be in session.

Mr. SOLOMON. It depends on how many 1-minutes there might be and how many special orders.

Mr. MOAKLEY. With no votes, the gentleman from New York [Mr. SOLOMON] is going to tell me we are going to go through an extensive pro forma session?

Mr. SOLOMON. Under unanimous-consent requests, filing of amendments would be in order up until 5 p.m. and that is the normal procedure of the House. We would have no objection to that.

Mr. MOAKLEY. Yes, but that request has not been made.

Mr. SOLOMON. No, we intend to make it.

Mr. MOAKLEY. When?

Mr. SOLOMON. So Members could be assured that they would have until 5 p.m. to file their amendments Monday. Again, this is in lieu of making them file their amendments by Friday at 5. This gives Members and their staffs the entire weekend and all day Monday.

Mr. MOAKLEY. So it is giving us our day off to come back here and file amendments. Is that what the gentleman is giving us?

Mr. SOLOMON. If the gentleman will let me interrupt him, I will make the unanimous-consent request right now.

PERMISSION FOR MEMBERS TO PREFILE AMENDMENTS ON H.R. 1158, EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS AND H.R. 1159, SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that Members would have until 5 p.m. on Monday to prefile their amendments on the rescission bills.

The SPEAKER pro tempore (Mr. EWING). Is there objection to the request of the gentleman from New York?

Mr. MOAKLEY. Mr. Speaker, reserving the right to object, would the gentleman be kind enough to withhold that request until we clear it with our leadership on this side, because I am sure this comes as quite a surprise.

Mr. SOLOMON. If the gentleman will yield, the gentleman is one of my best friends, and I would be glad to withdraw it at his request.

Mr. MOAKLEY. I thank the gentleman.

Mr. DINGELL. Mr. Speaker, I would also like to reserve the right to object.

Mr. SOLOMON. I have withdrawn the request, Mr. Speaker.

The SPEAKER pro tempore. The gentleman has withdrawn his request.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, let me ask the gentleman two questions that relate to the original announcement made by the gentleman from New York [Mr. SOLOMON], the committee chairman.

First of all, the gentleman mentioned legislating on an appropriation bill. Am I correct that the intent of the Committee on Rules will be to protect that legislation that is on the bill as it was reported by the committee?

Mr. SOLOMON. Absolutely. We intend to abide by the rules of the House.

Mr. HOYER. So you will be protecting——

Mr. SOLOMON. All we are saying is that if Members have amendments that would reinstate any of the cuts appearing in the bill that they would have to have offsetting cuts by chapter. In other words, in the Department of Veterans Affairs, HUD and Independent Agencies chapter, if you were going to reinstate a cut in that chapter, then you would have to provide for offsetting cuts within that chapter. But you are still allowed to offer further cuts on any of the chapters if you see fit, without offsetting anything.

Mr. HOYER. I understand. So if you wanted to make a cut in the defense chapter, there is no defense chapter, but if there were, you would have to make the cut in defense?

Mr. SOLOMON. Absolutely.

Mr. HOYER. That was, however, not the same when we added to the defense and made rescissions in the domestic side of the ledger some weeks ago. So we are changing that; is that correct?

Mr. SOLOMON. As we are doing it by chapter, right, because of the complexity of this legislation.

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

Mr. SOLOMON. I yield to the gentleman from Michigan.

Mr. DINGELL. What I am trying to do is to find out from my good friend the gentleman from New York, when will the basic legislation be available to us and when will the requirement for publication take place so we understand how much time we are going to have between the time the legislation becomes available and the time that the amendments——

Mr. SOLOMON. It is in today's RECORD. The gentleman has access to it. It was filed last night.

Mr. DINGELL. It was filed last night?

Mr. SOLOMON. Yes.

Mr. DINGELL. If the gentleman would yield further, could the gentleman tell me whether there will be changes in the legislation between now and the time that the printing requirement bites, so that we can understand that our amendments if drafted will be drafted to the legislation that will be considered by the House?

Mr. SOLOMON. To my knowledge, there will be no changes made. The report has been filed and the legislation is before you. It is pretty cut and dried.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

The SPEAKER pro tempore. The time of the gentleman from New York [Mr. SOLOMON] has expired.

Mr. SOLOMON. I am waiting for the gentleman from Massachusetts up in the Committee on Rules. We are holding up all these people.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent to address the outstanding chairman of the Committee on Rules.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MOAKLEY. The gentleman from New York [Mr. SOLOMON] says this is all cut and dried. So is there any reason for any amendments to be offered by Democrats? Are we going to be given any choice when you are picking out the Democratic amendments?

Mr. SOLOMON. There is a prefiling requirement. We intend to place a time limitation, but we would hopefully be able to take care of anyone's amendments, Democrat or Republican, liberal or conservative. We want to be as fair as we possibly can.

Mr. MOAKLEY. Mr. Speaker, I want to yield to our mutual friend, the chairman of the Committee on Veterans' Affairs, the Honorable General MONTGOMERY.

Mr. SOLOMON. He is not the chairman. He is the former good chairman, though.

Mr. MOAKLEY. He is always chairman to me.

Mr. MONTGOMERY. Mr. Speaker, if the gentleman will yield, I have been talking to him about the rescission of $206 million on veterans programs, mainly outpatient clinics which have been very, very important to take care of the older vet now that we have got about 20 million that are over age 60.

I have talked to the gentleman before. How does this affect the veterans?

Mr. SOLOMON. This means if you want to offer an amendment reinstating the cuts that appear in that chapter of the rescission bill—and I would support such an amendment, and I will take the floor and fight for it with you—it means that you are going to have to offset that reinstatement with a like amount of dollar cuts from other items appearing in that same chapter. Again that chapter takes in the Department of Veterans Affairs, it takes in HUD and independent agencies.

Just, for example, if you want to reinstate the veterans' cuts—and I do want to reinstate them, too—you are going to have to take them out of something like the National Service Corps, Americorps. In other words, we are going to have to decide which is the priority, and I will support the gentleman no matter where he takes it out of, out of that chapter.

Mr. MONTGOMERY. Will the gentleman support me if we do not take it away from anybody and just offer a clean amendment?

Mr. SOLOMON. No, I would not support that, because we have a responsibility to maintain the defense budget. With all the money that has been taken out of the defense budget for all of the peacekeeping missions, that is wrong. We have got to reinstate it someplace, and I will support your amendment if you offer it and will take the cuts out of somewhere else in the chapter.

The SPEAKER pro tempore. All time has expired.

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

Mr. MOAKLEY. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. To the chairman of the Committee on Rules, one more question.

Mr. SOLOMON. One more time.

Mr. MONTGOMERY. In that chapter, the only thing the veterans have would be compensation and pensions, and I certainly would not want to cut compensation and pension programs.

Mr. SOLOMON. No.

Mr. MONTGOMERY. In that chapter, what else does it include that we could get the money from? And would you let me offer a clean amendment just to take care of the $206 million?

Mr. SOLOMON. SONNY, as a matter of fact, here is a list I will be glad to give to you. There are a lot of items in that chapter. Certainly I would not want to see you take it out of other veterans' benefits, but if you want to take it out of the National Service Corps, I will support your amendment. If you do not want to do that, I will do it.

Mr. MOAKLEY. Is the gentleman from New York [Mr. SOLOMON] going to allow the amendments that have been subject to the Appropriations Committee's——

The SPEAKER pro tempore. All time has expired.

Mr. MOAKLEY. May the gentleman from New York [Mr. SOLOMON] have enough time just to answer the question Mr. Speaker?

Mr. SOLOMON. That is up to the Committee on Rules, JOE, and you are the ranking member.

Mr. MOAKLEY. You are the Committee on Rules. I am asking.

COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 109 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. 956.

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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. 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. When the Committee of the Whole rose on Wednesday, March 8, 1995, all time for general debate pursuant to House Resolution 108 had expired.

Pursuant to House Resolution 109, no further general debate is in order.

The amendment in the nature of a substitute consisting of the text of H.R. 1075 is considered as an original bill for purposes of amendment and is considered as having been read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1075

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Common Sense Product Liability and Legal Reform Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Findings and purposes.
Sec. 102. Applicability and preemption.
Sec. 103. Liability rules applicable to product sellers.
Sec. 104. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 105. Misuse or alteration.
Sec. 106. Frivolous pleadings.
Sec. 107. Several liability for noneconomic loss.
Sec. 108. Statute of repose.
Sec. 109. Service of process.
Sec. 110. Definitions.

TITLE II—PUNITIVE DAMAGES REFORM

Sec. 201. Punitive damages.
Sec. 202. Definitions.

TITLE III—BIOMATERIALS SUPPLIERS

Sec. 301. Liability of biomaterials suppliers.
Sec. 302. Procedures for dismissal of civil actions against biomaterials suppliers.

Sec. 303. Definitions.

TITLE IV—EFFECT ON OTHER LAW; EFFECTIVE DATE

Sec. 401. Effect on other law.
Sec. 402. Federal cause of action precluded.
Sec. 403. Effective date.

TITLE I—PRODUCT LIABILITY REFORM

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the manufacture and distribution of goods in interstate commerce is to a large extent a national activity which affects national interests in a variety of important ways;

(2) in recent years, the free flow of products in interstate commerce has been increasingly burdened by product liability law;

(3) as a result of this burden, consumers have been adversely affected through the withdrawal of products and producers from the national market, and from excessive liability costs passed on to them through higher prices;

(4) the rules of product liability law in recent years have evolved rapidly and inconsistently within and among the several States, such that the body of product liability law prevailing in this nation today is complex, contradictory, and uncertain;

(5) the unpredictability of product liability awards and doctrines are inequitable to both plaintiffs and defendants and have added considerably to the high cost of liability insurance, making it difficult for producers and insurers to protect their liability with any degree of confidence;

(6) product liability actions and punitive damage awards jeopardize the financial well-being of many industries and are a particular threat to the viability of the nation's small businesses;

(7) the extraordinary costs of the product liability system undermine the ability of American industry to compete internationally, and is costing the loss of jobs and productive capital; and

(8) because of the national scope of the manufacture and distribution of most products, it is not possible for the individual states to enact laws that fully and effectively respond to these problems.

(b) PURPOSES.—Based upon the powers contained in Article I, clause 3 of the United States Constitution, the purposes of this title are to promote the free flow of goods in interstate commerce—

(1) by establishing certain uniform legal principles which provide a fair balance between the interests of product users, manufacturers, and product sellers,

(2) by placing reasonable limits on product liability law,

(3) by ensuring that product liability law operates to compensate persons injured by the wrongdoing of others,

(4) by reducing the unacceptable transactions costs and delays which harm both plaintiffs and defendants,

(5) by allocating responsibility for harm to those in the best position to prevent such harm, and

(6) by establishing greater predictability in product liability actions.

SEC. 102. APPLICABILITY AND PREEMPTION.

(a) PREEMPTION.—This title governs any product liability action brought in any State or Federal court, on any theory for harm caused by a product. A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law applies to an issue covered by this title. Any issue that is not governed by this title shall be governed by otherwise applicable State or Federal law.

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—Except as provided in subsection (b), in any product liability action, a product seller other than a manufacturer shall be liable to a claimant for harm only if the claimant establishes that—

(1)(A) the product which allegedly caused the harm complained of was sold by the product seller; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty applicable to the product which allegedly caused the harm complained of, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the warranty; and (C) the failure of the product to conform to the warranty caused the claimant's harm; or

(3) the product seller engaged in intentional wrongdoing as determined under applicable State law and such intentional wrongdoing was a proximate cause of the harm complained of by the claimant.

For purposes of paragraph (1)(B), a product seller shall not be considered to have failed to exercise reasonable care with respect to the product based upon an alleged failure to inspect a product where there was no reasonable opportunity to inspect the product in a manner which would, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(b) EXCEPTION.—In a product liability action, a product seller shall be liable for harm to the claimant caused by such product as if the product seller were the manufacturer of such product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—In any product liability action, it shall be a complete defense to such action if—

(1) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

(b) CONSTRUCTION.—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term ''drug'' means any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that has been taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) GENERAL RULE.—Except as provided in subsection (c), in a product liability action, the damages for which a defendant is otherwise liable under State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes by a preponderance of the evidence that such percentage of the claimant's harm was proximately caused by—

(1) a use or alteration of a product in violation of, or contrary to, the defendant's express warnings or instructions if the warnings or instructions are adequate as determined pursuant to applicable State law, or

(2) a use or alteration of a product involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(b) WORKPLACE INJURY.—Notwithstanding subsection (a), the damage for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. FRIVOLOUS PLEADINGS.

(a) GENERAL RULE.—

(1) SIGNING OF PLEADING.—The signing or verification of a pleading in a product liability action in a State court subject to this title constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the pleading is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, a pleading is frivolous if the pleading is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and interposed for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of litigation.

(B) For purposes of subparagraph (A), the term ''groundless'' means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT PLEADING FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 60 days after the date a pleading in a product liability action in a State court is filed, a party to the action may make a motion that the court determine if the pleading is frivolous.

(2) COURT ACTION.—The court in a product liability action in a State court shall on the motion of a party or on its own motion determine if a pleading is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether a pleading is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that a pleading is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the pleading. The sanction may include one or more of the following:

(1) the striking of a pleading or the offending portion thereof;

(2) the dismissal of a party; or

(3) an order to pay to a party who stands in opposition to the offending pleading the amounts of the reasonable expenses incurred because of the filing of the pleading, including costs, reasonable attorney's fees, witness fees, fees of experts, and deposition expenses.

(e) CONSTRUCTION.—For purposes of this section—

(1) a general denial does not constitute a frivolous pleading; and

(2) the amount requested for damages does not constitute a frivolous pleading.

SEC. 107. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

In any product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic loss attributable to such defendant in direct proportion to such defendant's proportionate share of fault or responsibility for the claimant's harm, as determined by the trier of fact.

SEC. 108. STATUTE OF REPOSE.

(a) GENERAL RULE.—A product liability action shall be barred unless the complaint is served and filed within 15 years of the date of delivery of the product to its first purchaser or lessee, who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

(b) EXCEPTION.—Subsection (a)—

(1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 15 years, but it will apply at the expiration of such warranty,

(2) does not apply to a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product, and

(3) does not affect the limitations period established by the General Aviation Revitalization Act of 1994.

SEC. 109. SERVICE OF PROCESS.

This title shall not apply to a product liability action unless the manufacturer of the product or component part has appointed an agent in the United States for service of process from anywhere in the United States.

SEC. 110. DEFINITIONS.

As used in this title:

(1) The term ''claimant'' means any person who brings a product liability action and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term ''commercial loss'' means any loss of or damage to a product itself incurred in the course of the ongoing business enterprise consisting of providing goods or services for compensation.

(3) The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs) to the extent recovery for such loss is allowed under applicable State law.

(4) The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(5) The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), (ii) has engaged another person to design or formulate the product (or component part of the product), or (iii) uses the design or formulation of the product developed by another person;

(B) a product seller of the product who, before placing the product in the stream of commerce—

(i) designs or formulates or has engaged another person to design or formulate an aspect of the product after the product was initially made by another, or

(ii) produces, creates, makes, or constructs such aspect of the product, or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(6) The term ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(7) The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(8)(A) The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state which—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) The term does not include—

(i) human tissue, human organs, human blood, and human blood products; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(9) The term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

(10) The term ''product seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels a product, is otherwise involved in placing a product in the stream of commerce, or installs, repairs, or maintains the harm-causing aspect of a product. The term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; or

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(11) The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE II—PUNITIVE DAMAGES REFORM

SEC. 201. PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded in any civil action for harm in any Federal or State court against a defendant if the claimant establishes by clear and convincing evidence that the harm suffered was result of conduct—

(1) specifically intended to cause harm, or

(2) conduct manifesting a conscious, flagrant indifference to the safety of others.

(b) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded in any civil action subject to this title shall not exceed 3 times the amount of damages awarded to the claimant for the economic loss on which the claimant's action is based, or $250,000, whichever is greater.

(c) APPLICABILITY AND PREEMPTION.—Except as provided in section 401, this title shall apply to any civil action brought in any Federal or State court on any theory where punitive damages are sought. This title does not create a cause of action for punitive damages in any jurisdiction that does not authorize such actions.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such award. If a separate proceeding is requested, evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) CONSIDERATION.—In determining the amount of punitive damages, the trier of fact shall consider all relevant, admissible evidence, including—

(1) the severity of the harm caused by the conduct of the defendant,

(2) the duration of the conduct or any concealment of it by the defendant,

(3) the profitability of the specific conduct that caused the harm to the defendant,

(4) the number of products sold, the frequency of services provided, or the type of activities conducted by the defendant of the kind causing the harm complained of by the claimant,

(5) awards of punitive damages to persons similarly situated to the claimant,

(6) possibility of prospective awards of compensatory damages to persons similarly situated to the claimant,

(7) any criminal penalties imposed on the defendant as a result of the conduct complained of by the claimant,

(8) the amount of any civil and administrative fines and penalties assessed against the defendant as a result of the conduct complained of by the claimant, and

(9) whether the foregoing considerations have been a factor in any prior proceeding involving the defendant.

SEC. 202. DEFINITIONS.

As used in this title:

(1) The term ''claimant'' means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs), to the extent recovery for such loss is allowed under applicable State law.

(4) The term ''harm'' means any legally cognizable wrong or injury for which punitive damages may be imposed.

(5) The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(6) The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE III—BIOMATERIALS SUPPLIERS

SEC. 301. LIABILITY OF BIOMATERIALS SUPPLIERS.

A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by a medical device, only if the claimant in a product liability action shows that the conduct of the biomaterials supplier was an actual and proximate cause of the harm to the claimant and—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts:

(ii)(I) provided to the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary of Health and Human Services and that is currently maintained by the biomaterials supplier of purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for the purposes of premarket approval or review by the Secretary of Health and Human Services under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary of Health and Human Services, if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the raw materials or component parts;

(2) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(3) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

SEC. 302. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—

(1) GENERAL RULE.—Any biomaterials supplier who is a defendant in any product liability action involving a medical device which allegedly caused the harm for which the action is brought and who did not take part in the design, manufacture, or sale of such medical device may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(A) the claimant has failed to establish that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier; or

(B) the claimant has failed to comply with the requirements of subsection (b).

(2) EXCEPTION.—The biomaterials supplier may not move to dismiss the action if—

(A) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(B) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(b) MANUFACTURER OF MEDICAL DEVICE SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the medical device to which the biomaterials supplier furnished raw materials or component parts as a party to the product liability action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDINGS ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO STATUS OF DEFENDANT.—

(A) DEFENDANT AFFIDAVIT.—The defendant in the action may support a motion to dismiss by filing an affidavit demonstrating that defendant is a biomaterials supplier and that it is neither the manufacturer nor the product seller of the medical device which caused the harm alleged by the claimant.

(B) RESPONSE TO MOTION TO DISMISS.—In response to a motion to dismiss described in this section, the claimant may submit an affidavit demonstrating why it asserts that—

(i) the defendant who filed the motion to dismiss is not a biomaterials supplier with respect to the medical device which caused the harm alleged by the claimant;

(ii) on what basis it asserts that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(iii) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(iv) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—If a defendant files a motion to dismiss, no discovery shall be permitted in connection with the action that is the subject of the motion, unless the affidavits submitted in accordance with this section raise material issues of fact concerning whether—

(A) the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(B) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(C) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

Any such discovery shall be limited solely to such material facts.

(3) RESPONSE TO MOTION TO DISMISS.—The court shall rule on the motion to dismiss solely on the basis of the affidavits filed under this section and on the basis of any evidence developed in the course of discovery under paragraph (2) and subsequently submitted to the court in accordance with applicable rules of evidence.

(d) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 303. DEFINITIONS.

For purposes of this title:

(1) The term ''biomaterials supplier'' means an entity that directly or indirectly supplies, or licenses another person to supply, a component part or raw material for use in the manufacture of a medical device—

(A) that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids of internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(2) Notwithstanding paragraph (1), the term ''biomaterials supplier'' excludes any person, with respect to a medical device which is the subject of a product liability action—

(A) who is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the medical device, and has registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section, and has included the medical device on a list of devices filed with the Secretary of Health and Human Services pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) who, in the course of a business conducted for that purpose, has sold, distributed, leased, packaged, labeled, or otherwise placed the implant in the stream of commerce after it was manufactured.

(3) The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(4) The term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

TITLE IV—EFFECT ON OTHER LAW; EFFECTIVE DATE

SEC. 401. EFFECT ON OTHER LAW.

Nothing in title I, II, or III shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

SEC. 402. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 403. EFFECTIVE DATE.

Titles I, II, and III shall apply with respect to actions which are commenced after the date of the enactment of this Act.

The CHAIRMAN. No amendment to the amendment in the nature of a substitute shall be in order except the amendments printed in House Report 104–72 or in section 2 of House Resolution 109, as amended. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

Debate time on each amendment will be equally divided and controlled by the proponent and an opponent of the amendment.

It is now in order to consider amendment number 1 printed in section 2 of House Resolution 109, as amended.

AMENDMENT OFFERED BY MR. PETE GEREN OF TEXAS

Mr. PETE GEREN of Texas. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PETE GEREN of Texas: Page 7, insert after line 3 the following:

(c) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product shall be subject to liability under subsection (a) but shall not liable to a claimant for the tortious act of another involving a product solely by reason of ownership of such product.

The CHAIRMAN. Pursuant to the rule, the gentleman from Texas, Mr. PETE GEREN and a Member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Texas, Mr. PETE GEREN.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is in fact a clarifying amendment to title I of H.R. 1075. Our amendment would clarify that companies that rent or lease products are covered by the provisions of title I. Currently under title I it is clear that product liability actions against companies that sell products are subject to section 103. Section 103 provides that a product liability action cannot be pursued against a product seller unless the seller has been negligent, has offered an express warranted offer, or has engaged in intentional wrongdoing. Simply stated, there should be no liability without fault. That is the intention of this clarifying amendment.

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

Mr. PETE GEREN of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, this amendment amplifies and is consistent with an amendment offered in the committee by the gentleman from Illinois [Mr. FLANAGAN]. We find it perfectly acceptable, and I am pleased to accept the amendment.

Mr. PETE GEREN of Texas. Reclaiming my time, Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BRYANT].

(Mr. BRYANT of Texas asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding me the time, and I rise in support of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me the time.

Mr. Chairman, I too rise in strong support of this amendment. Vicarious liability is plain and simple: liability without fault. Every month car dealers, rental companies and leasing firms are held liable under these vicarious liability laws for harm to third parties that they in no way could prevent. There is no negligence whatsoever, and I believe that this clarifying amendment is essential because of the cost to American consumers literally equaling tens of millions of dollars in higher prices for car rental leases and also we are paying a price in terms of competition in these industries.

This bill has the support of the auto manufacturers, the new and used car dealers and the car rental industry. If there is any opposition, it comes from those who have used the vicarious liability laws to coerce companies into unfair and inequitable settlements.

This reform is long overdue. I commend the gentleman from Texas for bringing this amendment to the floor. I urge my colleagues to support it.

The CHAIRMAN. The Chair would inquire if there is any Member who wishes to speak in opposition to the amendment.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 5 minutes.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I do not rise in strong opposition to this but I must say I rise with great concern because there were so many amendments that were really very, very substantive and they were not allowed, and here we are with the first amendment, one that was basically adopted by the committee. I do not think there is a tremendous amount of dissent about it, and I think it just shows what a lot of us have been trying to say during the rules debate.

□ 1230

Really critical issues about which there is a lot of debate and a lot of concern have been moved aside, and they made room instead for amendments like this which were really more like a love-in. Basically, this amendment too goes to the issue a little bit more of tort. I think it is a little bit more of concern to some that it is kind of squeezed into the product liability, and I have some question as to how it may have moved into the torts area, and it is not quite clear. But nevertheless, my position at this point, and the committee's position on this side of the aisle would be that it is a shame we could not have substituted some of the amendments that there was much more dissent about than spending precious time on the floor on this.

Mr. Chairman, I reserve the balance of my time.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Florida [Mr. DEUTSCH].

Mr. DEUTSCH. Mr. Chairman, I rise in support of this amendment. This amendment clarifies what the committee tried to do in terms of making sure that a renter of a product is not automatically liable in that situation, and I urge the adoption of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Illinois [Mr. FLANAGAN].

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

Mr. FLANAGAN. Mr. Chairman, I also rise in support of this amendment.

During the Committee on the Judiciary markup of the product liability bill I offered an amendment which was adopted by voice vote to assure that companies who rent products were covered under the definition of product seller. This amendment is a further improvement on the Judiciary Committee bill, and it expressly states that a company that rents and leases products is to be treated as a product seller under title I of the bill. It makes clear that those companies will not be held liable for injuries they do not cause.

This amendment deserves the support of every Member of the body, and I urge my colleagues to support it overwhelmingly.

Mr. Chairman, among the problems H.R. 1075 is designed to address is the tort doctrine of vicarious liability for motor vehicles. The amendment, which I have coauthored with Messrs. Geren, Ramstad, and Cox, is a mere clarification of the bill's scope. It would assure that vicarious liability—or liability without fault—is covered under the product liability legislation before us today.

Mr. Chairman, 11 States and the District of Columbia currently have these vicarious liability laws on the books—laws which hold the owners of motor vehicles liable for damages caused by their vehicles even though the owners were not negligent and there is no defect in their automobiles.

Many businesses, such as car rental companies, automobile dealers, and leasing companies are being held strictly liable in these vicarious liability States for injuries they did not cause and could not prevent. These companies have not been negligent, and yet they are being forced to pay for the negligence of others.

For example, in my neighboring State of Iowa, a renter of an automobile fell asleep at the wheel. The vehicle he was driving left the road and struck a parked truck. Unfortunately, the renter's wife and child were killed in the accident. Although there was no negligence on behalf of the car rental company, the court still imposed a $800,000 judgement on the rental company. Mr. Chairman, is this fair?

To cite one more example, this time in New York, where a renter, allegedly using the vehicle for drug trafficking, struck a pedestrian on a downtown Manhattan street. The pedestrian received severe head injuries from the accident. The settlement by the car rental company was set at $1.226 million. Again, the car rental company had to pay-out $1,226,000 although it was not negligent. Surely, in this instance, the car rental company should not have been held at fault.

The Geren-Ramstad-Cox-Flanagan amendment will provide relief in these circumstances and would assure that companies that rent or lease products are not held liable for damages caused by rented or leased products if the company could not have prevented the harm.

This provision would not exempt these companies from liability if the company is negligent and would not exempt these companies from State financial responsibility laws for vehicle owners in each State.

In addition, this amendment would not, as has been alleged, cover all automobile accidents. Such a statement ignores the plain wording of the amendment. The amendment would cover only civil actions involving product sellers, not civil actions against all drivers of motor vehicles. Again, this amendment only covers product sellers as defined in section 110 of the bill.

Mr. Chairman, I believe it is appropriate to include the Geren-Ramstad-Cox-Flanagan provision in H.R. 1075 because vicarious liability impacts the car rental industry in the same fashion that product liability impacts other product sellers.

Vicarious liability claims cost car rental companies over $75 million annually—costs which drive up rental and leasing rates for all Americans.

In addition, vicarious liability has driven smaller companies out of business or forced them to refrain from doing business in States with vicarious liability laws. This leads to decreased competition, increased rates, and limited choice for consumers.

In sum, Mr. Chairman, section 103 of H.R. 1075 states that a product seller shall not be held liable without fault. This amendment simply extends this principle to companies that rent or lease products.

Therefore, Mr. Chairman, I urge my colleagues to support the amendment.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I continue my protest that we had amendments that were very, very critical that were shut out. One of the ones that I had wanted to offer that had everybody from the Right to Life Committee to NARAL joining in consensus on was a very critical one.

It dealt with people's reproductive organs, and the fact that it should be removed from this bill because people feel very, very strongly, and especially women who have had incident after incident after incident of people manufacturing things that did affect their reproductive organs. We really felt we wanted to make it very clear we thought that that should not be covered by this bill. That was not allowed.

I find that pretty amazing when we have this consensus from right to left, and it is rather historic, I do not think we have had that kind of consensus in this body for a very long time, that that amendment was not allowed, and yet we have this as an amendment that was adopted by voice vote, as the gentleman from Illinois said, in the committee, and here we are just continuing to perfect it a little bit and taking up time.

There are many other amendments similar to mine in the 82 that were there, and of course many fell off the table. And then of course many of the ones that we had, such as the one I will have next, has been limited to 20 minutes. We got hardly any time to discuss very serious legal principles that have been established in this country since the beginning of the Republic that we are now changing today, and it seems to me that we should have taken the precious time that we have and allocated it to many more of the serious issues about which there is real contention than this, which is really more of a cosmetic, housekeeping amendment about which there really has not been a lot of disagreement.

Mr. Chairman, I reserve the balance of my time.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume, and I yield to the gentleman from Louisiana [Mr. TAUZIN] for the purposes of a colloquy.

The CHAIRMAN. The gentleman from Texas, Mr. PETE GEREN, has 1½ minutes remaining.

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

Mr. PETE GEREN of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. It is my understanding that this amendment is intended only to preempt the State laws in a small minority of jurisdictions that impose unlimited financial liability on owners of motor vehicles for harm caused by the permissive users of their vehicles, and that nothing in this amendment should be construed to excuse any motor vehicle owner from meeting the minimum financial responsibility laws required by each State.

Mr. PETE GEREN of Texas. The gentleman's understanding of this amendment is correct, and that is an accurate characterization of it. I appreciate the gentleman helping us to clarify the intent of this amendment.

Mr. TAUZIN. I thank the gentleman, and I urge support for the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, borrowing from the wisdom I picked up from the gentleman from Louisiana over my years here, and drawing on the comments of the gentlewoman from Colorado, when the package is sold, you wrap it up.

Mr. Chairman, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, obviously I have a lot to say on my next amendment, and whatever time I have left, if I could just use it for that I would be very, very appreciative.

In my next amendment I am going to be talking about noneconomic damages, and it is called the family values amendment. I think even the gentleman from Texas would join me in saying that this body should stand up for this next family values amendment that hopefully will be coming up almost immediately after a voice vote on this, because it is a very serious amendment. We are talking about we cannot talk family values and say they do not amount to anything, and unless we pass this amendment that is exactly what we will be saying. So I apologize to the gentleman from Texas for using our 5 minutes to talk about some of the problems we have in trying to deal with this because of the rule, but I felt that that was really the only fair thing to do since we were not allowed to offer many of the amendments that really, really were coming up. So what I will be able to do then, hopefully, is find a way to get people's attention as to how patched together this is, how uncertain many of us are, and the concerns we have.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired. All time has expired.

The question is on the amendment offered by the gentleman from Texas, Mr. PETE GEREN.

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in section 2 of House Resolution 109.

AMENDMENT OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. 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 Mrs. SCHROEDER: Page 11, strike lines 17 through 24, and redesignate succeeding sections accordingly.

Page 17, line 25, insert ''and noneconomic'' before ''loss''.

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Colorado [Mrs. SCHROEDER] and a Member opposed will each be recognized for 10 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this amendment I have called the family values amendment, and I think it is very critical. I was very pleased when I offered it in the committee that it had a very large vote, and we had votes from both sides of the aisle.

Americans value this families. We talk family values. Here is a chance to put our money where our mouths are, because under this bill noneconomic damages are discriminated against very, very much, and I do not think that is fair.

Noneconomic damages mean if you do not get a paycheck, you do not count. So the fact that you were staying home and taking care of your family, no matter which parent you are, that does not matter. That is noneconomic damages. You do not count.

Let me tell my colleagues, every parent is a working parent, whether they are working in the house or out of the house, so I think that is ridiculous.

Second, if you are a child obviously you are not getting a paycheck, so that does not count.

Third, if a woman is working outside the home, they are still, unfortunately, very apt to be discriminated against, so any paycheck they would get still reflects the discrimination we have in society.

Finally, one of the areas I feel strongest about is the whole area of people's reproductive organs, because we have seen so many problems in this area in the past, with the Dalcon shield and all sorts of other issues that people are more and more familiar with. If we do not deal with this noneconomic damage issue in this bill, then we are really saying those do not matter. And we will not have joint and several liability on those issues, which means even if you get some kind of a judgment, it is very apt that you will not be able to collect it, you cannot collect it nearly as easy as you can with economic damages.

And this bill discriminates on punitive damages by not allowing noneconomic damages to count. So we are really saying you are only valued for your paycheck. There is no other value to you, and any other value that you have, whether it is about your reproductive organs or not, it does not count.

The CHAIRMAN. Does any Member seek recognition in opposition to the amendment?

Mr. HYDE. Mr. Chairman, indeed there is. I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment offered by the gentlewoman from Colorado eliminates the protection against disproportionate liability for subjective, nonmonetary losses and weakens the protection of the punitive damages cap. For these reasons I urge the defeat of the pending amendment. It was offered in committee and was defeated in committee.

Section 107, in the interests of fairness, protects a defendant from being held liable for noneconomic losses that are attributable to the fault or responsibility of another individual or entity. The concept of a defendant paying for its own proportionate share of fault or responsibility sounds self-evident to most people. Many States, however, give expression in their law to the principle of joint and several liability, which in its unrestricted form means that a party with relatively nominal responsibility, perhaps 1 percent, can be held liable for the fault attributable to the others, perhaps 99 percent.

The result of the principle of joint and several liability is that litigation imposes severe risks for solvent businesses, often necessitating excessive settlement offers, increasing liability insurance costs, and making goods more expensive for consumer. All of these factors have negative implications for our competitiveness in international markets and our ability to keep enterprises, with all of the jobs involved, in the United States.

Section 107 essentially is a compromise between the principle of joint and several liability with its disproportionate attendant costs, and the concept of liability limited to degree of fault or responsibility. Under section 107, a defendant can only be held liable for noneconomic losses in proportion to its share of the total fault or responsibility, but can continue to be held liable to the extent authorized by State law for economic losses that exceed its proportionate share.

This bill does not impinge on the rights of claimants to recover noneconomic damages from a defendant for the harm it inflicts, but appropriately safeguards one party from having to pay for the harm others inflict. Disproportionate liability for noneconomic damages not only is unfair, but results in expenses that are passed on to all Americans.

I strongly recommend defeat of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I just wanted to quickly answer my chairman. If joint and several is so terrible, then joint and several liability should be removed for both compensatory and noneconomic damages, and it is not. They are keeping it for one and taking it away for another, which is saying that family values do not count.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, if I understand the focus of the gentlewoman's amendment, this bill as written discriminates against the young child who has a limb severed or is decapitated, really, as a result of playground equipment, a senior citizen who is burned horribly in a fire with a defective heater, a student who is exposed to toxic substances and is impaired for life, a homemaker, be that male or female, but usually it ends up being female, a woman who is at home providing for her family but not a wage earner at that time? All of these people are treated as second-class citizens under this piece of legislation unless the gentlewoman's amendment is adopted.

□ 1245

Mrs. SCHROEDER. The gentleman is absolutely correct. That is why we call it family values. I think we respect something besides just a paycheck.

The paycheck is raised to a much higher level in this bill. It is going to be much easier to collect if you can show a paycheck. If you cannot, then you do not get the options of joint and several liability, you do not get the punitive damages. You are in real trouble. Those are the people that we are saying that do not count. We say, ''We like you, but good luck getting any damages on that.''

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a valued member of the committee.

Mr. SENSENBRENNER. I thank the gentleman for yielding.

Mr. Chairman, this amendment is a killer amendment, and it is a killer amendment because it goes back from the principles stated in the bill that the party who is at fault pays and the party who is not at fault does not pay.

The bill provides for several liability for noneconomic losses. That means that if a person or a party is determined by the jury to be 1 percent at fault, that party will pay 1 percent of the noneconomic losses, not 100 percent, if the party who is found more negligent by the jury ends up not having any assets or not having any insurance to pay for the judgment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I have a limited amount of time. I think it is only fair, the gentlewoman from Colorado, that the opponents use their time to lay out the case and not horn in on the opponents' time and take all of the time in support of it.

Second, what the gentlewoman from Colorado's amendment also proposes to do is to limit the cap on punitive damages. Punitive damages are not compensation for anything. It is designed to be punishment for the party or the parties that are at fault. And the bill provides an elastic ceiling on punitive damages of $250,000, or three times the actual damages, whichever is greater.

So if there is more than $83,000 or $84,000 of actual damages, then the punitive damages cap goes up.

Punitive damages are not compensation for anything, whether it is an economic loss or a noneconomic loss.

So the gentlewoman is now trying to increase punitive damages awards, which will end up, of course, enriching not only a plaintiff for not what they actually lost but also manufacture's attorney.

I would hope, for these two reasons, that this killer amendment would be defeated.

Mrs. SCHROEDER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentlewoman for yielding this time to me.

Mr. SENSENBRENNER, as we all know, the purpose of punitive damages is to deter manufacturers of dangerous products from being willing to put the dangerous products on the market because they might hurt somebody.

As we all know, because we are all human beings, some companies have done this, there will always be someone willing to do that, and we want them to be afraid to do it because if they do do it, they could get socked with punitive damages. That is the purpose of punitive damages.

You are taking these out of the bill. Basically, you are saying the cap on punitive damages is $250,000, which is not enough to frighten any major company, or three times earnings.

Once again, this is a bill basically for rich folks and it is bill that is going to hurt poor folks, poor working people. Why? Because under the Republican bill, you could get three times your economic damages for punitive damages. So, for a wealthy fellow who is making a lot of money, it is going to be three times a whole lot of money. But for a working person who is not making very much money, it is going to be three times not much, even though they both lost the same thing—that is, their ability to live a normal life and to make a living for their families.

So the rich are going to get plenty of money under your bill, the poor folks are not going to get much at all.

Or the regular folks, the working folks, the retired folks, or women who work in the home, for example, who cannot show great economic loss because they cannot work anymore, they are going to get very little. Your friends are going to get a whole lot. Why? Because your friends make a lot of money.

That is the bill you brought out to the House here today.

In 1966, 24 American young men were killed playing football. In 1990, none were killed playing football. Sports Illustrated reported that that is because of the fear of the manufacturers of football equipment that if they did not make the stuff safer, they would get sued and get a punitive damage award.

You are taking the punitive damage awards out of this bill, for all practicable purposes. You are saying the cap is $250,000, or three times economic damages, and you know that for 99 percent of the American people economic damages will not amount to very much. Well, they certainly will not amount to enough to deter one of these big companies from putting a bad product on the market.

I urge a vote for the amendment of the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. HYDE. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. I thank the chairman for yielding this time to me.

Mr. Chairman, let me say first of all that I hope we could have avoided some of the class war rhetoric that we have heard in debating this legislation. The fact is that in many cases in Europe, for example, where they probably have the safest automobiles in the world, there is no provision for punitive damages over there. The fact is that the American automobile manufacturers could not have child safety seats for about 7 years after Europe had introduced them because of the concern for product liability suits over here.

I suspect there are a number of young people who were killed in auto crashes before these child restraint seats were made available in the United States because of the fear of excessive litigation in this country versus Europe.

The idea behind our system was to make the plaintiff whole. It was basically to provide that the plaintiff be made whole. That is whole system that we talk about. Joint liability was created as a risk distribution insurance mechanism to insure that valid claimants would receive at least some compensation. However, no insurance program, not any workers' compensation program in any State, provides benefits or coverage for noneconomic damages.

The voters of California passed a State initiative in 1986 which eliminated joint liability for noneconomic damages. California trial attorney Suzel Smith, who practices for both defendants and plaintiffs, testified twice last year in the Senate that the elimination of joint liability for noneconomic damages in California has been fair and that there has been no effort to repeal or modify the law.

I think it is fundamentally unfair to have a situation where you have got a defendant who is found to be 1 percent responsible and yet, because they may have deep pockets, they will get 100 percent of the judgment.

Mrs. SCHROEDER. Mr. Chairman, I now yield 2 minutes to the distinguished gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. I thank the gentlewoman for yielding.

Mr. Chairman, we have already heard the outrage that this bill has, by discriminating against children, retirees and homemakers who may lose limbs, suffer blindness or others, without the economic loss. And they do not receive the same kind of treatment under this bill as someone with a big fat paycheck.

I want to talk a minute about joint and several liability. Mr. Chairman, we have heard the scare tactics of 1 percent fault having to pay the full damage. Well, Mr. Chairman, the majority saw an amendment proposed that would have said that only those with a substantial amount of participation, 20 percent, would be forced to pay the full freight, not those with 1 percent. That amendment was ruled out of order.

Mr. Chairman, if we have a situation where there is a problem with the design and the manufacture and the possible misrepresentation at sale, why should the victim have to sort all this out, getting three separate verdicts and having to chase down three separate defendants?

The fact is that in the business community you can insure for that loss and apportion it before it happens, and you ought not have to have that done by the defendant.

Mr. Chairman, there is a case, Gray versus Dayton Hudson Corp., where the manufacturers of children's pajamas had a product that the court found the manufacturer was uniquely aware that the product was flammable. The court noted that the pajamas in question burned almost as quickly as newsprint.

Mr. Chairman, this company could have, economically, feasibly treated the pajamas so they would not burn. This company would benefit if this amendment were not passed.

Children sleep safely tonight, Mr. Chairman, because punitive damages removed these from the market.

Let us not turn the clock on consumer protection.

Mr. HYDE. Mr. Chairman, does the gentleman from Illinois have the right to close debate?

The CHAIRMAN. The gentleman is correct. The chairman of the committee has the right to close.

Mr. HYDE. I have only one speaker left, Mr. Chairman, and I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I must say this has been frustrating because we have not been able to have a debate and all the artificial time limits on here have made this all really kind of a charade.

When you listen to people stand up and talk about how terrible it is we have punitive damages, there are no punitive damages and punitive damages are terrible. OK. But this bill does not do away with punitive damages, it just leaves it for economic interests. So if you guys think punitive damages are so bad, then be fair and do away with all of them. But you are leaving them for your fat cat friends. If you happen to have a paycheck, you get

economic damages and punitive damages. If you do not have a paycheck, if you are a child who has been burned by pajamas, it is tough bunchies, you do not get anything because they just burn a child who is not worth anything because a child is not working and does not have a paycheck.

Listen to what the gentleman from Virginia is saying. If that were your child, America, you would be angry.

Now, if we are going to do away with all punitive damages, fine. But this bill does not do it. It puts a fence around wage earners and fat cats, and it allows them joint and several liability. You heard the gentleman from Wisconsin saying how terrible joint and several liability is. Yes; this does not do away with it, it just limits it to people with a paycheck. So if you have a paycheck, America, we love you. If you have a paycheck, you get both joint and several liability, which means even if they are only 1 percent liable, they will pay your whole paycheck. And you also get punitive damages. But if you do not get a paycheck, you are nothing.

So, if you are staying home taking care of your children, you do not get punitive damages and you do not get joint and several liability. If you are a child, you do not get that. If you take a drug and it ruins your reproductive organs, too bad. If you are caught up with breast implants, too bad. On and on and on.

I thought in America we had a few values left for things other than just paychecks. So, before you listen to this rhetoric that, ''That is right, we don't need punitive damages and we don't need joint and several,'' you are not getting the whole picture. This does not do away with those. It only does away with those for noneconomic damages. If you vote ''yes'' on this amendment, you will have a level playing field.

Mr. Chairman, this amendment can be called the family values amendment, because it amends two provisions in this bill that have the effect of discriminating against families and family values.

When I offered this amendment in committee, although it failed narrowly, it received votes from both sides of the aisle. This amendment should receive bipartisan support from everyone in this body who believes, as I do, that we Americans value our families more than their jobs, and that our ability to have children is more valuable than any paycheck could ever be.

Without my amendment, the bill before us today will establish into law the notion that the paycheck is valued more in our system of civil justice than our families, and our right to bear children. The bill divides compensatory damages into two categories, economic and noneconomic, and says that the type of loss that includes our paychecks—wages that a victim loses because of an injury—are to be given first class treatment, while family-related losses, including loss of reproductive capacity, are to be given second-class treatment. My amendment would make sure that economic and noneconomic losses are treated equally for purposes of joint and several liability—which in many cases means the difference between collecting or not collecting your damages. My amendment also makes sure that all compensatory damages could for purposes of calculating the cap on punitive damages, and not just economic losses. Noneconomic losses reflect real injury, and that is no reason to give them second-class status.

The two-class system of justice this bill would establish hurts women and children in several ways. First, because of the enduring wage gap between women and men in the workforce, any provision that gives preferential treatment to ''economic'' losses, and gives second-class treatment to ''noneconomic'' losses, will have a disproportionately harsh impact on women, as well as on children and lower-income workers. This second-class treatment will be particularly evident in the case of women who are housewives, and women who are staying home with their children, because the damages they suffer are strongly weighted toward ''noneconomic'' losses.

The second way this bill devastates families has to do with reproductive harm. Many of the most infamous, dangerous products ever sold have been products like DES and the Dalkon Shield that inflicted terrible reproductive injuries upon their victims. DES exposed approximately 10 million women and men to reproductive damage. The Dalkon Shield caused injuries to the reproductive systems of thousands of women. Accutane, an anti-acne medication, caused birth defects when women used it while they were pregnant.

Harm to the reproductive system is an extremely devastating form of loss. I feel very confident that if you surveyed Americans about whether they would consider the loss of their reproductive capacity to be of less importance to them than the loss of wages, you would find very few people who would say, as this bill does, that lost wages are more highly valued than loss of reproductive capacity. Yet, unless my amendment is adopted, this bill will write into the law of this land that lost wages are deserving of better treatment under the law than is loss of reproductive capacity.

Mr. Chairman, this amendment is truly a family values amendment. It makes sure that our justice system values the family as much as it values the paycheck. It eliminates the harsh, discriminatory impact this bill has on women, children, and lower income individuals. I urge the adoption of this family values amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 3 minutes to close debate.

Mr. HYDE. Mr. Chairman, we have heard for the last 2 days capping noneconomic damages and liability suits would hurt women. The reason given is that women stay at home, so juries cannot calculate economic damages for them in the way they can for men who work. This is a strange argument, even a bizarre argument, coming from women who have spent their political careers telling us the traditional family is dead and we had better get used to it. I never thought I would hear the gentlewoman portray an ''Ozzie and Harriet'' view of America.

The facts are, in fact, just the opposite. Many women now, of course, work. There is no problem in calculating the economic damages there. But even more striking, juries now regularly calculate what the market value of a woman's services to a household would cost on the open market. Every woman has done this calculation in her head. I dare say the gentlewoman from Colorado has: chauffeur, cook, nanny, housecleaner, manager of the family budget, child care professional; the list goes on and one.

I am told that when juries make this calculation, they regularly come up with six figures; in other words, more than what most families make through their jobs. Juries respect and honor the economic role of women, including homemakers.

Mr. Chairman, I am amazed that those in this Chamber who have been so self-righteous for so long about their role in defending women would make arguments that essentially demean the role of women in our society.

This amendment severely weakens the much-needed punitive damages reform.

☐ 1300

It will undermine the punitive damages reform contained in the bill by lumping in highly speculative, noneconomic damages such as pain and suffering, and emotional distress, into the basis for determining punitive damages. This will result in a continuation of inflated punitive damages awarded, exactly what this bill is seeking to contain.

Mr. Chairman, I respectfully request my colleagues to vote no on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. Of course, I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Would the gentleman like to talk about children? Would he like to talk about the elderly? Would he like to talk about——

Mr. HYDE. I am one of each.

Mrs. SCHROEDER. Reproductive organs?

I also think the gentleman knows that economic damages for women in the workplace are very severely limited—who are not in the workplace, and I think——

Mr. HYDE. Reclaiming my time, Mr. Speaker, I respectfully disagree with the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

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

RECORDED VOTE

Mrs. SCHROEDER. 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 247, not voting 8, as follows:

[Roll No. 219]

AYES—179

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

NOES—247

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
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
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—8

Boehner
Gibbons
Istook
LoBiondo
McCrery
Pelosi
Rangel
Watts (OK)

□ 1320

The Clerk announced the following pair:

On this vote:

Mr. Rangel, with Mr. Watts of Oklahoma for against.

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

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. PELOSI. Mr. Chairman, I was unavoidably absent for rollcall No. 219, the amendment offered by the gentlewoman from Colorado, Mrs. SCHROEDER. Had I been present I would have voted ''aye''.

I support the Schroeder amendment which would strike from the bill the section which abolishes joint and several liability and would modify the bill's cap on punitive damage.

As written, this bill will discriminate against women, children, and the elderly by placing greater value on economic losses over noneconomic losses. Similarly, placing a cap on punitive damages awards also discriminates against these groups.

Women, for example, will suffer because noneconomic losses such as reproductive capacity and physical disfigurement are much harder to qualify than annual earning capacity. In addition, women's earning capacity is historically and currently less than men and would be punished by this bill.

The Schroeder amendment acknowledges this legal discrimination and deserves our support.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. 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. HYDE: Page 12, strike lines 8 through 11.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, every State has statutes of limitation that prescribe the period of time within which a law must be brought. Similar but not identical is a statute of repose. Statutes of repose specify the period of time after which a manufacturer may not be sued for an alleged injury caused by its product. Consequently, a statute of limitations specifies when an existing right to bring a suit expires, while statutes of repose specify the period of time after which no right to sue will be recognized at all.

Seventeen States have enacted statutes of repose, but they vary in length and in their applicability to various products. A uniform statute of repose is needed in order to provide certainty and finality in commercial transactions. Section 108 of H.R. 956 would establish a 15-year Federal statute of repose in product liability cases. Thus, a product liability action against a manufacturer would be barred 15 years after the date of first delivery of the product.

To be fair to plaintiffs, the provision would not apply in instances involving a latent illness—a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product. In addition, the statute of repose does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved where the express warranty given was longer than 15 years.

This legislation is similar to legislation that passed the Congress last year known as the General Aviation Revitalization Act of 1994 (Public Law 103–298). That Federal statute created an 18-year statute of repose for general aviation aircraft.

Section 108 is intended to reflect the view that, after a reasonable length of time, manufacturers should be free from the burden of disruptive litigation and potential liability. It recognizes that difficulty that exists in locating reliable evidence and defending claims many years after a product has been manufactured. It also prevents the unfairness that occurs when manufacturers are held liable for goods that have been beyond their control and subject to misuse or alteration, perhaps for decades. A statute of repose also helps to avoid the possibility of juries unfairly imposing current legal and technological standards on products manufactured many years prior to suit.

Even though manufacturers of older products frequently are successful in defense of these lawsuits they nevertheless must invest time and money into legal and transactional costs. These costs are wasted costs that could be better applied to create jobs and assist American companies in competing globally.

My amendment is aimed in ensuring that this statute of repose section does what it is intended to do. As part of the effort to combine the Judiciary Committee's legal standards bill with a product liability measure reported by the Commerce Committee, new language was inserted into the statute of repose section. It says ''(T)his subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical losses.'' Though unintended, this new language could effectively render the statute of repose provision useless.

My amendment is directed at deleting this one sentence because it would create a giant loophole for trial lawyers and would reverse the work of both committees in seeking a fair and effective statute of repose. Under the language I would strike, all a trial lawyer would have to show—to avoid the statute of repose—is that his client did not receive or was ineligible to receive full compensation for medical expenses. So, if there was any insurance copayment provision, if there was any insurance deductible, if reimbursed medical expenses are limited in any way, such as ordinarily and customary expense limitations—the statute of repose might not apply. Once the statute of repose is successfully evaded, a litigant could then seek additional economic damages, noneconomic damages and punitive damages. This is certainly not the result that the Judiciary Committee intended.

Unless this sentence is stricken, it will prompt further lawsuit abuse. Under this exception language, a manufacturer seeking to invoke the statute of repose would first have to litigate the issue of whether or not a claimant has received full compensation from medical losses. That is, has every medical test, prescription, bandage or Band-Aid been fully covered by insurance? This loophole would encourage a plaintiff to continue to claim medical expenses for as long as possible and to the maximum degree possible, so as to prevent full payment from triggering the statute of repose and its protections.

It is important to point out that the European Economic Community has a 10-year statute of repose with no such language contained within its provisions. Japan has a 10-year statute of repose with no such language. Again 17 States currently have statutes of repose, none has language like this in it. No such language was contained in the General Aviation Revitalization Act.

This language is an unwise, unfair and unworkable addition to an otherwise good strong and effective statute repose section. It must be removed if this House is to have the opportunity to vote for a statute of repose that really helps American manufacturers and encourages American productivity.

I strongly urge the adoption of my amendment. It will ensure that section 108 will be effective and provide manufacturers with the kind of certainty and finality that they deserve.

The CHAIRMAN. Is there a Member in opposition to the amendment?

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

The CHAIRMAN. The gentleman from California is recognized for 10 minutes.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, will the chairman of the committee respond to a question? Mr. Chairman, I would ask, the language in the bill is changed in one of the sections. I ask a question during the hearings as to whether or not asbestos cases would be exempted from this bill. In committee I was told that asbestos cases would not be affected by the passage of this bill.

With the change and with this amendment, is that still the case?

Mr. HYDE. Mr. Chairman, if the gentleman will yield, this amendment does not change that.

Mr. SCOTT. So asbestos cases are not changed as a result either of the amendment or the passage of the bill?

Mr. HYDE. That is correct.

Mr. BERMAN. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, we are dealing here probably with the only amendment I think on the status of repose. When I saw the language as it came out of the two committees and was reintroduced in this new bill, H.R. 1075, I said, well, this is not a bad effort. We are federalizing the product liability law in this one title. We will not even talk about what we are doing in the rest of the bill. We are providing the manufacturers with a certainty in terms of the amount of years. We are exempting it based on an amendment that the gentleman from Illinois, the chairman, accepted in committee for express warranties. If we could just get the Bryant amendment, to deal with a manufacturer who intentionally conceals problems with his product. We have a provision in the bill that says this subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

I thought with the addition of the Bryant amendment, which the Committee on Rules prevented him from offering, you could have a reasonable statute of repose as part of this federalization of the product liabilities scheme.

Lo and behold, the Committee on Rules does not grant Mr. BRYANT'S amendment, but instead grants an amendment that says when the person is injured by the defective product, if it occurs after the period of the statute of repose, even if he has no insurance, no other way of paying any of his medical bills, we are going to put him off on the county, put him into indigency, make him go on the dole in order to pay for the injuries which he suffered, which could be very extensive, because of this amendment.

□ 1330

What you looked like you were giving, you now, in substantial part, have taken away with this amendment. I think this is the wrong amendment. I am surprised that gentleman is offering it. It was a balance, it was a nice balance to the proposal. It is being totally thrown out of whack.

Mr. HYDE. Mr. Chairman, I yield myself 30 seconds.

I am equally surprised that the gentleman is opposing this amendment. The language I seek to strike was not in the bill in our committee. It was put in by the Committee on Commerce, and I think upon mature reflection it undoes the purpose of the statute of repose. It would leave it open-ended, almost impossible to predict or fulfill, and, therefore, if you are for a statute of repose, I should think you would be for having it a definite, time-certain.

Mr. BERMAN. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, it is a balance. We are not talking about punitives. We are not talking about pain and suffering. We are not talking about wage loss. We are talking about the medical bills this injured person has to pay to get treatment. In this small set of cases, which side do we come down on? Do we come down on the manufacturer of the machinery, the product, or do we come down on the side of plaintiff who has no medical insurance, who has no way of paying his medical bills?

Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, a moment ago, the gentleman from Illinois [Mr. HYDE] talked about the European Community statute of repose. As always, the other side likes

to quote sources for their purposes but leave out the more relevant facts about the sources that might say something about the other side. The European Community provides cradle to grave medical care for all of its citizens. We do not do that in the United States. So the statute of repose which says that after 15 years you cannot sue somebody for making a defective product has a provision attached to it that says that does not count if the person would be made unable to get their medical care paid for.

Only if they have been able to cover their medical care does the manufacturer have a defective product escape liability 15 years after it is manufactured. It is a great irony. The gentleman from California [Mr. BERMAN] referred to it a moment ago. Of all things, we ask for time to offer amendments to make an extremely unreasonable bill a little more reasonable. They do not grant time on the reasonable amendments. They grant time to the chairman of the committee, who could have written the bill any way he wanted to, to make the bill worse for the average person.

A 15-year statute of repose is a new addition to American law. We have one reasonable exception in here. It does not stop a guy that manufactured a bad product that blew up and hurt somebody from being held liable unless the victim gets their medical care taken care of. The gentleman from Illinois [Mr. HYDE] would say, forget the victim. It does not matter whether he gets his medical care taken care of or not. After 15 years even if the product was totally defective, totally responsible for hurting or killing somebody, you are not going to be able to recover anything.

I think that is absurd. It is, in my view, completely opposite of what the American people would want us to be doing.

I had an amendment which was designed to make this statute of repose a little more workable and a little more reasonable. What it would have said is, OK, we have a 15-year statute of repose. At the end of 15 years, you cannot sue somebody even if their product is defective unless that person who made the product knew the product was defective at the time it was made. In that case, they do not get the benefit of the 15-year cutoff. But the Republicans would not let us offer that amendment today. Instead they let the gentleman from Illinois [Mr. HYDE] offer an amendment that says, too bad if you cannot cover you medical care. After 15 years, you are out of luck.

Unfortunately, for you so-called conservatives, you phony conservatives on the other side, what that is going to mean most of time is that taxpayers are going to have to pay for that guy's medical care while you let your rich friends off the hook.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute. The gentleman objected last night to mentioning the American Trial Lawyers. You thought that was an invidious comparison. I did not yield to the gentleman. I did not yield to you.

The gentleman has no problem attacking us and linking us with rich friends and that sort of thing. The gentleman ought to do and practice what he preaches.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I rise in support of the Hyde amendment. The statute of repose currently in H.R. 956 has been threatened by language that has been added to the bill after it left the Committee on the Judiciary that has created a giant loophole in the statute of repose. This one provision in the law says that unless, unless all possible damages or health care is met by the insurance policy or by the health care program, that the statute of repose will not be effective. There are no insurance policies that provide that kind of protection.

Certainly the Federal policies that many of us are under do not provide that kind of protection. It gives the trial lawyers a giant loophole that will enable them in almost every instance to open up the issue of whether the statute of repose is to be effective or not.

The loophole will prolong litigation because we will first have to try the issue of whether all the possible damages, health care needs have been met before we ever go on to the basic issue that is involved, the language that will destroy one of the major goals of the product liability reform legislation in having finality of an issue 15 years after the product was issued.

The Hyde amendment is supported by many national organizations. It is necessary to make this bill effective.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Chairman, there is considerable irony in the fact that the distinguished chair of the Committee on the Judiciary should lead off the presentation of this amendment by pointing to the example of what 17 States do with their statutes of repose, because the whole theory of this bill is to junk States' rights.

If the people in Illinois in their constitution want a statute of repose with or without this, I say that is fine. If the people in Texas want it, that is fine. It is not our job to come along and junk States' rights and say, you have to do it the way we say do it in Washington. That is what is the theory and the approach of this bill, is not to rely on the States but rather to consider and argue and to contend that we have this terrible patchwork of States' laws that pose a great burden.

There was a time in this country, my colleagues, when that terrible patchwork that is criticized here on this floor today was called something a little different. It was called the laboratory of democracy, the fact that each State might look at the laws of its civil justice system and decide what is most appropriate. And it is that laboratory of democracy with reference to our State civil justice system that is being thrown out the window of this capitol building by this piece of legislation.

There is a second problem, of course, alluded to by my friend, the gentleman from Texas [Mr. BRYANT]. And that is that this amendment takes a blame the victim approach. The problem here with this whole statute of repose is that it allows every manufacturer in America, and that is really all that the section does, to write on its product after 15 years, do not look to us, buddy. It says, we will not be responsible no matter how defective our product for anything after 15 years.

And that would be fine and proper, except for the fact that they allow the manufacturer to do that in invisible ink. The same manufacturer can advertise on the Home Shopping Network this afternoon that you get a lifetime guarantee with our product. Indeed, you do. It is just that you do not get any right to recover after 15 years. So there is no burden placed on the manufacturer to identify the fact that in invisible ink we have limited the rights of the victim.

I say blame the victim because the choice with this specific amendment is between those who put defective products in the stream of commerce throughout this country and those who do not have the insurance even to cover their own medical bills, because that is what this very good language took care of.

One of the problems in the consideration of this entire week's legislative work in this Capitol is our failure to listen to the victims, to the people that have lost life and their family, a limb, those people have been excluded in this debate.

The CHAIRMAN. The gentleman from California [Mr. BERMAN] has 30 seconds remaining, and the gentleman from Illinois [Mr. HYDE] has the right to close debate.

Mr. HYDE. Mr. Chairman, I yield 30 seconds to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Let me respond, first of all, there is an expressed warranty provision in that that would cover the situation the gentleman mentioned. Let me say to my colleagues that when working on the statute of repose, we were looking for a particular length of time for the statute of repose. we found, to our amazement, that the longest statute of repose of any State is the State of Texas, the Lone Start State. And basically the statute of repose that is in this statute or in this bill copies almost word for word the Texas statute.

Mr. BERMAN. Mr. Chairman, I yield myself the balance of my time.

Let the body just remember, the product liability bill that the Committee on Energy and Commerce over several years has been passing and promoting on a bipartisan basis, the one that the gentleman from Ohio [Mr. OXLEY] always supported, was a product liability bill limiting the statute of repose to capital goods and providing 25 years. This is any product, any manufactured product, any manufactured product 15 years. And now you are taking out the medical benefit.

Mr. CHAIRMAN. All time in opposition to the amendment has expired. The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield such time as me may consume to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee, to close debate.

Mr. SENSENBRENNER. Mr. Chairman, I think to close debate it is important for us to focus on what a statute of repose is. A statute of repose is a limit during which period a lawsuit can be filed alleging negligence in the manufacture of that product.

The statute of repose here that is proposed is 15 years. That means that the product will have to be on the market and be used for 15 years, during which period of time a lawsuit can be filed and the manufacturer exposes himself to liability.

Is not 15 years long enough? If the product is defective, should not that defect become apparent within a 15-year period of time? I think the answer to that question is yes.

The gentleman from Ohio [Mr. OXLEY] has correctly stated that the 15-year statute of repose that is proposed in this bill is the longest of the State statutes of repose. So by federalizing this issue, we are in effect extending the time for which lawsuits can be filed in most States.

The amendment that the gentleman from Illinois is proposing is one that is very important, and that is taking out this last sentence, which was put in the statute of repose section by mistake, that says that if there is a penny of copayment or a penny of a deductible, then there is no statute of repose whatsoever, no limitation on when the lawsuit can be brought.

□ 1345

That will mean much higher product liability insurance premiums that manufacturers will have to pay. Who pays those product liability insurance premiums? We all do, as consumers, because those premiums are a cost of doing business. They are folded into the cost of the product.

By passing this amendment and establishing a standard of repose, we can lower those premiums, and thus lower the cost to our constituents. I urge an ''aye'' vote.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. SCHUMER

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

The Clerk read as follows:

Amendment offered by Mr. SCHUMER: Page 13, redesignate section 110 as 111 and insert after line 3 the following:

SEC. 110. SUNSHINE, ANTI-SECRECY, CONSUMER EMPOWERMENT, AND LITIGATION AVOIDANCE.

(a) IN GENERAL.—To empower consumers with the information to avoid defective products, court records in all product liability actions are presumed to be open to the general public. No court order or opinion in the adjudication of a product liability action may be sealed. No court record, including records obtained through discovery, whether or not formally filed with the court, may be sealed, subjected to a protective order, or otherwise have access restricted except through a court order based upon particularized findings of fact that—

(1) such order would not restrict the disclosure of information which is relevant to public health or safety; or

(2)(A) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(B) the requested order is no broader than necessary to protect the privacy interest asserted.

No such order shall continue in effect after the entry of final judgment or other final disposition, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) or (2) have been met.

(b) BURDEN.—The party who is the proponent for the entry of an order, as provided under subsection (a), shall have the burden of proof in obtaining such an order.

(c) AGREEMENT.—No agreement between or among parties in a product liability action filed in a State or Federal court may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such product liability action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(d) INTERVENTION.—Any person may intervene as a matter of right in a product liability action for the limited purpose of participating in proceedings considering limitation of access to records upon payment of the fee required for filing a plea in intervention.

The CHAIRMAN. Pursuant to the rule, the gentleman from New York [Mr. SCHUMER] and a Member opposed will each be recognized for 10 minutes.

The Chair assumes the gentleman from Illinois [Mr. HYDE] will manage the time in opposition to the amendment.

The Chair recognizes the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I yield myself 3 minutes and 15 seconds.

Mr. Chairman, I have been so used to open rules that I have forgotten how a closed rule functions.

Mr. Chairman, if there ever was a commonsense legal reform, this amendment is it. Every year hundreds of manufacturers who know their products are dangerous hide behind court secrecy orders to conceal the truth from the American public.

As a result, thousands of innocent, men, women, and children are maimed, poisoned, injured, and even killed simply because they never learn the truth. The truth and their fates are sealed in secret by lawyers behind closed doors. In some cases, secrecy order follows secrecy order, year after year, while the list of mutilated and dead grows longer and longer.

Let me just give one case, because this has been so much a battle of the anecdotes, that shocked me. It ought to shock everybody.

There is no more innocent activity than little kids going out to play. Yet, for over 13 years, an equipment manufacturer of playground equipment sold a merry-go-round that it knew was causing serious injury to scores of small children, mostly around 5 or 7 years old, children like little Rebecca Walsh, who had two fingers chopped off; like Larry Espinosa and Dale Lukens, whose bones were crushed; other children who had their hands and feet cut off. These kids were hurt and their lives forever twisted.

In spite of dozens of lawsuits against the manufacturer, because those lawsuits were settled in secret, the parents of these kids never had a chance to protect their children, and their children never had a chance to grow up whole.

The sad truth is that the history of product liability litigation is full of cases like that.

Mr. Speaker, I do not know what goes on in the minds of the men and women who sell these products, even after they know they are killing and injuring innocent people, but I do know one way to stop it. That is to open up the courthouse doors and shine the bright light of day on these dangerous products. That is all this amendment does. I hope we could get bipartisan support it. It bars courts from sealing their orders in product liability cases. It prohibits any other record in a product liability case from being restricted, unless, and there is indeed an exception, the court specifically finds that the order will not restrict information relating to public health or safety, or that some specific secrecy interest clearly outweighs the public interest in disclosing public health and safety.

In other words, there can be sealed orders, but the burden of proof ought to be the other way. When health and safety are at stake, the burden of proof ought to be that the order be open.

Finally, Mr. Chairman, it permits product liability settlement agreements that restrict parties from giving information to regulatory agencies. This is real common sense. I urge my colleagues to vote for this amendment. It is a vote against secrecy, for openness, and for the right of all Americans to know the truth about dangerous products.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think this is a very dangerous amendment. It is one that should be defeated. It would impair litigants' rights to maintain their privacy, protect valuable property interests, and interfere with settling legal disputes.

Massive amounts of private information are produced through the modern discovery process. The amendment requires the court to weigh the value of confidentiality versus the public interest in disclosure. To conduct such a weighing process on every document that is private would indeed weigh the courts down in endless disputes. Disputes over discovery issues would skyrocket, and further clog our courts.

The amendment would restrict judicial discretion in protecting confidential information, and would create lawsuit abuse, not eliminate it. The courts would have to conduct extensive and complex factual inquiries, which could include extensive hearings on and in camera review of thousands of documents. Such in camera review could result in an unfair and prejudicial prejudgment of the case.

This amendment would make it much more difficult to settle cases. It would prevent the mutual agreement between parties on issues of confidentiality, and would result in more contentious trials, consuming more time and attention than ever before.

There is no need for this amendment. The proponents of this amendment may trot out some tragic anecdotes allegedly supporting forced disclosure, but in each case the proponents of this amendment should be asked whether or not such information relating specifically to the alleged defect was not available to the public prior to the protective order, and in many cases, long before the lawsuits were even filed.

There is proprietary information, private information, information that does not belong in the public domain, and the judge now has ample authority to rule on whether this information shall be sealed or whether it should be made public. It is something that is best handled by court rules, not legislation.

Mr. Chairman, I do not know what else to call this but the Ralph Nader amendment, because it would permit any citizen at any time to intervene to get information that it wants, and that may or may not be helpful, but as a rule of law, it is the sort of thing that would obstruct the settlement of cases. It would make people very reluctant to disclose information on a nonconfidential basis.

I would sincerely hope that this gutting amendment would be defeated.

Mr. Chairman, this amendment represents a mischievous effort to compromise confidential information with potential adverse consequences for both businesses and injured parties. The amendment raises a new subject we did not consider in the Committee on the Judiciary.

The amendment can be interpreted as including a flat prohibition on sealing a court order or opinion in a product liability case. This prohibition—in contrast to the prohibition relating to a court record—apparently admits of no exception and may result in compromising trade secrets of American firms if the court order or opinion refers to such secrets.

By providing for public access to material obtained through discovery, we place in the public domain information that may have no relevance to pending litigation. The evidentiary standards for obtaining information through discovery are much broader than those applicable in a trial—a fact that renders inappropriate treating the discovery process like a public proceeding. The need to obtain a court order to restrict public access to records obtained through discovery can be expected to add immeasurably to the transaction costs of litigation—as parties go to court to safeguard the confidentiality of the discovery process. Alternatively, parties to litigation can be expected to resist discovery in order to keep irrelevant material from reaching the public domain. Efforts to avoid discovery or limit its scope may also add greatly to the transaction costs of litigation.

Providing that orders protecting confidentiality do not remain in effect after final disposition unless separate particularized findings are made by the court also complicates and prolongs the litigation process. Courts will be bogged down in considering such matters, and attorneys will invest considerable time and effort at additional costs to the litigants. Consumers will end up paying higher prices because of increased legal fees.

The amendment also discourages settlements by barring agreements between parties that purport to restrict disclosure of information to Government agencies.

Finally, this amendment adds to the costs of litigation—and exacerbates problems of delay—by allowing any person to intervene in a product liability action to participate in proceedings considering limitation of access to records. Although facilitating opportunities for some third parties to intervene in limited circumstances may be justifiable, the unlimited intervention mechanism this amendment establishes needlessly encumbers the litigation process.

Although I am committed to facilitating public access to relevant safety-related information, this shotgun approach to a complex subject is not the answer. Issues of confidentiality implicate not only the public's right to know but also the rights of victims to lead private lives and the rights of American corporations to protect proprietary information from foreign competitors; American jobs may depend on it.

Next week, the Judicial Conference of the United States will be considering proposed changes in rule 26(c) of the Federal Rules of Civil Procedure relating to protective orders. We should not precipitously preempt that process today.

I urge my colleagues to vote against this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SCHUMER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Illinois [Mrs. COLLINS], a coauthor of the amendment and ranking member of the former Committee on Government Operations, which is now the Committee on Government Reform and Oversight.

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Chairman, one of the most questionable, if not unethical practices in product liability suits today is the use of court orders to bar public disclosure of manufacturer's information concerning product safety.

These orders result where, in a claim involving a defective product, the plaintiff's attorney, for example, needs documents and other evidence to establish a claim. Often, the manufacturer-defendant will seek a court order that requires the plaintiff, at the end of the case, to destroy or return to the manufacturer the evidence, without making it public. Since the plaintiff's attorney has a duty to protect the interests of his or her client—as opposed to those of the public at large—that attorney acquiesces to this request and agrees to seek the court order. The agreements are blessed by the court and then the documents are placed under confidential seal. Thus, access to product information comes at a heavy price.

In an interesting book describing litigation of asbestos cases, these bargaining tactics and their consequences that are harmful to the general public were graphically illustrated. After a Federal judge literally locked the lawyers in a room for 16 hours a day, 5 days a week, for 3 weeks, the parties agreed to a financial settlement of certain worker claims. In exchange, the plaintiff's attorneys agreed that whatever evidence they obtained from discovery could not be passed along to subsequent claimants. All papers were then sealed by the court.

One of the plaintiff's lawyers, acknowledging he had made a serious mistake in agreeing to the settlement terms, later said of the court's action:

> As a result, the disposition of Richard Gaze—a company physician—which provided powerful evidence of what the Pittsburgh Corning people really knew about asbestos disease, and when they knew it, remained under wraps for the next 5½ years.

Indeed, during that time period, the company denied to hundreds of claimants that it had any knowledge of this hazard until the mid-1960's, a contention that plaintiff's lawyers obviously could not rebut.

Unfortunately, this is not an isolated case. A serious design defect in the heating systems of Chevy Corvairs, first discovered in the mid-1960's, was not disclosed until 1971 because of a protective order. In another instance, involving the crash of several Pan Am 707's an attorney said that if certain in-house and FAA reports had not been sealed, ''no one would have ever gotten on a Pan Am plane again.'' Similar orders were also entered into in Dalkon Shield cases. The list goes on and on.

It is time we put a halt to these orders, Mr. Chairman. The Schumer-

Doggett-Collins amendment before you would do just that.

Our amendment would prevent the sealing of court records in all product liability actions, except under limited circumstances. Such court records could be sealed only through a court order in those instances in which, first, the order would not restrict the disclosure of information which is relevant to public health or safety, or second, the need to maintain confidentiality would substantially outweigh the public interest in disclosing potential health or safety hazards, and the order would be no broader than necessary to protect the privacy interest asserted.

The benefits of this amendment are numerous. First, it will promote greater public safety. If repeated litigation demonstrates that a product has a serious design flaw, or contains inadequate warnings, the public will be appraised of this information and can take appropriate action. Similarly, liberal disclosure will put pressure on a manufacturer to correct dangerous aspects of a product which might not be changed if the manufacturer could easily avoid the responsibility for its flaws.

The amendment will streamline the litigation process. Parties and courts involved in the trial of subsequent cases over the safety of a product will no longer face timeconsuming and costly discovery procedures. They will not have to re-create the same information or relocate identical documents, starting from scratch. Consequently, attorney's fees will be reduced, and the chose of whether or not to bring a product liability claim to court will not be based on the ability to afford one.

The backlog of cases often faced by courts would be reduced and fairer and more consistent verdicts may result since juries would have the same facts before them.

Mr. Chairman, this issue's importance is reflected by the American Bar Association's recommendations, stemming back to 1986, that courts allow disclosure of relevant product information. The Schumer-Doggett-Collins amendment offers many positive benefits to the public, foremost of which is enhancement of public safety.

I urge support for this amendment, Mr. Chairman. It is time we let the sun shine in on corporate secrecy.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee.

Mr. SENSENBRENNER. Mr. Chairman, I would like to make two points. First, under the present procedure, whether or not court records are sealed is a matter of judicial discretion. I believe it ought to be kept that way. The judge who presided over the case, and assuming that there is a settlement offer that is coming before the court for approval, makes a determination on whether or not sealing the records is a reasonable request, and I think we ought to, in this instance, trust the judges to represent what is in the public interest.

This has to be done on a case-by-case basis. That is not to say that all records should be sealed, but it also is not to say that all records should be open, which is what the gentleman from New York is proposing.

The second problem with this amendment is, I think, what the gentleman from New York is trying to do is to do the work for lawyers in subsequent lawsuits on the same issue. Rather than doing their own discovery and findings out their own facts, they can simply go to the courthouse and rummage through the records that are already on file. Consequently, they end up not having to do as much work.

Mr. Chairman, we all know that most of these types of cases are taken on a contingency fee basis. By opening up the records and not having the lawyers do the work that they would have to do, they are going to end up spending less time, but their fees are not going to be reduced, because the fees are a certain percentage of the amount that is recovered.

For all these reasons, I think this amendment is a bad one, and ought to be defeated.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back 1 minute to the gentleman from Illinois.

Mr. SCHUMER. Mr. Chairman, I yield the remainder of my time to the gentleman from Texas [Mr. DOGGETT], who has been a leader on this issue, and has provided invaluable help and assistance on this amendment.

The CHAIRMAN. Based on the 15 seconds consumed by the gentleman from New York [Mr. SCHUMER], the gentleman from Texas [Mr. DOGGETT] is recognized for 3¾ minutes.

Mr. DOGGETT. Mr. Chairman, the philosophy of this amendment is embodied in the first sentence, which is to empower individual consumers with the information to avoid defective products; court records in all product liability actions are presumed to be open.

The thrust of this amendment is that if we empower people to be responsible, to have the information to avoid defective products, they avoid litigation, and trial lawyers and all the problems that the authors of this legislation say their legislation is designed to resolve.

It is rather shocking to hear a series of contradictions from those who oppose the amendment. First they tell us that we should trust the judges. Mr. Chairman, if we trusted the judges of the 50 States, we would not be here this afternoon with this piece of legislation in the first place. The whole theory of House Resolution 1075 is that this body does not trust the judges of the 50 States, nor the 50 legislatures.

If we are going to address the problem as they see it, as they see fit to do it, why do we not try to do something constructive? That is what this amendment does. It says secrecy is not in the interests of the American people.

In fact, court records across this country, and this is not an anecdote, it is based on fact, court records across this country hide facts that literally kill and maim thousands of people in this country.

Two States have done something about it. The State of Florida passed a statute on the subject, and they have done a great deal to focus a little Florida sunshine, which is what we are trying to copy in this piece of legislation, so people are not deceived by facts that are sealed and hidden away in some dusty file drawer from the people that it could protect.

□ 1400

The second State is my own State of Texas, where we chose to do it by trusting the judges in a court rule of procedure to deal with this problem.

Of course what we do in this amendment does relate to court rules of procedure just as the rest of the bill does in dealing with bifurcation of punitive damages which is a rule of procedure that the majority has not the least bit of concern about interfering with the States on that.

The suggestion that this particular amendment would open all records belies the very words of the amendment. It does not do that. There are legitimate privacy interests in every lawsuit. There are legitimate trade secrets. All that we ask is that the better law of the Federal jurisdictions, the law that prevails I think in most Federal courts today, be codified in this statute as we are codifying other law, and require the trial judge to do what only judges can do if they act in their proper role, and, that is, to balance the interest. Is the public's interest in avoiding more deaths and more injuries? Does it outweigh whatever interest is claimed by the manufacturer?

Let me give Members some specific examples of where this kind of amendment, if it had been the law of this land, would have made the difference and would have prevented the destruction, interference and harm of thousands of lives.

One of these examples is the whole problem with breast implants. In 1984, 8 years before the major crisis over breast implants, there was information available concerning the danger of these implants and it was locked up in San Francisco in a vault, sealed in the first places of this litigation. That information could have been there so that those women avoided those breast implants in the first place. Instead, we have the literal and physical scars on many American women that would have never been there had they known the dangers that were locked up in those file drawers.

Another good example comes from the State of Florida, where it enacted this statute, where one pharmaceutical manufacturer of an arthritis medication actually convinced a court judge to prohibit any of the documents, not from being shared with Ralph Nader

but from being shared with the Federal Food and Drug Administration so that they could do something about it. Indeed, the Food and Drug Administration learned much of the problems with breast implants, not from anything filed there but from what was sealed and secreted away in that vault in San Francisco.

That is the kind of thing that is happening in this country ever single day where people come in with one price to settle a lawsuit if the documents are open and one price if they are sealed.

Of course the person who is facing large medical bills, a serious threat to their earnings stream, many times is encouraged to take the higher price. But somewhere in all this the public interest gets left out. The role that we could play is by empowering citizens across this country to protect their own interests by knowing of the dangers that they face in the marketplace, making an informed decision, not locking this away but opening it up.

I would trust the judge to use this statute as we propose it through this amendment to carefully balance the interest, but to assume and presume that this Government operates best when it operates in the sunshine, when it operates in the open. That is what this amendment is all about, against secrecy, in favor of empowering the people of this country to protect themselves.

It is incredible that it would not be accepted because it represents true commonsense legal reform.

Mr. HYDE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Ohio [Mr. OXLEY], and I ask that the gentleman yield to me briefly.

Mr. OXLEY. I yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentleman for yielding. I would simply like to state the rule 26(c) of the Federal Rules of Civil Procedure has to do with protective orders and it provides the trial judge with authority in an appropriate case to seal documents or not to seal them. I prefer to leave it to the trial judge who is on the firing line and has the case before him or her and can make these decisions based on the type of case, the type of information, the demands of privacy, the embarrassment, the humiliation, the revelation of proprietary information or not. These are tough decisions, they are difficult decisions, and why should we make it for the judge and require the disclosure of these things?

I personally would like to know the formula for making Coca-Cola. I would suggest that has some monetary value. I would suggest the Coca-Cola people want to keep it quiet. In a lawsuit, why require its disclosure, if it is not essential to the litigation?

I yield to my friend, the gentlewoman from Chicago, IL.

Mrs. COLLINS of Illinois. I thank the gentleman for yielding. But, you know, if it were found that there was something in Coca-Cola that was killing folk, I certainly would want everybody to know about that.

Mr. HYDE. I certainly would expect our counsel or the plaintiff's counsel to urge the trial judge to disclose that if it was——

Mrs. COLLINS of Illinois. And I would urge them not to——

The CHAIRMAN. The Chair observes that the gentleman from Ohio [Mr. OXLEY] controls the time.

Mr. HYDE. The Chair is correct. I certainly should not have yielded, but she looked at me and I could not say no.

Mrs. COLLINS of Illinois. I know I have great charm. I thank the gentleman for recognizing it.

Mr. HYDE. I thank the gentleman for yielding.

Mr. OXLEY. Mr. Chairman, I had a judge tell me one time that a poorly settled lawsuit is much better than a well-tried one. I found in my experience that that was the case.

Indeed this provision, if it were to be adopted, the Schumer amendment, would clearly discourage the parties from considering whether that case should be settled. It seems to me that our public policy ought to be encouraging settlements, not discouraging settlements.

Judge Higginbotham, from the fifth circuit, testified on the Senate side as the chairman of the Advisory Committee on the Federal Rules of Practice and Procedure. He testified that his advisory committee had studied this particular idea and had found that no change was needed to the basic approach to the issuance and the use of protective orders.

In particular he stated that the results of these studies had shown that there was no need for these provisions and that they would create more burdensome and costly discovery as well as greater burdens on the court system.

Mr. Chairman, this amendment makes a mockery of our system of justice by allowing third-party special interests unlimited access to private corporate documents.

The gentleman previously had stated that one of the States that he pointed out that had changed the rules was Florida. In Florida, a trial lawyer recently testified that it has resulted in negative and confusing experiences that have discouraged out-of-court settlements.

I would suggest that the reason why 39 out of 41 State legislatures have rejected the type of change that the gentleman from New York would ask for is precisely because it would discourage the ability of companies and people involved in a lawsuit, to encourage them to come to a conclusion and to settle out of court.

I would think the gentleman from New York would want to have these kinds of settlements and not discourage those kind of settlements out of court and having to go to a trial and use up a lot of the resources of the court.

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

Mr. OXLEY. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for his courtesy in yielding.

Does the gentleman not think that if these records were opened, particularly in some of the egregious cases, it would actually reduce litigation because you would not have to go through the same discovery and the same process over and over and over again?

First it would reduce it in that people would not use the product, but second, once they did, it would greatly shorten whatever kind of trial time we would need. Why go over it 100 times?

The only other point I would make to the gentleman is that we are not opening all records. We are just changing the burden of proof when the health and safety, in effect changing the burden of proof when the health or safety of someone is at stake.

I await, I am sure, the gentleman's thoughtful and carefully considered answer.

Mr. OXLEY. Let me just simply respond by saying that Judge Higginbotham's advisory committee that did a serious study on exactly what the gentleman from New York would try to do came to the very solid conclusion as he testified in the other body that it would have a deleterious effect on the litigation system and it would in fact discourage out-of-court settlements. This is somebody who has studied the issue, who has been a Federal judge, a well-regarded Federal judge, and I think that we ought to take his advice very carefully, as well as the 39 out of the 41 States that have essentially rejected the gentleman from New York's recommendations.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCHUMER].

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

RECORDED VOTE

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

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 184, noes 243, not voting 7, as follows:

[Roll No. 220]

AYES—184

Abercrombie	Browder	Costello
Ackerman	Brown (CA)	Coyne
Baldacci	Brown (FL)	Cramer
Barcia	Brown (OH)	Danner
Barrett (WI)	Bryant (TX)	de la Garza
Becerra	Bunn	DeFazio
Beilenson	Cardin	DeLauro
Bentsen	Chapman	Dellums
Berman	Clayton	Deutsch
Bevill	Clement	Dicks
Bishop	Clyburn	Dixon
Bonior	Coleman	Doggett
Borski	Collins (IL)	Dooley
Boucher	Collins (MI)	Doyle
Brewster	Conyers	Duncan

Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
LaFalce
Lantos
Lewis (GA)
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—243

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dingell
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
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
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
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—7

Andrews
Chenoweth
Clay
LoBiondo
Lowey
McKinney
Rangel

□ 1428

Mr. BARTLETT of Maryland changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. LOWEY. Mr. Chairman, I unavoidably missed rollcall vote No. 220. Had I been there, I would have voted ''aye.''

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. 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. CONYERS: Page 13, redesignate section 110 as section 111, and insert after line 2 the following:

SEC. 110. FOREIGN PRODUCTS.

(a) GENERAL RULE.—In any product liability action for injury that was sustained in the United States and that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer, the Federal court in which such action is brought shall have jurisdiction over such manufacturer if the manufacturer knew or reasonably should have known that the product would be imported for sale or use in the United States.

(b) ADMISSION.—If in any product liability action a foreign manufacturer of the product involved in such action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) PROCESS.—Process in an action described in subsection (a) may be served wherever the foreign manufacturer is located, has an agent, or transacts business.

The CHAIRMAN. Pursuant to the rule, the gentleman from Michigan [Mr. CONYERS] and a member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Michigan [Mr. CONYERS].

□ 1430

Mr. CONYERS. Mr. Chairman, this is a very important amendment. I apologize for having such little time.

This amendment makes sure that foreign manufacturers comply with the U.S. Court rules if they choose to have their goods sold in this country, and that includes discovery, which is one of the most important parts of court rules, if there is a lawsuit against a foreign manufacturer.

Our hearings revealed that many times our liability laws are of little use against foreign companies because it is so difficult to obtain jurisdiction over them and obtain discovery of the documents necessary to establish legal liability. And that is why within my 5 minutes I have asked the former chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], and the gentleman from Illinois [Mr. DURBIN] to share this time with me.

Mr. Chairman, I think my amendment will make sure that foreign firms can be brought to justice in this country just as American companies can be.

Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I thank the gentleman for yielding this time to me.

Mr. Chairman, this is a fair amendment. It treats American corporations and foreign corporations in American courts exactly the same way. If you are interested in fairness, this is an amendment to vote for because it says foreign corporations must make the same disclosures in American courts under discovery process that must be made by American corporations.

If you are interested in competitiveness, this is an amendment on which you should vote. The argument for this legislation is that it is going to contribute to competitiveness. Well, if it is going to do so, it should do it fairly and completely. This says that foreigners do not get a greater advantage in dealing with American courts and American litigants than the foreign corporation. It says they have got to make the same discovery. Discovery is absolutely essential to the judicial process. Without fair discovery, there can be no fair judicial process, and without discovery in product liability suits, there can clearly be no discovery.

Without this amendment, what the bill will say is American corporations in court on product liability suits involving perhaps the same matter that might be involved with the litigation by a foreign corporation, have to disclose their whole case, but foreign corporations do not.

If you want American corporations to be competitive in a market in which foreigners sell better than $500 billion

worth of goods, my suggestion is that you should then vote for this amendment. It is fair, it protects American corporations, it contributes to competitiveness, and it is in the interest of the United States.

Vote for the Conyers amendment.

The CHAIRMAN. The Chair inquires, is there a Member who wishes to manage time in opposition to the amendment?

Mr. HYDE. I do, Mr. Chairman.

The CHAIRMAN. The distinguished gentleman from Illinois [Mr. HYDE], chairman on the Committee of the Judiciary, is recognized for 5 minutes.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I oppose the amendment offered by the gentleman from Michigan because it raises significant constitutional and international law questions, represents a serious potential irritant in our bilateral relations with other countries, and raises the specter of foreign retaliation against American firms. For the United States to take unilateral action that is likely to be perceived as overbearing in character and constituting an affront to other nations is shortsighted and counterproductive.

The due process clause of the fifth amendment and principles of international law are implicated when we purport to confer jurisdiction on a U.S. court over a foreign manufacturer based merely on the fact that the manufacturer knew or reasonably should have known that the product would be imported into the United States. The criteria for U.S. jurisdiction in the amendment would even embrace situations where a manufacturer might not want its product imported into this country but knew or reasonably should have known that that eventuality would materialize in spite of its wishes.

The extent to which American statutes apply to foreign nationals already is a point of contention in our relations with other countries. Prudence dictates that we proceed cautiously in this arena rather than act precipitously without adequate consideration. Although the author of this amendment offered another amendment in the Committee on the Judiciary markup relating to service of process on a foreign manufacturer, our committee did not have the opportunity to give any consideration to the proposal now presented to this body.

There are internationally recognized procedures for Americans, litigating matters in the United States, to obtain relevant information or material from foreign countries. These procedures involve going initially to an American court—with the discovery request eventually being presented to the appropriate foreign court.

Many countries react negatively to U.S. discovery procedures—and efforts to give extraterritorial effect to discovery orders of U.S. courts, by deeming failure to comply as an admission, fail to show appropriate deference to the sensibilities and prerogatives of other countries. Our own discovery practices have been subject to severe criticism even within the United States—and efforts to export them in circumvention of the courts of a foreign country are unjustified. The extent to which failure to furnish material is deemed an admission under proposed section 110(b) is overbroad, in any event, because the admission embraces any fact with respect to which the discovery order relates even though the testimony, document, or other thing that is sought may turn out to be irrelevant.

The potential for foreign retaliation cannot be overlooked when we contemplate the possibility of foreign countries taking the position that American firms must respond in foreign courts—under foreign law—when the particular product is sold or used there.

The new proposed section also raises significant interpretive problems when we try to give content to the term ''foreign manufacturer.'' U.S. manufacturers, for example, often have affiliates in other countries that manufacture component parts. The ambiguity of the reference to foreign manufacturer in proposed section 110 undoubtedly would precipitate much litigation.

It makes much more sense, in my judgment, to place primary emphasis in resolving this type of issue on international conventions and bilateral agreements. This body is not in a position today to contribute in a helpful way to addressing this subject.

I urge the defeat of the amendment.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, what we just heard explained as the reason for opposing this amendment is absolutely astonishing. We are saying we should not subject a foreign manufacturer to our legal process because of free trade considerations. Now, ladies and gentlemen, if we are prepared to say that they should have a more lenient way in our courts than our own manufacturers, I will be astounded to hear such a statement.

Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. I thank the gentleman for yielding this time to me.

Mr. Chairman, the position taken by the Republicans in opposition to the Conyers amendment is going to give free trade a bad name. If foreign corporations want to sell their products to Americans in America, they should be subject to our laws.

Consider this possibility: There is a collision in my hometown of Springfield between a car made in Detroit and one made in Tokyo. People are severely injured. There is a suspicion that one of these cars had some type of defect in its brakes, for example, but we are not sure which one. So the person who is injured goes to court and sues both the American car company and the Japanese car company. Guess what? You can discover all the documents in the world from the American car company to find out whether you have a claim. But as soon as you try to get the Japanese car makers to supply this information, they say, as the gentleman from Illinois [Mr. HYDE] said, ''No, no, no, it is a matter of international treaty. You can't find this out. You have to go to Tokyo.''

We bought the car in Springfield, but you have to go to Tokyo for discovery. Let me tell you what we are talking about here is concealment and evasion. If my colleagues want to get up here, wave their American flags, and vote ''Buy American'' day in and day out, for goodness sakes, take a look at what this amendment says. If foreign corporations want to sell products to American consumers, why in the world should they not comply with American law?

The CHAIRMAN. In order to close debate, the gentleman from Illinois [Mr. HYDE] is recognized for 1 minute.

Mr. HYDE. Mr. Chairman, this amendment is unfair, it violates due process by allowing suits against corporations that ''should have known'' their products would be sold in the United States. It violates the fundamental principles of fairness, and it subjects corporations to suits that might never have intended to do business over here.

I know the distinguished gentleman from Illinois [Mr. DURBIN] who just spoke is familiar with the Hague Convention on the taking of evidence abroad. He would not intentionally want to violate those rules of discovery of foreign corporations which already exist. The amendment is unnecessary. It casts too large a net. We are subject to retaliation. There is no definition of a foreign manufacturer.

There are just so many things wrong with this that I urge a ''no'' vote.

The CHAIRMAN. All time has expired on this amendment.

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

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 258, noes 166, not voting 10, as follows:

[Roll No. 221]

AYES—258

Abercrombie	Bereuter	Brown (OH)
Ackerman	Berman	Brownback
Allard	Bevill	Bryant (TX)
Andrews	Bishop	Bunn
Bachus	Blute	Cardin
Baesler	Boehlert	Chambliss
Baldacci	Bonior	Chapman
Barcia	Borski	Chenoweth
Barrett (WI)	Boucher	Clay
Bateman	Brewster	Clayton
Becerra	Browder	Clement
Beilenson	Brown (CA)	Clinger
Bentsen	Brown (FL)	Clyburn

Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Cooley
Costello
Coyne
Cramer
Crapo
Danner
de la Garza
Deal
DeFazio
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Duncan
Durbin
Edwards
Emerson
Engel
Ensign
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Forbes
Ford
Fowler
Fox
Frank (MA)
Frost
Furse
Gallegly
Gejdenson
Gephardt
Geren
Gibbons
Gillmor
Gilman
Gonzalez
Gordon
Graham
Green
Gunderson
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hayworth
Hefley
Hefner
Hinchey
Hobson
Holden
Horn
Hostettler
Hoyer
Hunter
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Jones
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Longley
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McInnis
McIntosh
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Murtha
Nadler
Neal
Ney
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Poshard
Pryce
Rahall
Ramstad
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rohrabacher
Rose
Roth
Roukema
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sawyer
Scarborough
Schiff
Schroeder
Schumer
Scott
Serrano
Shuster
Sisisky
Skaggs
Skelton
Slaughter
Smith (MI)
Spratt
Stark
Stearns
Stenholm
Stokes
Studds
Stupak
Tanner
Tate
Tauzin
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Walsh
Wamp
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates

NOES—166

Archer
Armey
Baker (CA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Cox
Crane
Cremeans
Cubin
Cunningham
Davis
DeLay
Dickey
Dornan
Dreier
Dunn
Ehlers
Ehrlich
English
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Ganske
Gekas
Gilchrest
Goodlatte
Goodling
Goss
Greenwood
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Heineman
Herger
Hilleary
Hoekstra
Hoke
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McKeon
Mica
Miller (FL)
Molinari
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Norwood
Nussle
Oxley
Packard
Paxon
Porter
Portman
Quillen
Quinn
Radanovich
Rogers
Ros-Lehtinen
Salmon
Sanford
Saxton
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Skeen
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stockman
Stump
Talent
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—10

Baker (LA)
DeLauro
Flake
Hilliard
Houghton
Kennelly
LoBiondo
Moran
Rangel
Towns

□ 1504

Messrs. PAXON, COBLE, and CHRYSLER changed their vote from ''aye'' to ''no.''

Messrs. BLUTE, WAMP, JONES of North Carolina, CHAMBLISS, POMBO, GALLEGLY, ROTH, PETRI, HORN, HAYWORTH, RAMSTAD, RIGGS, ROHRABACHER, HOBSON, McINTOSH, ROYCE, BEREUTER, CRAPO, CLINGER, and BACHUS, Ms. PRYCE, Mrs. CHENOWETH, and Mrs. FOWLER changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. MORAN. Mr. Chairman, during rollcall vote No. 221 on H.R. 956 I was unavoidably detained. Had I been present I would have voted ''aye.''

The CHAIRMAN. It is now in order under the rule to consider amendment No. 6 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WATT of North Carolina: Page 17, lines 16–17, strike ''by clear and convincing evidence''.

Page 20, lines 4–11, strike the section in its entirety and renumber the subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from North Carolina [Mr. WATT] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, let me put this in perspective for my colleagues, because this started out to be a part of a three-amendment package. Unfortunately, two of the three amendments the Committee on Rules did not see fit to make in order. So I want to talk a minute about the other two amendments and put this in context.

No. 1, this bill clearly preempts State law insofar as substantive law is concerned on products liability and in the area of punitive damages. But the bill actually goes beyond that to preempt State law, procedural law, by not only telling the States what standard of proof will be required, but also what the burden of proof will be in their courts.

The bill then, after it has preempted both procedural and substantive State law, says you cannot have access to the Federal courts under any circumstances to do any of this, so in effect it mandates the State courts not only the substance of what they shall apply as law, but the procedure by which they must apply the substantive law.

In North Carolina, in punitive damages cases, the burden of proof is beyond a preponderance of the evidence. That is the standard you must meet to win a case in North Carolina and in most State courts. This bill takes the standard and raises it to a standard of clear and convincing evidence, and by doing so not only preempts the substantive law of the State, but also preempts the procedural law of the State.

For my colleagues who have any respect for States' rights, it is one thing to say we will tell you what law to apply. It is an entirely different thing to say to the States we will tell you how to apply that law and how much of the evidence will be required to win a case and how you should try the case.

My colleagues, what I am trying to do by striking this clear and convincing evidence standard which is in this bill is to protect the integrity of our law in North Carolina insofar as we can do so to make sure that we at least begin to maintain the integrity of our procedural laws in North Carolina, even if my colleagues will not respect the substantive law in North Carolina.

Mr. Chairman, I reserve the balance of my time.

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

The CHAIRMAN. The gentleman is recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I thank the chairman for yielding me this time.

The amendment offered by the gentleman from North Carolina would strike section 201 of the bill, the clear and convincing evidence standard in punitive damages cases. This is an intermediate burden of proof that is higher than preponderance of the evidence, the general rule in civil cases, and a lower standard than proof beyond

a reasonable doubt, which is the burden in criminal cases. Because punitive damages are not designed to compensate injured parties, but rather to punish or to deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment in the form of punitive damages merely on the basis of showing a probability, perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury in 1991 has this to say:

In the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof ''beyond a reasonable doubt,'' what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate ''clear and convincing evidence'' burden of proof.

That is exactly what we have in this bill.

The report of the Special Committee on Punitive Damages of the American Bar Association, its section on litigation, reached the same result. What they said in their report:

Because one of the purposes of punitive damages is punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in ensuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the ''clear and convincing'' burden of proof is appropriate for an award of punitive damages.

That is what we have in this legislation. If we allow punitive damage awards based on too loose an evidentiary standard, we risk punishing defendants unfairly, and exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the cost of inappropriate awards of punitive damages. For these reasons, I believe the standard of clear and convincing evidence is fair and reasonable. It is not a mere preponderance; it is not beyond a reasonable doubt; it is right in the middle, clear, and convincing evidence. The American Bar Association, recommends it; the American Law Institute recommends it; and I recommend it.

Mr. Chairman, the amendment offered by the gentleman from North Carolina would strike from section 201 of the bill the ''clear and convincing evidence'' standard in punitive damages cases. This is an intermediate burden of proof that is a higher standard than ''preponderance of the evidence,'' the general rule in civil cases, and a lower standard than ''proof beyond a reasonable doubt,'' the burden in criminal cases.

Because punitive damages are not designed to compensate injured parties but rather punish or deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment, in the form punitive damages, merely on the basis of showing a probability—perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury [1991] is particularly pertinent:

[I]n the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof ''beyond a reasonable doubt,'' what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate ''clear and convincing evidence'' burden of proof.

The Report of the Special Committee on Punitive Damages of the American Bar Association Section of Litigation [1986] reached the same result. That report concludes:

Because one of the purposes of punitive damages in punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in insuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the ''clear and convincing'' burden of proof is appropriate for an award of punitive damages.

If we allow punitive damages awards based on too loose an evidentiary standard, we not only risk punishing defendants unfairly but also exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the costs of inappropriate awards of punitive damages.

For all these reasons, I believe the standard of ''clear and convincing evidence'' is fair and reasonable. I urge the defeat of the pending amendment.

□ 1515

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

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

Mr. BERMAN. The gentleman makes a very good, well-documented case for the appropriateness of the clear and convincing standard.

Mr. HYDE. I thank the gentleman.

Mr. BERMAN. But what he has not said one word about is why we should be pushing our judgment onto a State in an area of which there is no Federal interest in deciding whether it wants a higher standard or a lower standard.

Mr. HYDE. Reclaiming my time, Mr. Chairman, there is a great interest in standardizing the elements of proof. We are trying to have a products liability and litigation standard that transcends the 50 boundaries, so as to not have 50 separate standards. It seems to me, when you get to the subject of punitive damages, which can affect the entire stream of commerce, it is beneficial to have a standard level of proof.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I think we need to put this amendment and others into context, because this is not the only bill that we have passed regarding this subject. We have the loser pays bill that is designed to get rid of frivolous lawsuits, but it also has an impact on lawsuits like this.

If you had a case, for example, that you could win under the present law and this change comes about, you had a case that was previously a winner, now is a loser on the punitive damages. And if you failed to settle the case for what was offered and because of this higher standard, you come in a little bit under what was offered, you now have a frivolous lawsuit, in which case you have to pay both sides attorney's fees.

Mr. Chairman, there is a case in 1984 where a plaintiff presented evidence in a case involving bandages that had been contaminated and they had bought the bandages, the warehouse, they had already been notified about the contamination. The quality control advisor had told them that the bandages were contaminated. And they were used, sold anyway, and a person was injured. Damages totaled, medical damages of only $4,200. But if that case had not been settled, and they received punitive damages under the present law, if this amendment is not adopted and they lost the case because of the higher standard, that would now be a frivolous case and they could be in a situation where they are paying not only their attorney's fees but the other attorney's fees.

Mr. Chairman, I would hope that we would leave it up to the States, not change the standard and not turn the clock back on consumer protection, because the fact that these cases can be brought means that other consumers can have bandages that are not contaminated, because the companies have not had to pay the punitive damages.

Mr. Chairman, this is a very valuable amendment. I hope we leave it up to the States to decide what the standard ought to be.

Mr. HYDE. Mr. Chairman, would the Chair advise how much time I have left?

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] has 5 minutes remaining, and the gentleman from North Carolina [Mr. WATT] has 4 minutes remaining.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute.

I just wish to say, we are talking about punitive damages, which can have a serious impact on the economy, on jobs. They can extend, and do extend, well beyond the borders of a State. The purpose of this legislation is to standardize, as much as possible, in a fair way, the elements of proof that impact on our economy. If we want to have 50 patchwork sets of laws to deal with the economy and deal with products liability, why, I suppose we can. But the purpose of this legislation is to assist manufacturers, to give some certitude, some predictability, to do away with lawsuit abuse, forum shopping. Therefore, I must resist the gentleman's amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1½ minutes to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Chairman, I rise in support of the Watt amendment. The bill before us would take certain legal standards in a direction that is inconsistent with our system of justice. First, under the bill, the burden of proof in awarding punitive damages would be imposed by the Federal Government, thereby preempting the States from regulating this area. And, second, the bill imposes an awkward standard of proof in civil litigation that would make it unusually and unfairly difficult for victims to recover.

The Watt amendment corrects these imperfections.

The bill establishes a standard of ''clear and convincing'' evidence as the burden of proof for the award of punitive damages. A victim would have to show that the defendant, first, specifically intended to cause harm and, second, manifested a conscious, flagrant indifference to the safety of others.

These new requirements would totally change the punitive damages burden of proof in each of the 50 States. It has been my understanding, Mr. Chairman, that the majority has been pressing to return power to the States, not to take it away. The bill language takes power from the States and imposes a federally created standard.

More importantly, however, the bill creates a new standard in civil litigation. Currently, the standard is ''preponderance of the evidence.'' Apparently, under the bill, the preponderance standard would apply in the case in the main, but the ''clear and convincing'' standard would apply in assessing punitive damages. That is an awkward way to proceed and, in my view an unfair and unequitable way to proceed.

If you support the rights of States, and if you support a level playing field among litigants, support the Watt amendment.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, I think we have forgotten again what the basis is of punitive damages. Punitive damages comes from the doctrine of punishment which is really a quasi-criminal remedy. It is not strictly a civil remedy. That is the whole purpose of raising the standard of proof.

As we all know, lawyers on this committee know that the standard of proof, when it comes to proving a crime, is one of ''beyond a reasonable doubt.'' And when you are merely proving a civil case, it is the ''preponderance of the evidence.'' Well, ''clear and convincing'' is in between.

We are not talking about compensation here. We are talking about punishment. If we are going to go to a standard of proof that is going to mete out punishment, then we should require that that standard of proof be higher than the normal standard of proof that you find in a civil case.

While you can talk about States' rights or you can make other arguments until your heart is content, the fact is that what is really going on here is the need to have a standard of proof which meets the remedy. And the remedy is punitive, punishing—punishing the wrongdoer—if we are going to go to that point, after having compensated the victim for either his or her personal injuries or for property damages, to have a higher standard of proof. Otherwise, it is simply not fair and it is a way of using the civil justice system as a substitute for the criminal justice system in a way that is completely unintended, never was intended by our justice system and simply will not work.

Finally, it will undermine the confidence of the public in a system when they cannot predict what the outcomes are going to be, when they do not know what is going to happen and when they know that it is easier to get a punitive damage award for punishment at the civil bar than it is to actually convict someone of a crime at the criminal bar.

For all those reasons, I very strongly urge that we defeat this amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I listened to the gentleman from Ohio and I finally got it. New Jersey has a law that provides punitive damages uncapped for suits against sexual predators. They have a standard of ''preponderance of the evidence.''

How can we allow 50 different States to have 50 different standards against sexual predators? Sexual predators should know what the uniform, nationwide, 50-State standard is for punitive damages. This is a punitive kind of a thing. We have to protect these people against actions against them. Stream of commerce? Come on. Give me a break.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. DOGGETT] .

Mr. DOGGETT. Mr. Chairman, at the same time last year I sat on the highest State court in the State of Texas, struggling with this very issue. Our court looked at what the standard should be on the question of punitive damages. It looked at ''clear and convincing evidence.'' It looked at burden by ''a preponderance.'' It looked beyond ''a reasonable doubt,'' and it chose not to pursue this standard.

Other States have chosen to pursue the ''clear and convincing'' standard. There are some good arguments for it. But the one thing that is clear and very convincing about this debate is that our States are being denied that right and that people that come here praising the 10th amendment are shredding it in the course of this debate and are saying that State jurists and legal scholars and State legislators around this country shall not have the right to set the standard that will apply to their citizens.

So much of this debate is build on the theory that we not only need trickle-down economics, that what we need is trickle-down government and that it ought to trickle down from Washington instead of gushing up from the people and their State and local leaders.

I reject that, as this amendment does.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] is recognized for 1 minute.

Mr. WATT of North Carolina. Mr. Chairman, it is clear that this is not about what the appropriate standard should be for burden of proof for punitive damages. The issue is not what that appropriate standard should be. The issue is, who ought to be setting that standard? If Members believe that the States have a place in our federation, which is what I have heard over and over and over again, I submit to my colleagues that the States ought to be determining for themselves what their own burdens of proof are and that we ought not at this level, at the Federal level, to be telling them that.

Regardless of whether we think it ought to be one thing or the other, higher or lower, the States have the right to make this decision, not my colleagues here in this body.

Mr. HYDE. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

The CHAIRMAN. The gentleman from Wisconsin [Mr. SENSENBRENNER] is recognized for 2 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I am shocked at listening to the argument from the gentleman from North Carolina [Mr. WATT] and the gentleman from Texas [Mr. DOGGETT]. That was the same argument that was used 30 years ago in this Chamber by those who were opposed to the civil rights legislation that revolutionized our society.

This Congress, 30 years ago used the commerce clause for passing the Civil Rights Act of 1964, one which opened up public accommodations, lunch counters, mom and pop cafes, local city buses to people of all races without discrimination. And that is one of the things that this Congress can take pride in doing.

What we are proposing to do here is to use the commerce clause for something that is just as much interstate commerce as the civil rights legislation. And that is to try to have a uniform standard throughout the country on punitive damages so that there will not be forum shopping in a State that has a lower standard on what has to be proven in order to get punitive damages.

There are a number of States that have adopted the clear and convincing standard, including California, and Colorado has adopted the beyond a reasonable doubt standard for punitive damages.

What will happen in the States that have adopted a higher standard than preponderance of the evidence is that those manufacturers will end up paying much higher product liability insurance premiums even though the people in that State will not be able to enjoy what they are paying for.

□ 1530

Consequently, you are going to be seeing people in California, which has passed a clear and convincing evidence standard, through their higher consumer prices, benefiting the people in the other States that have not. This issue should be federalized, and the amendment should be defeated.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

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

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This is a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 150, noes 278, not voting 6, as follows:

[Roll No. 222]

AYES—150

Abercrombie
Ackerman
Andrews
Baldacci
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gibbons
Green
Gutierrez
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moran
Nadler
Oberstar
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—278

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

NOT VOTING—6

Cubin
Graham
Hall (OH)
Houghton
LoBiondo
Rangel

□ 1548

The clerk announced the following pairs:

On this vote:

Mr. Rangel for, with Mrs. Cubin against.

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

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

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. LOBIONDO. Mr. Chairman, I was granted a leave of absence through 4 o'clock this afternoon. I would like the RECORD to reflect that had I been present I would have voted "Yes" on rollcall No. 217, "Yes" on rollcall No. 218, "No" on rollcall No. 219, "No" on rollcall No. 220, "Yes" on rollcall No. 221, and "No" on rollcall No. 222.

The CHAIRMAN. It is now in order under the rule to consider amendment No. 7 printed in House Report 104–72.

AMENDMENT OFFERED BY MS. FURSE

Ms. FURSE. 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 Ms. FURSE: Page 17, strike line 22 and all that follows through line 2 on page 18 and redesigate the succeeding subsections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Oregon [Ms. FURSE] and a Member opposed will each be recognized for 15 minutes.

The Chair recognizes the gentlewoman from Oregon [Ms. FURSE].

Ms. FURSE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment lifts this bill's caps on punitive damages because the cap in this bill discriminates against women, children, retirees, and low-wage workers. My amendment does not change the high standards of proof needed to get punitive damages.

What are punitive damages? They are damages the court sets as a punishment for conscious, flagrant indifference to the safety of others. In the few cases where they have been awarded, just 15 nationwide in 1994, they have proved to be effective. They have caused important changes in articles that people use or come in contact with, and these changes have saved lives.

This Republican bill for the very first time ties punitive damages to economic damages in such a way that it discriminates because it sets these punitive damages in such a way that injuring a rich person is punished more heavily than injuring a poor person. I ask Members, is that fair? Is that the American way of justice?

Under the Republican bill, the punishment of a conscious indifference to the safety of a person whose economic damages were $1 million could be capped at $3 million. Yet the punishment for the same conscious, flagrant indifference to the safety of a person whose economic damages were only $10,000 would be capped at $250,000.

Why? Why would we do that? I want to remind my colleagues that women, children, retired persons, people who earn less money than others would all have far smaller economic damages than a person who makes a great deal of money, $1 million a year, say.

I am in favor of some cap on punitive damages, but not a cap that discriminates against women and children and low-wage workers.

My amendment is simply a fair amendment. It believes that when we punish people for their flagrant disregard for the safety of the people who use a product that they will be punished fairly. I ask a ''yes'' vote on the Furse-Mink amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I rise in opposition to the Furse amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] will be recognized for 15 minutes to manage the opposition to the Furse amendment.

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

Mr. HYDE. Mr. Chairman, this amendment eliminates one of the most important features of this bill: the cap on punitive damages. Under section 201(b), a punitive damages award cannot exceed three times the award for economic loss, or $250,000, whichever is greater. Without a cap on punitive damages, our ability to compete in international markets is compromised, the settlement value of cases is inflated, consumers pay higher prices, and defendants face risks out of proportion to injuries sustained.

U.S. competitiveness is compromised because many countries of the world do not recognize the concept of punitive damages at all. We, in the United States, allow virtually unlimited punitive damages. The settlement value of cases is greatly inflated because defendants feel pressure to settle cases with very tenuous liability rather than face the possibility of high punitive damages awards. American consumers pay higher prices because American businesses, from manufacturers to service providers, factor their punitive damages exposure into their costs.

Punitive damages are not designed to compensate for losses. They are designed to punish wrongdoers, not compensate victims. The provisions in H.R. 956 do not affect, in any way, a victim's full recovery of complete economic damages, such as medical costs and lost wages, or noneconomic damages, such as for pain and suffering and emotional distress.

Even, would you believe, the Washington Post editorial staff supports punitive damages reform. Just last Wednesday they wrote that punitive damages reform is ''long overdue, guidelines and limits must be set.''

Due process must limit States' authority to impose punitive damages. In a recent case, Pacific Mutual Life Insurance versus Haslip, the U.S. Supreme Court held that the due process clause limits the ability of States to impose punitive damages. The Court expressed concern about punitive damages, which have run wild, and made it clear that this was an area calling for reasonable and rational reform.

Punitive damages impede quick settlements. Under today's system, punitive damages vary so greatly and are so uncertain they get in the way of quick settlements.

These damages are a total wild card in today's lawsuits. Because under the current system, no one has any idea of what a final punitive damage verdict might be, both sides find it difficult to reach the agreement necessary for speedy resolution.

I urge a ''no'' vote on the Furse amendment which removes from the bill the reasonable limits on punitive damage awards.

Mr. Chairman, I reserve the balance of my time.

Ms. FURSE. Mr. Chairman, I yield 5½ minutes to the gentlewoman from Hawaii [Mrs. MINK].

(Mrs. MINK of Hawaii asked and was given permission to revise and extend her remarks.)

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentlewoman for yielding me time.

I am very proud to rise in support of the Furst amendment which I also submitted to the Committee on Rules for consideration. Under our system of justice, individuals who are injured have the absolute right to go to court to seek compensation for damages that they have suffered. This is a basic right under our American system of law and it is a right that has to be defended, and that is why the gentlewoman from Oregon [Ms. FURSE] and I are here today, defending the basic fundamental right of all Americans to have the same equal provisions of justice applied to all of us irrespective of whether we work or do not work, whether we are men or women, poor or rich, young or old. The system of justice has to be equal. This section that we are seeking to strike from the bill is an absolute discriminatory provision which goes against women who are homemakers or women who are low-wage earners, children, elderly, and the poor in our society.

I find it very difficult to understand why this provision was added to the bill except perhaps it helps insurance companies. Because as I understand the majority party and those that I have worked with over the years, they are champions, absolute champions of individual rights. Besides that, they belabor the point that they do not want interference from the Federal Government of the rights and prerogatives of State governments. This is exactly what we are trying to strike out of the bill, an absolute invasion on the prerogatives of the State to decide how they want to apply this concept of punitive damages under State law.

I believe that punitive damages are appropriate and that the State statutes ought to govern how they are to be applied. States have enacted them. They have worked under punitive laws setting up standards and whatever. I do not understand where the justification is for now coming in and overturning all of these State statutes. In fact, when you look at the records of the number of punitive awards that have been made in the last 25 years, there have been only 355 such punitive damage awards. Half of them have been either reduced or overturned. So where is this overwhelming necessity to supplant the State laws with now the wisdom of the Congress of the United States? I submit that the case has not been made for such intervention.

□ 1600

The courts ought to be allowed to determine whether punitive damages ought to be leveled and what the damages should be dependent on the egregiousness of the injuries sustained by the victims. There should be no limits and if there has to be one, certainly it has to be nondiscriminatory.

Limits that are discriminatory should be banned under any concept of equal justice in America. Where people are allowed to receive more damages, punitive damages because of their economic status, because they are a CEO or they are a rich attorney, is simply not fair. The economic standing of the individual who has gone to court and supported the concept of punitive damages and won that concept by the court should not have those damages limited because they are poor, because they do not work, because they are children, because they are women or because they are retired. Unfortunately this bill sets a punitive damage cap which is unfair and only allows the rich to have the kind of award as indicated here in the chart.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. MINK of Hawaii. I yield to the gentleman from Texas.

Mr. DOGGETT. A couple of questions that the gentlewoman's comments have raised. The first one is I believe every Member has received today a package of old fashioned Girl Scout cookies. Does the gentlewoman have any understanding of why these special interests keep hiding behind the skirts of the Little League and outfits like the Girl Scouts instead of fighting their own battles?

Mrs. MINK of Hawaii. I think it is basically because they cannot stand up on their two feet and defend what they are doing to the women and children of this country, so they are using mischievous allegations that the Girl Scouts support this.

Mr. DOGGETT. Will the gentlewoman yield for another question?

Mrs. MINK of Hawaii. Yes, I yield to the gentleman from Texas.

Mr. DOGGETT. If the young women who are pictured on this box of Girl Scout cookies, if they get injured and they are scarred or maimed for life, will they get less unless the amendment is adopted than the corporate lobbyists who sent these boxes of cookies to every Member?

Mrs. MINK of Hawaii. Unless they can prove economic damages, which children cannot do, they will get nothing, no matter how egregious the injury and suffering of the children, and I urge this amendment be adopted.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, we have heard repeatedly over the past several days of debate that there have been only 350 cases in all of American history that have resulted in the assessment of punitive damages and we have just heard that in fact this movement to try to put some sort of cap on punitive damages is being brought by special interests. But what we are not hearing about from the other side is the biggest special interest of all in the U.S. Congress, and that is the special interest of the trial lawyers. Two million dollars was spent by the trial lawyers in the 1993–94 cycle supporting Democratic candidates.

Let us look at the truth about this outrageous claim there have only been 350 cases in all of American history resulting in the assessment of punitive damages. That is complete hogwash and they know it is hogwash. They know there is no central list of punitive damages nationwide and they can pay for studies that will say whatever the lawyers want to say.

The case the trial lawyers mentioned represents a fraction of the type of cases in which punitive damages have been recovered. In just the last 4 years in the State of California alone there have been 253 jury verdicts in punitive damages cases to the tune of $1.6 billion, and in the past 2 years in four other States there have been 158 punitive damages alone. That is all punitive damage awards in just five States since 1990.

In order to understand the rationale for capping punitive damages we have to first look at the doctrine that underlines punitive damages themselves. Punitive damages are meant to be punishment for wrongdoing, the civil analog to a criminal fine. As we all know they are in addition to compensatory damages, those are the damages that are meant to compensate the victim for personal injury or damage to property. Punitive damages are a civil remedy that in many ways take on the qualities of a criminal remedy, and it is where the civil and the criminal law intersect.

This is why there is a fundamental problem with not having some outer limit on what the jury can render as punitive damages.

In order for our system of justice to inspire confidence in the public, it has to be meted out in a dispassionate and evenhanded and fairminded way which is consistent with respect to all parties in all situations or at least as consistent as possible. But the development of the doctrine of punitive damages in the past several decades has actually moved us in the opposite direction and it has moved us in the direction of unpredictability, not evenhandedness and is very much subject to passions which can be aroused by vigorous and inflammatory representation and counsel. To ensure public confidence in our justice system justice cannot be subject to capricious and unpredictable results. This is why in criminal cases we have never given juries the unfettered ability to set maximum fines.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, in case Members have not been following the debate closely, it has been a great break for Wall Street and the advice of the day is buy insurance company stocks because this legislation is a tremendous gift to the insurance companies. The gentleman who preceded me talked about generous contributions of the Democrats to the trial lawyers and consumers groups but what he forgot was that more than 12 times as much money flowed from insurance companies and other corporations to the Republican Party. And they are getting their payoff here today.

We are going to preempt the judgment of every jury in America on this floor today. The judgment of that side of the aisle is better than those 12 or 10 men and women who sit in judgment of their peers. We are throwing equal justice out the window. We are imposing caps, we are imposing discriminatory caps, caps that say, well, if you are a middle-income worker or you are a spouse or you are a child or a college student, you are worth a lot less in terms of punitive damages than a corporate executive.

That is what this amendment would overturn. Otherwise we will impose that discrimination, we will give that benefit to the better off, enshrine it in Federal law. We always knew the wealthy have done better in court. Now we are going to mandate that the wealthy do better in court.

What about the Ford Pinto? There has not been much discussion of that down here today. Do my colleagues not think there is a place for punitive damages when one of the largest corporations in the world willfully, it knows that its product is defective and it will cause death, and it willfully hides that.

Mr. HYDE. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from Virginia [Mr. GOODLATTE], and I would hope the gentleman could tell us some insurance companies that cover punitive damages. My understanding is they will cover negligence, but they do not cover punitive. But apparently they do; the gentleman from Oregon said so.

Mr. GOODLATTE. I thank the chairman for yielding me this time and I think he makes an excellent point.

This is a very important amendment to defeat, and the reason it is is that it is going to effectively limit our ability as a country to have a due process, a due course for setting public policy in this country. The problem we have is that only in recent decades has it become popular to offer up through juries multimillion dollar punitive damage awards that have the effect of going well beyond what juries were selected to do. And the jury system in this country is an excellent one. It works very well when it is working to resolve disputes between two or more people in court.

But when you arbitrarily have a system in this country where a jury in one community in the country can impose a multimillion dollar punitive damage award and have the effect of changing public policy in this country, sometimes good, sometimes not so good, as in the case of a Mercedes Benz scratch on a vehicle where a multimillion-dollar award is made.

And how about this case that Justice Lewis Powell wrote about involving an insurance company that appealed a jury's punitive damage award of $3.5 million on its alleged bad faith failure to pay $1,650.22 on a $3,000 insurance claim. Now where is the predictability and fairness of this to anybody doing business in this country, large business or small, to say that when you have a $3,000 insurance policy, and one of your many thousands of employees screws up and does not pay $1,650, that somebody should be liable for $3.5 million? What kind of windfall is that to the plaintiff in that case? It is absolutely inappropriate and it should not be allowed. That is why these caps are important.

The gentlewoman makes a point that there is discrimination in the way this

is imposed, because somebody who has larger economic damages will receive more than somebody who has smaller economic damages.

In point of fact it could be the reverse, though, because an executive could have very small economic damages and a janitor could have very high medical bills and lost income and so on if it goes for many years.

But notwithstanding that point, let me point out this: We can cure this problem by adopting the amendment that is coming up shortly. Why should the plaintiff receive punitive damages in the first place? The plaintiff is rewarded for economic damages. That is the lost income they have. That is the lost future income they have. That is the medical bills they have and other out-of-pocket expenses. In addition, though, they are entitled to noneconomic damages for pain and suffering.

This is something that is beyond what the plaintiff has lost, both in terms of their pain and in terms of their actual loss, and it ought to be going to a public good, if it is indeed intended to punish somebody.

We can solve this by adopting the Hoke amendment which gives the preponderance of punitive damage awards to the State, to the State Treasury for the general public good. That is what should be done with the punitive damage awards we allow underneath the caps and that will solve the problem of discrimination, because plaintiffs are given compensation based on economic damages and noneconomic damages and not based upon punitive damage awards.

That is what Justice Powell pointed out when he wrote that ''Alabama's system,'' that is where that award was made, ''like that employed by other States that permit punitive damages, invites punishment so arbitrary as to be virtually random: In each case, the amount of punitive damages is fixed independently, without reference to any statutory limit or the punishment applied in any other case.'' Jurors award punitive damages cases, they determine the dollar amount between zero and infinity. ''This grant of standardless discretion to punish has no parallel in our system of justice. In the Federal system and in most States criminal fines are imposed by judges,'' and I oppose the amendment.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the gentleman from New York [Mr. HINCHEY].

Mr. HINCHEY. Mr. Chairman, there is no doubt that our legal system can and should be improved. But this measure like so much of the Contract With America, goes too far. It is extreme, it is radical and it is unfair. It would deny people their opportunity to go to court to get justice.

Let me tell you a story of a person who lives near my district. Alice Hayes, 57 years old, worked on an assembly line all her life, went to work one day in the plastics molding factory, stuck her hands in the machine to remove the plastic mold, and the machine came down on those hands and severed them and her forearms as well. Alice Hayes no longer has her hands and no longer has her forearms; she will never get those hands back. But under the present law in New York, she at least has the opportunity to get justice. Under this bill she will lose both, her hands and the opportunity for justice.

This amendment at least provides some opportunity for punitive damages, so that she could be somewhat compensated for the loss that she has sustained. This bill will deny that opportunity.

This amendment should be passed.

Furthermore, this bill ought to be defeated.

There was another instance, an elementary school in Coldenham in which one day the cafeteria wall collapsed and the roof came crashing down on the children in that school. A number of them lost their lives, others were injured.

This bill will prevent them from getting the opportunity for justice.

The amendment should be passed.

The bill should be defeated.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from New York [Ms. VELÁZQUEZ].

Ms. VELÁZQUEZ. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I rise in strong support of the amendment. The cap on punitive damages is one of the most antiwomen extreme Republican measures introduced this year. It must be removed.

Contraceptives, breast implants, and other pharmaceutical products have been put on the market, and later found to cause very serious injury to millions of women. Punitive damages are often the only thing that saves millions of others.

A. H. Robbins implanted over 2 million women with Dalkon Shields—even though the company knew that they could develop a life-threatening uterine infection. After large punitive damage awards, they quickly pulled the IUD from the market.

Juries award punitive damages when manufacturers act with extreme recklessness, or conscious disregard of harm. Large awards encourage companies to quickly pull dangerous products from the shelves. They deter others from selling harmful devices.

Punitive damages save lives—often women's lives. I urge my colleagues to vote for this amendment, and remove one of the worst antiwomen measures considered by this Congress.

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Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, I rise to ask the real question as to what we are doing here today. First of all, because I think that we are misleading the American people by saying that by this amendment we are removing the element of protection under punitive damages. The States are already handling this.

What this amendment does is it recognizes needs of women and children, and it particularly helps me to address the questions of Marilyn, a loving grandmother in my district in my hometown of Houston, TX, whose faulty silicon breast implants have caused her total disability and agony.

Marilyn's daughter, Theresa, also suffers from severe neurological disorders that have been passed on to her by her mother. And as Theresa breastfed her three children, Marilyn's 5-year-old granddaughter now shows symptoms of silicon poisoning.

Do we not realize that since 1965 to 1990 there have only been approximately 358 punitive damages cases, and most of them have been overturned? The real question is that we must look at whom we are trying to address, business to business? We are willing to do tort reform and help them, but we are also going to abuse our women and children in the process.

Ms. FURSE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Michigan [Mr. CONYERS].

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

Mr. CONYERS. Mr. Chairman, I rise in strong support of this important Furse amendment.

Mr. Chairman, one of the most revealing features in the Republican Contract With America is the limit on punitive damages. Because this limit will take away one of the most effective means of protecting Americans from the products that will kill, maim, induce sterility, or otherwise injure.

Of course, the most profound lie being told about punitive damages is that they are awarded too often. The truth is that punitive damages are awarded only in rare cases. Between the years 1965 and 1990, there were just 355 punitive damage awards in product liability cases. Excluding asbestos cases, there were an average of only 11 such awards each year, many of which were reduced on appeal.

In exchange for the rare egregious cases that punitive damages are assessed, there are immeasurable gains in public safety. That's right, this limit on punitive damages to three times economic loss or $250,000 is a massive assault on public safety. I ask you to listen closely and I will tell you why.

Parents of America listen to this. In 1980 a darling 4-year-old girl was permanently maimed with second and third degree burns when her highly flammable pajamas caught fire. She merely reached across the kitchen stove to turn off a timer. Company officials were quoted as saying they new the pajamas were unreasonably flammable, and that making them flame retardant was economically feasible. But they failed to take the steps needed to protect the little girl. It took the

sanction of punitive damages to get the company to act responsibly and make children's pajamas safe.

Women of America remember the crime of super-absorbent tampons and toxic shock. The manufacturers of Playtex's super-absorbent tampons knew, according to the 10th Circuit Court's findings, that their product could increase the risk of toxic shock but, according to the 10th Circuit Court, ''deliberately disregarded studies and medical reports linking high absorbance tampons fibers with increased risk of toxic shock.'' Countless of innocent women suffered. It took $10 million in punitive damages to force Playtex to take the deadly product off the market. This is the type of crime the Republican contract would allow to go unchecked.

Women of America will also remember breast implants that manufacturers knew were not safe. Women were left in wheelchairs, weak, ill, and disabled for life. Punitive damages got these off the market.

And for anyone who likes the outdoors, listen to this. Had this bill been law during the Exxon *Valdez,* the punitive damage limit would have shielded Exxon's liability to just $860 million, the equivalent of 4 minutes of Exxon's annual revenues.

And even worse, the punitive damages limit preempts all State punitive damages laws. This bill will limit punitive damages in State actions for sexual abuse of children [New Jersey Stat. Ann Sec. 26:5C–14], Drunk Driving [Minnesota], for the selling of drugs on minors [Illinois], and for much else at the State level.

This bill's obnoxiousness does not end there. It is patently discriminatory against women as well as middle and low wage earners. That's because punitive damages are calculated by economic damages alone, with noneconomic damages like the loss of reproductive ability being totally discounted. If an insurance executive making $1 million and a middle-class housewife who stays at home taking care of her family are both injured by the same product, the insurance executive would be eligible for $3 million in punitive damages, whereas the housewife eligible for only $250,000, less than 10 percent. This would be so even if the injury resulted in the woman's sterility.

Where is this new majority's commitment to fighting these types of crime. Why such the rhetoric when it comes to stopping crime that occurs in the streets, but not crimes that occur in our commercial relations.

Without this amendment, this bill will severely limit the rights of States trying to stop child sexual abuse, of women whose reproductive organs will be vastly undervalued, of average working Americans who depend on our laws to deter the biggest corporations from injuring us with defective products. I urge support of the amendment.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, if we take the case which is before us and we change it just slightly, the business executive who was mowing the lawn and his 15-year-old son or daughter was mowing the lawn and the engine of the lawnmower exploded, blinding the executive, blinding the daughter, the measure of damages now would be, under this punitive new standard, that the executive could collect his $3 million as a punitive damage. The girl, the daughter, could only collect whatever the jury might think she might be entitled to, but capped at her economic worth, which is $5 an hour, which is what her mother or father was paying her to mow the lawn.

The point of a punitive suit being to send a signal to the entire lawnmower industry to fix this engine. Now, who should collect? It should be that little girl, not some socialistic scheme that gives the money back to the States. It should be to that girl who had the courage to bring the case.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa [Mr. GANSKE].

While Mr. GANSKE is approaching the well, I might add that the case that the gentleman from Massachusetts [Mr. MARKEY] mentioned, the lifetime diminution of earnings for the young girl, would amount to a lot more than what the gentleman has on the chart.

Mr. GANSKE. I thank the Chairman for yielding this time to me.

Mr. Chairman, I rise to speak against the amendment and in support of the bill.

For 2 days now, the opponents of this bill have brought up the issue of breast implants.

Now, although I disagree with their interpretation of the facts, I think the issue of silicon silastic is a good example of why we need a product liability bill.

There has been a tremendous amount of disinformation on this issue. I can speak from personal experience. My mother had breast cancer when she was 23 years old. She had a breast reconstruction about 8 years ago.

I have personally reconstructed over 200 women who have had mastectomies for cancer.

The science shows a couple of things: First, there is no correlation between silicon implants and cancer. There is no correlation between silicon implants and autoimmune diseases, as attested to by the recent statement by the American College of Rheumatology.

But I think a bigger issue—and we can disagree with these things—but the bigger issue is this: If you get into a situation where a jury is making this kind of decision as to whether a whole class of products will be available or not, then that jury is legislating. And what we have is a situation then where, if we lose, a type of class of medical products, silicon silastic, for example, is the basic material for such things as in-dwelling catheters for cancer patients. It covers cardiac pacemaker batteries, for example. It is a material that makes cerebral spinal fluid shunts for babies who have hydroencephalitis.

The point is that if you have a disagreement on a material, the proper procedure would be for this to go through a regulatory agency process, have a cost-benefit scientific analysis, and if there is a disagreement, then you bring that on to the floor of the legislature to be debated.

I think the issue is really this: that when we get involved with some of the scientific issues, let us go through a regulatory process, debate it on the floor of Congress. But the situation with the punitive damages is that one jury out of 100 will make such a huge award that their action, then, is making a determination for the whole rest of the country in terms of a whole class of products.

That is why I would urge my colleagues to reject this amendment and to vote for the bill.

Ms. FURSE. Mr. Chairman, I would like to close by saying that this is such a simple amendment. In this amendment we are not talking about whether there should be punitive damages. The Speaker who came before me I do not think realizes that for punitive damages you have to prove conscious, flagrant indifference to the safety of others.

What my amendment says is, if you have two cases, two cases with the same injury, the same guilt, you should have the same punishment.

But under H.R. 956, the Republican bill, if you have two cases with the same injury, the same guilt, you get different punishments. Why is that? That is not justice as we know it in America.

I ask people to vote for my amendment. What my amendment says is that every person injured has the right to the same treatment under the law.

I thank the gentleman and yield back.

Mr. HYDE. Mr. Chairman, I yield the remainder of the time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Chairman, the people who support this amendment would have everyone believe that unless the amendment is adopted, we are taking away peoples' rights to sue. That is not the case. There is a constitutional right to sue, and even if we wanted to take that away, which we do not, that could not be taken away under the Constitution.

Second, those who support the amendment would have everyone believe that there is a different standard of justice that is applied. That is not true either. The jury makes the determination of economic damages based upon the evidence that is placed before it. That jury cannot discriminate based upon race, based upon age, or based upon gender. It is based upon the evidence that is introduced in that trial and admitted into evidence. And they make the determination on what the economic damages are, and they issue a verdict that will make a plaintiff who has been a victim of the negligence of another, whole.

What we are talking about here is punitive damages which are over and above making the injured party whole,

in placing a cap on those punitive damages. Punitive damages are not intended as compensation, they are intended to be punishment. In the case of Browning Ferris Industries versus Kelso, 1989, all nine members of the Supreme Court of the United States expressed concern regarding punitive damages. Those justices are not extremists, those justices are not Republicans, those justices look at the law in the cases that come before them.

Justice Brennan, who is hardly a rightwing extremist, and countless other members of the Court have stated time and time again that punitive damages are for punishment of aggravated conduct and are a windfall to the plaintiffs.

The impact of such a windfall recovery is both unpredictable and at times substantial, said the court in Newport versus Fall Concerts, 1981. ''Juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused,'' said the Supreme Court in Gertz versus Robert Welsh, Inc., 1974.

Let us put some sense in this area. Let us reject the Furse amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentlewoman from Oregon [Ms. FURSE].

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

RECORDED VOTE

Ms. FURSE. Mr. Chairman, I demand a recorded voter.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 272, not voting 7, as follows:

[Roll No. 223]

AYES—155

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
English
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Istook
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McDade
McDermott
McHale
McKinney
Meehan
Meek
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Murtha
Nadler
Neal
Oberstar
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Poshard
Rahall
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thurman
Torres
Traficant
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Yates

NOES—272

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kaptur
Kasich
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
LoBiondo
Longley
Lucas
Manzullo
Martinez
Martini
McCarthy
McCollum
McCrery
McHugh
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
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
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thornton
Tiahrt
Torkildsen
Torricelli
Towns
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—7

Cubin
Forbes
Kelly
Livingston
McInnis
Morella
Rangel

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The Clerk announced the following pairs: On this vote:

Mr. Rangel for, with Mr. Forbes against.

Mr. CHAPMAN and Mr. TORRICELLI changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, I voted "nay" on the Furse amendment to H.R. 956, Common Sense Product Liability and Legal Reform Act, but my vote did not register by the electronic voting device.

PERSONAL EXPLANATION

Mr. McINNIS. Mr. Chairman, I was unable to vote on rollcall Vote No. 223 because I was serving as the chairman pro tem of the Committee on Rules, during this vote. Had I been present, I would have voted "no" on the amendment offered by Representative FURSE.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. Chairman, I offer an amendment at the desk, made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 3, line 12, strike ''are'' and insert ''is''.

Page 3, line 15, strike ''protect'' and insert ''project''.

Page 3, line 23, strike ''and is costing'' and insert ''causing''.

Page 4, line 18, strike ''transactions'' and insert ''transaction''.

Page 8, beginning in line 2, strike ''Except as provided in subsection (c) in'' and insert ''In''.

Page 8, line 11, strike ''the'' and insert ''a''.

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

(e) EXCEPTION.—

(1) REASONABLE CARE.—A failure to exercise reasonable care in selecting among alternative product designs, formulations, instructions, or warnings shall not, by itself, constitute conduct that may give rise to punitive damages.

(2) AWARD OF OTHER DAMAGES.—Punitie damages may not be awarded in a product liability action unless damages for economic and noneconomic loss have been awarded in such action. For purposes of this paragraph, nominal damages do not constitute damages for economic and noneconomic loss.

Page 18, line 17, strike ''CONSIDERATION'' and insert ''CONSIDERATIONS''.

Page 29, in lines 8 and 12, strike ''has'' and insert ''has or should have''.

MODIFICATION TO AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I ask unanimous consent to delete lines 1 through 9 on page 1 of my amendment in subparagraph E, and on page 2, lines 1 through 4.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. HYDE: Strike out ''Page 18, redesignate'' and all that follows through the proposed new subsection (e) of section 201.

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

Mr. CONYERS. Mr. Chairman, reserving the right to object, I want to commend the gentleman from Illinois [Mr. HYDE] for this modification, which has come about as a result of the discussions between our staffs. I think this is a very important deletion, because it makes the amendment more technical and takes out the part that was giving us a lot of trouble. I commend the gentleman.

Mr. Chairman, I withdraw my reservation of objection.

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

There was no objection.

The CHAIRMAN. The amendment is modified.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. HYDE, as modified: Page 3, line 12, strike ''are'' and insert ''is''.

Page 3, line 15, strike ''protect'' and insert ''project''.

Page 3, line 23, strike ''and is costing'' and insert ''causing''.

Page 4, line 18, strike ''transactions'' and insert ''transaction''.

Page 8, beginning in line 2, strike ''Except as provided in subsection (c), in'' and insert ''In''.

Page 8, line 11, strike ''the'' and insert ''a''.

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

Page 18, line 17, strike ''CONSIDERATION'' and insert ''CONSIDERATIONS''.

Page 29, in lines 8 and 12, strike ''has'' and insert ''has or should have''.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] is recognized for 5 minutes, and a Member in opposition will be recognized for 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment consists primarily of technical corrections to the text of H.R. 1075. It is almost exclusively technical in nature.

In section 101, Findings and Purposes, the amendment changes the tense of words, corrects typographical errors, and makes a plural word singular.

In section 105, Misuse or Alteration, it removes the reference to a nonexistent subsection (c) and says ''a'' defendant, rather than ''the'' defendant.

In the heading for subsection 201(f) the amendment makes the word ''Consideration'' plural, because there is a list of nine different factors that the jury is directed to consider.

In section 303 which is the Definitions section of the Biomaterials Suppliers title, the amendment makes it clear that a person would not be a ''biomaterials supplier'' within the meaning of title III, if it has ''or should have'' registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act, or has ''or should have'' included a medical device on the list of devices filed with the Secretary of HHS pursuant to section 510(j) of the same law.

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

The CHAIRMAN. Without objection, the gentleman from Michigan [Mr. CONYERS] can claim the 5 minutes in opposition to the amendment.

There was no objection.

Mr. CONYERS. Mr. Chairman, I do so, and I yield myself such time as I may consume. Mr. Chairman, I agree that the interpretation given by the chairman of the Committee on the Judiciary is correct. I think the gentleman has facilitated this, with a lot of time being saved by his having made the deletion. We have no objection to the technical amendment, and urge support of the amendment.

I yield back the balance of my time.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE] as modified.

The amendment, as modified, was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 9 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment made in order pursuant to the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. OXLEY: Page 19, insert after line 19 the following:

(f) DRUGS AND DEVICES.—

(1)(A) Punitive damages shall not be awarded against a manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) which caused the claimant's harm where—

(i) such drug or device was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(ii) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(B) Subparagraph (A) shall not apply in any case in which the defendant, before or after pre-market approval of a drug or device—

(i) intentionally and wrongfully withheld from or misrepresented to the Food and Drug Administration information concerning such drug or device required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and relevant to the harm suffered by the claimant, or

(ii) made an illegal payment to an official or employee of the Food and Drug Administration for the purposes of securing or maintaining approval of such drug or device.

(2) PACKAGING.—In a product liability action for harm which is alleged to relate to the adequacy of the packaging (or labeling relating to such packaging) of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer of the drug shall not be held liable for punitive damages unless the drug is found by the court by clear and convincing evidence to be substantially out of compliance with such regulations.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. OXLEY] will be recognized for 20 minutes, and a Member opposed to the amendment will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I rise to offer the bipartisan FDA defense amendment, along with my colleagues Mr. COBURN, Mr. BURR, Mr. TAUZIN, Mr. BREWSTER, and Mr. STENHOLM.

Mr. Chairman, the amendment states simply that when the manufacturer of a drug or medical device receives premarket approval from the FDA and complies with all post-approval reporting requirements, the manufacturer will not be liable for punitive damages in a civil suit.

The amendment protects the rights of plaintiffs to receive full compensatory damages, including pain and suffering. Punitive damages are not compensatory. They are intended to punish malicious conduct. To bring a drug from the laboratory to the marketplace takes on average 9½ years and costs manufacturers $350 million. The sponsors and supporters of this amendment believe that compliance with the process, and post-approval reporting requirements, clearly demonstrate a lack of malice. Punitive damages are quasi-criminal in nature, and careful adherence to an expensive 10-year process is certainly not criminal.

Members have asked me, what if the manufacturer knows the drug is dangerous, but still goes through the process and gets FDA approval? The defense is denied in that case, as it is when a manufacturer discovers a problem after approval. The defense only applies when the maker of the drugs or device acts in good faith and discloses all relevant information.

This amendment is needed to provide some predictability for liability in the development of life-saving drugs and medical devices. Because of our liability lottery, drugs are more expensive in the United States than almost anywhere on Earth. Products are kept off the market, or withdrawn after introduction. The effect of our liability system on drugs and medical devices was recently summarized by the American Medical Association:

> Innovative new products are not being developed or are being withheld from the market because of liability concerns * * * Certain older technologies have been removed from the market not because of sound scientific evidence indicating lack of safety or efficacy, but because product liability suits have exposed manufacturers to unacceptable financial risks.

Mr. Chairman, writing on punitive damage damages, Justice Lewis Powell said, ''* * * punitive damages invite punishment so arbitrary as to be virtually random.''

Faced with a threat of random punishment, many manufacturers are understandably reluctant to put a new drug or device on the market. Our amendment says to them invest $350 million, wait 9½ years, obtain FDA approval, observe all reporting requirements, disclose fully, and we will say you did not act wantonly or maliciously. If your product causes injury, you are responsible for compensation. That determines the difference between economic and noneconomic and punitive damages. The plaintiff will be able to recover economic and noneconomic damages.

This amendment is common sense and deserves the support of this body. I urge my colleagues to support this amendment.

Mr. Chairman, I reserve the balance of my time.

□ 1700

The CHAIRMAN. Is there a Member who wishes to manage opposition to the amendment?

Mr. DINGELL. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] is recognized for 20 minutes.

Mr. DINGELL. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, the FDA defense has been a topic of considerable discussion and controversy over the years. In the past I have supported the adoption of provisions affording the FDA defense. This was done based on my belief that strong support and appropriate oversight by the Congress would enable the FDA to provide thoughtful, careful review for drug and medical device approvals and scrupulous post-market surveillance, all of which are essential to the protection of the American consuming public.

If this were to be the case, there would be no question but what Congress should afford the FDA approval as a defense against punitive damages. Regrettably, that appears not, however, to be the case. Times have changed and it appears that congressional support for FDA and support for a strong, viable, adequately-funded, well-staffed agency is at risk at this particular time.

We have been hearing about privatizing, cutting back, reducing and eliminating FDA. It is my strong belief that until these questions have been satisfactorily resolved and until we are satisfied that FDA approval really means something, that we should not then afford a weakening of the civil suit process which affords protection to the American consumer from misbehavior by manufacturers of devices and prescription pharmaceuticals.

The ability of FDA to properly process the business before them, to see to it that the new drugs are properly approved, that all information necessary is produced, to see to it that there is no deceit or duplicity in the offer, to see to it that there are no changes in the drugs as manufactured, to see to it that the Food and Drug Administration's requirement for good manufacturing practices be met during the manufacturing of the drugs is absolutely essential to consumer safety. If that is to be tampered with or impaired with through the budget process or through actions of Congress or through less than vigorous enforcement by the administration because of lack of adequate funds or because of congressional pressure, then clearly this kind of amendment is not in the public interest.

I would urge, therefore, that until we have seen more fully the state of affairs with regard to the strength and the adequacy of FDA supervision of new drugs, new drug applications, and with regard to the safety and adequacy of supervision by FDA of devices, that this Congress should not relax the supervision that is given to manufacturers of both devices and prescription pharmaceuticals until we are more sure that the protections of FDA are meaningful and have not been impaired by budget cuts, by reductions in the authority of the agency, by roll back of the abilities of the agency to carry out its responsibility or by actions like those taken more recently by the Congress in setting up cost-benefit analyses and things of that kind. Those are actions which are inimical to good protection of the consumer and to assurances of adequate safety, because if FDA must take that length of time to do these things, they will not be looking at the question of safety of prescription pharmaceuticals or devices from the standpoint only of health and safety of the individual who purchases that commodity.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. BURR].

Mr. BURR. Mr. Chairman, I rise today in support of the FDA exemption amendment. In the past several weeks, we have made many efforts to streamline government and to eliminate unnecessary duplication. This is another area where we can effectively do just that.

The Food and Drug Administration has been charged with scientifically weighing the risks and benefits that go along with the development of pharmaceuticals and medical devices. Anyone would be hard pressed to successfully argue that randomly selected tort juries are more qualified to reach these difficult, scientific conclusions.

Progress comes with a certain degree of risk. Opponents of this amendment have argued that it will limit the ability of those harmed by a minimal risk factor to receive compensatory and non-economic damages such as pain, suffering, and lost wages.

This amendment does not preclude their right to just compensation.

By offering this exemption from punitive damages, our amendment will allow many people to reap the benefits of drugs and devices that companies have not manufactured, for fear of litigation.

Support life drug research. Support a scientific balance between benefits and risk. Support the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 1075.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I just wanted to cite a case of corporate wrongdoing that would benefit by the passage of this amendment as an example of why it should not pass. This is the O'Gilvie versus International Playtex case from Kansas, 1985, where Playtex voluntarily removed from the market tampons linked to toxic shock syndrome after a Federal court jury awarded compensatory and punitive damages. A Kansas woman died from toxic shock syndrome using the company's super-absorbent tampons.

Playtex had complied with FDA regulations. It had gotten that approval fair and square. However, the jury found that the FDA requirements only set minimum standards and mere compliance with those standards had been inadequate under the circumstances.

Mr. Chairman, the 10th circuit, in reviewing the case on appeal, found that there is an abundance of evidence that Playtex deliberately disregarded studies and medical evidence linking high-absorbency tampon fibers with increased risk of toxic shock at a time when other manufacturers were responding to this information by modifying or withdrawing their product. Moreover, there is evidence that Playtex deliberately sought to profit from this situation by advertising the effectiveness of its high-absorbency tampons when it knew that other manfacturers were reducing the absorbencies of their products due to the evidence of casual connection between high absorbency and toxic shock.

Mr. Chairman, consumers are now protected from this product. With the

passage of this amendment, we will be turning the clock back on consumer protection. Unfortunately, it is consistent with the loser pays and limits on awards and other discouragements from people bringing these meritorious suits to protect the consumer from these products.

I hope we will defeat the amendment.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Chairman, I want to thank the gentleman from Virginia for bringing this up for in fact that is a misconception on the case against the Playtex. And under this bill, they would be fully liable. They would not be excluded under this amendment from full prosecution, and they would have been exposed to FDA clearance and punitive damages. This bill would not have excluded that agreement from punitive damages. Because, in fact, they have knowledge or did have knowledge of the worsening condition which was required to be reported to the FDA.

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

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

Mr. SCOTT. Mr. Chairman, if they complied and provided all of the information and FDA approved it anyway, when there were studies that the FDA just approved it, when the jury found that only minimum standards were set——

The CHAIRMAN. The time of the gentleman from Oklahoma [Mr. COBURN] has expired.

Mr. DINGELL. Mr. Chairman, how much time remains on both sides, please?

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] has 14 minutes remaining, and the gentleman from Ohio [Mr. OXLEY] has 14 minutes remaining.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding time to me.

Just on this last point, the exemption from immunity for punitive damages is the defendant before or after premarket approval of a drug or device intentionally and wrongfully withheld from or misrepresented to the FDA information concerning such drug or device. It is not whether or not the party knew that harm could come from the product, whether there was any of that kind of conduct. It is withholding of information from the FDA. That is the only escape clause here.

I disagree, from what I have heard about this case, with the gentleman.

The point I would like to make follows up a little bit on the gentleman from Michigan's point. We are getting, sometimes there is a great deal of pressure on the FDA to loosen up its regulatory process to allow drug approval quicker. In my own area where the medical device manufacturers, they are furious and being driven crazy by the delays they have in getting products on the market. But never one has ever said to me that they should be able to get away from accountability and responsibility for their negligence or avoid punitive damages for the conduct, intentional or wanton disregard, conduct, or reckless conduct from tort liability.

I just find it very strange that the same party that is promoting the concept of deregulation so strongly now wants to undermine the other way in which we can keep parties responsible to a high standard of conduct, which is the accountability through the judicial process. When you do both, I promise you the consequence is going to be greater negligence, greater harm, less willingness to take the kinds of precautions necessary to avoid danger. That is why I think this is a bad situation.

I would like to read about one case myself. In 1980 the drug Zomax, a painkiller, was marketed by the McNeil Drug Co. Reports in 1982 of allergic reactions causing death and severe illness came to McNeil. McNeil reported those adverse drug reactions to the FDA as required, thereby not getting out of avoiding that problem of the punitive damage suit if this were to be in effect, and the company embarked on a massive selling campaign to get rid of the supply before the word spread about the negative side effects. The salesmen were instructed to not bring up the subject.

During the McNeil sales campaign 14 people died and over 400 suffered life-threatening allergic reactions. Incidentally, McNeil Pharmaceutical called its Zomax campaign one-eleven, representing the $111 million sales target by McNeil.

When you have this law in place, FDA has approved it, FDA had all the information, but Zomax acted wrongfully and in an intentional—McNeil acted wrongfully and in an intentional fashion to market a product they knew had adverse reactions without advising the consumers of this and without letting the FDA know that they were increasing their marketing.

Mr. OXLEY. Mr. Chairman, I yield 1 minute and 30 seconds to the gentlewoman from New York [Ms. MOLINARI].

Ms. MOLINARI. Mr. Chairman, I rise today in strong support of the amendment of the gentleman from Ohio [Mr. OXLEY], and I urge my colleagues to include it in the bill.

The purpose of the amendment is very simple. If the FDA has approved a drug or a device, then the manufacturer cannot be held liable for punitive damages, unless, as in the case of the tampons and the toxic shock syndrome, the company withheld information regarding potential damages. This amendment in that case clearly would not apply.

Mr. Chairman, I find it disturbing that some opponents of this amendment claim it is antiwoman. This is a provision that is prowomen. I will tell you why.

Last year $600 million was spent on cosmetic research, $30 million was spent on contraceptive research. Only two companies currently perform contraceptive research. The reason why is they fear huge punitive damages. Research in this area and in the larger area of reproductive health is too risky for companies. And it is not just reproductive health research. It is research on other diseases, too.

One in nine women will get breast cancer in her lifetime, and although there are treatments, there are no cures. It frightens me that there may be a cure out there but companies will not find it, because the risk liability is too great. We cannot afford to let this happen, not for breast cancer, not for uterine cancer, not for any disease that strikes predominantly men or women.

It is a tragedy, but we should not punish companies that play by FDA's stringent rules. If you ask me, I think it is a far greater tragedy that young men and women die because drug companies are afraid to pursue research.

□ 1715

Mr. DINGELL. I yield 4 minutes to the gentleman from California [Mr. WAXMAN].

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

Mr. WAXMAN. Mr. Chairman, let us understand that this legislation before us today sets a very high threshold before punitive damages can be awarded. I think what this amendment is doing is using the FDA as a cover for manufacturers whose products have caused real harm to consumers. Even in cases where the manufacturers' behavior has been egregious, malicious, or knowingly negligent, there is a high standard for collection of awards. Title II of the bill states that in order to collect punitive damages, a claimant must be able to show by clear and convincing evidence that a manufacturer specifically intended to cause harm or engage in conduct that illustrated a conscious, flagrant indifference to the safety of others.

If a plaintiff who is injured can maintain that threshold and show that a company acted with flagrant disregard for the safety of others, why should a drug company be protected because of the FDA approval? The FDA approval does not mean that the FDA is there as a watchdog, to be sure that the company, after it has that approval, is doing everything it properly should. The FDA may never know about the complaints that the company has had that the product that they manufacture is now causing a lot of harm to people, yet they continue to sell it. Should an injured consumer be punished if a company continues to sell a product which it knows or suspects is not performing properly, when the company was in possession of numerous consumer complaints or other

kinds of reports that it may, technically, not have been ''required to submit'' to the FDA?

Mr. Chairman, the FDA has very limited independent legal authority to demand documentation from manufacturers, nor does the agency have the resources to police these manufacturing facilities. The agency relies on the manufacturers to be honest and to follow the rules. The majority of them, no doubt, do that.

However, what about those cases where they do not, but they still technically meet the test of this amendment; that is, they submitted what was required to FDA, they have not bribed an official, they have not lied to the FDA during the product review in order to receive an approval? What about those cases where there is harm and that harm is a result of the company's misconduct, or of the company's taking chances on safety, of a company's operating just on the razor's edge of legality?

For those cases, this bill establishes, elsewhere, a high standard under which consumers would seek punitive damages. That standard is sufficient to protect ethical, honest, careful companies. Such companies do not need to hide behind the shield of this FDA defense that this amendment would provide.

Mr. Chairman, I would like to point out that we do not have a crisis of high punitive damages being awarded in these cases. The reports about this kind of national crisis traceable to outlandish and numerous awards of punitive damages are not supportable by actual data. Contrary to what the supporters of this amendment would like us to believe, punitive damages are not common in product liability lawsuits. In the cases where such damages are awarded, they are not excessively high.

A number of scholarly legal studies published between 1987 and 1991 concluded that punitive damages in a variety of State jurisdictions was awarded in no more than 8 percent of the cases. In those cases, awards were on the average comparable in size to amounts awarded for compensatory damages.

Mr. OXLEY. Mr. Chairman, I yield 6 minutes to my good friend, the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, I thank the gentleman for yielding me this time, and I yield to the gentlewoman from California [Ms. HARMAN].

Ms. HARMAN. Mr. Chairman, as a woman, mother of four, and corporate lawyer, my life experience intersects the issues involved in this amendment in many ways. My decision to support it was a close one for me, and I thank my colleagues on both sides for giving me the time to explain my views.

On the one hand, all of us are horrified by the stories of individuals, many of them women, injured by drugs and medical devices. However, on the other hand, there is a fundamental fairness argument, and real evidence that our present system chills research and development on new drugs and medical device breakthroughs which could be enormously helpful to various at-risk communities, especially women.

This amendment is based on the view that if a drug manufacturer is in full compliance, and I stress, full compliance with Federal regulatory requirements, it should not be liable for damages designed to otherwise punish that behavior. I agree. To be sure, the FDA is not all-knowing when it comes to assuring product safety, but it is the best mechanism we have available in balancing the social values associated with drugs and medical devices and the unfortunate injuries which may result from known or unknown side effects. If there are ways to improve the FDA's performance, let us do it.

There are risk living in a modern, technologically advanced society. I hope we can minimize those risks, but I give a very high priority to the development of a predictable and fair system where pharmaceutical and biotechnology firms can rely on Government approval and reasonable limits on liability, and thus, invest the millions of dollars it takes to develop medical breakthroughs that will benefit all our citizens. Without these breakthroughs, women really will not have choice, none of us will have choice. None of us will have the opportunities that our first-rate and first-in-the-world medical system could offer.

I urge support of this amendment, and would make three related comments about this legislation. First, I hope as it moves through the Congress, two things will change. First, I think the noneconomic damages, which are extremely important to women, will be brought to a parity with economic damages, and, second, I think the cap on punitive damages should be raised at least to $1 million. I know many of us would have supported an amendment in this body to do so.

And third, my colleagues from California, Mr. WAXMAN, who preceded me to the well, was correct in pointing out that the explosion of civil suits has not been in the personal injury area. In California, at least, the number of personal injury suits has been level if not on the decline. Indeed, the number of such suits declined from 132,000 in 1988 to 88,000 in 1992. Still the bill before us is important in that it replaces the costly patchwork of state laws with a uniform law that speeds recovery and provides certainty to manufactures.

Mr. STENHOLM. Mr. Chairman, I yield 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 afternoon to support this legislation. As a pharmacist, I know firsthand the need for the passage of the Oxley amendment. Our country has the most rigorous drug approval process in the world. A company which has researched and developed a new drug spends an average of $359 million to get that drug from the laboratory to the market.

They undertake exhaustive clinical trials involving thousands of individuals, spanning many years, before they are able to sell the product on the market. Often during the course of the trials problems arise and the project is stopped. Often a treatment has been in the research and development pipeline for many years before warning signs or problems have arisen and the trials are halted. Such clinical trials are similar to the gut-wrenching dry holes those of us in the oil patch are all too familiar with.

This amendment puts no limits on actual or noneconomic damages. It simply protects companies who have, in good faith, invested many years of work and millions of dollars in a product, from the fear of frivolous lawsuits and out-of-sight jury awards. I encourage my fellow Members on both sides of the aisle to vote ''yes'' on the amendment.

Mr. STENHOLM. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I thank the gentleman from Ohio [Mr. OXLEY] for his generosity with time. I rise in strong support of the amendment. This is an attempt to put some common sense back into our public liability system, and to allow technology in America to move forward.

Most of the criticisms of this amendment have to be balanced with a commonsense statement of saying that our current system is broken. Perhaps there are weaknesses by moving forward, but in my judgment, adopting this amendment, allowing technology to move forward, and saying to any individual company that if you in fact have a product that is approved under the best technology possibly available, and then something goes wrong because CHARLES STENHOLM uses it, at that time no punitive damages should be allowed because you have followed the rules.

If we cannot bring ourselves to adopt this kind of legal law, we are going to have a difficult time competing in the future marketplace.

Mr. Chairman, I rise in strong support of the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 956, the Common Sense Product Liability and Legal Reform Act.

Our amendment offers a limited exemption from punitive damages for Food and Drug Administration [FDA] approved products. Manufacturers of drugs and medical devices are already subject to the agonizing delays and costly bureaucratic scrutiny of the FDA approval process, in order to determine if the benefits of a product outweigh the risks—not to assert that the use of a product carries no risk, or that all uses, under any circumstances are completely safe. In doing so, the FDA and medical community decide if the risks that a product poses are socially acceptable.

Under our current liability system, a jury second guesses this scientific evaluation done by the medical community and can punish manufacturers because their products are inherently risky.

Our amendment is simple, if a manufacturer or product seller of a drug or medical device which caused the claimants harm was premarket approved by the FDA, punitive damages shall not be awarded.

Opponents of this measure have said that it will prevent plaintiffs from suing drug and device manufacturers, and that it will hurt the consumer. This is simply not true. Punitive damages can still be sought in appropriate cases—those where the manufacturer was at fault, either by withholding or misrepresenting information or through participation in fraudulent activities. More importantly, injured parties will still be able to sue for compensatory damages. This amendment in no way limits compensation for loss, damages, pain and suffering.

The Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment makes good sense. I urge my colleagues to support this important amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in reluctant opposition to the amendment, reluctant because one of the sponsors is my colleague, the gentleman from North Carolina [Mr. BURR].

However, I have concerns about this amendment on three counts. First, the FDA's responsibility is to set minimum standards for bringing a product to the market, and we should note that while we are setting a clear and convincing standard in our courts of law to win these cases, no such standard applies to the FDA.

Second, the regulatory process is subject to political pressures, economic pressures, and pressures that hopefully the jury system is not subject to. We factor out all of these things in the court, we hope, to the best extent possible, and get a fair and impartial verdict in the process.

The third point I want to make, Mr. Chairman, is when all else fails, I have started to read the fine print in these amendments that are being offered. I would submit to my colleague, the gentlewoman from California [Ms. HARMAN], that I do not see anything in this amendment which talks about full compliance.

I do see a second provision in the bill that goes beyond simply FDA approval, which says that the producer or manufacturer is exempt if the drug is generally recognized as safe and effective, pursuant to conditions established by the Food and Drug Administration. I have no idea, and I would submit to my colleagues that they have no idea, what kind of Pandora's box that opens up for litigation, because every kind of product or drug which comes to the market that ever gets through the process is going to be recognized, we hope, as generally safe and effective.

Mr. Chairman, I think when we start setting one standard, clear and convincing, to win cases, we ought to at least be holding the regulatory bodies to that same standard if we are going to say that compliance with their regulations will make the manufacturer immune from liability.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY], a valuable member of the Committee on Commerce.

Mr. BILBRAY. Mr. Chairman, tonight we are speaking a lot about lawyers, a lot about corporations, a lot about pharmaceutical companies, but we are talking about consumers only as victims. However, the victimization goes both ways, Mr. Chairman. We hear a lot about the things that go wrong in our society when people use products. We hear about the bad things that the consumer products do.

However, Mr. Chairman, we do not talk about the fact, about the woman who goes to her pharmacist to be able to get a drug that she has used for years, but that drug no longer is available to her, not because the FDA found it not safe, not because a court found that it was not safe, but because of the huge liability that was being created by lawsuits that were being brought forward without merit, but with substantial resources, to the point where they were driving these products off the market.

Mr. Chairman, for years Bendectin has been used by pregnant women for a long time, and it is not available today for one reason, and that is because of lawsuits.

□ 1730

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the gentleman for Louisiana [Mr. TAUZIN], a member of the committee.

Mr. TAUZIN. I thank my good friend, the gentleman from Michigan [Mr. DINGELL], for yielding me the time.

Mr. Chairman, let me just say that when we talk about punitive damages, we are talking about quasi-fines. Quasi-fines. It is one thing to say that you are going to fine somebody for doing something wrong. It is another thing to say that we are going to first authorize you to do it as a Government agency and then allow you to be fined for doing it even though we said it is OK to do it. That is the issue in this debate.

The FDA goes through an extraordinary process of approving drugs for the American public. It is a lengthy, complicated process. Once they approve something for us, they put their stamp of approval on it, should we as a government say now we are going to allow somebody to sue you and collect a fine after we have authorized you to sell that particular drug or product to the American public?

It seem a bit ludicrous. I suggest to Members that if the speed limit says you can go 35, you ought not have to pay a fine if you have stayed under that speed limit. That is essentially what this argument is all about. I urge Members to adopt the amendment and make this bill a better bill.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. NORWOOD], a member of the committee.

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

Mr. NORWOOD. Mr. Chairman, I rise to strongly support the Oxley-Burr amendment.

Mr. Chairman, I know the FDA is not perfect, I will admit that, but if we have to choose between the FDA and tort juries, the FDA is obviously better suited to make judgments as to what products should be on the market. This amendment is intended to prevent tort juries from second-guessing and overriding often very, very difficult but essential and scientific conclusions and risk-benefit assessments the FDA must make in approving a drug and deciding what warnings must and must not accompany a drug.

We must pass this amendment, Mr. Chairman, for the health of our Nation. When juries are permitted to punish defendants for conduct approved by the FDA, substituting their amateur scientific judgment and cost-benefit analysis for the judgment of the FDA's professional scientists, it makes drug manufacturers very wary of producing new products.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MCCOLLUM].

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

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding me the time.

I rise to strongly support this amendment today. It is very clear from the work we did in the Committee on the Judiciary that this is essential. What we are talking about is only application to punitive damages and it is obvious that if a pharmaceutical company gets the approval of the Food and Drug Administration for a pharmaceutical product, then the Government has gone through about 12 years of processing to determine if that product is indeed sound and safe.

No product is 100 percent safe, but for gosh sakes if the FDA has approved it and sanctioned it, why should we be subjecting a pharmaceutical company to the threat of punitive damages for something that goes awry in that product that comes out later? We are only stifling the opportunity to develop the diversity of new products that we need for the health of America.

I urge in the strongest of terms that this amendment be adopted today. It is a good, sound exemption and safeguard for the pharmaceutical industry, for the health of the future of this country if we give this particular protection in those cases, those limited punitive damage cases where the FDA has approved a pharmaceutical product.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. COOLEY].

Mr. COOLEY. Mr. Chairman, before coming to Congress and being in the cattle business for a few years, I spent 10 years as director of regulatory affairs for an international pharmaceutical company. Our company literally spent millions and millions of dollars in complying with the FDA approval process. This process is the most rigorous process in the entire world to prove safety and efficacy of a drug. If we have no confidence in the FDA to do this, then we should find another agency to do this job for us.

As long as a company complies with the licensing requirements and continues the research after a drug is introduced on the market, I cannot believe that we can have punitive damages which should be only directed toward those companies who have reckless misconduct in the selling and administering of the drug. Currently prices of important drugs and medical devices are artificially high because of the cost of the liability insurance. Under this amendment plaintiffs still will have full compensation.

I urge passage of this amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 valuable seconds to the gentleman from Ohio [Mr. CHABOT].

Mr. CHABOT. Mr. Chairman, I strongly support this amendment. It makes no sense to allow punitive damages against companies that have acted in good faith and gotten the FDA's approval. Most importantly, this amendment will help those who truly need help the most, those who need drugs which otherwise would probably not come on the market at all to relieve agonizing pain and those who need drugs which may preserve life itself.

The CHAIRMAN. The Chair will inform the committee that the gentleman from Ohio [Mr. OXLEY] is entitled to close debate.

PARLIAMENTARY INQUIRY

Mr. WATT of North Carolina. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry has to do with why the gentleman on that side has the right to close debate. We are defending the committee position on this side this time.

The CHAIRMAN. If the Chair might respond to the inquiry, the gentleman from Ohio is the author of the amendment and there is no official committee position that is being represented here by opposition to the amendment. So the gentleman from Ohio is entitled to close debate on the amendment.

POINT OF ORDER

Mr. WATT of North Carolina. Mr. Chairman, I make a point of order.

The CHAIRMAN. The gentleman will state the point of order.

Mr. WATT of North Carolina. Mr. Chairman, I make this point of order, and I have already gone through this with the parliamentarian today.

The CHAIRMAN. The Chair is aware of that.

Mr. WATT of North Carolina. Any time that anyone makes a position that is contrary to the committee's position which in this case is the bill, and the amendment is contrary to the bill, I was told earlier today that whoever is defending the committee's position would be entitled to close.

The CHAIRMAN. In response to the gentleman's question, this amendment does not strike language from the bill at all.

Mr. WATT of North Carolina. Mr. Chairman, pursuing my point of order, the amendment on which I made the inquiry this morning did not strike any language from the bill. It was Mr. SCHUMER's amendment——

The CHAIRMAN. The Chair is not aware of exactly what amendment it was that was being discussed with the parliamentarian.

The gentleman may proceed.

Mr. WATT of North Carolina. I thank the Chair. I thought we had gotten to the point in this body that a Member cannot even make a point of order anymore.

The inquiry that I made this morning was on Mr. SCHUMER's amendment which struck nothing from the bill, and I was told at that time by the parliamentarian that any amendment that was contrary to the position, and it was presumed that the position of the bill was that it would not be amended at all, it would be the party that was defending the committee's position, which in this case is presumed to be the bill itself, not the amendment, that would be allowed to close.

The CHAIRMAN (Mr. DREIER). The Chair has perceived that the gentleman from Michigan [Mr. DINGELL] is not necessarily carrying the position of the committee.

The Chair will acknowledge that it is a difficult call, but that is the determination of the Chair.

PARLIAMENTARY INQUIRIES

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Are there any standards by which the Chair perceives? This is a very disturbing statement the Chair has just made.

The gentleman from Michigan is the ranking minority member, I believe, of one of the two committees of jurisdiction over this bill, and when we have had stated that there is nothing in the bill one way or the other, are we totally dependent——

The CHAIRMAN. The gentleman offers a very good parliamentary inquiry. The issue is addressed as follows:

It is the call of the Chair and it is the determination of the Chair that the gentleman from Michigan [Mr. DINGELL] does not represent the position of the committee. It is for that reason that it has been determined that the gentleman from Ohio [Mr. OXLEY], the author of the amendment, would be entitled to close debate on the amendment.

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, we have a very important point here, and I must say I am distressed by the tone of these rulings. By what standards can Members know how a chairman is going to divine whether or not someone represents the position of the committee? Is there no objective standard as to who represents the position of the committee when the ranking minority member defends the position of the committee? I would point out this amendment as I understand it was considered at least in one of the committees and rejected by one of the committees. What are the standards?

The CHAIRMAN. Under the rules of the House, the proponent of the amendment has the right to close unless the committee position is being offered by another member.

Mr. FRANK of Massachusetts. I have further parliamentary inquiry, Mr. Chairman.

Anytime there is silence in the bill on an amendment, can we safely assume that the proponent of an amendment will then be allowed to close?

The CHAIRMAN. The Chair does not take that position.

Mr. FRANK of Massachusetts. Or does the chairman take the position whatever he wants will be the case and if he wants to give his party an advantage, he will do it?

The CHAIRMAN. The Chair has stated that the proponent of the amendment has the right to close unless the committee position is being represented by another Member.

Mr. FRANK of Massachusetts. But the question is, by what standard do you determine that? My parliamentary inquiry is, are there any standards by which you determine that? Or is it just arbitrary as it appears to be in this case?

The CHAIRMAN. There is not an absolute objective standard that exists for making that determination.

Mr. FRANK of Massachusetts. Is there a relative standard?

The CHAIRMAN. It is the prerogative of the Chair to make that determination and the Chair has determined that in this case, the proponent of the amendment, because a position of the committee is not being represented by another Member, has the right to close.

Mr. FRANK of Massachusetts. I have another parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, if the Chair decides to give partisan advantage, is there any recourse?

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. If the chairman decides then to simply follow partisan instincts, does the Member have any recourse?

The CHAIRMAN. This is the discretion of the Chair, and this is the ruling of the Chair.

Mr. WATT of North Carolina. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry is, is the Chair expecting to consult with the parliamentarian? Because the parliamentarian clearly gave me this morning a completely contrary opinion. Is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. It is the determination of the Chair that in this instance, the proponent of the amendment will close debate as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. I have parliamentarian inquiry, Mr. Chairman.

My inquiry is, is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. The Chair will consult with the parliamentarian. It is the determination, having consulted with the parliamentarian, that in this instance the gentleman from Ohio, the proponent of the amendment, has the right to close as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. A parliamentary inquiry Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. WATT of North Carolina. Does the Chair have some psychic connection with the parliamentarian since nobody here has seen him consult?

The CHAIRMAN. That is not a parliamentary inquiry.

Mr. SENSENBRENNER. Regular order, Mr. Chairman.

The CHAIRMAN. The gentleman knows that is not a parliamentary inquiry.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me time.

Mr. Chairman, I rise in strong support of the Oxley amendment as cochair of the bipartisan House Medical Technology Caucus.

Why in the world, Mr. Chairman, should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

Mr. Chairman, let's quit stifling medical innovation. Let's quit stifling research and development, drugs and medical devices. Let's adopt the Oxley amendment.

Mr. Chairman, I rise in strong support of the Oxley amendment, as cochair of the bipartisan House Medical Technology Caucus. This amendment is needed because manufacturers are currently being forced to withhold life-saving drugs and medical devices rather than face unlimited liability.

Why in the world should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

The FDA defense was originally in H.R. 917 and should be part of this important tort reform legislation. Let's quit stifling research and development in drugs and medical devices. Let's quit stifling medical innovation. Let's help those consumers and patients who need life-saving drugs and medical devices.

Let's adopt the Oxley FDA amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Indiana [Mr. MCINTOSH].

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

□ 1745

Mr. MCINTOSH. Mr. Chairman, I rise in support of this amendment. It is vitally needed.

In talking with one of the leading medical device industry specialists, Mr. Dane Miller of Indiana, he has told me it is becoming extremely difficult if not impossible for that industry to provide lifesaving devices because of the threat of liability. The reason: I think liability risks are forcing the suppliers of raw materials, companies such as DuPont and Dow Chemical which have an outstanding record will not take the risk of providing the materials because of the threat of liability.

I urge Members to vote in favor of this amendment.

Mr. OXLEY. Mr. Chairman, may I inquire how much time I have remaining?

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] has 2 minutes remaining, and the gentleman from Michigan [Mr. DINGELL] has 3 minutes remaining.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from North Carolina [Mr. HEINEMAN].

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

Mr. HEINEMAN. Mr. Chairman, the FDA defense is simple and it is fair. If the Food and Drug Administration approves a drug, then the pharmaceutical company which manufactures that drug should not be liable for punitive damages.

Currently the fear of unnecessary litigations stifles innovations and limits the types of drugs which are available to the American consumer. Without the FDA defense, beneficial drugs will be driven out of the marketplace and manufacturers will continue to be discouraged from developing new drugs to treat illnesses such as AIDS and cancer. I urge my colleagues to support the amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes, my remaining time, to the distinguished gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time. He has worked on this matter for many years, and I have noted his change of position, his reluctance now to allow FDA approval to reign superior in this instance; we now have those who are seeking this amendment, many of them are at the same time holding FDA in a suspended state of animation, which could result in an important diminution of its powers and resources and ability to do the job.

I have heard it said here on the floor several times, if there are ways to improve the FDA's ability to get the job done, then let us do it. But we may be going in the opposite direction. As badly as the FDA needs support, the problem right now is whether it is going to be able to continue funding at its present level.

So I rise in clear opposition to an amendment which will ultimately have the effect of immunizing manufacturers of defective products who happen to obtain FDA approval.

This amendment would provide a complete defense to liability for any drug or medical device that received premarket approval from the FDA. In other words, if the FDA for whatever reason allows a defective product on the market, the victims would not be able to sue at all. Even if both the manufacturer and the FDA have evidence of the dangers of a product but permitted it to be marketed anyway, the innocent, injured victim would be left without any opportunity for compensation whatsoever.

Do the authors of this amendment really want us to place that much faith in an underfunded Federal regulator?

It goes without saying that the amendment would have a disproportionate impact on the ability of women in particular to recover punitive damages which could occur from grossly negligent conduct, since many of the cases that involve large awards involve defective medical products placed inside women's bodies, the very products likely to need FDA approval.

These are products such as the Dalkon Shield, the Cooper-7 IUD device, high-absorbency tampons linked to toxic shock syndrome and silicone breast implants. For each of these products, the manufacturer had information indicating the dangers posed by the product.

So join me and the gentleman from Ohio in opposing this amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] is recognized for 1½ minutes to close debate.

Mr. FRELINGHUYSEN. Mr. Chairman, I strongly support this amendment which will strengthen H.R. 956, the Common Sense Product Liability and Legal Reform Act and address what I see as a deterrent to research and development of lifesaving pharmaceuticals and medical devices.

The out-of-control tort situation in our country is forcing companies that research and develop medical equipment and lifesaving drugs to back away from developing important new treatments for diseases such as AIDS or cancer.

The United States has the most rigorous drug and medical device approval process in the world. Companies which research and develop new medical treatments spend millions, sometimes billions of dollars, on developing and testing these products in order to meet FDA standards and approval, before they are able to make these important products available to the public. In addition to the money spent, the time involved with the process of FDA approval can take up to 10 years.

The proposed limitation on punitive damages makes sense. Even when every effort is made to ensure the safety and efficacy of the drug for the illness or condition it is designed to treat, no drug is 100 percent risk free. The FDA recognizes this and in making its approval decision must weight the risks and benefits of each new pharmaceutical in order to minimize, if not eliminate, risk of injury. If injury does occur, despite all the companies research and the government's review, and the manufacturer has complied with all relevant federal requirements, it should not then be held liable for ''punitive damages.''

Without this amendment, there remains a powerful disincentive to certain types of pharmaceutical research. Enacting the government-standards defense will encourage new research and development.

I am pleased to support this amendment which I believe offers a fair balance of protection for consumers and businesses alike.

Mr. ROEMER. Mr. Chairman, I rise today to support the amendment to H.R. 956 offered by the gentleman from Ohio [Mr. OXLEY]. This amendment will bar punitive damages for the sale or manufacture of drugs or devices which have been approved by the Food and Drug Administration.

Our medical device and pharmaceutical companies must be able to continue to pioneer life-saving, cost-effective products. The explosion of litigation and the skyrocketing costs that are attendant to such lawsuits are in great part responsible for the high costs of healthcare in the United States. They also dampen our enthusiasm for innovative and breakthrough research that produces products that enhance our quality of life. This amendment would produce a ''government standards'' defense where companies that adhere to strict government regulations designed to preserve safety would not be held liable for punitive damages involving a product.

New medicines and medical devices increase life expectancy and make life better for those who need it most: people afflicted with disease or people with disabilities. Our approval process for these items is the most stringent in the world, and require huge investments of funding and human resources. The testing process is rigorous and complete. Clinical trials are exhausting. Paperwork substantiating these processes usually runs 100,000 pages or more for a single product.

Clearly the decision to allow such products on the market prove that their benefits outweigh any risk that may be involved. Punitive damages were designed to punish businesses or individuals for willfully negligent or harmful behavior. Companies that submit products for FDA review do not do so in bad faith.

Mr. Chairman, in my Indiana District we are the home of three important producers of biomedical products. The Biomet, Zimmer and DePuy Corporations are the makers of orthotic and prosthetic devices that are critical to the health and well-being of people throughout the world. They invest constantly in improving their products, and in turn create good jobs and contribute heavily to our trade balance. The work they do is only for the common good, and their contribution to modern health and quality of life must be acknowledged in this legislation.

This amendment provides a level of protection for these companies while protecting the rights of individuals to seek damages for expenses, pain or suffering. I commend the gentleman from Ohio for offering this measure and encourage my colleagues to support this important provision.

Mr. OXLEY. Mr. Chairman, this has been a very worthwhile debate. I am only sorry we did not have more time. This has been a worthwhile and edifying debate.

Let me conclude by answering some questions that have been raised during the debate and particularly from some conversations I have had with my good friend from New York, Mr. TOWNS, as to what this amendment does or does not do.

First of all, this amendment applies only to punitive damages. Second, the amendment does not cap noneconomic damages in any way, so that the plaintiff would be entitled to receive economic and noneconomic damages; only punitive damages would not be permitted.

Thirdly, the FDA is the agency we rely on to regulate food and drug purity and the only agency authorized to give premarket approval.

This amendment encourages innovations, it protects consumers and it makes good common sense.

Mr. Chairman, this was a bipartisan effort on this amendment, and we think it goes to the heart of the entire process of approving medical devices and drugs. It is in the best interests of our consumers and of our constituents that we have a system that we can rely on and that provides adequate protection against voracious punitive damage awards against drug companies or other manufacturers of medical products.

The Oxley bipartisan amendment is an amendment that all Members can and should support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. OXLEY].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HOKE

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

The CHAIRMAN. The Clerk will designate the amendment.

Amendment offered by Mr. HOKE: Page 19, redesignate section 202 as section 203 and insert after line 19 the following:

SEC. 202. DEPOSIT OF DAMAGES.

If punitive damages of more than $250,000 are awarded in a civil liability action, 75 percent of the amount of such damages in excess of $250,000 shall be deposited—

(1) if the action was in a Federal court, in the treasury of the State in which such court sits, and

(2) if the action was in a State court, in the treasury of the State in which such court sits.

This section shall be applied by the court and shall not be disclosed to the jury.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. HOKE] will be recognized for 10 minutes and a Member in opposition to the amendment will be recognized for 10 minutes.

The Chair recognizes the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this punitive damages amendment is fairly simple and straightforward. What it does is it restores the original intent of punitive damages awards which is namely to punish wrongdoers, it is not to compensate plaintiffs.

Every day in courtrooms across America, plaintiffs are compensated for lost wages, for medical and rehabilitation costs, loss of the use of property, emotional distress, injury to their reputation, humiliation, and loss of companionship or consortium. These are the awards that are intended to make the defendant whole or complete. These are compensatory awards.

But in addition to these economic and noneconomic damages, plaintiffs are receiving themselves windfalls that were never meant to play part in making them whole. This windfall comes in the form of punitive damages that by their very definition are intended to be punishment for wrongdoing defendants. This punishment is intended to deter future wrongdoing.

The key to a fine's effectiveness is not who receives it but who is forced to pay. That is why I am proposing that 75 percent of punitive damages in excess of $250,000 be paid to the State in which the action is litigated. In other words, plaintiffs will still receive 100 percent of any punitive damages up to $250,000 and will receive 25 percent of any amount awarded in excess of $250,000.

I believe this arrangement strikes a very good balance between maintaining the plaintiff and the plaintiff's attorney's incentive to seek punitive damages, and emulating the model of a criminal fine.

This amendment also stipulates that the arrangement is to be applied by the court and is not to be disclosed to the jury. This provision safeguards against juries using punitive damages to finance State initiatives in a way that would improperly bias their outcome.

Ten States have adopted laws sending a portion of punitive damages to their State for a variety of purposes.

The Georgia Supreme Court has upheld its law sending a portion of punitive damage awards directly to the State.

This has broad support, Mr. Chairman. It is supported by people from former Attorney General Griffin Bell to the State legislatures of 10 States across this country.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is there a Member who wishes to manage the opposition to the Hoke amendment? Does the gentleman from Michigan [Mr. CONYERS] wish to manage the opposition to the Hoke amendment?

Mr. CONYERS. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 10 minutes.

PARLIAMENTARY INQUIRY

Mr. CONYERS. Mr. Chairman, on a point of procedure, would I have the right to close on this since this is an amendment against the bill?

The CHAIRMAN. As a member of the reporting committee, the gentleman has the right to close.

Mr. CONYERS. Mr. Chairman, I yield myself 3½ minutes.

Mr. Chairman, this amendment continues chipping away at the entire concept of punitive damages by reducing punitive damages over $250,000 by an additional 75 percent and giving it to the Federal or State treasury rather than to the individual who sued.

Do State treasuries want these awards? New York said, ''No thanks,'' and repealed its apportionment law. In Colorado, the supreme court held that giving punitive awards to a State fund was an unconstitutional ''taking.''

Who benefits? The corporations who will simply build economic damages into their costs of doing business, without fear of facing large punitive damages that would have deterred them from knowingly selling products that cause devastating injury to the buyer.

Who loses? Those at the lower end of the economic scale who will have less incentive to sue, especially when their recovery is determined by how much they earn rather than the outrageousness of the defendant's conduct.

Some Members on the other side will argue that punitive damages should punish wrongdoers and are not intended to compensate plaintiffs, but they should know better. Lawsuits brought by victims, not Government regulation, brought about safety improvements like restricting asbestos use, like beepers on reversing garbage trucks that had resulted in numerous injuries to children, like recalling the Dalkon Shield. Punitive damages put an end to the exploding fuel tank and the heart by-pass drug that resulted in amputation caused by gangrene.

The likely result if this amendment passes is more dangerous products on the market and less incentive for the victims to sue, a prospect that does not advance the common good but will only please the sponsors of this Contract with Corporate America.

□ 1800

Please reject the Hoke amendment.

Mr. HOKE. Mr. Chairman, I point out once more, while we are talking about our punitive damages, not compensatory damages, compensatory damages are already paid to compensate a victim for his economic and non-economic losses.

Mr. Chairman, at this time I yield 1 minute to the gentleman from Illinois [Mr. HYDE], the chairman of the committee.

Mr. HYDE. I thank the gentleman for yielding this time to me.

Mr. Chairman, the amendment offered by the gentleman from Ohio [Mr. HOKE] provides for 75 percent of punitive damages awards in excess of $250,000 to be deposited to the treasury of the State in which the particular Federal or State court sits. Since punitive damages are limited under Section 201(b) to $250,000 or 3 times the damages awarded for economic loss—whichever is greater—punitive damages can exceed $250,000 only if the damages for economic loss exceed $83,333.33. I support this proposal because it effectuates the public interest in allowing large punitive damages awards to benefit the appropriate State without either compromising the rights of claimants to full compensation for injuries sustained or eliminating incentives to seek punitive damages.

Punitive damages are designed to punish or deter egregious misconduct—in contrast to compensatory damages that compensate claimants for both economic and non-economic losses. Compensatory damages cover such monetary items as medical expenses and lost wages and such non-monetary items as pain and suffering. Claimants who are fully compensated for both monetary and non-monetary losses receive windfalls when they also collect punitive damages. It makes eminent good sense for punitive damages to be allocated for public purposes—which essentially is what we accomplish by directing such funds to state treasuries. The States in turn can decide on the best uses to be made of these funds.

Although in theory all of these awards should go to the appropriate State, we recognize the practical need to retain incentives for claimants to seek such awards. For that reason, the amendment leaves untouched State law schemes that allow claimants to collect punitive damages up to $250,000. The claimant's share of amounts in excess of $250,000 will equal 25 percent provided the law of the particular State permits the claimant to collect it. The amendment includes sufficient incentives for claimants to continue seeking punitive damages in appropriate cases while recognizing the public interest in retaining benefits from large punitive damages awards.

The amendment is meritorious and represents a positive contribution to this legislation.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. NADLER].

Mr. NADLER. I thank the gentleman for yielding this time to me.

Mr. Chairman, I recognize the intention of the gentleman from Ohio [Mr. HOKE]. I had a similar amendment, similar but different, in committee, which I am sorry that the Committee on Rules did not make in order.

The purpose of punitive damages, the main purpose, is to deter, to deter egregious, terrible conduct. When we are dealing with a malefactor of great wealth, as the Republican President once put it, you need a large punitive award.

But why should the individual victim be unjustly enriched just because the tort feasor was a very wealthy individual or a big corporation.

So I do not mind the limit of $250,000 or 3 times the economic damage, whichever is greater, as the recovery for the victim. But that will totally limit the deterrent effect against the large tort feasor.

So I suggested let the victim get the $250,000 or 3 times economic damage, whichever is greater, and let government, for deficit reduction, get any award in excess of that.

So you still get the deterrent effect, but not unjust enrichment.

The gentleman from Ohio turned it around, and he says let us give 75 percent to the government of the excess over $250,000 below 3 times economic damages. So if the economic damage was $400,000, 3 times economic damages would be $1.2 million. Mr. HOKE says limit what the victim gets to $250,000 plus a quarter of that difference.

So this is reducing below what the bill said the possible recovery is. I think this is wrong because the victim is entitled to some reasonable recovery of punitive damages in relation to economic damages.

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

Mr. NADLER. I yield to the gentleman from Ohio.

Mr. HOKE. I thank the gentleman for yielding.

Mr. Chairman, I ask the gentleman, is it not true what his amendment would have done would have been to eliminate the cap on punitive damages?

Mr. NADLER. Yes. Reclaiming my time, that is exactly the point. There should not be a cap on punitive damages necessary as a deterrent but to avoid unjust enrichment. I can understand the cap on the recovery to the victim. But to cap the total award and then to say underneath that cap we are going to say the victim cannot get it all, that I think is wrong to the victim and does not provide an adequate deterrent to the tort feasor.

Mr. HOKE. Would the gentleman not agree that it is true that we just rejected that concept by rejecting soundly the First Amendment in this Congress? We just rejected that idea.

Mr. NADLER. Well, I think the majority is wrong.

Mr. HOKE. But we had a vote on what the gentleman wanted.

Mr. NADLER. But what the gentleman is doing goes further. What the gentleman is saying is the cap of 3 times economic damages $250,000, and we are going to deny part that have to the victim.

If you want to say we should not have any cap at all, then it makes sense to say to the victim he should not unjustly enrich himself to any extent.

I urge defeat of the amendment.

Mr. HOKE. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the gentleman for yielding and commend him for what I think is a very good amendment.

In fact, it is an amendment that helps to cure one of the objections raised on the other side to the fact that there is a cap on punitive damages. The cap is important in order to keep juries from becoming legislators. They are not elected. They do a very good job of resolving disputes between individuals, but when you have multimillion-dollar awards, you have a problem with juries imposing rules on society that ought to be imposed by State legislatures.

In this case, you are now dealing with the problem that they observe once you impose the cap, and that is that it is discriminatory because they said somebody with a very wealthy background might have high economic losses, they got 3 times that and recover far more than somebody with a poorer background who could only have a $250,000 cap.

So I compliment the gentleman because he is saying that everybody up to $250,000 is equal. Once you get beyond $250,000, we have gone already beyond the purpose of punitive damages. They are not to reward an individual or even compensate an individual for loss they get from the economic loss and the noneconomic loss.

That is medical bills that they are entitled to be reimbursed for, lost income, pain and suffering, all of that is not affected by punitive damages.

So, by saying that 75 percent of the amount above $250,000 will go to the public treasury where it should go because it is, in effect, a fine is a very good idea. And that is exactly the parallel to fines.

The standard for punitive damages is a very high one. It is only for people who do serious wrong.

So when we impose a fine on people and it is a serious wrong meeting a high standard, it ought to go into that public treasury just as a fine imposed on a criminal wrongdoer.

That was exactly the point made by former Supreme Court Justice Lewis Powell, who said that the private windfall aspects of punitive damages aggravates the problems that we have with the whole rack of standards in punitive damages because, unlike fines, which go to the public treasury, punitive damages go to the private plaintiffs. To a limited extent, that is fine, and your bill does it. Beyond that, it goes into the public treasury.

I commend the gentleman for a very good amendment.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Virginia [Mr. SCOTT], a member of the Committee on the Judiciary.

Mr. SCOTT. Mr. Chairman, we keep hearing these generalities about excessive awards, but we do not hear specific cases that outraged juries so much that they actually awarded punitive damages.

We have to put this amendment in the context of the other amendments that we have already had and recognize punitive damages are designed to be high enough to protect society from a corporate calculation that it is easier to pay the damages for somebody injured, maimed or killed, than it is to correct the situation.

Earlier today we talked about the situation with flammable pajamas where the court found that the corporation knew that the pajamas—that newsprint burned only slightly faster than the pajamas. Because of the punitive damages, children can now go to bed safely knowing they are not wearing these things.

In the context of loser pays and a separate trial for punitive damages, this amendment would essentially remove any incentive that a plaintiff would have to go after punitive damages, thereby removing the safety valve that others will enjoy by virtue of the fact that corporations are afraid of these punitive damages. The loser pays, you can win the case, on the compensation, you could even win punitive damages. But if you come in under the offer, you end up paying your attorneys' fees, the other peoples' attorneys' fees, and you are therefore discouraged from bringing these cases.

This amendment is another discouragement in protecting society from corporate wrongdoing and ought to be defeated.

Mr. HOKE. Mr. Chairman, I would just like to respond to the last speaker by saying that clearly when you still have a $250,000 amount of money, I do not know why that is not considered to be an incentive, not to mention that in terms of criminal fines that is a tremendous fine. If somebody is fined for criminal negligence or felonious activity, a $250,000 fine is disproportionate to almost anything you will find in a State legislature's code of criminal penalties.

Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY].

Mr. BILBRAY. I thank the gentleman for yielding this time to me.

Mr. Chairman, frankly, I think if you tried to explain this to the average citizen in the United States, they would think it is absurd that somebody is going to be given a fine and that fine is going to be given to the plaintiff. With fines and forfeitures in criminal cases, we do not have those fines and forfeitures going to the victim of the crime. That may be more logical than what we have here because at least in the criminal case they have not been made whole.

By definition, they should have been made whole before punitive is ever considered.

I think what we have to do is get the lottery out of this. I would ask that we support this amendment. I would prefer that all punitive damages go to a public fund because that is where penalty fees should be going. They go to a public fund in a criminal case. By definition, they should be going to such a fund.

Mr. HOKE. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I rise in strong support of this amendment.

I think the concept has oft been repeated today about compensatory and punitive damages and the purposes of each. Clearly, we have established today that punitive damages are to punish and deter. We have a parallel concept in the criminal code when we have restitution and fines. In that instance, the court may award restitution; that is to the victim of the crime. But the fine that they punish that criminal with goes to the State.

In the instance of the civil justice system, punitive damages are used in a civil case to deter conduct. In our civil justice system, punitive damages are used to deter conduct for the good of society as a whole. Under those circumstances it is only right that society as a whole should reap the benefit of the punitive damages. For that reason I strongly support and commend the gentleman from Ohio for his amendment.

Mr. HOKE. I thank the gentleman for those kind words.

I will close with two thoughts. First of all, I want to thank the gentleman from California [Mr. BILBRAY] for wanting to speak on this subject. He has been walking around with pneumonia for 3 days. He felt so strongly enough, he said he wanted to come down and speak on this, and I think that says a great deal.

Mr. Chairman, this is not a far-fetched amendment, by any means. What you are going to hear from the other side is somehow this is taking rights away, money away, dollars away from people. Nothing could be further from the truth than that.

□ 1815

The fact is that a punitive damage award is meant to take the place of a criminal fine. We are saying that the first $250,000 of that can go to the victim. After that, it still goes 25 percent to the victim and 75 percent to the

State. It was never intended to make a plaintiff whole. We have already done that with economic and noneconomic compensatory damages. That is not what this is intended to do, never has been, never will be. But what we have to do is we need to put the money back to the State. That is where criminal fines go. That is where this, the punitive damage awards should go.

That is what this bill is all about; it is a common sense balancing approach to this problem.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CONYERS] for 1½ minutes to close debate.

Mr. CONYERS. Members of the Committee, we have seen a chipping-away effect that has now reached the point that I think Members on the other side will begin to be repelled by it. The entire concept of punitive damages are now being reduced by an additional 75 percent when they exceed $250,000 by giving it to the Federal or State treasury rather than to the individual who sued.

When is this going to end? What reason does a person have to come into court with a lawyer, to risk his all, under the accentuated costs and risks that he must not attend, and then, if he recovers, it goes not to him, but it goes to the State or to the Federal Government itself? What kind of nationalistic scheme are we talking about?

I say to my colleagues, ''You don't have to be a supporter of states rights to take exception to this.''

Where will we draw the line? What are we doing? Has each citizen become an apparatchik for the State even when he or she goes to court and recovers?

The New York State court has said ''no,'' the Supreme Court of Colorado has said ''no,'' and now we should say ''no'' to the gentleman from Ohio [Mr. HOKE].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HOKE].

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

RECORDED VOTE

Mr. HOKE. 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 265, not voting 7, as follows:

[Roll No. 224]

AYES—162

Andrews
Archer
Armey
Baker (CA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bereuter
Bevill
Bilbray
Bliley
Boehner
Bonilla
Browder
Brownback
Bryant (TN)
Bunn
Buyer
Calvert
Camp
Chenoweth
Christensen
Chrysler
Coburn
Collins (GA)
Condit
Cox
Crane
Cremeans
Cunningham
Deal
DeLay
Doggett
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ewing
Fawell
Fields (TX)
Flanagan
Fowler
Frisa
Funderburk
Gallegly
Ganske
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hancock
Hastert
Hastings (WA)
Hefley
Heineman
Hilleary
Hobson
Hoke
Hostettler
Houghton
Hunter
Hyde
Inglis
Jacobs
Johnson, Sam
Jones
Kanjorski
Kasich
Kim
Kingston
Klug
Knollenberg
Kolbe
LaFalce
Laughlin
Leach
Lewis (KY)
Lincoln
Linder
Luther
Maloney
Martinez
McCollum
McCrery
McInnis
McKeon
McNulty
Metcalf
Mica
Miller (CA)
Miller (FL)
Moorhead
Neumann
Norwood
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Pomeroy
Porter
Portman
Pryce
Regula
Roberts
Rogers
Rohrabacher
Roth
Royce
Sabo
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schumer
Seastrand
Sensenbrenner
Shaw
Shuster
Skeen
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stenholm
Stump
Talent
Tanner
Tauzin
Taylor (NC)
Thomas
Thornberry
Thurman
Towns
Upton
Vucanovich
Walker
Watts (OK)
Weldon (FL)
Weller
Williams
Wolf
Young (FL)
Zimmer

NOES—265

Abercrombie
Ackerman
Allard
Bachus
Baesler
Baker (LA)
Baldacci
Barcia
Barrett (WI)
Bass
Bateman
Becerra
Beilenson
Bentsen
Berman
Bilirakis
Bishop
Blute
Boehlert
Bonior
Bono
Borski
Boucher
Brewster
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunning
Burr
Burton
Callahan
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Combest
Conyers
Cooley
Costello
Coyne
Cramer
Crapo
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Ensign
Eshoo
Evans
Everett
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Foley
Ford
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gekas
Gephardt
Gilman
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastings (FL)
Hayes
Hefner
Herger
Hilliard
Hinchey
Hoekstra
Holden
Horn
Hoyer
Hutchinson
Istook
Jackson-Lee
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaHood
Lantos
Largent
Latham
LaTourette
Lazio
Levin
Lewis (CA)
Lewis (GA)
Lightfoot
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Manton
Manzullo
Markey
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McHugh
McIntosh
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moran
Morella
Murtha
Myers
Myrick
Nadler
Neal
Nethercutt
Ney
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Poshard
Quillen
Quinn
Radanovich
Rahall
Ramstad
Reed
Reynolds
Richardson
Riggs
Rivers
Roemer
Ros-Lehtinen
Rose
Roukema
Roybal-Allard
Rush
Sanders
Sawyer
Schiff
Schroeder
Scott
Serrano
Shadegg
Shays
Sisisky
Skaggs
Skelton
Slaughter
Smith (NJ)
Spratt
Stark
Stearns
Stockman
Stokes
Studds
Stupak
Tate
Taylor (MS)
Tejeda
Thompson
Thornton
Torkildsen
Torres
Torricelli
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Waldholtz
Walsh
Wamp
Waters
Watt (NC)
Waxman
Weldon (PA)
White
Whitfield
Wicker
Wilson
Wise
Woolsey
Wyden
Wynn
Yates
Young (AK)
Zeliff

NOT VOTING—7

Cubin
Forbes
Gibbons
Hayworth
Rangel
Tiahrt
Ward

☐ 1838

Messrs. ZELIFF, TATE, BUNNING of Kentucky, BREWSTER, HANSEN, VENTO, BONO, BARCIA, DICKS, KENNEDY of Massachusetts, OBERSTAR, CALLAHAN, WAMP, MONTGOMERY, CHAMBLISS, EVERETT, and SISISKY, and Ms. BROWN of Florida changed their vote from ''aye'' to ''no.''

Messrs. PAYNE of Virginia, PAXON, GREENWOOD, MCINNIS MCCRERY, and DORNAN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 11, printed in House Report 104–72.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. 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. COX of California:

Page 1, strike line 7 and all that follows through the matter that precedes line 1 on page 2, and insert the following:

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purposes.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Applicability.
Sec. 102. Liability rules applicable to product sellers.
Sec. 103. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 104. Misuse or alteration.
Sec. 105. Frivolous pleadings.
Sec. 106. Several liability for noneconomic loss.
Sec. 107. Statute of repose.
Sec. 108. Definitions.

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS
Sec. 201. Treble damages as penalty in civil actions.
Sec. 202. Limitation on additional payments beyond actual damages.
Sec. 203. Fair share rule for noneconomic damage awards.
Sec. 204. Definitions.
TITLE III—BIOMATERIALS SUPPLIERS
Sec. 301. Liability of biomaterials suppliers.
Sec. 302. Procedures for dismissal of civil actions against biomaterials suppliers.
Sec. 303. Definitions.
TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE
Sec. 401. Application limited to interstate commerce.
Sec. 402. Effect on other law.
Sec. 403. Federal cause of action precluded.
Sec. 404. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the civil justice system, which is designed to safeguard our most cherished rights, to remedy injustices, and to defend our liberty, is increasingly being deployed to abridge our rights, create injustice, and destroy our liberty;

(2) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly, and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(3) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(4) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the several States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce;

(5) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the national market, and from excessive liability costs passed on to them through higher prices;

(6) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses, and adversely affects governments, taxpayers, nonprofit entities and volunteer organizations;

(7) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(8) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, and individuals to protect their liability with any degree of confidence and at a reasonable cost;

(9) because of the national scope of the problems crated by the defects in the civil justice system, it is not possible for the several States to enact laws that fully and effectively respond to those problems;

(10) it is the constitutional role of the national government to remove barriers to interstate commerce; and

(11) there is need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

Page 2, strike line 3 and all that follows through line 24, and page 4 (and redesignate subsequent sections accordingly).

Page 11, strike lines 17 through 24 (and redesignate subsequent sections accordingly).

Page 12, strike line 24 and all that follows through line 2 on page 13 (and redesignate the subsequent section accordingly).

Page 17, strike lines 10 through 12 and insert the following:

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

SEC. 201. TREBLE DAMAGES AS PENALTY IN CIVIL ACTIONS.

Page 17, line 21, insert ''rights or'' before ''safety''.

Page 17, beginning in line 25, strike ''for the economic loss on which the claimant's action is based'' and insert ''for economic loss''.

Page 18, insert after the period in line 2 the following: ''This section shall be applied by the court and shall not be disclosed to the jury.''.

Page 18, line 3, strike ''AND PREEMPTION''.

Page 18, strike ''title'' in lines 4 and 6 and insert ''section''.

Page 18, beginning in line 7, strike ''in any jurisdiction that does not authorize such actions'' and insert after the period in line 8 the following: ''This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages.''.

Page 19, after line 19, insert the following new sections (and redesignate the subsequent section accordingly):

SEC. 202. FAIR SHARE RULE FOR NONECONOMIC DAMAGE AWARDS.

(a) FAIR SHARE OF LIABILITY IMPOSED ACCORDING TO SHARE OF FAULT.—In any product liability or other civil action brought in State or Federal court, a defendant shall be liable only for the amount of noneconomic damages attributable to such defendant in direct proportion to such defendant's share of fault or responsibility for the claimant's actual damages, as determined by the trier of fact. In all such cases, the liability of a defendant for noneconomic damages shall be several and not joint.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the application of the theory of joint liability to any kind of damages.

Page 19, after line 21, insert the following new paragraph:

(1) The term ''actual damages'' means damages awarded to pay for economic loss.

Page 19, line 22, strike ''(1)'' and insert ''(2)''.

Page 20, line 4, strike ''(2)'' and insert ''(3)''.

Page 20, line 12, strike ''(3)'' and insert ''(4)''.

Page 20, line 18, strike ''(4)'' and insert ''(5)''.

Page 20, after line 20, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(6) The term ''noneconomic damages'' means damages other than punitive damages or actual damages.

Page 20, line 21, strike ''(5)'' and insert ''(7)''.

Page 21, line 1, strike ''(6)'' and insert ''(8)''.

Page 30, strike lines 6 and 7, and insert the following:

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 401. APPLICATION LIMITED TO INTERSTATE COMMERCE.

Titles I, II, and III shall apply only to product liability or other civil actions affecting interstate commerce. For purposes of the preceding sentence, the term ''interstate commerce'' means commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation.

Redesignate subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. COX] and a Member opposed will each be recognized for 20 minutes.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. FRANK of Massachusetts. As a member of the reporting committee, I wonder, by whatever process of mental divination the Chair uses, if he would decide that I had the right to close on this.

The CHAIRMAN. The gentleman is correct, he will have the right to close.

Mr. FRANK of Massachusetts. I thank the Chair.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, the tenor of the debate on this entire bill and all of the amendments to this bill is pretty clear: We have too many lawsuits in America. We have become too litigious. It costs too much money, and simple justice is not being served.

The amendment that I am proposing, along with my colleague, Mr. PETE GEREN from Texas, advances a simple rule that will go a long way to making

sure that fair justice exists once again in our courts. Our simple rule is called the fair-share rule.

Under this provision, a person will be made to pay for the damages that he, she, or it caused, but no person will be made to pay for damages that someone else caused. Our rule will hold wrongdoers responsible for their actions, and our rule will permit people who are not responsible for that damage to understand that their conduct will have been rewarded faithfully by the law.

The so-called joint and several liability doctrine is really the fair-share rule stood on its head. If you are adjudged 1 percent liable, you can be required to pay under the current system 100 percent of the damages caused by someone else if it turns out that you are the only one in the picture that has any money. It is known to plaintiffs' trial lawyers as the deep-pockets opportunity. Find somebody, not necessarily a rich person, perhaps just a small business person or an individual who has an insurance policy, who you think can therefore be made to pay, or just from whom a settlement can be extorted, and bring them into the lawsuit.

Take the case of a drunk driver going down the street, goes off the sidewalk onto the front lawn and kills someone. If that person is sued and the jury were to find, and this is approximately the facts in a real case in California, the jury finds that the drunk driver is 95 percent liable for the damage that the drunk driver caused, but the city is 5 percent liable because there was a pothole on the way, and the drunk driver does not have any money, then the taxpayers are stuck for all of the damage caused by the drunk.

□ 1845

That is our current system. Under the fair share rule, someone adjudged 5 percent liable will pay 5 percent of the damage. That is the fair share rule.

I urge support for this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes and 30 seconds to the gentleman from Michigan [Mr. CONYERS], the ranking member of the full Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding time to me.

We are confronted with a very strange amendment here, because what has not been mentioned by the author of it is that it seeks to exclude foreign manufacturers from the service of process requirement that American manufacturers are subject to. And so members of the committee, we are back to the same amendment on the other end that we voted only a few hours ago, where we said that a foreign manufacturer was subject to the same discovery proceedings that a national manufacturer, a domestic manufacturer is subject to.

We said that we should not be able to have them avoid litigation because their discovery may take them to Europe or to Japan, that they must subject themselves to discovery. And this amendment, although strangely enough it has not been said yet, and you are going to have to read pretty carefully to find it anywhere, is that this is going to change the service of process in suits brought against foreign manufacturers.

It is another way to let them out of playing the game on a level playing field with domestic manufacturers.

I think we all know what some of them are doing. They sell their goods, freight on board, in Japan or Germany, just so they will not be treated as having contacts in this country which could subject them to suit there. They know that this makes U.S. citizens go through repeated hurdles to bring suit against them, ranging from translating the complaint into another language and asking the State Department to serve action, and even then the foreign business may elect to ignore the action.

This is another backdoor way of giving a foreign manufacturer a leg up. To make sure that everybody knows what the gentleman is doing, I do not know why the gentleman did not just come out, the gentleman from California did not just come out and say what this is going to do. It is going to change the way service of process is implemented by a foreign manufacturer, and that is just the front door way of getting around the discovery amendment that would have given them a break that we just rejected.

Why do you want to give different rules in court to foreign companies? What benefit do you see in that? I know there are a lot of foreign companies here, but do you not see, my friend, that citizens that are sued and want to sue will need to have service of process. And if you try to take this out, we are going to be doing ourselves a grave disservice to all of our constituents?

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

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

Mr. COX of California. Mr. Chairman, the gentleman makes a very fair point. In fact, the effect of gentleman's just having won on his amendment is that the provisions of this amendment that would otherwise have dealt with service of process will have no effect. The gentleman has carried the day, and the gentleman's amendment will in fact be successfully included in this bill.

Mr. CONYERS. Reclaiming my time, the current language in this bill is carefully balanced. It offers a carrot and a stick. The end result is a substantially more balanced playing field.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

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

Mr. FRANK of Massachusetts. My sense would be, in most parliamentary situations, that the last enactment would supersede the previous one. So the notion that by a prior action we could somehow control a subsequent action is a dubious proposition at best. The gentleman has got a drafting problem. He cannot solve it by something that we did a couple of hours ago, because by a subsequent action we would be deemed to have amended or modified the previous action.

Mr. CONYERS. Mr. Chairman, this amendment strikes a blow against U.S. citizens, the same as the other discovery amendment tried to do.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Texas, Mr. PETE GEREN.

(Mr. PETE GEREN of Texas asked and was given permission to revise and extend his remarks.)

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

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. COX of California. Our amendment dealt with section 109 and struck it. The gentleman from Michigan added a new section 110. Our amendment has no effect on it. So the gentleman has carried the day.

Mr. PETE GEREN of Texas. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of this amendment. The amendment in front of us applies to noneconomic damages known to most people as pain and suffering, emotional distress. Joint and several liability for noneconomic damages is a system that asks Peter to pay for Paul's sins. The bill currently remedies this inequity for all products cases.

However, our amendment extends this much-needed reform to all civil actions. This means that each defendant will be liable for damages for pain and suffering in an amount proportional to his fair share.

When joint and several liability was first developed, plaintiffs had to be found completely blameless to recover damages. Now with few exceptions, plaintiffs can recover damages even if they are partially or mostly at fault. In a recent case involving Walt Disney and a woman injured on bumper cars, Walt Disney was found 1 percent at fault in an accident, yet the trial court held and the Florida Supreme Court affirmed that Disney had to pay 86 percent of the plaintiff's damages.

It may make sense to require that a single defendant be held accountable for all economic damages to make sure that the defendant is made financially whole to the extent that dollars can account for the problems suffered by the plaintiff, but there is little justification for allocating liability in this manner for highly subjective noneconomic damages.

I urge my colleagues to join me in voting for this amendment. The problems of joint and several liability are not limited exclusively to the product liability area. Excessive noneconomic damages are not commmonplace in all types of cases, including claims against

citizen, small businesses, charities, and the Little League.

Let us ask each citizen to pay his or her fair share of the damages, no more, no less. That is fair.

Mr. Chairman, I ask my colleagues to support this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. DINGELL].

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

Mr. DINGELL. Mr. Chairman, the House a little earlier rejected an amendment which would have denied discovery to American firms which were involved in product liability cases where foreigners were taking advantage of them and where they were receiving shelter under the bill. Note that the vote was 258 in favor of that amendment, an overwhelming win. This amendment would, and language of section 109, eliminate the requirement that foreign companies inside this country appoint an agent for purposes of receiving service in the case of product liability suits.

I say that the House has once rejected that principle and should again reject it. Under the previous amendment, you could not get discovery. Now you cannot even get into court under this amendment.

Let us talk about something other. In eliminating the joint and several liability, a man hires two hoodlums to kill his mother-in-law. The woman is horribly disfigured. Judgment is collected ultimately by the woman against the husband and the two hoodlums. She can only collect approximately a third because no longer is there joint and several liability.

Another case: A Member of Congress is liabled by his local newspaper, charged with contributing to the delinquency of a minor. No longer under this amendment is there joint and several liability. He sues the newspaper and the two reporters. Because joint and several liability is no longer there, we can only collect approximately a third of the damages which would have been appropriately assessed against the wrongdoers.

This is a bad amendment. It is an admirable reason for why we ought not write legislation of this kind on the floor. It carries the question of liability. It carries the question of compensation well beyond the question of product liability.

It carries it into all civil wrongs and all civil litigation.

The amendment should be rejected. It favors foreigners, it favors wrongdoing. It puts the innocent at risk. It denies people proper recovery for serious wrongs, intentional or otherwise.

I urge the amendment be rejected.

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

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

Mr. DOGGETT. Mr. Chairman, the section that is being deleted by the Cox amendment requires the foreign manufacturer to appoint an agent for service or process. The prior amendment of the gentleman from Michigan [Mr. CONYERS] did not touch that issue at all. So what this is doing is something very inconsistent with the spirit of the Conyers amendment, but if this amendment should pass, contrary to the author's representations, it would do great damage just as the gentleman has suggested.

Mr. DINGELL. Reclaiming my time, Mr. Chairman, it strikes the provision relative to service of process. It strikes the proper requirement that foreign companies appoint an agent for purposes of receiving service.

Mr. DOGGETT. Mr. Chairman, if the gentleman will continue to yield, the House, previously, by an overwhelming margin adopted the amendment of the ranking Member, the gentleman from Michigan [Mr. CONYERS]. It does deal with trying to assure parity that we, for once, do not give all the advantages to the foreign manufacturers, that we realize the importance of American manufacturers and now the spirit and the principle of that amendment is being undermined by the amendment being offered at this point, because it deletes the section in this particular provision that requires these foreign manufacturers to have an agent for process, something that every American manufacturer has to do.

Mr. DINGELL. The House has already spoken. Foreigners should respond in discovery. But this amendment strikes the ability to even get them in court. It takes away the ability of an American injured by foreign misbehavior in the area of product liability to even get service, because no longer must the foreigner appoint an agent for purposes of receiving service under this legislation.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

It is very interesting to note that the fair share rule that we are proposing in this amendment is apparently so unobjectionable that the minority chooses not even to debate it, but rather to debate the red herring, first, that the Conyers amendment that we earlier passed might be stricken by this amendment. They have now conceded that the Conyers amendment is protected, is part of this bill. We have just passed it. It is not stricken.

But the argument is raised that the service of process provisions in another part of the bill, which are required in order to make the Conyers amendment work, would be stricken. That is neither here nor there because the Hague Service Convention already provides procedures consistent with our international agreements that will permit the Conyers amendment to work perfectly fine.

Mr. Chairman, I yield 3 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in support of the Cox-Geren-Ramstad-Christensen bill under debate here. This is an important piece of legislation that will ensure small businesses and volunteer organizations, to make sure that they are brought under the umbrella of protection that we have sought to provide other American manufacturers.

This amendment will extend the prohibition against the unjust application of joint and several liability to all civil cases involving interstate commerce.

□ 1900

The litigation explosion is having an adverse affect, not only on our manufacturing, but also on the Nation's start-up businesses and other small businesses. Frivolous and excessive litigation has an especially destructive affect on small businesses.

We all know these sorts of businesses. They are undercapitalized and understaffed, which means they cannot afford either the lawyer bills or the ridiculous amounts of time it takes for an individual to deal with a legal matter.

Under the rule of joint and several liability, a small business can find itself literally driven out of business by a jury in search of a pocket, and a pocket with money in it. It is usually the deep pocket they are looking for.

But small businesses are not alone in being threatened by joint and several liability. We have all heard the horror stories about the vastly increased insurance premiums that volunteer organizations and municipalities across the country are being forced to pay because of the ridiculous rulings against them.

Those rulings, based on the doctrine of joint and several liability, based on the idea that you can be held entirely responsible for the injury if you are only 1 percent or 2 percent at fault, are absolutely wrong. When trial lawyers go looking for a State that has been very kind to them, and sympathetic juries, they go to States like Alabama and Texas. I will tell the Members, it is time to restore some common sense back to this rule.

That is why Congress needs to exercise its authority to serve as the arbiter on the issues that are involving interstate commerce, so that we have cases that are judged similarly in New York and in Texas and in Alabama and in Omaha, NE, where I am from.

We need to end the arbitrary doctrine of joint and several liability, and we need to end it today. I urge my colleagues to vote for this Cox-Ramstad-Geren-Christensen amendment, and to do it today.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. I thank the gentleman for yielding time to me.

Let me say first of all, Mr. Chairman, there is bipartisan support for this amendment, but my opposition I hope will demonstrate that there is indeed some bipartisan opposition to this amendment. I wish there were more than 2 minutes in order for me to explain all of the variety of reasons why I do so.

Fundamental to it is, No. 1, the recitations of the findings and purposes of the amendment I think are inordinately broad. They represent a conclusion by this Congress that we think there are too many lawsuits being brought in America, and plaintiffs are winning too many of them. That may or may not be the case, but I suggest it is not even the function of this Congress to make that judgment. The function of this Congress is as to Federal law, to set forth the ground rules, the parameters, and the substantive law for the Federal courts in cases where there is Federal jurisdiction.

I complain of this amendment because it federalizes a significant aspect of the law which, until now, has been relegated to the State courts and to a State court system in which most of the litigation is brought. I would suggest that we make a mistake to federalize civil justice in this United States from this Congress, and would say to my colleagues, especially on this side of the aisle, if we do it today in this fashion, under these findings, for these purposes, it can be done tomorrow for entirely different purposes.

Mr. Chairman, let me finally say that this notion of joint and several liability is bottomed on principles, principles that were part of the common law of England, brought to America in the 13 original colonies, and a part of the law of all of those 13 original colonies forming the Union, and have been a part of the law of all of the States for all of the years since.

I wish there was time for me to discuss with the Members, and I hope someone else will, the principle on which that rule regarding joint and several liability is bottomed. There is a principle involved.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of this amendment to extend the fair-share rule to all civil actions.

Mr. Chairman, other than the vote on final passage, make no mistake about it, this will be the most important vote we will have on tort reform. The bottom-line question for each of us to answer is this: Why on earth should a defendant with 1 percent or 2 percent of liability be held 100 percent responsible for payment of noneconomic damages. That is the question each of us has to answer. That is not fair, and everyone knows it.

Let me stress what this amendment will not do. It will not end joint liability for medical expenses. Thus, even though a party may be only 1 or 2 percent at fault, such a defendant could still be held 100 percent liable for the plaintiff's medical expenses and other economic damages, such as lost wages.

While this also may not be fair to such a defendant, it would be more unfair to deny an injured plaintiff the means to be made whole again, and that is what our tort system is all about, to make an injured plaintiff whole.

Mr. Chairman, let us make it perfectly clear that this amendment simply limits noneconomic damages in proportion to each defendant's share of fault. This, Mr. Chairman, is just common sense. Let me give Members an idea of an actual case involving the problem that joint liability can cause.

Those of the Members who have been there or lived there know that in Minnesota we have two seasons, winter and road construction. We see signs for most of the year ''Slow down, give them a break, under construction.''

Now, picture among these signs a drunk driver careening at an excessive speed through detours posted at 45 miles an hour. The end result is a crash. Next comes a lawsuit brought by the drunk driver. Who does the drunk driver sue? For starters, he sues the State highway department, but the State in this case imposes limits on its liabilities, so the driver's attorney sues every deep pocket imaginable: in this actual case, not only the State but the road contractor, the utility company who owned the adjoining property, the engineering firm who designed the detour through which the drunk driver plowed his car, and so forth.

In the end, the defendants decided to settle out of court for $35,000 each. This was after a 15-member engineering firm spent over $200,000 in legal fees over 5 years, and 100 hours of work that should have been spent on engineering. Clearly, the drunk driver's attorney would have thought twice about suing all possible deep pockets if joint liability were not available.

I urge all of my colleagues to support this amendment to restore common sense to our legal system, to restore proportionate liability and the fair share rule.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, the intellectual weakness of the arguments of the proponents is really quite amazing, if you take just a couple of moments to think about it. First, every case they cite talks about the 1-percent negligent party, but the vast majority, I believe all the Republicans, voted for a rule which prohibited amendments to eliminate any minor wrongdoer, anyone below 20 percent, from having joint liability, while keeping the major wrongdoers in the case, because in the end, the issue is who is going to get shafted. Either it is the plaintiff, or it is one of the wrongdoers.

We concede, at least in my amendment that I offered, and it was denied, that minor tort feasor should not have to pay the entire judgment. Second, a great deal is made about how important and logical this is, and it is only fair, but it does not apply to economic damages.

The gentleman from Massachusetts [Mr. FRANK] had an amendment to exclude anybody who is under for economic or noneconomic damages. If it is unfair to pay the pain and suffering, why is it fair to pay the economic damages?

I know why you did not do it that way, because it looked too cruel, because the proponents of the amendment talk about ''We are just dealing with the feelings part of this.'' If a person becomes a quadriplegic because of the negligence of another, and they say ''You pay the medical bills and the wage loss and that is it, everything else is just about feelings,'' you amputate the wrong leg because of the negligence of the hospital or the doctor, you pay whatever wage loss there is, there may be none, you pay the medical bills, and then everything else is just feelings, we are talking about compensating the person and making them whole.

Get rid of the minor tort feasors by excluding the 1 percent, 2 percent, 5 percent, 10 percent case. Do not let off the major wrongdoers, and leave the plaintiff without being made whole, without compensation. You talked about the drunk driving case. What you have passed with title II in this bill is a punitive-damages statute which keeps a person who is injured by a drunk driver from suing the drunk driver for punitive damages on State remedies.

The amendment is so broad it reaches into the typical automobile case in a neighborhood in any city in America. It is not limited to product liability. It is not limited to interstate commerce. It is the most far-reaching, intrusive kind of amendment imaginable.

The best comments I have heard today were from the gentleman from Virginia [Mr. BATEMAN], a true conservative, who wanted to know what business is it of Congress' whether in an automobile accident case at an intersection, there is joint and several liability or not?

We can make arguments either way, but the State legislature and the Governor, they are the people to decide. They are the ones closest to the voters. There is no Federal question involved in this, but there are some economic interests and some insurance companies who want it, and I do not believe that is the motivation, because I am not into attributing motivations to people; some people see that perspective, but they do not see what is going to be left for the plaintiff or for the concept of Federalism.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman who just spoke stated ''It isn't limited to interstate commerce.'' Were that true, I would not support this amendment, but of course, it is expressly limited to interstate commerce, which is precisely the role of this Congress under Article 1, section 8.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Chairman, I shall have to talk fast.

Mr. Chairman, 33 States have abolished joint and several liability. That is the problem. There are 33 different laws, different methods of avoiding and evading joint and several liability, which is very unfair. The serious problem of inconsistency in the tort laws of the 50 States is there. This seeks uniformity, which makes legal common sense.

Mr. Chairman, let me briefly address the federalism aspect that I have heard so much about today. I have heard from Members on our side of the aisle who are troubled by our preempting of State laws. They insist that the States are important and should not be administrative districts of the Federal Government.

I just want them to know what the passing of time has done to that notion. We have the Environmental Protection Agency, Food and Drug Administration, Occupational Safety and Health Administration, Consumer Product Safety Commission, Equal Employment Opportunity Commission, National Labor Relations Board, Federal Trade Commission, Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodities Futures Trading Commission. Every aspect of life is regulated by the Federal Government. I have not mentioned the Americans with Disabilities Act, ERISA.

The only facet of our great economy that is left untouched is the multibillion-dollar litigation industry. It seems to me it is eminently justified that we try to put some common sense and rationality, predictability, into this big business of lawsuits. That is what the gentleman is trying to do. I support it wholeheartedly.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, in these cases, all the victim knows is that he was injured. If you have a doctor who is clearly negligent, the doctor can escape some liability by saying it was 5 percent the nurse's fault, 10 percent the anesthesiologist's, 10 percent the hospital, 10 percent the product, and now where are we in the lawsuit?

The plaintiff has to have five different defendants, five different sets of lawyers, five different judgments, five different collections, some insolvent. This consumer just has to, I guess, get over it. They are not going to be able to become whole.

Mr. Chairman, we have always had loser pays. Even if they win, they might be having to pay opposing counsel. We have limited damages. We have come up with new defenses.

Mr. Chairman, this reduces the accountability of wrongdoers. It allows wrongdoers to escape responsibility for their actions, at the expense of the innocent victims. Consumer protection is taking another giant step backward. I would hope that we would defeat this amendment.

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, 50 States, 50 different State laws affecting interstate commerce, and we have for so long allowed a tremendous ripoff. It blows my mind that we have tolerated this for so many years.

Mr. Chairman, I rise in support of Common Sense Product Liability and Legal Reform Act of 1995, and I rise in support of the amendment of the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] the fair share amendment.

It is so simple. It does not take a lot of words, a lot of legalese. The bottom line is so simple. If you are responsible, you should pay your proportionate share of whatever problem you caused, but if you are not responsible, you should not be held liable.

When I hear of the outrageous awards that are given to an individual plaintiff, and then I learn of the liability that company had, which was 100 percent, when in fact they only caused 5 or 10 percent of the action, and then I think ''Who pays?'' I pay, you pay. We all pay for this outrage. This outrage needs to end.

□ 1915

The bottom line is so simple, it is so clear and maybe it is just one has to be an attorney to find it confusing. If you are in fact responsible, you should pay. If you are 50 percent responsible, you should pay 100 percent of your 50 percent. But you should not have to pay when you are not responsible in the vast majority of the cases.

I urge my colleagues to vote this amendment and vote this bill. I consider it of all the bills coming before this Chamber the most important bill that we will vote on in this entire 2 years.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time.

Mr. COX of California. May I inquire of the Chair how much time remains on each side?

The CHAIRMAN. The gentleman from California [Mr. COX] has 3 minutes remaining and the gentleman from Massachusetts [Mr. FRANK] has 5½ minutes remaining.

Mr. DOGGETT. Perhaps the gentleman might yield on section 109.

Mr. COX of California. As I indicated, I would like to reserve time at the end for such purpose.

Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. I thank the gentleman for yielding me the time.

I rise in strong support of this bill to abolish the doctrine of joint and several liability. The core of our judicial system, I think, is one of fairness and has been repeated so often today.

In this context, it just seems to me the fairest thing, that a person at fault have to pay and if a person is not at fault, then they should not have to pay, that it ought to be grossly unfair for this system to require a defendant to pay the full judgment, 100 percent of a judgment, when a jury has decided that they are not 100 percent liable, perhaps as little as 1 percent liable.

The example that I have seen used so many times, you have got 3 defendants, X, Y, and Z, and X is held to be 10 percent at fault and Y and Z 45 percent at fault each for a total of 100 percent. If 10 percent is the deep pockets in the case and they are going to have to pay 100 percent of the judgment, they may have a right to go back against the other two defendants, Y and Z, but if Y and Z have no money, which is usually the case, it is worthless.

Let me address just briefly before I sit down two examples that have been brought forward from the other side. One had to do with the doctor who might be 5-percent liable and point the finger at the nurse and this nurse and this doctor and this hospital and that the lawsuit would result in more defendants coming in. Let me assure the gentleman from Virginia that the lawsuit will certainly include all of those people, anyway. There is a shotgun approach that is used so often in litigation to sue anybody that might be at fault and that is what happens in the type of system we are working under.

Under another example cited by the gentleman from Michigan, he used the example of a husband hiring two hoodlums to beat up his wife and somehow that the husband might escape 100-precent fault on that because of the actions of the hoodlums. I would suggest that the legal theory of principal and agent would be at work there and certainly whatever the hoodlums did to his wife, he would be held 100-percent accountable and I would assume a jury would so find him and he would be 100-percent liable for the judgment to his wife. Again I think this is the only fair thing to do under the circumstances, and I strongly support the bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time for the purpose of closing.

Mr. COX of California. Would the gentleman from Massachusetts who

has significantly more time be willing to yield to the gentleman to ask a question?

Mr. FRANK of Massachusetts. No.

Mr. COX of California. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I just learned something this evening. O.J. Simpson does not have the most creative lawyers in the world; the most creative lawyers in America are right in this Chamber.

Did Members hear some of these arguments? One fellow from Michigan who I admire a great deal got up and said, ''Don't vote for this amendment, people in Congress, because if you do, you can't sue your local newspaper if they wrong you.''

Have you ever heard of a Congressman winning a case against a local newspaper? In fact, Sullivan versus New York Times says you cannot sue your local newspaper.

The reason that this is a great amendment comes not from this body but from George McGovern. Remember him? After he left the Senate, he went into business, and here is what he said in the New York Times. He said,

> America is in the midst of a new Civil War, a war that threatens to undercut the civic basis of our society. The weapons of choice are not bullets and bayonets but abusive lawsuits brought by an army of trial lawyers subverting our system of civil justice while enriching themselves.

That is why this is a good amendment. The Manhattan Institute says it costs $100 billion a year. Vote for this amendment. It is a great amendment.

The CHAIRMAN. To close debate, the Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. To begin, Mr. Chairman, there is not the remotest evidence that George McGovern was talking about this particular amendment, because this amendment is not about product liability. The restriction on joint and several liability for noneconomic damages on product liability is in the bill. This bill, and I was glad to hear the gentleman from Illinois proclaim the death of States rights, because what this bill says is, ''This section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought.''

This is an amendment that does not deal with product liability but that is already covered. This says any lawsuit anywhere in America where people are looking for noneconomic damages, we will tell the States how to run things. People said, ''Well, we've got to protect our manufacturing. We do a lot of exports.'' Then they mentioned the Little League. Well, it is not my impression we export that many little leaguers. I know the kids go overseas to play ball, but most come home. They rarely leave but one or two behind. The fact is that this is a statement by the Republican Party on the whole, not all of them, saying, ''We don't trust local juries, we don't trust local legislatures, we don't trust local judges. We will tell you how to run, not manufacturing, not interstate commerce, any civil lawsuit.'' Someone falls down the steps, someone is sued for libel, someone claims alienation of affection, anyone, so it is the most arrogant grab from the States by the Federal Government. Because it is not about manufacturing. We do not need that. The amendment is about every single lawsuit and it says we cannot trust the juries and we cannot trust the States.

As to the noneconomic damage thing, I offered an amendment that said if you are less than 20 percent responsible, you do not get joint liability for economic or noneconomic damages. That must have been a good amendment. How do I know? The Committee on Rules would not let it in. The Committee on Rules is for openness on any amendment they think they can beat.

The argument made is that it is unfair to the small tort-feasor to give that person joint liability. It is unfair economically and it is unfair in the noneconomic. The distinction is not between economic and noneconomic damages in a logical world but between the large and the small degree of responsibility.

So I said all right, let's not discriminate between economic and non-economic with the gender bias and the class bias that that implicates, let's cut off the small versus the large. But the Republican Committee on Rules said, ''Oh, no, that's too logical and we can't have that, because if we're going to tell every State court in America how to deal with every lawsuit in America where anybody alleges noneconomic damages, then we better do it the other way.''

Plus we also have the gentleman's amendment which does weaken the amendment of the gentleman from Michigan. Under the amendment of the gentleman from Michigan, a foreign manufacturer must name an agent to be served here. The gentleman strikes that in this amendment. We would still theoretically have jurisdiction if we can find them to serve them.

I mean in Croatia, they have jurisdiction over Serbian war crimes but they are not going to try many Serbs and we will still have technical jurisdiction over foreign manufacturers but if the gentleman from California's amendment passes and they do not have to designate an agent for accepting process, we will not get many of them into court. It is an abstract discussion and what he is saying is to every State court in America, every State court in America, if there is a foreign manufacturer, you can't require them to serve process and if you want to sue them in State court, good luck to you. Maybe the United Nations can pick them up on the way to try and find some Serbs in Croatia, because they will have about as much chance.

This belies the notion that the Contract is about empowering the States. This says when we feel that the economic interests with which we are in most sympathy will be better served by nationalizing matters that have been State law for 200 years, we will do so. And we will claim it is according to interstate commerce, that will be the entering wedge. Then we will give you an amendment which says any civil action in any Federal or State court on any theory.

This is the ''anys'' amendment. Every ''any'' that applies got put into this amendment. Any case, any State, any cause of action, any reason they want, congratulations, you are now under Federal law.

This amendment brings back Selective Service. You have just drafted every State court and every State jury and every State cause of action and it has nothing to do with interstate commerce. Maybe the Republican party has adopted the theory that there is no more interstate commerce.

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

Mr. FRANK of Massachusetts. No, no more than the gentleman would yield to the gentleman from Texas.

Maybe you have now adopted a theory that there is no more interstate commerce, that we are all one big unitary society. I think you are going a little far myself, but I take it after we heard the gentleman from Illinois who said everything in American life has been nationalized except this, that you have now conceded that everything is now fair game nationally and we will not hear the States rights arguments again.

Fifty different State laws, is that not terrible? Of course where poor children are concerned, 50 different State laws is a good idea. Where school lunches are concerned, 50 different low levels of State nutrition, that is a good idea. Where Aid to Dependent Children 3- and 4-year-olds who need economic support, let's give it back to the States.

I have never seen such selectivity about what goes to the States and what does not.

I yield to my friend the gentleman from Texas.

Mr. DOGGETT. This amendment deletes section 109 from the bill. Section 109 of this bill requires that a foreign manufacturer to benefit from this bill at all, to get any benefit from it, appoint an agent for service of——

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX].

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

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 263, noes 164, not voting 7, as follows:

[Roll No. 225]

AYES—263

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

NOES—164

Abercrombie
Ackerman
Andrews
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Chapman
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Manton
Markey
Martinez
Martini
Mascara
Matsui
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Nadler
Oberstar
Obey
Olver
Orton
Oxley
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Poshard
Rahall
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tauzin
Thompson
Thornton
Thurman
Torres
Towns
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—7

Cubin
Forbes
Gibbons
Murtha
Owens
Rangel
Tucker

☐ 1945

Messrs. POSHARD, HAYES, and COLEMAN changed their vote from ''aye'' to ''no.''

Messrs. HOLDEN, MILLER of California, FAZIO, TEJADA, and Mrs. KENNELLY changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

☐ 1945

The CHAIRMAN. It is now in order to consider amendment No. 12, printed in section 2 of House Resolution 109, as modified.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. 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. COX of California:

Page 19 redesignate section 202 as section 203 and after line 19 insert the following:

SEC. 202. LIMITATION ON NONECONOMIC DAMAGES IN HEALTH CARE LIABILITY ACTIONS.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In any health care liability action, in addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as pain and suffering and emotional distress. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the health care injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any health care liability action brought in any Federal or State court on any theory or pursuant to any alternative dispute resolution process where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages. This section does not preempt any State law enacted before the date of the enactment of this Act that places a cap on the total liability in a health care liability action.

(d) DEFINITIONS.—As used in this section—

(a) The term ''claimant'' means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term ''economic loss'' has the same meaning as defined at section 203(3).

(c) The term ''health care liability action'' means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, and entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim (including third party claims, cross claims, counter claims, or distribution claims) based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

Page 17, line 10, insert ''and other'' after ''punitive''.

The CHAIRMAN. Pursuant to the rule, the gentleman from California

[Mr. COX] will be recognized for 20 minutes, and a Member in opposition will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are coming to the conclusion of our debate about reform of our civil justice system in America so that the courts will once again earn the maxim ''Equal justice under law,'' and no longer will people have to fear the courthouse and think it is not a place for them and think it merits rather the admonition from Dante's Inferno, ''Abandon hope, all ye who enter here.''

It is impossible, it is unthinkable, to handle lawsuit reform in the Congress without considering health care, because nowhere in our American life have the skyrocketing costs of lawsuits done more damage than in our health care system.

For the last 2 years, in 1993 and 1994, we debated health care in this country. And during that last 2 years of debate, in 1993 and 1994, through all the hearings, we all know the story. The American people came to the essential realization that we need to control health care costs so that we can increase access for those who are least able to afford basic care from doctors and good hospitals.

We decided we did not want a government-run system, but we decided if we can, we would like to get rid of all of the extra costs that lawsuits and lawyers suck out of our health care system, to get rid of all of the extra costs that defensive medicine imposes on our health care system, that is all the unnecessary tests that all doctors perform. Three-quarters admit they do this because of the threat of liability, if for no other good reason, $9 billion in extra malpractice premiums attributed to defensive medicine. Another $20 or $30 billion according to various estimates are attributed to this defensive medicine, which is doctors behaving not in the best interests of the patients, but lawyers, so Ralph Nader and Joel Hyatt seem to have more to say about the kind of health care we have in this country than doctors and patients.

We have a system in place in several States in this country, in particular my home State of California, that has worked very well, called MICRA. It has limited our health care premiums for the average Californian from somewhere between 33 percent and over 50 percent less than other States without these reforms. That is what I propose in this amendment today. The only change that this makes is in health care cases; not all civil cases like the last one, just health care cases.

We believe that we should have a system in America that compensates without limit, 100 percent of all of the damages that somebody might suffer. They should be able to claim these through a lawsuit, all of the damages for their medical expenses, for their doctors' expenses, for their hospital expense, without limit, all of their rehabilitation expenses, all of their future estimated lost income and earnings. All of these things called economic damages should be compensable without limit.

We have already decided that on top of that, they should be able to multiply all of their real, actual damages times three and get that in punitive damages. In our country uniquely we have something called noneconomic damages. That means things we cannot really monetize, we cannot figure out how much it is worth, but we just want to add extra on top of all the real damages and punitive damages.

Only four other countries in the world allow this kind of damage. For the rest of the world it is zero, and for the other countries that allow it limit it sharply. In Canada this type of damage award is limited to $180,000. In California we limit it to $250,000. That is what we would do in this amendment.

Mr. Chairman, I urge my colleagues to vote for this vitally important health care reform. We know we need it. I hope that Members will act upon it.

Mr. Chairman, I reserve the balance of my time.

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

The CHAIRMAN. The gentleman from California [Mr. BERMAN] is recognized for 20 minutes.

Mr. BERMAN. Mr. Chairman, I yield myself two minutes.

Mr. Chairman, let me initially correct some of what I am sure are the inadvertent misrepresentations of the gentleman from California. No. 1, California's health care premiums did not go down 33 percent over what they would have been. The gentleman is referring to the malpractice premiums paid by physicians, not the health care premiums paid by citizens.

Second, this bill is not in any fashion limited to medical malpractice. It covers, with a $250,000 limit on pain and suffering, any health care liability action which is defined in this bill under any theory, tort, or contract, that a contractor could have a provision for liquidated damages, anything like that that goes beyond the medical costs and the lost wages, and it seeks to put this $250,000 limit on that.

The anomaly is when this day is done, if this amendment passes, and you ride in a car which is manufactured defectively, it explodes, and you are paralyzed, there is no limit on what you can get for pain and suffering. Difficult to quantify, but very real. You are paralyzed for the rest of your life, you are a quadriplegic, the wrong leg is amputated, there is something there beyond wage loss, and there is something there beyond just the simple cost of your medical treatment.

If you are injured in that explosion by that defective car, no limit. If you are injured because of the negligence in a defective medical device and it results in your being paralyzed, you are capped at $250,000.

What is the logic of the distinction? I do not know. I will be interested in hearing the gentleman speak to that particular issue.

Once again, we have gone way beyond the issue of product liability and gone way beyond the issue of medical malpractice. In California there are a series of damage remedies for bad faith insurance practices. If it is a health insurance policy and the health insurance company does not pay and the result is serious injury to the person, if he is arbitrarily canceled and there are massive losses and a breach of contract, under that theory, no matter what the contract provision provides for damages, this comes in and caps the pain and suffering with those limitations.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to respond to the gentleman from California by saying he is correct that as a result of the health care lawsuit reform passed in California, by a Democratic legislature I should add, medical liability premiums are 33 percent to 50 percent lower on average than those in other States that do not have these reforms.

Mr. Chairman, I yield to the distinguished coauthor of this amendment, the gentleman from Texas [Mr. PETE GEREN], 2 minutes.

(Mr. PETE GEREN of Texas asked and was given permission to revise and extend his remarks.)

Mr. PETE GEREN of Texas. Mr. Chairman, I rise in support of this amendment, and I want to direct Members' attention to the change that has been made in this amendment. This was an amendment that was the subject of the rules change earlier today in the printing in DSG that describes it as a limit on noneconomic damages for all civil actions. That is no longer correct. This is limited to health care liability actions. It is patterned after the MICRA system in California.

The Office of Technology Assessment reported in 1993 that limits of this type that will come about as a result of this amendment are the single most effective reform in containing medical liability premiums. Ohio is a good example of a State in which a cap on noneconomic damages had a substantial impact on costs until it was struck down. Prior to the enactment of the cap, Ohio's payment of medical malpractice claims was 3.7 percent of the total nationwide. That declined to 2.9 percent while the reforms were in force. In 1982, the Supreme Court invalidated the claim, and by 1985 the percentage of nationwide claims had almost doubled to 5.4 percent.

California had the highest liability premiums in the Nation prior to its enactment of a cap of this type. Since its

enactment, cap premiums are now one-third to one-half of those in New York, Florida, Illinois and other States that do not have these kind of limits.

Contrary to what many are saying, a ceiling on noneconomic damages will not in any way restrain the ability of an injured party to recover medical expenses, lost wages, rehabilitation costs, or any other economic out-of-pocket loss suffered. It only limits those damages awarded for pain and suffering, loss of enjoyment, and other intangible items. These items routinely account for 50 percent of the total payment of a suit and are highly subjective.

Mr. Chairman, this system has worked in California, it is an important planning in any health care reform we consider as a country, and it will help us hold down the skyrocketing costs of health care in this country.

Mr. Chairman, I urge my colleagues to support this amendment.

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Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, I do not profess to be an expert on any subject. But I come to this debate with some experience. Prior of my election to Congress, I spent 10 years practicing law, specializing in medical malpractice. I defended doctors, and I brought suit against them.

Let me ask my colleagues, if they can for a few moments, to forget the lobbyists, forget the companies, the insurance companies, and forget all of the special interests and listen to one simple tragic story.

One of my first cases involved a baby girl. I would say to the gentleman from California, Mr. COX, and to the gentleman from Texas, Mr. PETE GEREN, that like most parents in America, these parents took their baby girl to the pediatrician for her baby shots. Unfortunately, this little girl has suffered from a rash called roseola a few days before she went for her shots. Because of the doctor's failure to ask and examine, the little girl suffered a devastating reaction to the vaccination. The brain damage was so severe she was left in a permanent vegetative state. She would never speak, never walk, never go to school. She would be in diapers as long as she lived.

For 5 years or 50 years or more, she and her loving parents would suffer from the negligent act of that doctor.

Mr. COX and his amendment would decide that no matter how long she lived, no matter how long she suffered, her maximum recovery for pain and suffering would be $250,000. Mr. COX would take away from any court or jury in America the right to decide that she and her parents deserve 1 penny more.

My Republican colleagues call this common sense legal reform. Limiting a deserving victim's right to recover for pain and suffering does not even reach the threshold of common decency.

We are not talking about frivolous lawsuits. We are talking about parents facing a lifetime of caretaking because of a doctor's negligence. We are not talking about verdicts that we giggle about when we hear about them on the radio. We are talking about verdicts that when you hear about them you say, it could not be enough. You could not pay me enough money to live with that injury to myself or my baby.

But Mr. COX is prepared to say no matter what your injury, no matter what your pain, no matter how many years you will be crippled and broken, your right to recover will be limited.

Our system of justice is far from perfect, but this Cox amendment would invite tragic, unjust results which would be visited on the lives of innocent victims and their families for decades to come.

This amendment is mean in the extreme. Vote ''no.''

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

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

Mr. CHRISTENSEN. Mr. Chairman, do not be confused about the opponents that I just heard visit on this, this little child will be compensated for those damages for the rest of her life. The plaintiffs bar are going to try to confuse the issue here, but in Omaha, NE, an ob/gyn pays 20,000 in medical malpractice insurance. Just across the river that same ob/gyn pays 60,000 in medical malpractice insurance. Why? Because of the reason we have tort reform in Nebraska. We have a cap on medical malpractice in Nebraska. And that is why we need to continue to enforce this State by State so other States can enjoy what we have in my home State.

Because of the litigation explosion, the cost of insurance to obstetricians jumped 350 percent between 1982 and 1988. In some areas a doctor will spend over 100,000 on medical malpractice insurance. Faced with these numbers, many doctors cannot afford to deliver babies in rural areas and poor areas. We need to put a reasonable ceiling on health care liability so it will open the way for lower insurance costs. Too many personal injury lawyers are making their careers out by waging war on doctors these days. Because of their activity, men and women and children across this land are going to suffer each and every day. This bill restores some common sense to what we need to restore in our civil justice system.

I yield to the gentleman from Georgia [Mr. BARR].

Mr. BARR. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, this begins an important process that is not independent of the process but it begins an important process, this legislative proposal, in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to these otherwise generous caps.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. ISTOOK].

Mr. ISTOOK. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to this amendment. I believe this is a deadly amendment. I believe it is a damaging amendment. I think it is an amendment that fails to take stock of reality. Under this bill, your losses must be one of two types: either they must be economic damages, as defined on page 20 of the bill, something that is a financial loss. Everything else is noneconomic damage.

If you lose your sight, it is noneconomic damage. If you lose any other organ, your ears, your hearing, it is noneconomic damage. If you lose your arm, if you lose both legs, if you are paralyzed for the rest of your life, it is noneconomic damage. And it is capped; it is treated under the same cap as intangibles such as pain and suffering.

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

Mr. ISTOOK. I yield to the gentleman from Missouri.

Mr. SKELTON. Mr. Chairman, what does this do to the nature and extent of the injuries such as someone with an amputated foot?

Mr. ISTOOK. This means that if you can still make a living with your amputated foot, then you are restricted in what you can recover, even if you can no longer play football with your kids or soccer or baseball. If you lose your sight, you cannot even go to a movie or watch a TV program. You cannot see your children. You cannot see a family picture. You cannot check out and watch a video. Whatever it may be, that is what we are restricting if this amendment is adopted.

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

Mr. ISTOOK. I want to urge my fellow Republicans, those of us who have been supporting tort reform, to vote down this amendment. I do not think a lot of Members realize what you are lumping in. The reference in the text of the amendment to pain and suffering is only by way of example and inclusion. It is not the complete definition of noneconomic damages. It does not pretend to be. Do not tell me that there is no difference between having a lifetime where you may have perpetual pain.

I had a young man that I hired in my office as a staff member that was a paraplegic in a wheelchair. Do not tell me that because he was still able to work, which he did, tremendous young man, tremendous worker, but do not tell me because of that, the accident that cost him his feelings from below the waist, is not worth anything more than someone that says, I hurt or I have emotional distress. Do not treat those as the same. Do not treat someone that

has this type of disability as no different than someone who just says, I have pain or I have emotional distress.

This amendment does that. I urge my colleagues, even those who support tort reform, vote down this amendment.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

I am sure that the gentleman from Oklahoma did not mean to mischaracterize in his statement. He said that there are only two types of damages, economic and noneconomic. He inadvertently left out punitive damages which has been the subject of much debate here. Under our legislation, punitive damages are allowed, in addition, up to three times all of the actual damage.

I should also point out that there is another more important reason that we need to do health care lawsuit reform tonight. It is that the poor and the disadvantaged who use our public hospitals, our free clinics and our community clinics are the worst injured by the high liability costs today.

Qualified doctors increasingly are refusing to do high-risk procedures. And where do these high-risk procedures occur but in our public hospitals.

The front page of the New York Times last Sunday is a great example. The bottom line for babies weighing over 5½ pounds, the cutoff they use as a general gauge of good health for babies, the death rate the first 4 weeks after birth in New York City's public hospitals is 80 percent higher than for babies born at private hospitals. New York's unlimited tort liability system has not stopped malpractice cases.

They hired as an obstetrician a man who had failed for 14 years his national exams. Just a few months after he was hired by the city hospitals of New York, he became another one of their malpractice cases. New York, unlike California, does not have this kind of health care reform.

They have thousands of lawsuits. Over the past two decades those lawsuits have not stopped malpractice. They have made it worse. A 1992 report studied lawsuits of 64 children in those New York hospitals who have been left brain damaged or permanently crippled because of negligence in the delivery room. These 64 lawsuits alone cost city hospitals $78 million and another 793 lawsuits were still pending. What is seen is that more and more lawsuits lead to ever higher liability premiums and this leads to even fewer qualified doctors willing to handle the kinds of higher-risk cases that typify low-income health care.

That in turn leads to less and less access to quality care for the poor. The patients suffer.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. THOMAS].

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

Mr. THOMAS. Mr. Chairman, I want to thank the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] for having the courage to bring this amendment to the floor.

I just wanted to tell my colleagues that the high point in the last Congress for me was as ranking member of the health subcommittee in discussing the President's health care plan. Democrats and Republicans together in a bipartisan way passed a medical malpractice reform provision out of the subcommittee. It was, of course, denied in the full committee, and we went on not to do anything at all on the floor of the 103d Congress about health care reform.

And 3 months into this Congress, on the floor of the House, is the key to health reform.

A yes vote on this amendment will, of course, lower health care costs by lowering malpractice insurance rates. A yes vote on this amendment will remove the defensive medicine costs and lower health care rates. A ''yes'' vote on this amendment will get rid of the ridiculous border games now played between States and doctors because of the nonuniformity of malpractice laws across this country.

But more important and fundamentally, get your eyes off of this amendment and look up. This vote is on health care reform. It this amendment loses, the chances of meaningful health care reform in this Congress are virtually gone. This is the time and this is the moment.

I also might add, we maybe need truth in packaging around here. I want to confess, I am not an attorney. And I am for this amendment, because in passing this amendment, we have laid the fundamental groundwork for real health care reform in this Congress. Three months into this Congress, we will have made a statement to everybody. This Congress intends to be bipartisan, not just in subcommittees, not just in committees, but on the floor. Pass this amendment, and we can pass health care reform. Vote ''yes'' on this amendment.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, I am astounded at the comments of my colleague from California, new chairman of the Subcommittee on Health of the Committee on Ways and Means. Our State of California has these limits that this proposal would impose upon the whole country. Is that health care reform? The State of California has 3 million people who are uninsured. It has not solved our problems. Has it led to any less defensive medicine? There is no evidence of that whatsoever. Has it reduced the premiums the doctors pay? Perhaps, somewhat, it is stabilized. It may have had that value. But this is not health reform.

If you are being told we have to keep somebody who is injured and maybe even butchered in surgery from recovering to make them whole so that we have health reform, this is not what health reform is all about.

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

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

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Mr. THOMAS. Mr. Chairman, I ask the gentleman, is he an attorney?

Mr. WAXMAN. Mr. Chairman, I would say to the gentleman, I am an attorney. What is that supposed to mean?

Mr. THOMAS of California. Thank you.

Mr. WAXMAN. Mr. Chairman, is the gentleman a doctor?

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Chairman, in the previous Congress I coauthored consensus health reform legislation with our former colleague, Dr. Roy Rowland of Georgia, health reform that sought to bring to the table issues upon which broad agreement existed in the Congress and among the public. It became one of the leading health reform proposals at that time, and it was the one truly bipartisan health bill considered by the 103d Congress.

One of the consensus issues in our bill was medical malpractice reform. It was an issue upon which many Members of this body on both sides of the aisle agreed. In fact, it was a consensus item addressed in most of the health reform bills introduced in the previous Congress. I have no reason to believe that medical malpractice reform is any less of a priority in this Congress. All of these bills included a $250,000 cap on noneconomic damages, just as does this amendment.

Did the 98 Members who signed onto our legislation, 36 of them Democrats, support this cap because they wished to deny an individual the full legal redress to which he or she was entitled? The answer, of course, is no. Opponents of this amendment today claim that we cannot quantify the pain and suffering of a victim of injury. I tell them this, I cannot agree with them more. I believe that our legal system should pay the complete costs of injury, including lifetime medical costs, rehabilitation, disfigurement, or other forms of actual damage, without limit.

But the very fact that noneconomic pain and suffering damages cannot be quantified has led us into a swamp of astronomical awards that amount not to judgments but to windfalls. No other country in the world, Mr. Chairman, allows these kinds of windfall awards. Is that because they have any lack of feeling or sympathy for the victims of injury? Again, the answer is, of course not. The true reason for limiting these

awards is that it is the single most effective method of reducing medical liability costs. This, in turn, leads to reduced health care costs for everyone. I strongly urge my colleagues to vote for the Cox-Geren-Ramstad-Christensen amendment today.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentleman from North Dakota [Mr. POMEROY], a nonlawyer.

Mr. POMEROY. Mr. Chairman, I would tell the gentleman from California [Mr. BERMAN], I do have a law degree, and practiced for 5 years. I never brought a medical malpractice action. More recently, I regulated insurance for 8 years. I am the only former State insurance commissioner in Congress, and it is in connection with this that I rise.

My friend, the gentleman from California [Mr. THOMAS], urged you to take your eyes off the amendment and look at the health care issue and pass this bill. The health care issue is not before us; the amendment is. I urge Members to go back and look at the text, because we could embarrass ourselves by passing this amendment as drafted.

Mr. Chairman, on page 2, between lines 13 and 16, it says ''This shall apply to any health care liability action brought on any theory.'' I wish the sponsor of the amendment would have yielded to my question, because I was going to ask him, does that mean you cannot sue for noneconomic loss in excess of $250,000 a psychologist that was abusing his patients? I believe yes, under the strict terms of the text you have offered.

On page 3 of the bill, health liability action is defined as more than the providing of health care, but also the paying for health care. In connection with this, I have a lot of experience, because I adjudicated claims that were unfairly denied by health insurers. I am aware of people who have had bills, hospital bills they have owed, bill collectors hounding them on those bills, and yet they have not been paid by their insurance company.

Clearly, Mr. Chairman, we do not want to protect that. There is a lot of noneconomic loss that can flow from that, but that is covered under the bill, the liability is capped under the bill on any theory. No matter how egregious the conduct of the health insurer, no matter how blatant, how cruel, the liability is capped.

This bill may address a very important concept, one we need to work on. We did not have a hearing on it, we did not discuss it. The language brought before us in this amendment overreaches and would put you in the position of protecting the abusing psychologist and the claim-denying health insurer. You do not want to be in that position.

The CHAIRMAN. The Chair would inform the committee that the gentleman from California [Mr. BERMAN] has the right to close debate.

The Chair recognizes the gentleman from California.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan [Ms. RIVERS].

Ms. RIVERS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I offer the committee the words of one Frank Cornelius, who says ''I think tort reform as we know it is totally bad. We have a judicial system that I find quite adequate, if allowed to function in its own way;'' so you have to ask, who is Frank Cornelius? Is he some parasitic trial lawyer? Is he some rabid consumer rights advocate? No, Frank Cornelius is a lobbyist for the insurance industry. He was part of an effort in Indiana to cap noneconomic damages. What happened to Frank Cornelius? Soon after these caps were put in place, major malpractice was worked upon him. He expects to die within the next 2 years from those problems. He has a different point of view now that he sees the problem from the side of a patient, as opposed to the side of the insurance industry. He acknowledges there is a certain poetic justice to the injury that he suffered, but he adds ''If there is a God, and I believe there is, what happened to me has a purpose. It changed my way of thinking and looking at things.'' He says ''Medical negligence cannot be reduced by simply restricting consumers' legal rights.'' That is what is being proposed here. Mr. Cornelius found this out the hard way.

Mr. Chairman, how many other citizens will have to learn this selfsame lesson? Not many, I hope.

Mr. BERMAN. Mr. Chairman, I yield 1 minute and 30 seconds 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 want Members to look at what this amendment says, at page 13. It covers anything of a medical character. It caps pain and suffering and noneconomic damages at $250,000.

Let us look at some of the things for which a person will get $250,000 maximum for pain and suffering and other noneconomic damages. A person is blinded, a person is rendered a paraplegic, loss of a leg or an arm, loss of reproductive capacity. A woman can never have a child again, she gets $250,000.

How can this body justify the enactment of a proposal which has this, on which there has been no hearings whatsoever; no hearings, no testimony, nobody knows what this does. It springs like Hebe from the brain of Jove, without the faintest appreciation of what is done, without the least awareness of what it acccomplishes.

Think of the hurt and pain and suffering that you are not properly compensating with this outrageous amendment. This is an outrageous amendment. I cannot in conscience see how I can vote for it, and I cannot imagine anybody else who could contemplate voting for this kind of outrage. No hearings, capping pain and suffering, without the faintest acknowledgment of what it will in fact cost.

Let me remind the Members, a citizen can get more on workmen's compensation, on railroad compensation, or on maritime compensation than they could get under this.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Michigan suggests that it is outrageous to propose health care reform on this floor because health care reform has not had hearings in this Congress. I think that is something, after 2 years of hearings on health care, the American people would find outrageous.

Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise to support this amendment. I am a doctor. I would like to talk about three things. I would like to talk about the economic costs of medical malpractice, I would like to talk about the noneconomic costs to the patient, and let us talk for just a second about how lawsuits have limited care.

Twenty years ago when I was in medical school, when we would make rounds we would talk about the patient's illness and we would talk about the solutions. Today when you make hospital rounds you talk about the patient's illness and solutions, and how those solutions may cause a lawsuit.

What happens? You practice defensive medicine. What happens with defensive medicine? Additional tests get ordered that you would not naturally do to cover your backside, and unfortunately, this results in tremendous increases in expense to the total system.

This is real, Mr. Chairman. When I get called to the emergency room to take care of somebody with a scalp laceration, if I did not tell the emergency room doctor ''Do not order that series of x-rays until I see the patient,'' there would be $400 worth of facial or scalp x-rays sitting there, whether it is needed or not.

The funny thing about this issue is that the noneconomic costs to patients by invasive tests that sometimes are ordered to prevent a lawsuit actually cause a paradox. Every type of invasive test has a small chance of injury, so what are we doing? We are taking and making an increased chance of injury. I urge my colleagues to support this amendment.

Mr. BERMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN].

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

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT] for purposes of a dialog.

Mr. BRYANT of Texas. Mr. Chairman, I wonder if I could ask the gentleman, the doctor, who just spoke, a question.

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

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

Mr. GANSKE. Mr. Chairman, I would be happy to respond.

Mr. BRYANT of Texas. Mr. Chairman, last week a member of the gentleman's profession did some surgery down in Florida. I heard on the radio, he was supposed to cut off a person's foot. He amputated it, and when that person woke up, they had cut off the wrong foot.

How much money does the gentleman think that fellow ought to get for pain and suffering and noneconomic damages? He woke up and he lost the wrong foot, which means he is going to lose both his feet, because a fellow in your profession made a mistake.

How much money do you think he ought to get for noneconomic damages, an open-ended question?

Mr. GANSKE. If the gentleman will continue to yield, it is inevitable that mistakes are going to be made.

Mr. BRYANT of Texas. Yes, it is.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. NADLER].

□ 2030

Mr. NADLER. Mr. Chairman, in 1986 I and a number of other Members of this House were members of the New York Legislature and we took up the issue of medical malpractice. We made so-called tort reforms, we limited joined and several liability, we limited ability of continent fees, and did a number of other things. But we also ordered a study to see what was really going on, what would really work to reduce malpractice premiums.

Several years later, the Harvard study that we had ordered came down. What it showed is this: It showed that limiting damages for pain and suffering to a quarter of a million dollars would not reduce insurance premiums. It showed that 2 percent of the doctors were responsible for 80 percent of the claims and 80 percent of the awards, that the real answer to this problem of insurance premiums overwhelming the doctors is to tell the States to crack down on the 1½ percent or 2 percent of the doctors who are killing and maiming people because they are incompetent and are driving up everyone else's insurance rates.

Victimizing the victim further by this amendment is not the answer. Cracking down on incompetent doctors is the answer.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume to say that earlier in the debate, one of the Members on the other side put a question to one of our Members but then did not yield him sufficient time to respond to that question. The question that was put was what ought to be the recompense for someone who has lost a foot due to the negligence of a doctor or a hospital, and the answer to that question is quite clear. Replacing someone's lost foot is very expensive in today's world. It involves a great deal of technology, a great deal of doctors and professional care, probably lifelong rehabilitation and hospitalization, and in a fair system, 100 percent of those costs without limit would be paid by the people who were responsible, and that is exactly what will obtain when we pass this amendment. Nothing in this amendment will change that.

Mr. Chairman, I yield the balance of my time to close the debate to the distinguished gentleman from Texas [Mr. STENHOLM].

The CHAIRMAN. The gentleman from Texas is recognized to close debate for 2¾ minutes.

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

Mr. STENHOLM. Mr. Chairman, status quo is not acceptable. This debate today is about changing the status quo. Everyone agrees that patients must be reasonably protected against malpractice and against undue harm for medical devices, drugs and other medical products. Unfortunately, our current system is not working, and to all of those who have spoken so eloquently against all of the faults of this amendment, none of those comments have been addressed to changing the status quo.

As one Member who has wanted to have hearings last year, the year before, the year before, of reasonably getting into debating this question, we were denied. We were never able to bring this discussion to the floor as we are doing today. I wished we had not brought that point up, because that is a sore point to this man.

Patients and physicians all are losing under our current system. That is what some of us want to change tonight, the status quo. Numerous reforms must be enacted if we are going to control health care costs. My colleague from California, a classmate from the 96th Congress, said it very eloquently and very truthfully and very factually. If we want to reform our health care system, we must start with malpractice reform. We must begin to honestly deal with the problems of health system reform by changing first the malpractice system. That alone will not solve it.

It is ironic that in one of our largest States, what we are now saying will not work has been working. This is puzzling to me. The case for medical liability relief is overwhelming. Lawsuit abuse is driving up the cost of health care for all of us. As one who represents a rural district in which we can no longer get doctors to come to our rural hospitals to deliver babies, how in the world can anyone stand here today and say the current system is adequate, the current system cannot be changed, we cannot dare to try something new, that we have to preserve that which we are doing today?

I strongly urge the support of the Cox-Geren amendment. Change the status quo. Let us make our system better.

Mr. BERMAN. Mr. Chairman, to close the debate, I yield the balance of my time to the gentleman from Texas [Mr. DOGGETT].

The CHAIRMAN. The gentleman from Texas [Mr. DOGGETT] is recognized for 4¾ minutes.

Mr. DOGGETT. I thank the gentleman for yielding me the time.

Mr. Chairman, perhaps it is a peculiar observation at a time when we focus so much attention on lawyers and lawsuits to suggest that maybe a little bitty part of the problem of malpractice in this country, malpractice litigation, is malpractice itself. The statistics from the Harvard Medical School study conducted by a group of doctors in 1990 suggest that every 7 minutes in this country, someone dies in a hospital from medical malpractice. Maybe that has something to do with why we have a medical malpractice problem in this country. But the suggestion that, well, there will be mistakes completely avoids the question, because the question is, who is going to bear the burden of that mistake, and the suggestion by the author of this amendment that we can somehow give back a foot through medical technology suggests the ability to do something that only God can do.

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

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

Mr. WAXMAN. I want to make the point that this amendment which was just thrown together on the floor last night, revised again today, never had a day of hearings, it does not apply just to mistakes. It applies to intentional conduct. A doctor who comes in, a surgeon who comes in drunk and butchers somebody would be protected under this amendment to no more than $250,000 in damages. It has no relationship to the kind of conduct that might have been involved, like a psychiatrist raping an individual patient and harming that person for life. That is a psychological damage. If you say they are $250,000 in total noneconomic damages, there may be no economic damages for that kind of case. But to say that somebody should get $10,000 a year, when their lives are destroyed, for 25 years, that is good enough? I find that tremendously offensive. If you cannot create a leg to put on somebody whose leg was amputated improperly, then the pain and suffering and the humiliation means nothing more than some limited damage. I just want to point that out to the gentleman.

Mr. DOGGETT. This is as the gentleman suggests a poorly crafted amendment that applies not only to careless conduct but to grossly careless conduct, to intentional conduct. It applies not only to the family physician

that drags this legislation along in the speeches but to the nursing home that intentionally abuses older Americans. But to suggest that this has something to do with health care reform is frivolous in and of itself. The studies have shown that all the medical malpractice insurance and litigation in this country amounts to a big 63 cents out of every $100 spent on medical care. If that is where you want to start health care reform, I would submit that we start with the other 99-plus dollars out of health care and not focus on the part that relates to protecting people who are harmed by those who are careless or in this case engaged in intentional misconduct.

Mr. WAXMAN. If the gentleman will permit, medical malpractice and defensive medicine is a real problem. We need to address it. We need to look at a lot of different alternatives, alternative dispute mechanisms, some ways to compensate people who can never find an attorney to allow them to get some access to some reward for the pains that they have suffered. But this does not address these issues. The committees have never held hearings on it. This is an amendment dropped on us this morning in this latest form and I am sure that as they read through how poorly drafted it is, with the unintended, I assume unintended consequences, that it is an embarrassment to those who are supporting it.

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

Mr. DOGGETT. I yield to the gentleman from Michigan.

Mr. DINGELL. This amendment does absolutely nothing to deter litigation. It simply cuts the amount that can be paid to a person who has been wronged by medical malpractice or by other unfortunate improper practices. It denies them proper recovery. If that is medical reform, I do not know what it is.

I urge the rejection of the amendment. I thank the gentleman.

Mrs. SEASTRAND. Mr. Chairman, we need to institute a phrase from the NFL when they were still using instant replay called, ''Upon further review.'' Because upon further review, it is clear our judicial system is filled with inconsistencies and arbitrary decisions. The ''feelings'' or non-economic damage claims lead the pack. These claims result in unlimited damage awards and turn our system into a virtual lottery. The lawyers get rich while the system is brought to its knees.

Make no mistake. Our system should and will pay for the full cost of injury, medical costs, property damage and income, without limit. I will fight for that. But we simply must do something to cap the unlimited and arbitrary damage claims to pay for someone's feelings. The way our system currently operates brings a whole new meaning to the Clinton phrase ''I feel your pain.'' Do we ever.

However, there is a model for reform. The state of California. Our state set in place a cap of $250,000 for non-economic damages and that is what this amendment does. It says the defendant is responsible for all medical costs, all past and future income and all real economic damages. Then they can also be held accountable for up to a quarter of a million dollars in non-economic or pain and suffering damages. And this model works. In fact this model is credited with being the most effective reform in containing medical liability costs.

Mr. Chairman, we will never be able to put a price tag on someone's feelings or pain, but this amendment does try to place a reasonable limit on the awards so those involved in suits won't have to play the lawsuit lottery.

Mr. BARR. Mr. Chairman, I strongly believe along with many of my colleagues that tort reform must address the serious abuses that occur in the area of punitive awards for non-economic damages. On this subject, I seek a balance that takes into account important but diverse interests. We must protect against awards that bear no reasonable relation to the injury and threaten the economic integrity of our profit and non-profit enterprises. We must also permit sufficient discretion to ensure that injuries are compensated in full. In this regard, I continue to believe that while arbitrary caps on punitive damages in all instances are to be avoided, this legislation begins an important process in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to those otherwise generous caps.

Mr. NORWOOD. Mr. Chairman, we have gone too far in the area of non-economic damages. No other country in the world awards non-economic damages at or even near the levels of awards in the United States. It is almost impossible for anyone to put a dollar figure on such non-economic terms as pain and suffering; yet, our legal system continues to allow unlimited awards for pain and suffering. No other nation in the world comes close to placing economic burdens on society through non-economic damages the way we do in this country.

Mr. Chairman, this amendment is particularly important to our constituents. It is a major factor in the cost of health care today. This amendment will provide one of the best weapons possible in reducing the cost of health care. Forty percent of all MD's will find themselves party to a lawsuit, 50 percent of all surgeons will be party to a lawsuit, and 75 percent of all obstetricians will be party to a lawsuit. The problems of our tort system are not insignificant in the medical profession—they threaten the health of this nation by tying the hands of doctors. Doctors should not be forced to practice defensive medicine because they are terrified of $30 million lawsuits. The practice of medicine is not perfect. It is the science and art of the practice of medicine. No matter how good a doctor you are, when dealing with the human body, things do not always turn out perfect—as we would like.

Of course, neither is the legal profession perfect. In fact, writing laws is not perfect. Each law we write hurts some people—but the goal should be to pass laws that help the most people possible. This amendment is not perfect, but it will greatly help the majority of people in this country by reducing the cost of health.

Our physicians are being forced to practice defensive medicine. To perfect their own families. We have taken away one of the most important things you want in your doctor—to use good judgment in the practice of medicine. But when every decision is being watched over by suit-minded lawyers just waiting for the less than perfect outcome so they can get rich, it forces the doctor to make his or her first decision ''How can I not be sued?'' The thought process goes like this—I know we do not need this test or this x-ray for the patients benefit—but I must order this test or this x-ray in case I am sued, because some lawyer will make it appear I did not do all I can do.

There is a limit to how much malpractice one can pay for, but there is no limit to how much a jury of our peers can award. Some physicians pay as much as $150,000 per year for malpractice insurance. That increases the cost of medicine. And with jury verdicts in the tens of millions of dollars, one can never carry enough insurance to be sure you aren't ruined by a lawsuit. There must be a cap if you wish this country to continue to have the best health care system in the world—There must be a cap if you want the cost of health care to come down.

We have listened so long to the half-truths about protecting the middle class put out by the other side, it is time to lower the veil of obfus-cation and look at the costly reality that our tort system has become. We must no longer endanger the health of this Nation—we must place limits on all non-economic damages.

We should pass this amendment today.

Mr. Chairman, Congress has recognized this problem before. In 1992, Congress created the Federal Tort Claims Act in response to skyrocketing malpractice insurance premiums from federally funded community health centers. Under this act, judges rather than juries decide damages. Attorney's fees are limited and punitive damages are disallowed altogether. Why would the Federal Government institute such a restrictive system? Because the Federal Government, that is of course the taxpayers has to pay for the cost of these suits. If it is good enough for the government, it ought to be good enough for the rest of the health care industry. Let's give the rest of the medical industry that same relief.

Mr. Chairman, I end my remarks with one simple thought for your consideration. The Office of Technology Assessment recently identified a ceiling on non-economic damages as the single most effective reform in containing medical liability costs. We should do the same.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. COX].

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

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 247, noes 171, not voting 16, as follows:

[Roll No. 226]

AYES—247

Allard	Barrett (NE)	Blute
Archer	Bartlett	Boehlert
Armey	Barton	Boehner
Bachus	Bass	Bonilla
Baker (CA)	Bateman	Bono
Baker (LA)	Bereuter	Brewster
Baldacci	Bevill	Browder
Ballenger	Bilbray	Brownback
Barcia	Bilirakis	Bryant (TN)
Barr	Bliley	Bunn

Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Davis
DeLay
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fazio
Fields (TX)
Foley
Fowler
Fox
Franks (CT)
Franks (NJ)
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Goodlatte
Goodling
Gordon
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
McCollum
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
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 (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—171

Abercrombie
Ackerman
Andrews
Baesler
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clement
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
Deal
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Edwards
Engel
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Ford
Frank (MA)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Graham
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
LaTourette
Levin
Lewis (GA)
Lincoln
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Nadler
Neal
Nethercutt
Oberstar
Obey
Olver
Ortiz
Orton
Pastor
Payne (NJ)
Pelosi
Pomeroy
Pryce
Rahall
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Serrano
Shadegg
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Tucker
Velazquez
Vento
Visclosky
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Wilson
Wise
Woolsey
Wyden
Wynn

NOT VOTING—16

Boucher
Clinger
Cubin
DeFazio
Forbes
Gibbons
Hall (OH)
Jefferson
Johnson (CT)
Martinez
Murtha
Owens
Rangel
Weller
Williams
Yates

☐ 2057

Messrs. JACOBS, GILCHREST, and DE LA GARZA changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. RICHARDSON. Mr. Chairman, product liability legislation has been debated in Congress for several years now and I would like to express some thoughts on past efforts to rectify problems with our legal system.

In 1987, I introduced H.R. 1115, the Uniform Product Safety Act of 1987, to establish standards in determining product liability lawsuits. This legislation was the subject of 22 hearings and mark-ups which enabled manufacturers, sellers and consumers to offer their views. My bill had 96 cosponsors from both sides of the aisle. Comparatively, today's bill H.R. 956, the Common Sense Legal Standards Reform Act has received little bipartisan input and leans heavily in favor of business interests.

My legislation clearly defined reasonable standards of liability for manufacturers that would have reduced excessive lawsuits without infringing on State laws or the rights of consumers. H.R. 1115 did not try to restructure technical provisions of the legal code such as abolishing joint and several liability for noneconomic loss. With congressional prodding, legislators in New Mexico have enacted reforms that meet the needs of both consumers and business groups.

Today's short-sighted debate is discouraging to Members who believe such broad measures are not only unnecessary but potentially dangerous. Among my concerns for today's legislation is the 15 years statute of repose for all products. I am hesitant to support such an all-knowing directive.

Furthermore, my legislation exempted from the new standards industrial waste, pollutants or contaminants released into air or water, tobacco and tobacco products, alcoholic beverages, and any drug or device which is used as a contraceptive or abortifacient or which interferes with human reproduction under certain circumstances. Have we really considered the long-term ramifications of today's bill?

Finally, H.R. 1115 contained provisions to increase the availability of information in product liability actions. The 1988 bill allowed courts to disclose information that presented a risk to the public health and safety. It is hypocritical for Congress to place the burden of proof on consumers as H.R. 956 does while allowing companies to withhold information that could educate consumers.

My efforts to enact responsible legislation in the 100th Congress are indicative of my support for product liability reform. In the light of current research used by the U.S. Supreme Court which claims that there is no epidemic of punitive damage awards, I remain hesitant to support the broad, precedent-setting legislation before us today. It is unfortunate that we have not been able to craft a responsible piece of legislation.

Mr. BEREUTER. Mr. Chairman, this Member rises in support of this measure and to express his pleasure at seeing this much needed legislation finally brought before this body.

This Member introduced the first product liability legislation in the Nebraska Unicameral Legislature in 1977. During this process this Member realized that this issue must be dealt with on the Federal level, because the vast majority of products and services move through interstate commerce. Addressing product liability at the state level is like patching one hole in a tire with fifty holes.

Now, finally, this issue is being debated on the House floor after years of being bottled-up in committee by the trial attorneys and the former chairmen of the respective committees.

Mr. Speaker, all Americans are paying much higher prices for consumer goods and services because this legislation has been delayed for so very long. The insurance costs incurred by companies protecting against and paying for outrageous and unreasonable product liability suits are passed along to the consumer each and every day, in nearly every product and service purchased.

Perhaps even more outrageously, the current system unfairly imposes upon the American public product design standards, which are created in response to penalties awarded in a few states with the highest punitive and compensatory damages. Those States get to impose their juries' ideas of appropriate design and safety standards on the rest of the Nation. That is a perversion of Federalism. National standards should be set by the national legislature. That is what this bill will do.

Mr. Chairman, this Member has been a long-time co-sponsor of product liability reform, dating back to at least 1986. This Member is pleased that this long delayed measure is finally being debated on the House floor and urges his colleagues to support it.

Ms. PELOSI. Mr. Chairman, I rise today to voice my opposition to H.R. 956, the Common Sense Product Liability Reform Act of 1995. This bill is an undisguised assault on the safety of the American people that will result in more unsafe products, more injuries, and less compensation for those who are hurt by corporate misconduct and negligence.

Mr. Chairman, this bill contains two provisions that are particularly harmful to women: The punitive damages cap and the provision

that shields FDA-approved products from full liability.

Punitive damages in our Legal System Act as a powerful incentive for companies to make safety improvements to their products.

A punitive damages award as little as $250,000 will fail to serve as an effective deterrent in many cases. In addition, capping punitive damages awards at $250,000, or at three times the amount of economic damages, whichever is greater, discriminates against women and others who may not have large incomes.

Economic damages were generally not as high in the products liability cases of women who developed endometriosis, pelvic inflammatory disease, toxic shock syndrome, and other illnesses that left them sterile when they used copper-7 intrauterine devices or super absorbency tampons.

A punitive damage award cap is less harmful to those with higher salaries and discriminates against those who have lower incomes, many of whom are women. Justice would be meted out very differently for two people injured by the same defective Ford Pinto. The corporate CEO could seek a large punitive award based on economic damages, while the homemaker would be severely limited by the provisions of this bill.

Second, Mr. Chairman, this bill shields products from liability that have been previously approved by the FDA in spite of the fact that the record is filled with examples of drugs that have been approved or underregulated by the FDA only to cause immense physical harm once authorized for sale on the open market.

For example, the FDA approved high estrogen birth control pills which caused renal failure. It also approved the copper-7 intrauterine device which caused sterility in young childless women. The FDA defense shields negligent manufacturers at the expense of our nation's women and should be rejected.

Mr. Chairman, there is no national crisis in products liability litigation, nor is there any epidemic in punitive damages awards. To the contrary, the facts demonstrate that our current State-based products liability system works well.

It allows our citizens to seek redress when they have been injured by corporate negligence and it provides ample incentives to correct defective products when cause harm.

This bill favors powerful corporations at the expense of women, the elderly, the young, and all working Americans.

I urge my colleagues to reject these ill-advised reforms and to vote against H.R. 956.

Mr. RUSH. Mr. Chairman, I rise today in strong opposition to H.R. 956, the so-called Common Sense Product Liability and Legal Reform Act.

There is nothing even vaguely commonsensical about this bill. On the contrary, this bill is nothing more than a thinly disguised, let's kill all the trial lawyers bill.

Mr. Chairman, unlike so many of my colleagues on both sides of the aisle, I am not an attorney. But, unlike many who support this bill, I do not view the trial lawyers to be inherently greedy or evil.

Instead, it is my strong and considered opinion that a good lawyer can be a wronged party's only friend just when he or she needs one the most.

The overwhelming majority of our nation's products liability plaintiffs are not just nameless, faceless individuals but hard-working Americans with mortgages and families. Their right to seek compensation for faulty or defective workmanship in consumer products cannot and should not be denied.

Many States are also moving to harm consumers and working Americans by placing arbitrary limits on monetary damage awards in product liability suits. The Governor of my State, for example, signed into law today a measure that caps punitive and pain and suffering awards while making it harder for wronged citizens to see justice served in Illinois State Courts. My colleagues, this is an outrage. We must work ever harder to see that these efforts are defeated at all levels of government.

The bill before us today would make sure that many of these persons will have nowhere to turn to redress their injuries. The rights of working-class American consumers have never been more under threat than they are now. I therefore implore my fellow Members on both sides of the aisle to oppose this extremely underhanded and reckless bill. We must work together to see that it is defeated.

Mr. MOORHEAD. Mr. Chairman, I rise in strong support of the Common Sense Legal Reform Act of 1995. Civil justice reform is an extremely important part of the Contract with America. The time for enacting effective product liability reform is now. The first comprehensive product liability bill was introduced in the House of Representatives six Congresses ago by former Representative Jim Broyhill. I was proud to be an original cosponsor of this legislation. Since that time we have been blocked from action time and time again. During this long wait for federal action, the situation has only deteriorated.

The average American is confronted with a civil justice system that is too costly, too protracted and oftentimes seems to work better for the attorneys than for their clients. Each day in America, hundreds of lawsuits are filed by lawyers against fellow citizens, businesses, civic institutions, government entities, and countless other targets. This seemingly endless series of legal attacks has practically numbed America to the fact that, as a nation, we have become the most litigious society on Earth and that an onslaught of lawsuit abuse has had damaging and lasting effects on the standard of living of all Americans. While most legal actions brought in the United States seek legitimate redress for harm caused, unfortunately many are groundless, frivolous and the result of lawyers who abuse the system and seek to claim lottery sized dollar awards from both their advisory and their client. It is these types of abuses that bring discredit to the American legal system, damage the U.S. economy, and drain precious national resources into the dark hole of endless litigation. The current system creates fear among Americans that they will likely be the victim of an unjust lawsuit. It chills their desire to volunteer and participate in many aspects of ordinary life, and it prevents the introduction of new and beneficial products and services to the American people. Companies in many industries across the 50 states have discontinued product lines, closed plants, shut down divisions, been forced overseas and, in some cases, have been bankrupted by the current product liability system in this country. We should ask the men and women who have lost their jobs in these industries whether or not we need to change the current system. When the House Judiciary Committee considered this legislation, we heard testimony from a medical equipment manufacturer that it will soon be unable to get raw materials to make pacemakers and other implantable medical devices because of liability concerns of its suppliers. We have been warned specifically that the current product liability system is stifling innovation and preventing newer and more effective lifesaving medical devices from ever coming to market. Biomedical and pharmaceutical executives have testified repeatedly before Congress that they are not developing vaccines and medicines because of fear generated by the current unpredictable liability lottery they face in this country. We should ask the millions of Americans suffering from heart disease, AIDS, cancer and other deadly illnesses whether there is an urgent need to unleash medical innovation and discovery by reforming the current system.

Today, standards of liability vary from State to State, and sometimes even from Court to Court within a State. Neither the injured individual, the product manufacturer, nor the seller has any idea what liability standard will be applied, and all are subjected to conflicting rules on their responsibility in the use, design, production, and sale of products. The legislation before us establishes clear guidelines for determining who shall be responsible for harm caused by an accident. Uniformity is essential in order to provide fairness and predictability to consumers, manufacturers, and sellers. Although tort law is generally considered a matter for the States, it has been clear for quite some time that, due to the interstate nature of the sale of products, liability reform should be dealt with at the Federal level.

It is time to recognize that America will never be the best place in the world to create a job until we reform our current product liability system. It is time we provide the reform necessary to unleash American ingenuity in the development of new and more effective products, create jobs, increase our international competitiveness, and provide fairness to product consumers, sellers and manufacturers alike. Enactment of the proposals put forth in H.R. 956 will form the basis of strong and effective legal reform which will loosen the grip of lawyers on America. These common sense reforms are necessary to ensure that American consumers, manufacturers, product sellers, employers and employees alike receive fairness and justice under our civil justice system. The time has come to end lawsuit abuse in America.

Mrs. COLLINS of Illinois. Mr. Chairman, I am dumbfounded that this bill to restrict the rights of victims and consumers to adequate compensation for and reasonable protection from injury caused by unsafe, down right dangerous, and sometimes even deadly products has been named the Common Sense Legal Reforms Act. This bill absolutely turns common sense on its head.

Tell me, Mr. Chairman, is it common sense that the greatest leniency will be reserved for manufacturers of products that hurt children? That's what this bill will do. Is it common sense that a pharmaceutical company could face lower penalties if its product kills a senior citizen rather than a middle-aged man? That's what this bill will do. Is it common sense that victims of hazardous and unsafe products will have less of a chance to recover damages if

they are women, or poor? That's right—this bill will do that too.

Most importantly, do the American people really think that it's common sense to take away the power of our most democratic institution—the citizen jury—to impose deterrents against unsafe products and practices? I think not.

It's not hard to sell common sense reforms to the American people but supporters of this bill should be ashamed to put that label on a package of tricks that are crafted to increase corporate profits at the expense of the most vulnerable in our society. Perhaps the most dangerous product around these days is this bill, and when people get a chance to look inside the box and see what's really there they will be outraged. The Members of Congress who vote for it, however, will ultimately have to answer to the consumers, which is more than you can say for negligent manufacturers if this bill passes.

One of the most troubling aspects of H.R. 956 is the rule for calculating punitive damages, setting a cap at three times the amount of economic loss, or $250,000, whichever is greater. This bill establishes appallingly unequal penalties based not on the severity of the harm caused or the extent of negligence or even malice, but on the income of the victim.

Punitive damages have a positive impact on decisions made by product manufacturers and sellers. The Conference Board, a business-funded research organization, surveyed companies about the effect of strong product liability penalties on their operations. They reported, managers say that products have become safer, manufacturing procedures have improved, and labels and use instructions have been more explicit.

Yet by tying the amount of punitive damages to monetary loss alone, and not non-economic damages like pain and suffering, this bill takes away the threat of heavy punitive damages for products that severely hurt people with low-income, or no-income, like kids.

Think about it. Under this bill, if a product kills a child, punitive damages, regardless of the situation, will be capped at $250,000 since there will be no lost earnings to calculate as monetary losses.

I worked hard during the 103rd Congress to improve product safety, especially for children. A child toy safety bill was one of the products of my efforts. Yet now we are seriously considering a bill that says that a toy manufacturer's concern about product safety might be diminished because the potential penalties are tied to the income of the victim. Large manufacturers and corporations will simply calculate punitive damages as defined under this bill as a small cost of doing business rather than attempt to improve the safety of their products.

Recently, a group of Illinois families joined together around their concerns about the lack of a safety latch on the rear hatch of a popular brand of mini-van. Since 1993, the National Highway Traffic Safety Administration has been investigating the rear liftgate of these vans because they fly open in crashes. According to the NHTSA, the latches failed to keep the rear hatches closed in at least 51 accidents, causing 74 ejections and 25 known deaths. Who rides in the rear seats of minivans? Kids, of course. This bill would mean that the van manufacturer probably does not need to worry about hefty punitive damages in civil actions. If the issue were the front door latch of a luxury sports car, a manufacturer would almost certainly pay more attention.

Is this common sense?

Harming senior citizens would also tend to carry lesser punitive damages under this bill, since their incomes tend to be less. Of course, senior citizens are big consumers of pharmaceutical drugs. With this bill the majority is setting a lower standard for safety for drugs marketed to seniors than for drugs marketed to the general population. Pharmaceutical manufacturers often say that fear of liability keeps them from marketing certain drugs. Does that mean that removing some fear of extensive punitive damages will lead them to market drugs to seniors that they might not otherwise sell? Is this really what the GOP wants to accomplish?

Is this really common sense?

Punitive damages are levied by juries as punishment for actions by manufacturers and sellers to deter the marketing of unsafe products. Therefore, punitive damages should be related to the severity of injury and the actions of the manufacturer or seller, not the economic status of the victim.

That is true common sense.

Unfortunately, the bill before us also sets up yet another dual standard for recovery of damages in a product liability case based on the income of the victim. The bill eliminates the doctrine of joint and several liability, which ensures compensation for an injured party even if one or more of the defendants are unable to pay, for non-economic damages.

Women, senior citizens, children, and low-wage workers are more likely to receive compensation in the form of non-economic damages rather than economic damages. Yet this bill says that if one of the parties responsible for hurting someone goes bankrupt, the victim cannot recover full compensation, regardless of what the jury says. Upper-income men, who are more likely to be awarded economic damages for loss of income, are not affected by this provision of the bill because joint and several liability for economic damages remains intact.

Consider a case where two people suffer an injury. One is a man, the other a woman. The man is a lawyer and receives his full compensation whether or not all responsible parties contribute. The woman is a homemaker, and so the compensation she receives could be severely limited if one of the responsible parties is unable to pay.

Is this fair? Is this common sense?

Are the Republicans saying with this bill that they don't value women, seniors, children, or the poor? You bet they are.

Mr. Chairman, I have just finished fighting a bill passed by this chamber which suspends all new Federal regulations, including those designed to protect the public from unsafe products. Now the majority has come forward with this effort to close the only remaining mechanism average citizens have to protect themselves. With one hand, they remove regulation, and with the other, they take away the power of citizen juries to control corporate behavior through the threat of punitive damages.

What next? I probably shouldn't ask.

The American people have plenty of common sense, and when they are able to step back and see the whole of what is being done here, they will know whose interests are being protected, and who is being sold down the river.

The leadership may want to call this bill the Corporate Profits Protection Act, or the Corporate Wrongdoers Protection Act, or even the ''Profits Regardless of Who Gets Hurt Act,'' but they will find that the people are far too smart to let them call this the Common Sense Legal Reform Act for long. Its not hard to see why the majority wants to act so quickly on this bill. After all, you can't fool all the people all the time. And time is running out.

Mr. Chairman, the American people will be shocked when they find out what this bill calls common sense.

I urge my colleagues to reject H.R. 956.

Mr. HYDE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the SPEAKER pro tempore (Mr. LONGLEY) 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.

UNITED STATES SUPPORT FOR MEXICO—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 44)

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 Banking and Financial Services and ordered to be printed.

To the Congress of the United States:

On January 31, 1995, I determined pursuant to 31 U.S.C. 5302(b) that the economic crisis in Mexico posed ''unique and emergency circumstances'' that justified the use of the Exchange Stabilization Fund (ESF) to provide loans and credits with maturities of greater than 6 months to the Government of Mexico and the Bank of Mexico. Consistent with the requirements of 31 U.S.C. 5302(b), I am hereby notifying the Congress of that determination. The congressional leadership issued a joint statement with me on January 31, 1995, in which we all agreed that such use of the ESF was a necessary and appropriate response to the Mexican financial crisis and in the United States' vital national interest.

On February 21, 1995, the Secretary of the Treasury and the Mexican Secretary of Finance and Public Credit signed four agreements that provide the framework and specific legal arrangements under which up to $20 billion in support will be made available from the ESF to the Government of Mexico and the Bank of Mexico. Under these agreements, the United States will provide three forms of support to Mexico: short-term swaps through

which Mexico borrows dollars for 90 days and that can be rolled over for up to 1 year; medium-term swaps through which Mexico can borrow dollars for up to 5 years; and securities guarantees having maturities of up to 10 years.

Repayment of these loans and guarantees is backed by revenues from the export of crude oil and petroleum products formalized in an agreement signed by the United States, the Government of Mexico, and the Mexican government's oil company. In addition, as added protection in the unlikely event of default, the United States is requiring Mexico to maintain the value of the pesos it deposits with the United States in connection with the medium-term swaps. Therefore, should the rate of exchange of the peso against the U.S. dollar drop during the time the United States holds pesos, Mexico would be required to provide the United States with enough additional pesos to reflect the rate of exchange prevailing at the conclusion of the swap.

I am enclosing a Fact Sheet prepared by the Department of the Treasury that provides greater details concerning the terms of the four agreements. I am also enclosing a summary of the economic policy actions that the Government of Mexico and the Central Bank have agreed to take as a condition of receiving assistance.

The agreements we have signed with Mexico are part of a multilateral effort involving contributions from other countries and multilateral institutions. The Board of the International Monetary Fund has approved up to $17.8 billion in medium-term assistance for Mexico, subject to the Mexico's meeting appropriate economic conditions. Of this amount, $7.8 billion has already been disbursed, and additional conditional assistance will become available beginning in July of this year. In addition, the Bank for International Settlements is expected to provide $10 billion in short-term assistance.

The current Mexican financial crisis is a liquidity crisis that has had a significant destabilizing effect on the exchange rate of the peso, with consequences for the overall exchange rate system. The spill-over effects of inaction in response to this crisis would be significant for other emerging market economies, particularly those in Latin America, as well as for the United States. Using the ESF to respond to this crisis is therefore plainly consistent with the purpose of 31 U.S.C. 5302(b): to give the United States the ability to take action consistent with its obligations in the International Monetary Fund to assure orderly exchange arrangements and a stable system of exchange rates.

The Mexican peso crisis erupted with such suddenness and in such magnitude as to render the usual short-term approaches to liquidity crisis inadequate to address the problem. To resolve problems arising from Mexico's short-term debt burden, longer term solutions are necessary in order to avoid further pressure on the exchange rate of the peso. These facts present unique and emergency circumstances, and it is therefore both appropriate and necessary to make the ESF available to extend credits and loans to Mexico in excess of 6 months.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

PERSONAL EXPLANATION

Mr. BILBRAY. Mr. Speaker, I was absent yesterday due to an illness. I would like the RECORD to show that had I been present, on rollcall 213 I would have voted ''nay,'' on rollcall 214 I would have voted ''nay,'' on rollcall 215 I would have voted ''nay,'' and on rollcall 216 I would have voted ''aye.''

AMENDMENT FILING DEADLINE ON H.R. 1158 AND H.R. 1159

Mr. SOLOMON. Mr.Speaker, earlier today I announced a preprinting requirement for amendments to the two supplemental appropriations and rescissions bills, H.R. 1158 and H.R. 1159 and noted that amendments should be submitted for printing no later than Monday, March 13, 1995.

I now ask unanimous consent that Members have until 5 p.m. on Monday, March 13, which is a pro forma day to file their amendments for preprinting in the CONGRESSIONAL RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

PERMISSION FOR SUNDRY COMMITTEES AND SUBCOMMITTEES TO SIT ON TOMORROW DURING THE 5-MINUTE RULE

Mr. SOLOMON. 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 Economic and Educational Opportunities, Committee on Government Reform and Oversight, Committee on House Oversight, Committee on the Judiciary, and Committee on Transportation and Infrastructure.

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 New York?

Mr. DOGGETT. Mr. Speaker, reserving the right to object, we have consulted with the ranking minority member of each of those committees and subcommittees, and there is no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. TAYLOR of Mississippi. Mr. Speaker, reserving the right to object, I had hoped, with the change in the House, this practice of Members being expected to be in three places at once would hopefully come to an end. Today, for example, I had a Committee on Government Reform and Oversight and a Committee on National Security meeting as we had some very important tort reform legislation going on on the floor.

Is it the intention of the Republican leadership to continue this practice for the remainder of the Congress, or at some time can we get to the point where Members can do one or maybe two things, and do them very well rather than running around like a bunch of chickens with our heads cut off?

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield, I would say to him we are doing everything possible to get that Member home for the Easter break to have a work period. And once we have reached that April 8 date I would think that we would go back to the regular rules of the House and probably would not be making these requests, or very seldom.

Mr. TAYLOR of Mississippi. If I may, there are things that are more important than the Easter break. Passing well-thought-out legislation is more important than the Easter break, and I would sure hope the Republican leadership would keep that in mind.

Mr. SOLOMON. If the gentleman will yield, we certainly will, and I hope the gentleman has a happy Easter break when the time comes.

Mr. TAYLOR of Mississippi. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

THE REPUBLICANS' WAR ON KIDS

Mr. SKAGGS. Mr. Speaker, I would like to commend to all Members of the House a striking series of articles from the Los Angeles Times. They provide a poignant rejoinder to current House Republican doctrine that we can somehow cut school lunch and breakfast programs without really hurting anybody.

The articles tell the story of the kids from West Covina, CA, a place where the local school board decided not to participate in the school breakfast program. Let me just give an excerpt.

By 10 many mornings there is a long line outside the nurse's door. Some children clutch their stomachs, others their heads. In this mostly middle-class bedroom community, these children share a common ailment. They are hungry.

Phys ed teacher Barbara Davids sometimes fed 12-year-old boy who volunteered to help custodians pick up after lunch so he could salvage garbage scraps.

Another student got in trouble so he could be sent to the principal's office, where a jar of candies was perched on the desk. ''I'm so hungry. I'm so hungry,'' sobbed the 12-year-old-boy dipping his hand into the jar. * * *

Mr. Speaker, I include these articles for the RECORD.

The articles referred to are as follows:

[From the Los Angeles Times, Nov. 20, 1994]

GOING TO SCHOOL HUNGRY

As poverty spreads, teachers often see students who have not eaten for days. Malnutrition hinders learning, but resistance to breakfast programs raises question of how far districts should go to help.

The symptoms have swept through Edgewood Middle School.

By 10 many mornings there is a long line outside the nurse's door at the West Covina school. Some children clutch their stomachs. Others grasp their heads. In this mostly middle-class bedroom community, these children share a common ailment. They are hungry.

One boy came into Assistant Principal Amelia Esposito's office last year and confessed to stealing food from a 7-Eleven store. ''Every night I go to bed hungry.'' the 13-year-old told her, bowing his head. ''There isn't enough food.''

''It's scary how many kids here are hungry,'' says Esposito, who believes one in four children comes to class undernourished.

America's hunger is not the starvation of Somalia or Rwanda that galvanizes global attention: bloated bellies, emaciated arms, failing bodies along roadsides. Hunger here saps people in more subtle ways: families eat only once a day or skip meals for several days, causing chronic malnutrition. It is a problem that many researchers say eased markedly in the 1960s and '70s, but resurfaced with a vengeance in recent years.

Hunger, they say, afflicts up to 30 million Americans. Twelve million of them are children, many in recession-ravaged Southern California.

Their plight has emerged most publicly in the schools, where teachers delve into their own pockets to feed children whose ability to learn is being crippled by hunger.

Yet half of California's schools—including all 11 in the West Covina Unified School District—do not offer one ready remedy: breakfast, a federally funded entitlement. Nationally, 37% of the 13.6 million low-income children who get a subsidized lunch also eat a morning meal at school. In some districts, breakfast has been barred or eliminated by school officials who oppose it on philosophical grounds. Many in West Covina, where Christian conservatives dominate the school board, oppose feeding children breakfast at school, calling it anti-family and a usurpation of what should be a parent's responsibility.

''I want kids to eat at home with their families,'' said school board President Mike Spence. ''Breakfast at school is just one more thing school districts do rather than allowing parents to take care of their children.''

A suburb that blossomed from orange groves in the San Gabriel Valley after World War II, West Covina, the ''City of Beautiful Homes,'' is an unlikely haven for hunger. In the 1980s, however, teachers watched as lost jobs, an influx of new-comers from the inner city and an increase on single mothers left many students living hand-to-mouth. Although the median family income in West Covina is $51,000, there are pockets of poverty: one in four single mothers lives on less than $14,800 a year.

Although the shifts in West Covina are hardly unique, the town's emerging economic stratification has made hunger highly visible in the schools.

The number of students qualifying for free or reduced-price lunches at Edgewood, the district's only middle school, has surged to nearly two-thirds from one-third a decade ago.

Among them is Cristina Yepez, a soft-spoken 12-year-old with freckles and wide-set blue eyes, who spends some mornings at the school health office complaining of stomachaches. Last year, she says, she got dizzy on the playground, crumpling onto the blacktop at Merced Elementary. She had had no breakfast that day. Dinner the night before was a potato.

''A lot of times, we have just break,'' says Cristina, gently combing the silky red hair on her Little Mermaid doll as her family prepares for an evening's meal. ''Sometimes, I get really hungry. But there's nothing more to eat. I go to my friend's house and pretend to play and say: 'Oh, can I have something to drink?'''

Cristina sits down with her mother, Darlene, and sister, Jesseca, 13, for dinner. It is their only meal today. One hot dog each, and water. Darlene Yepez, 38, who is divorced, was sidelined from a forklift job by a back injury but is searching for work. Meanwhile, the family survives on $607 in welfare and $130 in food stamps, which run out halfway through the month. Swallowing her pride, the mother has gone to West Covina's food pantry—but has used her five allowed visits. A few times, the girls have gone up to three days without food, she says, quietly beginning to sob. The last two weeks, she says, they have had one meal.

Studies show that hungry students are fatigued. They cannot concentrate. They do worse than their peers on standardized tests. Because they are ill twice as often, they miss class more frequently.

''They are dazed. You can see it in their eyes. Sometimes, their hands tremble,'' says Edgewood teacher Kim Breen, who estimates that three-quarters of her students arrive without eating breakfast. Some do not have the energy to raise their heads from their desks. One girl broke down last year in class, her hands shaking, describing how she had gone all weekend without eating.

Kathi Jennings sees hunger's toll daily at Edgewood, which has about 1,800 students. Knowing many of them are undernourished, she keeps a choice of rewards for daily tasks on her desk: a baseball card, a small top or a cup of applesauce. Many kids choose food.

Two guards who patrol Edgewood's playground say one 13-year-old girl chases their green security cart, asking for food. Physical education teacher Barbara Davids says she sometimes fed a 12-year-old boy who volunteered to help custodians pick up after lunch so he could salvage garbage scraps.

Another student got in trouble regularly so he could be sent to the assistant principal's office, where a jar of diabetic candies is perched on her desk. ''I'm so hungry. I'm so hungry,'' sobbed the 12-year-old boy, dipping his hand into the jar and stuffing six candies into his mouth.

Hunger plagues many U.S. schools. More than a quarter of elementary schoolchildren come to class without breakfast, said Doris Derelian, president of the American Dietetic Assn.

The Los Angeles Unified School District, like many urban areas, has long served breakfasts so the problem on those campuses is less pronounced.

Rural and suburban districts are less likely to serve a morning meal. In the Baldwin Park Unified District, nearly half of 16,000 visits to the school nurse last year were tied to hunger. Since then, the district has started offering breakfast at many of its schools.

The mounting toll in schools mirrors a resurgence in hunger, which studies show was brought under control in the '70s but grew by 50% between 1985 and 1991. Even for Americans with jobs, a growing percentage—now nearly one in five—work full time but earn less than the poverty level.

Divorce and out-of-wedlock births left children, along with their mothers, the nation's biggest losers. More than one in five children live in poverty, and almost a quarter of low-income children in the United States are anemic—a condition linked to inadequate or poor nutrition. Government cuts have not helped: median Aid to Families With Dependent Children benefits for a family of three have dropped 47% since 1970. California food stamp payments average 70 cents a meal, slightly more than half of what the U.S. Department of Agriculture says it takes to get an adequate diet.

In an effort to assess the extent of hunger in America, the federal government has launched its first tally on malnutrition. Results from the survey of 60,000 households are expected to be released in 1996.

Recent academic research already has focused on the effects of hunger in the classroom. A 1993 Tufts University study said hunger is stunting cognitive development as lethargic children disengage from learning, and warned that ''our country may be heading for a crisis of enormous proportions.''

''Health and nutrition are powerful determinants of educational competence,'' says Ernesto Pollitt, a UC Davis human development professor. His 1993 study found that anemic and iron-deficient toddlers lag behind their peers in mental development by up to 25%. Nonetheless, Pollitt said he is surprised to find that many schools do not serve breakfast and ignore the effects of hunger on the ability to learn.

A study of 1,023 public schoolchildren in Lawrence, Mass., found that when schools started to serve breakfast, students' standardized test scores rose, and absenteeism and tardiness declined. Math, another study shows, is hardest hit when children are not given a morning meal.

''Scientific evidence shows that if you don't do this, you are undermining the very reason for your existence, which is to educate children,'' says J. Larry Brown, director of the Tufts University Center on Hunger, Poverty and Nutrition Policy.

At Edgewood school, mid-morning is the worst, said science teacher Breen. ''How many eat three meals a day? Two? One?'' Breen asks her class. Most say they eat twice, some only once. It is her annual informal body count on hunger, and the results are more grim each year. Breen estimates a sixth of her students are hungry regularly.

''I have to repeat instructions two or three times,'' she says. ''I try to teach them physics, but I can't.'' By second period, a boy in the third row drops his head to his desk. ''I just leave them alone. They aren't going to get it,'' Breen says, her voice full of frustration.

Just before lunch, a 14-year-old girl rises from her desk and slowly approaches her teacher. She says she has not eaten in two days. Earlier, on the playground, she nearly fainted, dizzy from lack of food. ''Could I have 50 cents?'' she says quietly so the other children can't overhear. ''I'm hungry.'' Breen—who often gets requests for food—fishes out four quarters. The girl, who has not yet been issued a card that will allow her to get a free lunch, still lacks enough money to buy one. She eats what she can: a bag of Doritos from the school vending machine.

''I keep my own stuff,'' says the school health clerk, Deborah Paschal, swinging open the office cabinet. Sandwiched between

the Band-Aids and medicines are peanut butter, crackers and boxes of juice, all purchased with her own money. Counselor Pamela Clausen sometimes gives away her sack lunch. Physical education teacher Barbara Davids occasionally brings in grocery bags of food. When she runs out, or does not have money, she sends children to the cafeteria with a note: ''Feed this kid.''

Throughout southern California, teachers like Ernie Sanchez are picking up the slack. When he was a second-grade teacher at Vejar Elementary School in Pomona, Sanchez spent the first period each morning making cheese sandwiches for every student. If he had no cheese, he scooped a cup of cereal into a napkin on each child's desk.

Once, he brought apples to the school, where 99% of the children qualify for free or reduced-price meals. ''All these little hands reached out toward me,'' says Sanchez.

''We don't have food sometimes,'' says one 13-year-old Edgewood student, nervously adjusting her glasses. Asked what her mother does, the girl said. ''She stays in the house and watches TV every day.'' Her father? ''He takes drugs. That's why my mom threw him out.''

But most, Esposito says, suffer because their parents have been laid off, work long hours and leave their children to fend for themselves in the mornings, or work at jobs that barely cover the rent.

Lisa Drynan, 32, was recently laid off from her administrative job at an engineering firm, the second position she's lost to ''downsizing'' in three years. She is again searching for work. Drynan has gone up to two days at a time without food. Her three boys, Kevin, 3, Kenny, 9, and Keith, 11, who attends Edgewood, often eat once or twice a day. The night before, says Drynan, staring inside her bare refrigerator, her three sons split two hot dogs.

''There are many days I don't have anything for them for breakfast,'' she says in her tidy apartment, where the toys are lined up outside the front door. Even though she buys generic brand foods, her $102 in food stamps each month run out after 2½ weeks. Drynan, who is divorced, has used up her five trips to the West Covina food bank. ''I know food is important. But I know we need a roof over our heads more,'' she says, adding that most of her income goes to the $690-a-month rent, bills and collection agencies to pay off thousands of dollars in medical costs owed from one son's head injury.

''I'm hungry,'' says Kevin, tugging at his mother's white T-shirt. Drynan has heard that her 3-year-old ventures to neighbors' homes, asking for food. She pulls out a Popsicle—the last bit of food in her freezer—and gives it to Kevin, who consumes the treat in seconds.

Kenny, a skinny boy with big brown eyes, laments not having had his favorite food, pork chops, since his birthday in March. At school, he says ''in the mornings, I get real hungry.'' By 10:30, he begins a daily lunchtime countdown, eyes focused on the classroom clock. Other children sit down after morning recess for snack time—a treat from home. ''They read us a story, or we do our work. I just have to work. I don't have a snack,'' Kenny says quietly. ''I get hungry when I look at them.

Drynan knows hunger afflicts other families in her neighborhood, even those in which the parents have jobs. When Drynan sent her children for a sleep-over to Susie Ballard's house across the street, they were told to eat supper at their own home, then come over.

Ballard, 38, whose daughter Kristin attends Edgewood, explains that although she works, she cannot put three meals on the table for her own three children, much less visitors. Ballard, whose marriage broke up two years ago, lost her long-time job as a pizza company training manager. Work as a cleaning lady barely covers the rent. Half the month, there is no breakfast. Ballard stretches a pack of spaghetti into three meals, thinning down the red sauce with cans of water.

''There are nights I tell the kids: 'I'm not hungry. You eat.'" says Ballard, nervously smoothing the lace doily on the apartment's living room table. She gives the kids Kool-Aid to fill their bellies. Fresh fruit, vegetables and coffee are luxuries of the past.

''I tell them: 'If someone offers you a free meal, take it, take it.' I used to go to bed crying every night. I feel a failure to them. I ask: How can they look up to me?''

Kristin, 13, is curled up in a chair in the corner of the sparsely furnished but immaculate apartment. ''If the food was there, I would eat more,'' she says shyly.

Anti-hunger advocates are waging a coordinated, nationwide campaign in a school-to-school battle to get the tens of thousands of schools without breakfast programs to sign up. Without breakfast in schools, the $16 billion California spends on elementary and high school education may be wasted money, Assemblywoman Gwen Moore warned in a January letter to colleagues, prodding them to push the program in their districts. Twenty-one states—including New York and Texas—now mandate that all or some of their schools serve breakfast. Bills to make breakfast mandatory in California schools have failed, partly because they are viewed by some legislators as coddling immigrant children.

In La Habra, a recently implemented breakfast program has made teaching more productive. Morning stomachaches used to afflict half her students daily, said Maria Vigil, a Las Lomas elementary kindergarten teacher. ''They were all nauseous'' and lethargic, she said. Her office brimming with more than a dozen hungry children by midmorning, Las Lomas Principal Mary Jo Anderson found that for 10% of the students, school lunch was their only solid meal. ''I their tummies hurt, their brains can't work.'' Anderson says. School breakfast she adds, resulted in a 95% drop in disciplinary problems. ''They are calm, happy. They aren't angry. They aren't hurting. It's like a miracle.''

''Teacher! I am going to eat!'' children yell at Vigil as they spill out of yellow school buses. Sandra Andrade. 5, races from the parking lot, grabs her green meal ticket, then rushes to the wire screen window, waiting impatiently for her tray of milk, juice, cereal and string cheese. Unemployed father Roberto Andrade—who some days can't scrounge up the gas money to search for work—hovers over the school breakfast tables, where four of his children who attend Las Lomas share their food with his other three younger children. ''Without this, they might not eat some days,'' says the handyman. Three-year-old Eduardo devours a packet of graham crackers with his sister Sandra.

The focus on food is everywhere. As soon as class starts in Vigil's Room 6, she notices that 6-year-old Jonathan Quintana is irritable and crying. Vigil's hand dives into a desk drawer and pulls out a bag of crackers: ''Let's get you a little cereal, OK?''

Jonathan is ushered to a table, seated next to his teddy bear, and given cereal, juice, milk and more crackers. The lesson quickly continues. Jonathan's sobs become more infrequent. He sniffles. By 9, he is seated with the other students, at work on lessons about the calendar and the weather.

As Vigil offers each child a animal cracker from a large jar. Jonathan cheerfully plays with Legos. Even as lunchtime approaches, children attentively listen to Vigil's rendition of ''The Three Bears,'' jostling to see the book's pictures. Later, Alberto Cueva. 5, savors his lunch—a burrito, followed by corn and milk—before his half day of school ends.

''Sometimes, we eat at night,'' says the boy, urgently shoveling the burrito into his tiny mouth. ''Sometimes we don't.''

SCHOOLS DEFEND DECISION AGAINST OFFERING BREAKFAST

Although school breakfast programs could help many children, there are many reasons why schools do not offer a morning meal.

Logistic barriers can be a nightmare, said Wanda Grant, food services director for El Monte City School District. Her district, which serves breakfast at its 18 schools, had to shuffle bus schedules, buy trucks to haul more food supplies and deal with water heaters that could not handle bigger dishwashing loads. Food service directors, principals and custodians usually do not jump at the chance to do more work for the same pay.

However, schools that want to offer breakfast find a way. When the Riverside Unified School District could not juggle bus schedules, it offered breakfast pizza and pancakes on the school bus.

Often, philosophical objections are the bigger obstacle. Many people believe parents, not taxpayers, should provide something as basic as breakfast for their children. If schools take on more duties—offering sex and drug education, for example—won't that encourage parents to abdicate more responsibilities?

In a case that attracted widespread attention, the Meriden, Conn., school board, arguing that children should eat at home with their families, repeatedly voted down school breakfast programs from 1990 to 1993—flouting a 1992 school breakfast state mandate until there were sued by the state attorney general.

A survey this year by the California Department of Education, which allocated only a third of the $3 million in breakfast start-up grants last year because of a dearth of applicants, found that many principals and superintendents voiced philosophical objections to breakfast programs. ''The parents have some responsibility for these kids. It's not the schools' job to be all things to all people,'' one principal wrote.

Since the 1980s, Shyrl L. Dougherty, the nutrition services director for Montebello Unified, has prodded four of 26 schools balking at serving breakfast. In one school, 98% of the children would qualify for free or reduced-cost morning meals. ''How much are we supposed to do for families?'' one principal protested to Dougherty.

Only about a tenth of students in Orange County's second-largest district, Garden Grove Unified, get free or reduced-price breakfasts, although half qualify.

''What's next? Are we going to provide housing for these people too?'' one principal asked the district's food services director, Karen Papilli.

In the West Covina Unified School District, many administrators and teachers believe the decision not to offer breakfast is rooted in conservative attitudes. The school board begins its meetings with Christian prayer.

''We have a conservative school board. They are very concerned about the role of the school,'' said Mary J. Herbener, the district's child welfare and attendance supervisor. Merced Elementary Principal Janet Swanson said: ''Breakfast is a hot potato. It's a political issue.''

Edgewood Middle School Assistant Principal Amelia Esposito said she has pushed for breakfast for three years. ''This board is stuck in the '60s. Lunch is OK, but breakfast is controversial.''

Anthony Reymann, who calls himself the board's lone liberal, sizes up his colleagues' reaction to a breakfast program: ''They will say: 'Ultimately God put parents on this earth to take care of their children. By God, that is what they should be doing.' ''

The board's conservative president, Mike Spence, said: ''The government is trying to usurp the responsibilities of the parent. There is a trend to take over aspects of what the family does.''

''Schools need to educate,'' said Susan Langley, the West Covina School District Council-PTA president. She says parents should turn elsewhere for food assistance. ''We are really big on self-help.'' Some teachers are skeptical as well. One told Esposito: ''If they (parents) weren't on drugs, their kids wouldn't be hungry.

Since bringing in breakfast last year at Santa Ana's Pio Pico Elementary School, the droves of hungry children who arrived at Principal Judy Magsaysay's office sick with hunger in the morning have disappeared. Teachers are astounded at the difference in the classroom: 10 to 11:30 a.m., once dead time, has become a fertile learning period.

Magsaysay said she knows the difference the meals make when she watches students return from month-long vacations visibly thinner. Twenty-five children line up against the cafeteria's outer wall by 6:45 a.m. for breakfast. Sometimes the cafeteria lady runs late. When she finally swings open the door, the children clap and cheer.

THE FOOD ANGEL OF 42ND STREET

Mae Raines loads an old pickup with donated food and hands it out in some of the city's poorest areas. 'When I can ease someone's pain, I feel good,' she says.

To the children running excitedly after her rusty blue 1978 Dodge pickup for a piece of bread, or an orange, she is Mother Raines or the Muffin Lady.

Mae Raines' food truck pulls to a stop in South-Central Los Angeles and she begins the task of easing hunger. ''A lot of kids don't know what a snack or lunch is,'' says Mae, who watches some children devour whole bags of bread. Women sometimes sob when she puts food in their hands. Men bow their heads and say thanks.

At 71, when most are quietly enjoying their golden years, Mae spends her time hauling truckloads of food to some of the most dangerous streets in Los Angeles, places many people in the City of Angels avoid. In her mind, she is simply a good Christian. ''God said: Take care of the poor and the widows. I do what the Word says,'' says Mae, a widow herself. To her neighbors, she is the food angel of 42nd Street.

On a crisp autumn morning with wisps of clouds in the sky, Mae arrives at the Los Angeles wholesale produce market's ''charity dock,'' where she gets donations of fruits, vegetables and bread. An ample woman, Mae—clad in flowing purple culottes, black high-top sneakers and a royal blue beret covering salt-and-pepper hair—points two of her foster sons at boxes of food to load. The boys pile the scratched and scarred Dodge with loaves of bread, sweet corn, oranges, pumpkins, even doughnuts. And they never forget an item children in her neighborhood south of the Coliseum count on May to bring; English muffins.

''We need radishes, four boxes,'' Mae prods her foster son, Donell.

An hour later, Mae and the children scramble into the cab of the truck. The squeaky doors clang shut. She grasps her window and pushes it down by hand. Peering out the shattered windshield, she eases away from the concrete loading dock, heading south, through the warehouse district near Downtown, over two railroad tracks, past rubble-strewn lots and graffiti-marred walls, zigzagging into the heart of the city.

Rolling past low-slung houses, Mae's food wagon brakes at her first stop. Most who converge on her truck are very old or very young.

One 4-year-old boy, Minor Beli, can barely believe it when Mae holds out a box of doughnuts. ''Do you want it?'' she asks. For a moment, Minor hesitates, then reaches out, tightly grasping the box. His eyes look lovingly at the treat, then at Mae. Minor's mother, Ana Beli, 27, says she must often limit how much her children eat to stretch their food to the end of the month. ''When I pay the rent, there is little left,'' she says.

The Belis pay $350 a month for a room in a house they share with another family. Her husband works for minimum wage as a garment worker. Last night, she says, Minor, 2-year-old Jennifer and Angel, 7 months, ate one egg each.

Mary Lou Ellis, an 83-year-old with tufts of gray hair peeking out from under her cap, hobbles down the block to Mae's truck. Mae thrusts a bag of bread, radishes and tomatoes into trembling hands. ''Oh lordy, lordy. Thank you! Thank you!'' the woman says, beaming at Mae.

The former Lockheed Corp. riveter and housecleaner says that there often isn't enough food, so she skips meals. The rent eats up $400 of her $645 Social Security check. Utilities consume most of the rest. Someone swindled her out of her meager retirement savings, she says. Her house was emptied of furniture in a recent break-in. She leans heavily on her brown cane and stares hard at the ground. ''I've never lived like this,'' she says, confessing to no one in particular. ''I feel like taking a gun and shooting my brains out.''

The stooped woman hobbles away. But as word gets out, her neighbors emerge from their homes, creating a crowd. ''Are you selling this?'' one woman asks. Mae turns to her with a warm smile. ''No,'' she says. ''I'm giving it away.''

''Oh! There's my girl,'' Mary Washington squeals at Mae, who has helped her ever since she fell and broke her neck a decade ago. A former cook and janitor, she points to a long surgical scar that runs the length of her neck. Her head tilts to the side. Ever since the accident, seizures have made it hard to keep a job.

''She'll dress you. She'll feed you,'' she says, striking Mae's shoulder as her friend fills a bag with radishes and corn. Each month, she tries to survive on $212 in welfare—which lets her rent a room in a house—and $103 in food stamps. Collecting cans and bottles from trash bins brings in $15 more, which busy some food for the end of the month.

* * * * *

Two years ago, at 69, Mae took in a 2-day-old crack baby for a year. She has had 10 foster children over the years, and also has taken in 10 other neighborhood children off and on, occasionally sleeping on the living room window seat to accommodate them.

Sometimes, the tough grandmother feels fear on her food runs. Once, she had driven her truck Downtown to Skid Row, parked and begun laying out pans of homemade rice, chicken wings, cheese toast and cobbler. Chris and Cee were at her side, wrapping forks and spoons in napkins. A group of homeless men gathered around her menacingly. Mae quickly solicited one of the ragged men to help her. ''You can come here anytime.'' he said, staring down the others. ''I guarantee no one will take advantage of you and your children.'' She fed 200 that day.

Mae's neighborhood is rough, too. In recent years, two neighbors' sons—neither one in gangs—were killed in drive-bys, shot through the back and neck. One an 18-year-old boy, was buried in a grave site Mae had purchased for herself The Menlo Avenue School one block from her home has a ''gunfire evacuation plan.'' Its schoolyard has been sprayed with bullets 10 times in the past year and a half, once just as kindergarten was letting out, says Principal Arthur W. Chandler. Police helicopters often hover overhead, tracking clashes among the 18th Street Gang, the Rolling 40 Crips and increasingly violent tagging groups such as the Dirty Old Men.

Poverty is another mounting concern. Part of Mae's route traverses an area of South-Central in which more than one in four residents didn't have the resources to feed themselves the entire month, according to a UCLA study.

Since the 1980s, as a growing tide of poverty has left more people hungry, the efforts of nonprofit groups and individuals have become increasingly critical in curbing hunger's toll. ''The government cannot do it all. If it weren't for the private sector, the tragedy would be, I think, unbelievable,'' says Roy B. McKeown, president of World Opportunities. Requests from people like Mae, he says, have become more urgent in recent years as joblessness in the inner cities has skyrocketed.

Mae's drive through this hungry landscape often includes a stop at her neighborhood Unocal gas station. ''C'mon baby,'' she beckons to a man furiously washing windshields one recent day. Word spreads like wildfire down the street. Soon, the truck is surrounded by homeless women and men, many of whom have known Mae for years. She plucks oranges, apples and bread from boxes around the rim of the truck.

One bag goes to Tyrone Richardson, a 32-year-old unemployed construction worker. Taking the food, he fishes a wadded-up dollar bill from his pants. He stuffs it into Mae's shirt pocket. ''This will help you get gas to help others. Sometimes I don't have a dime. Today I do.'' he says. The gift amounts to half of his total assets. Mae vehemently refuses the money. But, cradling a watermelon in his arm, he walks away, saying only, ''She got a good heart.''

''This is what we do,'' Mae says simply, stuffing more plastic bags with food.

''What's the problem? Tell me?'' Mae quietly asks Sheree Wilson, 31, who has been homeless for three months and was headed to Jack-in-the-Box to eat a free packet of jelly when she noticed Mae's truck.

''This is my baby,'' the woman says, pulling from her jacket a crumpled photograph of her 1-year-old boy, Joshua, beaming from his crib. She stops peeling her orange and begins to sob, explaining that she left the baby with her mother because she is addicted to crack and ''going crazy.''

She says her best friend, who was on the streets with her, was recently arrested for prostitution and drug dealing. Now that she's alone, the streets are wildly dangerous. She's not sure how to get out, or if she has the will to leave crack behind.

Mae pulls out a small coin purse, counts out four quarters. Then, standing by her truck, Mae lays her hand on the woman's chest and leads her in prayer. ''You are gonna be all right. Nothing is too hard,'' she urges.

''I have faith.'' Sheree says, lovingly fingering the picture of her son. ''I just went the other way.''

Mae pulls out of the station, leaving behind a destitute crowd on the blacktop, all of them munching apples.

It's not long before Mae happens upon Rosa Ramirez, 20, with her two children. Marbella

Heredia, 1, and Jose Heredia, 2. Her husband, she explains, gets sporadic work in the garment industry. Now things are slow and he brings home as little as $50 a week. Marbella virtually inhales an orange she grasps in her tiny right hand. The juice cascades down her chin, trickling onto her white sweater. ''I try to feed them something every day. Sometimes, it's just rice and beans,'' she says.

Mae prepares to leave, but Jose's brown eyes look pleadingly at her as he stuffs the orange into his mouth. ''More?'' he asks.

Mae's last stop of the day is Tarlee McCrady's house on Raymond Avenue. Mae peers inside the two-story house from her truck and, seeing no sign of life, drives on. But a loud pleading wail comes from behind the front door: ''I'm here! I'm here!''

Mae parks in the shade. ''You want a pumpkin?'' she asks. The woman, who has sweptback gray hair, runs out and nods.

A 65-year-old living on Social Security, she met Mae in church nearly two decades ago. When her body is up to it, she goes out on the truck with Mae, helping distribute food. Today, she says, she is fretting over how to pay her water bill. She, too, gets much of her sustenance from Mae.

If not for the help, she says, ''I'd be down on Skid Row. What else would I do?''

''She doesn't do a lot of talking. But she does a whole lot of doing,'' says Brenda White, who works at Church of the Harvest, which Mae attends. She says she's seen Mae take a bed out of her house—even the food in her own refrigerator—and give it away. Brenda, who has two daughters, was divorced six years ago and had a breakdown, leaving her temporarily unable to work at her hair salon. She was too embarrassed to ask for help from relatives. Mae didn't need prodding. Every other week, she began to bring bags of food.

In addition to her Social Security, Mae receives a modest income from caring for her foster children. Everything that's left after paying bills—about $100 a month—is put in a coin purse and slowly given out to people in need. The only hand-out she's taken from the government is some cheese.

''People have millions of dollars, they die, and their children fuss over it. I give my surplus money for children,'' she says.

Mae, nearing exhaustion, steers her truck home.

Wheeling into her driveway, Mae still has a third of the food. ''Hi, Mother Raines!'' a little girl from next door cries, waving. Other neighbors drop by. ''What kind of bread you need? Brown bread? White bread? Your grandma feel better today?'' Mae asks Erick, 8. He nods. Mae knows that many neighbors skip some meals each day but are too embarrassed to ask for food. ''I know which ones won't come out,'' she says. ''Some people would rather die than ask for help.'' For these, she packs boxes, which Donell begins delivering on people's stoops.

''I work in the shadows of an inner city overrun by gangs and riotous living. But when I can ease someone's pain, or can encourage them, I feel good,'' Mae says. ''If I never do anything for the community I live in, why am I here? I don't want to hear the baby next door cry from lack of milk or see a child walk by without shoes.

''It's not hopeless. Everyone isn't extending themselves.''

On Thanksgiving Day, Mae says, she will bake 17 traditional dishes. In the morning, her natural and foster children will gather, and read prayers. ''Thanksgiving is for my family,'' Mae says, closing her front gate as the last of the food is dispensed and dusk approaches. That said, Mae concedes that last year, she gathered her leftovers at the end of the day, some paper plates and plastic silverware and summoned her children to help. She went to the corner of her street and served food to the thankful until every crumb was gone.

EPILOGUE

Three weeks after this series ran, the West Covina Unified school board voted to institute a government-subsidized breakfast program at Edgewood Middle School and at seven of its elementary schools, thus assuring breakfast—and a chance to learn unimpeded by hunger—to thousands of children.

West Covina's move to join the program was part of a rush by 60 schools in California. Thirty-three of these schools were in Southern California. They were among a group of 193 Southland schools that the state says should offer breakfast because a high proportion of their students are low income, but did not do so for a variety of reasons.

The Times reported on these schools and their struggles over whether to serve breakfast in a follow up to the series on Dec. 12.

Back at Edgewood, donations poured in. More than $22,500 had been pledged or delivered by Dec. 13. A citizens group, formed spontaneously after the series to fight hunger in West Covina Unified schools, used the money to serve breakfast to children until the government-funded breakfast could begin.

West Covina residents were not the only ones moved to get involved. One donor offered a secondhand truck to Mae Raines, the food angel of 42nd street, to replace her old clunker. Several churches and temples read the story about ''the Muffin Lady'' during weekend services. At the Ahavat Zion Messianic Synagogue, 40 worshippers passed a plate and collected $307 for Raines. Then, they planned a food drive.

''It really made us look in the mirror and say: 'We aren't doing enough','' said Ron Bernard, synagogue board president.

Others pledged $12,000 to the Charity Dock, an innovative hunger program at the Los Angeles Wholesale Produce Market.

Hundreds of callers flooded the newspaper with offers of help for some of the people profiled in the series. Many called crying, saying they wanted to know how they could help a food pantry, a food drive, or assist a family in need.

''My husband is ill on life support. And I'm crippled from arthritis.'' wrote Majorie B. Walker of Los Angeles in halting handwriting. ''But never have we went without food.'' She sent $50 to one family profiled in the series.

''My wife and I found your article to be a rude awakening to a problem which we did not know existed.'' wrote Bob J. Ratledge of Palm Desert, who fired off a letter to the West Covina Unified school board urging that it adopt a breakfast program. Other letters to the board were more blunt, threatening a recall if action wasn't taken. Some who sent checks apologized that they couldn't afford to send more. Others said they sat their children down and read them the stories of hunger.

Lisa Drynan, who was profiled with her three young sons, received more than 200 calls from readers offering to help. She said the assistance promised to make this the best holiday season ever for her children.

The story also sparked calls from hungry people seeking food assistance. At the Southern California Interfaith Hunger Coalition, a stream of people called to ask how they could apply for food stamps. The Self-Help and Resource Exchange—a program that helps people pool their resources to buy wholesome food at half the retail cost—has also seen an uptick in activity.

And at the Los Angeles Regional Foodbank, which struggles to get a decent share of corporate salvage food products to feed the hungry, this series helped focus new attention nationwide on the difficulties private efforts are encountering in stemming hunger. Pointing to subsequent national TV news and magazine stories touching on the issue, executive director Doris Bloch said, ''these stories have built a fire under people.''

SPECIAL ORDERS

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.

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.]

TAKING FOOD OUT OF THE MOUTHS OF CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. VOLKMER] is recognized for 5 minutes.

Mr. VOLKMER. Mr. Speaker, we are now at day 65, if my math is right, of 100 days and we are now getting to see toward the final 35 days of that 100 days. And when we look at it we look to see that we are going to have severe reductions in food stamps, school lunches, nutrition aid, the Women, Infants and Children's Program, hearing assistance for the elderly, and all because we have to give a big tax cut for the wealthy. It is not going to deficit reduction, it is not going to balance the budget. It is going to go to the wealthy, and it is going to be coming up from the young kids down here that are hungry and need that nourishment.

When I look at the school lunch program, we contacted our State Department of Education, we contacted the Governor's office, we contacted some of our local school districts, and the analysis of that school lunch program is in. Members do not have to take my word for it. The Governor of Missouri, the school superintendent of Missouri, the experts who operate the school lunch program in Missouri all agree. The majority party, led by NEWT GINGRICH, is taking food out of the mouths of children by cutting the school lunch program. Even worse, the majority party at the same time is cutting the same children's food stamps. Poor children in this country not only will not get a hot meal in school, but when they get

home there will be less food. In the morning when they wake up there will be less or no food, and when they go to school there will not be any breakfast program at the school for them.

How are they going to learn on empty stomachs, their stomachs growling and turning around and churning because they have not gotten the nutrition that they need?

The majority party, quite simply, does not care if poor children in this country eat or not.

Is the majority party taking this mean-spirited approach in order to reduce the deficit? Oh, no, Mr. Speaker, not to balance the budget, not to reduce the deficit, but to give a tax cut to the wealthy. How callous can you get, taking food from children to give fat cats more money?

□ 2110

Let us look at it. These young children out here, we have got a man and a wife working part-time, making a little over minimum wage. They are making about $20,000 a year, $19,000, $19,000 a year. They are scraping by. They have got two kids. They are eligible for food stamps. In some ways they are eligible for a reduced price for the school lunch.

But when they pass their bills on welfare reform, they call it, those folks are not going to get anything.

Well, they say, hey, we are going to give you a $500 per child tax cut. That is what we are going to do for you.

But for that couple, folks, and those children, that $500 is zip. It is nothing, because it is not a refundable tax cut. So they do not get a thing.

But what they are doing is, they are saying, those kids, you do not need any help, because your parents are making all of $20,000, you do not need any help.

You know what they say who really needs the money, folks? Who really needs that money? Well, under their tax bill, the man and wife who are making $200,000, $200,000, they are going to get, for those same two kids, they are going to get $1,000; $1,000 is what they are going to get. And they tell you those people making that $200,000 need it. They need it for their kids. But the one making $18,000, $19,000, they do not need anything, they need less. And that is what they are going to get from the majority party.

You know why they say that $200,000 couple needs that money, that thousand dollars for their kids? They need it so they can be the leaders of this country, so they can go to Harvard and Yale and all those other places and they can sock the money away. So if you have ever seen Robin Hood in reverse, just watch the next 35 days, America.

The SPEAKER pro tempore (Mr. LONGLEY). 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.]

FEDERAL FOOD ASSISTANCE

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. Mr. Speaker, from yesterday morning into the wee hours of this morning, for 15 hours, the Committee on Agriculture marked-up title five of the Personal Responsibility Act. That bill, with great reductions and many restrictions on feeding hungry Americans, is now poised for consideration on the House floor. Leadership of the committee is to be commended for eliminating the mandate for block granting the Food Stamp Program.

A State option on block grants, however, remains in title five and will be an issue on the floor. Also, during mark-up, the committee accepted my amendment, which requires persons 18 to 50 years old, those who must work for food stamps, to be paid at least the minimum wage for their labor. Without my amendment, the bill would have forced many food stamp recipients to work for less than 1 dollar an hour. The agriculture committee was wise to support the amendment. But, with action by other committees, the block grant issue continues to loom large and will be hotly contested during floor consideration.

Mr. Speaker, I would urge our colleagues, as we consider the block grant issue, to recall their days in school. Recall the importance of a hearty breakfast and a healthy lunch. Recall the necessity of the mid-morning and mid-afternoon milk or snack break. Recall the sense of urgency each of you felt the first time you experienced the pangs of hunger. And, recall how the ache of not being fed in your stomachs prevented you from being fed in your minds. Mr. Speaker, this debate is not about party or politics or pocketbooks. This debate is about our young, and our old. This debate is about strong bodies and clear minds. This debate is about the future of this Nation. Understanding the future, however, sometimes lies in remembering the past. Recall the infant mortality rate in America before the WIC Program. That rate has been lowered by as much as 66 percent, in some cases. WIC works. Babies don't die today like they died in the past, because we invested in life. Recall the fact that since the Institution of Nutrition Programs, the gap between the diets of low-income and other families has narrowed, significantly. Stunting has decreased by 65 percent. Anemia has dramatically improved. Low birthweights are down. Mr. Speaker, it is easy to forget. Members of Congress dine at some of the finest restaurants. Eating is taken for granted. Hunger is unknown. But, while it is easy to forget, it is dangerous to fail to remember. This Nation is strong because we care for our weak. Every citizen is important. All can make a contribution. But, none, who is hungry, can participate or contribute in any meaningful way. Even those incarcerated in our jails and prisons, throughout the United States, are assured of three square meals a day. Surely, our children and seniors should get nothing less.

Mr. Speaker, I have been increasingly concerned about how rapidly we are making major and dramatic changes to the way our Government functions, indeed, many of our colleagues have commented on the pace of this Congress. It seems that we are emphasizing quantity at the expense of quality, and, more importantly, at the expense of the American people. The U.S. Constitution has been amended just 27 times in more than 200 years, yet this Congress has proposed several new amendments in less than 50 days. Moreover, in the space of fewer than 3 months, we have proposed a balanced budget amendment, passed unfunded mandates legislation, proposed a Presidential line-item veto, rewritten last year's crime bill, passed a plethora of regulatory reform measures, acted on defense spending and national security matters in a couple of days, considered term limits, welfare reform and rescissions, and we are now in the midst of tort reform. In our rush to meet an artificial, 100-day goal, it is a fair question to ask, are we hurting more than we are helping? Consider an article which appeared in today's New York Times. When the Personal Responsibility Act was marked up by the Committee on Economic and Educational Opportunities, the language passed resulted in 57,000 children of military families being denied access to the State feeding programs that would be established. To restore this feeding program for the military, it will cost the Pentagon more than $5 million for meals and another $5 million for administrative costs. It seems, Mr. Speaker, that we profess to want a strong military, yet we pass legislation that will cause military children to go hungry. These actions are either mean spirited or grossly negligent. Either way, America suffers.

I urge my colleagues to stand up against nutrition program block grants. Let us demonstrate that a wise and thankful Nation really does remember.

WELFARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. TALENT] is recognized for 5 minutes.

Mr. TALENT. Mr. Speaker, on March 21, the House will take up comprehensive, real and historic welfare reform. The object of that bill will be an historic and fundamental change in the direction of our welfare policy, away from a failed system that is destroying the poor and towards a system of relief

and a system of relief and assistance that is based on marriage, on family, on work and on personal responsibility.

Mr. Speaker, how is the welfare system hurting the poor? First and foremost, it is destroying their families. Let us take a look at this graph here on my left.

In 1965, Mr. Speaker, one out of 15 children in the United States, about 6 percent, were born out of wedlock. Federal and State welfare spending at that time was about 30 billion. Today the out-of-wedlock birth rate is one out of three. It has increased by six times since 1965. The welfare spending has gone up 10 times to about $300 billion a year.

Welfare spending has not brought us a decrease in poverty, as I will show in a minute. It has caused an explosion in illegitimacies. The best social studies also agree. A controlled study in New Jersey showed that a small restriction in the growth of welfare benefits caused a 30 percent reduction in illegitimacy. And June O'Neill, who is the current head of the Congressional Budget Office, conducted a study showing that a 50 percent increase in AFDC and food stamps led to a 43 percent increase in the out-of-wedlock birth rate.

President Clinton has said there is no question that if we reduced Aid to Families with Dependent Children, and I am sure he meant substituting that with a different form of assistance for the poor, it would be some incentive for people not to have dependent children out of wedlock.

So history, social science, the President and common sense all agree: the welfare system as it is currently structured with its current incentives destroys families. It promotes illegitimacy by promising young men and women a measure of security and independence through a welfare package, but if and only if they have a child without being married, without having a work skill and earlier than they otherwise would. That means that the existing welfare system causes poverty, because, Mr. Speaker, work and marriage are essential to eliminating poverty. The best antipoverty programs are family and work.

I invite the House to look at the next graph. The red line in that graph shows the poverty rate in the postwar era. It has declined steadily all throughout that era until about 1965, when it reached approximately 15 percent.

The blue shaded area on the graph shows State and Federal spending on welfare since 1948. As the graph shows, that welfare spending held basically steady until about 1965, when the Great Society programs were started. At that time it exploded and increased by a factor of 10 times to about $300 billion.

At the same time as we were increasing welfare spending by a factor of 10 times, the poverty rate actually increased slightly. It was a little under 15 percent in 1965, and now it is a little bit over 15 percent.

In the last generation, the Federal Government has transferred trillions of dollars to the poor. But the welfare system at the same time has destroyed their families and, therefore, their incentives to seek the American dream for themselves and their children.

□ 2120

It is as if you are bailing out a boat with one hand while you were pouring water into the boat with the other.

Mr. Speaker, as we proceed through this debate on welfare we should remember two principles. The debate over welfare should not be about blaming the poor. It is the Federal Government that has perversely given material assistance to the poor on the conditions that they accept the kind of innervating spiritual poverty. We should not reform this system because people on welfare are abusing it, although that does happen. We should reform the welfare system because the system has been abusing people on welfare.

The second principle is this: Welfare reform shouldn't mean abandoning the poor. America must stand or fall together as a people with common ideals and aspirations. Welfare reform should mean bringing back the welfare system to reliance on those ideals.

My friend, the distinguished freshman from Oklahoma [Mr. WATTS] put it this way. He says that for the past 30 years the Federal Government has measured the success of welfare by how many people we could get on AFDC and food stamps and medicaid.

We need to measure success by a different index. Real welfare reform means measuring success this way by how many people we can get off of AFDC, food stamps and medicaid and into a life of dignity and hope. That is what the fight for welfare reform over the coming weeks in this House should be about. It is a fight that we can and must and will win for all of the American people.

ISSUES IN AMERICAN POLITICS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont [Mr. SANDERS] is recognized for 5 minutes.

Mr. SANDERS. Mr. Speaker, let me just touch upon a few issues that are very rarely talked about in this Congress. We do a lot of talking about a lot of things but I am always amazed that sometimes the very most important issues that face the American people, the dynamics of our Nation seem to be ignored here in the Congress. So let me just touch upon a few points that I consider to be quite important.

Number one, if we are to understand the dynamics of American politics, it might be appropriate to understand that in the U.S. Congress today approximately 20 percent of the Members of Congress themselves are millionaires. And everything being equal, until we get campaign finance reform, we can only expect that number to increase.

A democracy is supposed to mean that ordinary people can run for office, ordinary people can get elected to represent their neighbors back home. Clearly, there is something wrong in this country today when at a time that perhaps one-half of 1 percent of our people are millionaires, 20 percent of the Members of the House and Senate of millionaires.

We recently had a gentleman in California who took out his checkbook wrote himself a check for $25 million in attempting to buy the Senate seat in that State, and that is happening increasingly. So if we want to understand why the policies of the U.S. Congress so often work to reflect the interest of the wealthy and the powerful, it has something to do with who is in Congress and who funds people who go to Congress.

Many of you may have seen in the papers that last month the Republican Party held a fundraiser. It was a nice little fundraiser. It was only $1,000 a plate. It was a good dinner. Nice dessert. It was a good bargain. The point is that the Republican Party on that night left with $11 million.

Now, why do people go to a dinner at a $1,000 a plate? The food is good, that is true, but there are other reasons and the reasons might be that they are not donating, they are investing.

Now, as the only Independent in Congress I would point out the Democrats are not far behind. They also have dinners of that kind. Wealthy people invest so that when this session, this Congress comes together, they vote tax breaks for the wealthiest people. They vote for trade policies which help large corporations export our jobs to Third World countries. That is a very, very serious problem. We desperately need campaign finance reform so that we can limit the amount of money that can be spent on a campaign and that we can really have democracy in this institution.

Number two, another issue that we don't often talk about is the very, very unfair distribution of wealth in America. Very rarely is that talked about. It is important to point out that in the United States today the wealthiest 1 percent of the population owns more wealth, not that bottom 90 percent. We have a situation now where the chief executive officers of the largest corporations in America are earning 150 times what their workers are earning.

Now, nobody thinks that everybody in America should all earn the same amount of money, but clearly there is something very wrong when so few people have so much money, while at the same time, the middle class is shrinking and at the same time poverty in America is growing.

While the richest 1 percent of the population own 37 percent of the wealth in America, we have 18 percent of our workers, people who are working

full time, they are earning poverty wages.

We have 22 percent of our children living in poverty. That is the highest rate of childhood poverty in the industrialized world by far. That is double the rate of any other country. And we have at a time that some of our friends are proposing to cut back on WIC and to cut back on food stamps, we have 5 million children in America who are hungry today.

Let's talk about that issue. Tax breaks for the rich increased hunger for children at a time when we have the highest rate of childhood poverty in the industrialized world.

Let me talk about another issue. Our Republican friends talk about the mandate they received on November 8. Let me say a word about that mandate.

What percentage of the people came out to vote in that mandate? Thirty-nine percent of the people came out to vote. Republicans ended up with a smaller percentage, a little bit larger percentage than the Democrats did. Thirty-nine percent of the people came out to vote.

I am happy to say that in my home city of Burlington, VT on election day just this last Tuesday a progressive was elected mayor. We had 50 percent of the people coming out in a local election.

Why is it that so few people participate in the Democratic process in America? Why is it that poor people in America virtually don't vote at all, many working people don't vote at all? And I think the reason is that the people are basically giving up on the political system.

WELFARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nevada [Mr. ENSIGN] is recognized for 5 minutes.

Mr. ENSIGN. Mr. Speaker, since Lyndon Johnson first launched the Great Society programs of the 1960s this country has now spent over $5 trillion to defeat poverty, a war that we have since lost and lost miserably.

You know, some people around here try to define compassion as how much money we can give to people and how many people we can put on welfare and how many people we can make dependent on a system that has failed that has destroyed the family. That has had crime rate skyrocket over the last 30 years, that has seen out-of-wedlock birth and we need to abandon that system and start over.

Incremental welfare reform will not work. President Clinton said it is time to honor and reward people who work hard and play by the rules. The administration knows that our welfare system is broken.

The people who defend our current welfare system want to keep people, or at least they seem to at least want to keep people in poverty. That can be the only justification for defending the current welfare system.

We are here and we were sent here to revolutionize the welfare system. It does not work. Government cannot be compassionate by definition because the word compassion means ''to suffer with.'' Only individuals can suffer with other individuals, to offer them a hand up instead of a handout.

Our welfare system was intended to be a safety net in between work. If you happened to get in trouble, there was a safety net. What was intended to be a safety net has now become a hammock that, in time, becomes like a spider web that just entraps people and they cannot get out of it.

When I was campaigning, I would go through and meet different people, and I have a brochure and one of the things in the brochure talked about mandatory work for welfare recipients. Single mothers that I met with, that was the thing that they picked up on almost immediately every time that I met them. Mandatory work for people that are out there struggling, and they know that their tax dollars are going to pay for somebody that could be working, but is not. That is the hallmark of our welfare plan that will be voted on later this month.

You know, our country is a great country. And we have been known to be an opportunity society that has attracted people from around the world. But to continue to keep people in poverty is wrong. It is morally wrong.

This is not a question of economics; this is a question of morality. It is morally wrong to keep people in poverty by making them dependent on a system that they just don't see any way that they can get out of.

I believe that our country needs to become that opportunity society once again. We need to encourage small businesses and jobs, encourage entrepreneurs that are going to get out there and create opportunities for minorities and women and all people. We need to look for economic principles that don't benefit the rich, that don't benefit the middle class or the poor, they benefit all classes of people, young and old, black and white, Hispanic. It does not matter.

We need to have principles that look for situations where all classes of people win. Instead of saying it is the Republicans or the Democrats, we need to put partisanship aside. I have only been here a short time and the partisanship of this place is sickening on committees and on the House floor. We need to put that aside and work for the American people. We were all sent here to solve the problems that a lot of this government has created. We were sent here to solve those problems, and we need to get down to doing the business that the American people sent us here to do.

In conclusion, let me say that I am proud to represent the people of Nevada. They are hard-working people with the work ethic, I think, that is known throughout the West. And because of that work ethic, they sent me here to get people off of welfare and into work.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana [Mr. FIELDS] is recognized for 5 minutes.

[Mr. FIELDS of Louisiana 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 Kentucky [Mr. WHITFIELD] is recognized for 5 minutes.

[Mr. WHITFIELD addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

CHILD SUPPORT ENFORCEMENT AND COLLECTION SYSTEM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. HOYER] is recognized for 5 minutes.

Mr. HOYER. Mr. Speaker, one of the most critical areas in need of reform is our child support enforcement and collection system. Too many absent parents are not meeting their responsibility of emotionally and financially supporting their children.

Bringing children into this world and not supporting them is an irresponsible act and it is wrong. The time has come for us to put an end to this irresponsible behavior.

Those of us who work hard and play by the rules can no longer continue supporting a system in which responsibility is abandoned. Enough is enough.

Americans expect and we need to demand that both parents support their children. We must discourage government dependence and expect every able-bodied American to be personally responsible for their actions. The previous speaker talked about that. This is not a partisan issue. This is a critical issue if America is going to succeed to build a better society for our children and generations to come.

Payment of child support should be as certain as taxes and death. Each year failure to collect child support costs our country billions of dollars and children billions of dollars.

The potential for our child support collection is estimated at around $48 billion. However, only $14 billion is actually collected. This leaves an estimated collection gap of $34 billion per year that parents are not paying to support their children and expecting the rest of us to pick up the slack.

Clearly, we need to take care of those children. But we also need to demand that parents are there first.

Moreover, half of the women eligible for child support are receiving nothing. These statistics send a clear signal that we have got a lot more work to do.

Last week President Clinton moved us another step forward in our continuing effort to improve our Nation's child support enforcement system. I want to commend him on taking such a bold step in issuing an Executive order which will improve and expedite child support enforcement for Federal employees.

The Executive order will cross-match the names of Federal employees with Federal employment records and inform the States if there is a match. A determination will be made by the State as to whether wage withholding or other actions are necessary. The order will simplify service of process for Federal employees.

In addition, it will require every Federal agency to cooperate with the Federal parent locator service. The Executive order also cuts the time in half between the day a paycheck is garnished and the day it is received by the custodial parent.

Now, almost every Member of this body knows and my constituents know that I am a strong supporter of Federal employees and fight for their pay and benefits. But they, like others, need to be responsible. And they need to support their children.

The President has established a working model upon which the Congress can build. In the next couple of weeks I hope this House will bring a bill to the floor which contains meaningful reform to the current system.

The previous speaker talked about welfare reform and a couple of others did as well. There is not a person in this body that does not know that welfare is broke. And the issue is, how do we fix it? How do we fix it, and, yes, expect and demand work, but also understand that to get to work, we are going to have to take actions to facilitate that transfer from dependency to independence.

Before we reach the floor for the final vote, there is still ground which can be covered such as revocation of driver's licenses for persons owing child support arrearages. While I applaud my colleagues for including child support in their welfare reform package, I am disappointed that they chose to not include this provision. The inclusion of such a provision would have the effect of again holding parents responsible for support of their children.

The State of Maine has instituted such a plan. Since implementation, the State has revoked less than 20 licenses, but because of the threat of license revocation, the State has received about 12 million additional dollars for back child support.

Just imagine how much could be collected and used to support our Nation's children if this were implemented in all 50 states.

Mr. Speaker, we all agree the child support system is in need of reform. Let us take actions in the coming weeks to make sure that children receive the support from their parents that they are due morally and legally.

PUNITIVE DAMAGES

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, punitive damages have clearly gotten out of hand. Tonight, I want to share with you a case involving punitive damages in my home State of Tennessee.

Sadly, it involved the death of an individual from Alabama by carbon monoxide poisoning.

The plaintiff claimed that the carbon monoxide poisoning was caused by a natural gas water heater made in Tennessee. It was a used heater obtained by a homeowner and installed by someone with no plumbing background. It was installed behind a wall without combustion air, with no vent, and was connected to an LP gas line. The local gas company wasn't notified, and that was a violation of local law.

In short, the heater was altered from its original manufactured condition and was installed improperly and illegally. Nevertheless, a jury verdict was rendered against State industries. The jury awarded $5.5 million in compensatory damages and $6.5 in punitive damages. In fact, one of the jurors wanted to give $25 million.

On appeal, the Alabama Supreme Court reduced the compensatory damages to $850,000, but the punitive damages stood.

Now I am not criticizing in any way, shape, or form the person who installed the heater. In his mind's eye, he was lending a helping hand. And I am truly sorry for the death of anyone. But what I am criticizing is the award the jury made.

Punitive damages are intended to punish—not to redistribute wealth. Compensatory damages are designed to compensate for medical costs, lost wages, pain and suffering, and emotional distress. Punitive damages are intended to punish—to send a message that whatever was done wrong, don't do it again.

Had the legislation before us tonight been in place, the plaintiff still could have received almost $3.5 million. That's a substantial amount of money which would have served to both compensate the plaintiff for their suffering and punish the defendant for whatever wrong they may have done.

This legislation will not impede upon anyone's right to sue, despite the many fallacious and misleading charges by its opponents.

I would support no legislation that would close the courthouse doors to anyone. Access to the courts is a fundamental right that must be acknowledged. But as a lawyer, I can tell you we must have tort reform, and we must have it now.

It's time we establish common sense and reason in our judicial system, and this legislation does just that. Many States have already placed caps on punitive damage awards.

It's time the Federal Government followed their lead, and passed tort reform legislation.

A CHALLENGE TO THE DEMOCRATIC PARTY: GIVE US YOUR SPENDING CUTS

The SPEAKER pro tempore (Mr. LONGLEY). Under a previous order of the House, the gentleman from Georgia [Mr. KINGSTON] is recognized for 5 minutes.

□ 2145

Mr. KINGSTON. Mr. Speaker, the balanced budget amendment is not truly dead, but it is in the hospice care unit across the hall. In the House about 130 Democrats voted against it, 2 Republicans. In the Senate, 33 Democrats and 1 Republican voted against it, so apparently, I know the Democrats had some heartburn with the concept of a balanced budget amendment.

One of the big reasons that they gave, particularly in the Senate, was monkeying with the Constitution. Apparently, not monkeying with the Constitution is more important than not letting the country go bankrupt. Obviously, interpretation of the Constitution and its sacredness is relative to proximity to reelection.

I would say that so many times, if you watch the Senators speaking, they flip-flop back and forth more than an old Patsy Cline record on the jukebox.

First, they said, the Constitution: ''I'm not going to vote for a balanced budget amendment because of the Constitution.'' Then, they said ''Give us your specifics, Republicans. You want to balance the budget by the year 2002, give us the specifics.''

Last week, the Committee on Appropriations gave $17 billion in specific cuts, very difficult cuts, heart-wrenching in many cases, painful, many times politically risky, politically unwise. Members had programs in their own districts that were reduced, at a time when there is a lot of screaming and crying back home to keep these programs.

What the Republican Party has had to do is say ''Look, we are on a sinking boat. We are asking everybody to throw out a little bit of your own luggage, but we think if you do that, we can get the boat ashore. We can guarantee you if you won't let go of your luggage, we are going down.''

At a $4.5 trillion debt, and an item on our budget called interest on the national debt, which is the third largest expenditure in the national budget, $20 billion a month, we are going bankrupt.

Yet, Mr. Chairman, we hear time and time again, as we did earlier tonight from the gentleman from Missouri, ''We are not doing things for the children.'' Back home, Mr. Speaker, it reminds me of when I was a kid. My daddy had a charge account at a pharmacy.

I found out when I was about 10 years old I could go down there and get myself a 25-cent Coke and charge it to my dad, just write his signature, and I didn't have to reach in old Jack's pocket, because I just had to sign my dad's name.

Then at the end of the month my dad would see a 25-cent charge for Coca-Colas and he would have some stern words for me, but he would also get his 25 cents back.

We have got an opposite case going on in the U.S. Congress, particularly on the Democrat side, particularly on those who will not give it a rest on the school lunch program. They would prefer misinterpretation of reality to reality.

Mr. Speaker, what they are saying is ''Go ahead and charge it, not to your dad, charge it to your son and your grandson and your daughter and your granddaughter. Years from now, when your children's children come to pay the bill, you will be dead and you will not have to worry about their debt.''

That is what we are doing. We talk about doing things for children. How about not saddling them when they get out of school, when they get out into the work world, how about not saddling them right off the bat with a huge, tremendous debt? That is what we are doing.

It is kind of like saying, you know, people want ice cream for today. It might not be in their best interests to eat ice cream three meals a day. Let us kind of cut back a little bit, and maybe there will be enough tomorrow, but we have to take some meat and vegetables now. It is very important to do it.

We had $17 billion in specific cuts. To my knowledge, not one Democrat voted for any of them. They grandstanded about how harsh all of them were. I understand that, that is fair game. I would say the Republican Party has done it to the Democrats many times themselves.

However, the fact is we are taking away one of their arguments for voting against the balanced budget amendment, Mr. Speaker. We are giving specific cuts.

Now, in the spirit of good sportsmanship, in the spirit of preservation of America, in the spirit of the best interests of the taxpayers, I challenge the Democrat party, give us your cuts. You do not like ours. That does not change the fact that we have a $4.5 trillion debt. That does not change the fact that we are paying $20 billion a month in interest. That does not change the fact that the third largest expenditure on our national budget each year is interest. So give us your specifics. We need to hear from you.

I think if the Democrat Party would go ahead and decide to jump in the water with us, that maybe we could take the best of their ideas with the best of the Republican ideas and do what is best for the United States of America, so that our children and our children's children will not be saddled with such a huge and tremendous debt and a bankrupt nation.

THE TRUE REPUBLICAN PROPOSALS FOR SPENDING ON THE SCHOOL LUNCH PROGRAM AND ON WIC

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, I would associate myself fully with the remarks made by my good friend, the gentleman from Georgia [Mr. KINGSTON], and for that matter, I listened with great interest to my good friend, the gentleman from Maryland on the other side of the aisle in his call, in his plea for bipartisanship, echoing our good friend and fellow newcomer from Nevada, [Mr. ENSIGN].

I would implore Members on both sides of the aisle, and indeed, people across this Nation, who have watched with interest, Mr. Speaker, as we have been involved, setting an historic pace for legislation, fulfilling a Contract With America, working to establish a new partnership together, knowing what is at stake, to truly understand the terms of this debate.

It has happened again, and doubtless will happen yet still, when those who fail to answer the challenge and call of my friend, the gentleman from Georgia [Mr. KINGSTON], proffer not new ideas, but, instead, inflammatory rhetoric, and inaccurate rhetoric.

For that purpose, once again tonight, I feel it is important as part of the truth squad to share with the American people, Mr. Speaker, the true proposals on spending for the School Lunch Program and for the program we called WIC, Women, Infants, and Children.

We start here in 1995 with an expenditure for WIC of almost $3.5 billion. We start with a school lunch expenditure in 1995, for the fiscal year, of $4.5 billion. Note in the succeeding years, the totals always go up. In 1996 for WIC, $3.6 billion. For the School Lunch Program, it is $4.7 billion. Look down to the year 2000. For the WIC Program, there is an increase of almost, or really in excess, of one-half billion dollars, up to $4.2 billion, and an increase in the School Lunch Program, an increase in the School Lunch Program of $1.5—pardon me, $1.1 billion, all the way up to $5.6 billion. Mr. Speaker, how on earth can that be characterized as a cut?

Now, the unkindest cut of all is the broad swath of truth that is shunted aside for purposes of political theatrics, for purposes of partisan advantage, for purposes of inflammatory rhetoric. The numbers speak for themselves.

Mr. KINGSTON. Mr. Speaker, will the gentleman yield?

Mr. HAYWORTH. I am glad to yield to the gentleman from Georgia.

Mr. KINGSTON. Mr. Speaker, I am disturbed about that. Somebody is lying. Are you lying, or is the gentleman from Georgia lying? If the taxpayers of America want to have those numbers, will you be willing to send them to them? Are you going to stand behind them?

Mr. HAYWORTH. Mr. Speaker, I am very happy to send these numbers. I believe everyone in the new majority is happy to share these numbers as part of the new proposals. Will there be different delivery systems? Sure.

Mr. KINGSTON. If the gentleman will yield, let's do this. Let's say if you are represented by a Democrat, write and get a copy of these. Send them to your representative and ask him why those numbers are not the truth.

If you are a Republican, we are going to send them to you. Let us just talk to the Democrat district tonight: Write and ask for those numbers.

Mr. HAYWORTH. Reclaiming my time from the gentleman, Mr. Speaker, I think he makes an excellent point. As we engage in this debate, in this new partnership, the American people really should write, write any of us, Members of the House, and ask for these numbers; specifically, the GOP proposed spending on WIC and School Lunch Programs.

We will be happy to supply those numbers, and challenge our friends on the other side to talk about this term ''cuts,'' because again, there are no cuts. In the popular imagination, the only ''cuts'' are decreases in future increases in expenditures. Again, only in this culture, only in this curious combination and curious advantage-taking of political opportunism can that term even be bandied about.

I guarantee, I say to the gentleman from Georgia, and Mr. Speaker, the families gathered around the kitchen table making hard decisions about the family budget deal with real cuts, not phantom cuts and not theatrics.

I noted with interest my good friend, the gentleman from Missouri, who really started the special orders tonight, I think his information was inaccurate. This is the real story.

THE RESCISSION PACKAGE OF THE REPUBLICAN MAJORITY

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. Mr. Speaker, I appreciate the opportunity to come tonight and speak to my colleagues about something that will be coming before us next week. That is the Republican majority's rescission package, which, in essence, is the cuts that were made in the Committee on Appropriations in the last week or two to the tune of about $18 billion, cuts that are going to be used, we first were told, for purposes of trying to finance the disaster relief efforts in places like California, as a result of the Northridge earthquake; in

places like Florida, that still have some final tasks to be done to take care of the hurricane disasters they suffered from; northern California, earthquake; the Midwest, floods; a number of different disasters that this country has experienced over the last couple of years.

Unfortunately, if you take a closer look at this rescission package, you see something very, very disturbing. I would like to go into that a bit.

Again, the rescission package, what it really means in plain English is that we have wiped out funding for certain programs which have already been approved for such funding. In other words, Mr. Chairman, last year's budget, which may have allocated $1 for a program, this past week the Committee on Appropriations went in and decided to make cuts in particular programs under which it has discretion to do so.

It cannot touch things like Medicare, Medicaid, Social Security, because those are entitlement programs, and they are not discretionary. The discretionary programs include things like the Department of Defense, Department of Education, job training, veterans' benefits, and so forth.

If you are concerned about the quality of public education in this country, teen drug use, the increasing potential of today's youth being involved in gang violence, in crime, if you are concerned about veterans, if you are concerned about housing for seniors that are on a limited budget, then you have good reason to be very concerned, if not outraged, about what the majority party has done with regard to this rescission package.

The majority party's main target, as it turns out, happens to be kids and senior citizens. The GOP's main beneficiaries in this rescission package happen to be the very wealthy. Let us take a look at a few things done through this rescission package.

I have put together a chart here to give us an idea of what happened with all the cuts that came out of the Committee on Appropriations recently. Who takes the hit? Of all the cuts, the close to $18 billion in cuts, 63 percent of those cuts will hit low-income individuals. Close to two-thirds of all the moneys cut come from programs that help veterans who are low-income, the elderly who are low-income, children, $17 billion. It will be interesting, because we will talk about where that money goes, and it is going to be interesting to find out why we had to cut $17.5 or so billion.

Mr. Speaker, let me focus a little bit more on where those cuts are that we see here listed as having hit mostly the low income. Where did the money come from? For the most part you can see the biggest hit was taken by housing, housing for seniors, housing for low-income individuals, housing to help supplement those who are having a tough time making a living, that are working poor; job training, job experience. Of all the cuts 14 percent come from job training programs to help young people and those who are trying to get off of welfare, and those who are trying to get back on a job because the recession has caused them to lose their job as a result of downsizing in areas like the aerospace industry.

□ 2200

Health care, health cuts, 10 percent. Education, 9 percent. Within the other 25 percent, I should mention that we list veterans benefits programs. Let me give some quick details on some of those areas in cuts.

Housing, $7.2 billion comes from housing; $2.7 billion comes in rental assistance for low-income families. That is about 62,000 vouchers down the drain, 62,000 families that will not be able to qualify for some assistance to try to make sure they are able to rent a place to stay; $186 million comes from housing for persons with AIDS. In Los Angeles, I can tell you that thousands of people with AIDS will now probably find as a result that they will be denied certain housing because that assistance that was being provided for this population of needy individuals is now being cut.

Job training cuts, $2.35 billion. Included in that is the complete elimination, not a cut, complete elimination of summer youth employment programs, $1.7 billion. That is money that has been used in a lot of different areas, including places like New York, in rural States, in places like Los Angeles, to try to help youth who otherwise might just hang around the street corner at night.

The impact on Los Angeles of that cut, well, we can expect about 23,000 kids to be denied job training and classroom instruction over the next year.

Impact nationwide, probably about 600,000 children, not children, young adults, will be deprived of a chance to do some good work and learn something as they prepare themselves to become working adults.

Education, $1.7 billion in cuts. What do we do? Well, eliminate the drug-free schools program. That is a program to try to make sure kids don't start using drugs and as we know, most folks who are arrested these days, it is as a result of using drugs, selling drugs or somehow drugs are related. Yet we are eliminating the drug-free schools program that tries to keep drugs out of the school and tries to make sure kids don't start using or selling drugs.

What else? We eliminate also school construction programs. How many of our neighborhood schools need some type of refurbishing, how many of our neighborhoods just need schools? Well, we have eliminated a program for that. We have got massive reductions in grants to reform schools, so we finally get caught up in technology. We use money for homeless youth, to educate homeless youth, that is eliminated.

We have a cut in national service. That is the program that ''Says young man, young woman, you are interested in going to college, you want to serve your community, we will give you a little money, pay you low wage, minimum wage, at the same time we'll also tell you that after a year you'll have a grant of about $4,700 that can be used for your education, only for your education. If you go on to college, we'll give you $4,700 to help offset some of the cost of that education.'' Huge cut in national service.

Health cuts, $10 million cut in the Healthy Start Program. That is a program to help working women, poor women who have very little access to health care. It provides them with prenatal care so that they can make sure that they do not end up costing the local government and the community and its taxpayers additional dollars because they end up having a child that is born with low birthweight or some abnormality and has to go to the approximate intensive care units and costs us 10 times as much as it would have cost to have given decent prenatal care.

A $25 million hit on the WIC Program, Women, Infants, and Children Program; 100,000 women and kids are going to probably be denied proper nutrition.

What else? Low-Income Home Energy Assistance Program. That is the program that helps low-income seniors, others who have a very difficult time during winter months in places where it is cold, to survive those chilling winter months. We are cutting $1.3 billion from that program.

Other cuts, I will mention veterans' benefits, take a hit of about $206 million. That is a real slap in the face of our veterans who certainly do not believe they get enough as it is in the types of programs available under the Veterans' Administration. Yet they are going to take another hit.

Corporation for Public Broadcasting, $47 million hit, a $94 million hit is projected for the next fiscal year. What we are doing with the Corporation for Public Broadcasting in Congress is the Republican majority is trying to get us to a glide path in about 3 or 4 years where we actually eliminate all funding for public broadcasting.

The EPA—That is the Environmental Protection Agency, lots of cleanups to do, all the toxic dumps we know that are in our communities. Well, $1.3 billion mostly for Clean Water Infrastructure Program is being gutted.

Where does all of this money go from this $17.5 billion or so bill that cuts from these programs? Let's take a look.

We were told first that since the President sent a bill over requesting that we provide some additional moneys to help provide for disaster relief, as I mentioned earlier, that was one of the reasons the Committee on Appropriations had to find some way to fund it. We have never done it before where

in a disaster we have taken money from other programs to pay for a disaster, we have always said this is a disaster, we have always said this is a disaster, we have to pull together as Americans and find a way to help people. But this time we did it differently. But not only did we do it differently, let's take a look at what happened.

The committee, the Republican majority, decided to give about $5.3 billion for disaster relief. Yet they cut about $17.5 billion in programs. So where did the other two-thirds of the money go if only $5.3 billion went to disaster relief?

Well, you see, the Republicans ran a campaign last year saying in their Contract on America that they were going to provide tax relief. The problem is the tax relief they are providing goes to the wealthy. So two-thirds of all the moneys cut, from veterans, from our schools, from programs that help children stay away from drugs and out of gangs and away from crime, from health care programs, from housing programs for seniors, for moneys that go to help AIDS victims, all of that is being packaged in the $17, $18 billion package. Less than one-third is going to go for actual disaster relief to help people who are still suffering from natural disasters, and two-thirds is going to go to tax cuts. I know I have a colleague who is going to join me in a few moments, I want to talk soon about to join me in few moments, I want to talk soon about what those tax cuts are going to do. But let me just make a couple of quick comments more.

Why tax cuts now? But more importantly, when we looked at the programs that were being cut, why did we not see anything that hit the military? Are we so convinced that there is no fat in the Department of Defense? Is this not the same department that gave us $500 toilet seats and that gave us billion dollar cost overruns on military projects in the last few years? But why is it that we do not see a single cut there? But more importantly, why is it that about 2 weeks ago, this same House with majority Republican support passed out a bill that increased spending for the military, including moneys for star wars? Increasing money for the military spending, giving tax cuts to the wealthy, paying for it through cuts to low income and middle income people. That is what we see.

If you do not believe it, let's take a look at one last chart.

That tax cut that is in that Contract on America, where does it go? Part of it is for a a capital gains tax cut. It is important to understand that when you give a capital gains tax cut, that does not go to every American, and especially not to most working Americans who earn a wage. Most of that goes to people who are fairly wealthy, who have a lot of assets and who get to deduct some of the profits on those assets when they sell them. So much so that let's take a look at who benefits from that capital gains tax cult that the Republican majority is proposing in the House of Representatives. That tax cut, by the way, will cost over the next 10 years when it is implemented, should it ever get implemented, about $208 billion. That is $208 billion to our deficit over the next 10 years. Who gets the majority of the benefits of that? As you can see in this chart, and if it may be kind of small for people to see some of the type, this is broken down into different income levels.

Less than $10,000 incomes, well, you're going to get about half of a percent of the benefits. If you earn between $10,000 and $20,000, well, your benefits will be about 0.8 percent of the entire cut. Well, 20 to $30,000, you get about 1.7 percent. So all the families in America that earn $20,000 to $30,000 can expect to get as a group 1.7 percent of the tax cuts under the capital gains tax cut; $30,000 to $40,000 income range, you'll get, as a group, about 2.6 percent of all that; $40,000 to $50,000, you'll get about 3.2 percent of the benefits of that. If you make between $50,000 to $75,000, that whole group of Americans within the $50,000 to $75,000 income range will get about 9 percent of all the $208 billion in benefits. If you make between $75,000 and $100,000, you are going to get about 9.4 percent of that $208 billion in capital gains tax cut benefits. And If you happen to make more than $100,000, which represents about 9 percent of all taxes-filing, taxpaying Americans, you get about 72.6 percent of all the benefits. These are the folks that are going to make out like bandits from the capital gains tax cut. And who is getting cut to finance this capital gains tax cut? As I said in that rescission package, if only 5.3 billion is being used for disaster relief, the other $12 billion or so, which is coming out of low-income and middle-income individuals, families and children and seniors, is being used to finance this.

Let me at this stage ask my colleague from Vermont to join me. I want to first thank him for taking the time at this late hour to come and chat with me a bit about this.

Maybe he has a few comments he would like to make as well about what I have just had a chance to discuss.

Mr. SANDERS. First I want to thank the gentleman from California for his wonderful presentation, because I think he hit the nail right on the head.

Essentially what we are talking about tonight are priorities. That is what a government does, like every family in America. It has to make choices as to how it allocates money and where it saves money.

What the gentleman said in terms of the rescission package is basically consistent with the whole thrust of the Contract With America. What that is about, as his charts have amply demonstrated, is that on one hand, despite all of the loud rhetoric about the terrible deficit and the $4.5 trillion national debt, the first point is our Republican friends are proposing massive tax breaks for the wealthiest people in America. Here we have a situation today where the gap between the rich and the poor in America has never been wider, the wealthiest 1 percent of the population own more wealth than the bottom 90 percent. We have a terrible deficit. All kinds of very serious social needs in America. And our Republican colleagues are proposing massive tax breaks for the wealthiest people in America.

Now, that may make sense to somebody, but not to the many people in the State of Vermont and around this country that I talk to who work for a living. That is point number one.

The second point that the gentleman from California made, which is also absolutely appropriate, is that today at a time when the cold war has finally ended, when the Soviet Union is no longer our enemy, Russia wants to join in NATO, many of the Communist bloc, former Communist bloc companies want to join in NATO, at a time when we have the ability to significantly lower military spending, to help us deal with the deficit, to help us pump money into all kinds of enormous needs that this country faces, our Republican friends, if you can believe it, and I know that many people may have a hard time actually believing it, are proposing tens of billions of dollars more for the star wars program.

So tax breaks for the rich, more money for star wars, and for other military programs.

If you are going to do those things, which will cost us tens of tens of billions of dollars and if you want to move toward a balanced budget in 7 years, something has got to give. That is the equation. Tax breaks for the rich, more money for star wars. Well, what has got to give?

And the gentleman from California mentioned a number of the areas that have been affected by rescissions, that is, cutbacks in money that has already been appropriated.

Let me reiterate some of them as they apply to the State of Vermont. I was particularly outraged that one of the areas where we saw the most savage cutbacks, $1.3 billion, was for the Low Income Heating Assistance Program, also referred to as LIHEAP. The LIHEAP program provides heating assistance to low-income people, many of them elderly people who live in cold climates. In my State of Vermont, the weather gets down to 20 below zero to 30 below zero. We have many elderly people who are living on very fixed incomes. These are people who often have to choose between heating their homes or buying the prescription drugs they need to ease their pain.

□ 2215

The LIHEAP program impacts upon 24,000 households in the State of Vermont. The Republican rescission package would cut back 100 percent, would eliminate the LIHEAP program.

One of two things will happen as a result. Either elderly people will go cold

in Vermont and in Maine and throughout northern America, or they will take the little money they have to put into heating and not have the food that they need or the medicine that they need.

I do not know about other people's priorities, but it does not make a whole lot of sense to me to talk about spending billions of dollars more for Star Wars to cut taxes for the rich by tens of billions of dollars and then force tens and tens of thousands of elderly people in America to go cold in the wintertime.

Every politician who gets up here talks about the serious drug problems that we have. It is a problem in Vermont, it is a problem in California, it is a problem in Virginia, it is a problem all over America.

In my State of Vermont I was recently at a town meeting in Bennington and teachers there talked about how important the drug education money that comes into that community is in keeping kids away from drugs. Every sensible human being understands that an ounce of prevention is worth a lot more than spending billions of dollars throwing people into jail. People in Vermont and all over this country are working day and night to keep kids away from drugs, away from gangs.

This rescission program cuts back significantly on money that goes to help teachers and educators keep kids away from drugs. And on and on it goes, cutbacks for education, for people who are homeless.

I think what the rescission package talks about is the priorities that some of our Republican friends have, and I think that they are not the priorities that the ordinary American people have. And I hope that out of this discussion tonight people all over this country will stand up and say, now wait a second, that is not what the United States of America is supposed to be, it is not supposed to be making the elderly go cold in the wintertime, it is not supposed to be taking away educational opportunity from homeless people.

I would simply conclude my remarks by thanking the gentleman from California very much for this extremely important discussion.

Mr. BERCERRA. I thank the gentleman from Vermont [Mr. SANDERS] for participating and I hope he will have a chance to stay and we will have a chance to indulge in further colloquy.

I would like to recognize my other colleagues in a second. But I would like to make one quick point. The gentleman from Vermont left off on a very important note and I would like to follow up on that and return to this chart which shows where the money goes. As I said, only less than a third of the money is actually going to disaster relief. But let me talk a little bit about this disaster relief.

Something very interesting was done here. It was a play with hands, you know it is a shuffle game. Part of that money that was cut in that $17.5 billion in cuts included the following: $350 million of unused funds from the Federal Highway Administration. That is money that was allocated for the Federal Highway Administration to help in the earthquake relief efforts to get roads and bridges back up to working condition. It has not yet been expended because we have not finished the fiscal year.

So, what did the Republican majority do in the Committee on Appropriations? They cut that remaining $351 million, but interestingly enough we see we are getting $5.3 billion for disaster relief, so what they did was say we are taking $351 million, putting it in our pocket, pulling it out and saying now we are giving, about to give $5.3 billion for disaster relief. They do not tell you they really cut $351 million from disaster relief, they are just saying that they have made cuts and they are trying to say that they are mostly cuts in waste, fraud and abuse, but quite honestly we know it is much more than that.

It is really discouraging to see how this is being done.

Let me now take a moment to recognize a good friend and colleague from the State of Virginia [Mr. SCOTT], who is here I hope to join us and discuss some of these things as well.

Mr. SCOTT. I thank the gentleman. It is a pleasure to join him and the gentleman from Vermont and the gentleman from New Jersey to discuss these rescissions. As the gentleman has indicated, the rescissions are going to pay mostly tax cuts.

Comment was made earlier about school children and lunches and whether we are spending more money or less money. You can call it whatever you want, but if we adopt the Republican budget many school children who are eligible for school lunches today will not be eligible if that budget is adopted.

Mr. BECERRA. Mr. Speaker, if the gentleman will yield back the time for just a moment, we should give some detail because the gentleman who spoke earlier about this and said we are actually increasing the budgets over the next several years for those school, those child nutrition programs wants to leave the impression that actually we are giving more under this Republican proposal than was allocated under current law.

Mr. SCOTT. Well, no, it is not more than current law; it is less than current law.

If we continue going as we had planned, to cover the school children that need to be covered, more would be covered. They are going to cover less school children, and some eligible today will not be eligible with inflation; costs go up, more children show up in school, and if we continue at the rate they want to go, some children that are eligible today just simply will not be eligible if this budget is adopted, period.

Mr. BECERRA. So in other words, the Republican proposals do increase from this current fiscal year what will be allotted next year, but they do not cover the true costs because they do not take into account the growth in the number of kids in the schools or the inflation rate.

Mr. SCOTT. This is exactly right.

Mr. BECERRA. So the schools will have to do with a little bit more money, but with more kids and inflation on top of that.

Mr. SCOTT. And more costs and some children will not be able to get fed as a direct result of that budget.

Mr. Speaker, I would like to again thank the gentleman from California for having this special order. The 1995 rescissions touch many programs, but frankly the ones I want to talk about just very briefly are the targeted prevention-oriented programs.

I am particularly concerned about the mean-spirited cuts in the Safe and Drug Free Schools and Communities Program and the Summer Jobs Program. These programs will not just suffer a reduction in funds, but are at risk of being completely eliminated. The Drug Free Schools Program and the Summer Jobs Program are not frivolous programs, they are designed with specific intentions. Drug Free Schools was authorized as a means to repeal the onslaught of drugs and violence in the schools. The most significant changes in 1994 included an emphasis on violence prevention.

In the city of Richmond in my State of Virginia, we have a program called Richmond Youth Against Violence. Recognizing the overlap and risk factors for violence and substance abuse, the school system decided to focus on violence prevention as an effective means to reduce or eliminate drugs used by our young people.

Richmond Youth Against Violence is operating in all eight middle schools. It teaches mediation, how to avoid violence and the circumstances of violence and provides counseling for students suspended for violence. Funds from the Drug Free Schools and Communities Act provided the startup money for Richmond Youth Against Violence, and it works. Through various evaluations, research on this program has shown that boys in the program do not display an increase in violence, violent behavior and they are less likely to initiate substance abuse activities.

Mr. Speaker, the Summer Youth Program is another successful program. The GOP, however, has decided the program that gives over 1.2 million low-income youth their first opportunity at work and their first step toward learning work ethics has no place in the Republican Contract With America.

□ 2230

Summer youth jobs has a long history. It started in 1964 and has been enjoyed by youth in inner cities and rural areas. Kids 14 to 21 are eligible for the program and they flock to it. Last year there were two applicants for every job in the summer program.

For those who say that the program is ineffective, I say look at the research. The Department of Labor's inspector general says that the program is run very tightly and is well administered, and unlike the stereotypical welfare programs, the summer youth jobs program involves real jobs. It is not uncommon to see youth performing clerical work for city offices, supervising and tutoring children in daycare centers, serving as a nurse's assistant in a hospital.

Work and study done by Westat, Incorporated on the 1993 summer job program gave high marks for the program. The supervisors who were surveyed reported that there are no serious problems related to kid's behavior, attendance or turnover, and, Mr. Speaker, we know the importance about feeling good about your job and feeling that what you are doing is worthwhile. The young people in the summer youth jobs program feel the same way, they work hard and feel good about their summer jobs.

These two programs, like many others, like the education for homeless children and youth, the training for careers and early childhood development and training for careers, and counseling young children affected by violence, the literacy programs for prisoners, all have merit and need to be continued.

Some may oppose the short-term costs, but I remind them of the long-term risks. We cannot continue to undermine the programs which have been proven to deter violence and crime. We must also provide an environment for young people to gain the experience necessary for them to function as adults. Drug-free schools and communities program and the summer youth and jobs program accomplish these goals.

In conclusion, Mr. Speaker, the prevention programs work. We can pay for them now or we can pay a lot more for prisons later. We need to defeat these mean-spirited, short-sighted rescissions.

Mr. BECERRA. I want to thank the gentleman from Virginia for taking the time to come here and present a cappella testimony about why we should fear these cuts that are being proposed at this particular time.

Let me at this time recognize another distinguished colleague and friend, the gentleman from New Jersey [Mr. ANDREWS], and ask him if he has a few things would he like to say. And I thank my friend from California for giving me this time and organizing this discussion.

Mr. BECERRA in particular is to be commended for leading on this floor tonight a discussion of priorities in our country and where the taxpayer's money ought to go. Mr. Speaker, Mr. BECERRA deserves particular praise because this may be the only discussion we have an opportunity to have about priorities under the way this bill is going to be brought to the floor, and I want to speak for just a few minutes about what is wrong with that and how that cuts off a real debate about where the public's money ought to go and what the Federal Government's priorities ought to be.

Myself and Mr. SCOTT and Mr. SANDERS and Mr. BECERRA may have different priorities as to how this bill ought to come down. Frankly, I think it is an urgent priority to cut the size of the Federal budget and to make this government leaner and smaller and more efficient.

I think it is a demanding priority that we find a way to lessen the burden of taxes on the American people, and perhaps there would be some agreement or disagreement among the four of us as Democrats on that point. The point is, this is the place where we are supposed to thrash out those differences over priorities and have our say.

Mr. Speaker, as we all know, when a bill is brought to this floor, it is brought to the floor under something called a rule and the rule sets forth which amendments may be debated and voted upon and which amendments may not be debated and voted upon.

This afternoon, March 9, the chairman of the Rules Committee, the distinguished GERALD SOLOMON of the State of New York circulated a letter, which I will make part of the record at the appropriate time, which outlines his proposals to what the rules should be under which this bill is brought to the floor, in other words, the rules of debate, what we can vote on and what we can't vote on.

The rules of debate are totally closed, totally unfair, and will totally shut off the kind of priorities debate, Mr. Speaker, that Mr. BECERRA has launched tonight. Let me give you some examples.

The Republican bill that will be before us will cut a net $12 billion from this year's budget. Now, one could take one of three different positions on that—four, I guess. You could say that we should cut $12 billion and these are the right $12 billion to cut, and you will have that chance because you will have a chance to vote for this bill. You can say that we shouldn't cut any of it, that we should add to the budget. You won't have that chance because you won't be permitted to add to the budget under this bill. You will only be permitted to subtract from it.

Frankly, I find that OK but I don't think that others that don't find it OK should be denied the chance to add if they so desire.

You might say we should cut less than $12 billion from the budget. You won't have that chance because the number that is fixed in this bill must be going forward and you may say, as I would, we should cut $12 billion but we should cut a different $12 billion than the Republican have proposed. I will not get that chance. Mr. SANDERS will not get that chance. Mr. BECERRA will not get that chance. Mr. SCOTT will not get that chance, nor will any of our colleagues under the rules being brought to the floor.

Let me tell you what I want to do. I am working on and tomorrow will complete a proposal as a substitute for this rescission bill that doesn't cut the budget by $12 billion as our Republican friends would, but cuts it by $13 billion, but cuts it in different places.

The Republican proposal says to an 82-year-old woman who has a fixed income of $9,000 a year and heating bills of $1,500 a year, that the little bit of help that she gets right now, the little bit of help, the couple hundred dollars she gets to pay her electric bill, her heating bill, will be eliminated next winter.

I say instead we should cut research contracts that benefit Exxon and Mobil and Fortune 500 corporations that sell her the energy for that heat. Let's give this House a choice between cutting her heating subsidy and the research subsidy of the Fortune 500 energy companies that brought her her energy. We won't have that choice under this rule.

I would say this, to a 17-year-old who is trying to work a summer job from a low-income family so he or she can earn money to get a college education. The Republican bill would say there will be no federally sponsored summer jobs anywhere in America starting this summer.

So, Mr. Speaker, a young person who is listening to us tonight, 16 years old, planned on getting a job this summer, maybe saving $500 or $600 or $1,000 toward their school tuition, no job, nothing this summer. I say, why don't we cut out some of the bureaucratic jobs in the Department of Agriculture, the press secretaries, the statistics gatherers, the people who compile information about the American agriculture system.

I would say give us a choice between cutting summer jobs for young people around this country and bureaucratic jobs in the Department of Agriculture. we will not have that choice under this bill, and I will yield to Mr. SANDERS for a moment.

Mr. SANDERS. I thank my friend from New Jersey, as he opens up a whole area of discussion that I was intending to get to in a moment and I thank him for getting there earlier, and that is the whole issue of what some of us call corporate welfare.

Now, at the same time as we are seeing massive cutbacks in heating programs for low-income senior citizens, cutbacks in drug prevention programs, cutbacks in programs for the homeless, does my friend from New Jersey or California or Virginia happen to notice

if there are any cutbacks in the corporate welfare programs that are providing tens and tens of billions of dollars of Federal subsidies and Federal aid and tax breaks for some of the largest corporations in the United States of America?

Now, maybe they are there. I happen not to have seen them. I have a list of all of the programs. I did not see them.

If I might for one moment, and there is a long list, the Progressive Policy Institute, I might say a conservative Democratic organization, suggested that there were tens and tens of billions of dollars of savings if the Congress had the guts to call for welfare reform on large corporations and wealthy people. we all know that.

The savings can take place within the energy industry where there are huge tax subsidies for companies who are extracting oil, gas and minerals. There are special tax credits for producers of fuel from nonconventional sources. There are depletion cost allowances for oil, gas and nonfuel mineral firms. On and on it goes.

My friend from New Jersey makes exactly the right point: We should have that debate right here on the floor in front of the American people as to how we proceed to save money. And reclaiming my time, I would say to my friend from Vermont, who truly is an Independent, not only the way he thinks, I have read the bill. There were 228 cuts in the bill. Virtually none of them cut out the kind of corporate welfare, the Wall Street welfare that you make reference to.

So I would say to you that this bill, Mr. Speaker, demonstrates that the majority party of the Republicans are not against the welfare state at all. They are against the welfare state for those who tend to vote for the Democrats, but not for those who tend to vote for the Republicans. And this bill is ample evidence of that.

Let me give you other examples of things we will not get a chance to vote on that some of us would prefer. This bill says that if you are a senior citizen living in what we call section 8 subsidized housing, what that means is you live in a senior citizens high-rise and your rent is limited to 30 percent of your income and a subsidy pays less. So let us say your income is $10,000 a year, you only pay $3,000 a year toward rent and if your rent is really $5,000, the Federal Government picks up the other $2,000 so you can rent a modest apartment in a senior high-rise.

I have had senior citizens call me from around New Jersey scared to death that they are going to lose their apartments because of what is in this bill, because this bill eliminates $2.7 billion from that subsidy. You know what answer I could give them, Mr. Speaker? You just might lose your apartment, it is true.

Some of us, instead of denying housing to senior citizens under this program, would like to stop building so many courthouses and Federal buildings around America. We would like to substitute a provision that says, Do not cut the housing for senior citizens to have an apartment. Stop building a courthouse everywhere that a certain Member of Congress who is well connected enough to get one built.

Yes, we need courthouses in America, but I will tell you what. If we have to wait a few more years before we give a few more judges an elaborate place to sit and hear cases and save the money there and put it into keeping senior citizens in their homes and apartments, I think we should do that. And at the very least, Mr. Speaker, we ought to have that debate and we ought to have a choice, and this Republican rule will not let us do that.

One more example. One more example. This Republican bill says we are going to take $105 million from the program that hires remedial reading teachers, speech therapists, child psychologists, and other educators that help young people with a learning disability get through their school years, and is going to take $38 million from a program that helps young children who do not speak English learn how to. If they come to this country from Vietnam or Cambodia or Mexico or Russia or Poland or wherever, $38 million so those teachers can help our children learn English first when they are in first grade. That is gone from this bill.

Some of us would rather take the money from something called the Export-Import Bank, which is a program paid for, Mr. Speaker, by the people watching us tonight, that gives subsidies to major American corporations to help them underwrite the sale of their goods around the world.

Now, let me say this. I hope that American companies are able to sell their goods around the world tenfold what they do right now because that is good for the country, but the people who will profit from selling those goods should underwrite the cost of selling those goods. The shareholders and investors of those companies ought to pick up the tab of this, not the American taxpayer.

So let me summarize. I would like to see us vote on an amendment to substitute the cut that cuts heating assistance for senior citizens and instead cuts energy research that benefits oil companies. We will not get that chance.

I would like to see us get rid of the cut that abolishes the summer job program for young people in urban and rural and suburban areas around this country, including my hometown, and give us a chance to get rid of some of the bureaucracy in the Department of Agriculture or the Commerce Department or the Department of the Treasury or wherever. We will not get that chance.

I would like to see us restore the cut that would say to senior citizens, we are going to take away the subsidy that helps you get an apartment and instead stop building so many courthouses for so many judges and so many Federal buildings around America. We will not get that chance.

I would like to restore the cut that says no more remedial reading teachers, no more education for children who cannot speak the English language as their first language, no more assistance for those children. I would like to get rid of some of the spending in the Export-Import Bank that helps IBM and AT&T sell their products around the world. We will not get that change.

Now, my friends as a Democrat, I have been wanting to sponsor an initiative in the last Congress called the A-to-Z spending cuts plan. Any Member can come to this floor during a special session and propose his or her best idea to cut spending. There would then be a debate and a vote.

When they were in the minority, my friends on the Republican side thought that was a terrific idea. The Speaker, the majority leader, the majority whip, all of them signed on to the bill and signed a petition forcing the bill to the floor that almost made it but did not. They thought it was a great idea that everybody's spending priorities could be brought here in debate.

Now they are in charge. Now they have the majority. Now they can win any vote because they have a certain number of more votes than we do. Now they are not quite sure the idea is so good with the majority change in this House, Mr. Speaker, because the people are fed up with a system that is closed, that does not permit free and honest debate.

We are going to have an opportunity to make a decision on Tuesday whether we have a free or honest debate about this rescissions bill. If you vote for the rule that Chairman SOLOMON wants, we are not going to have a free and honest debate. We are going to have a closed debate and a lousy bill. If you defeat the rule, give us a chance to offer these and other ideas and have the kind of discussion we are tonight, the public will be well served.

I thank the gentleman from California [Mr. BECERRA] for this time.

Mr. BECERRA. I thank the gentleman for his eloquent words to make it clear it is not just an issue of substance when it comes to this issue of cuts and our priorities, but it is also an issue of mechanics, how we actually get to the point in the House of the people of making decisions for the people of America. And when it becomes clear to the people of America that their voice, through their Representatives, is not allowed to express itself because we cannot offer amendments, because we cannot try to sell the idea of where our priorities should be and instead must accept what is force fed to us, then clearly we are not doing the jobs as Representatives and clearly that frustrates the American people even more, as the gentleman so eloquently said with regard to why we had a change in November 1994. Clearly the

people are frustrated and we must do some things to change that.

Let me point out a couple of things that disturb me most about this direction that we are heading, the fact that we have closed debates, the fact that we have these cuts that go after middle-income and lower-income people, but yet will benefit the wealthy.

I cannot understand why we are seeing proposals for a capital gains tax cut that, as you can see, will benefit the most wealthy. But when you take a look at how much the average annual tax cut will be received by the income groups, it is astonishing.

If you earn $20,000 or below, you know how much you are going to get in tax cut relief over the year? About $7.63. That is what a family that earns $20,000 or below can expect to get from the capital gains tax cut proposal that the Republican majority in the House has proposed.

How much tax relief will you get if you have earned between $20,000 and $50,000 for the vast majority of American families? About $33 in the entire year. That is what a family will receive in tax relief from this Republican proposal.

Now, if you are $50,000 to $100,000, what will you get back in extra income? About $124.

Now, what happens if you earn between $100,000 and $200,000? Well, now you are going to get about 100 times what a person or a family earning $20,000 gets. You are going to get about $636 in that year.

But what will 2 percent of America's tax filers get? The 2 percent wealthiest filers of tax forms in this country, the 2 percent wealthiest Americans, what will they get, those earning $200,000 and above? Four-thousand-three-hundred and fifty-seven dollars in a year.

The folks that need it least get the most, and that, I think tells us a bit about the priorities of this new Congress, where we are heading. It seems anomalous to think that we are going to head in that direction but that is what it looks like.

Mr. SANDERS. If the gentleman would yield.

Mr. BECERRA. Of course.

Mr. SANDERS. Let us reiterate what all four of us have been talking about. No. 1, with a huge deficit, huge national debt, and terrible social needs in America, there are significant increase tax breaks for the rich, at the same time as the gap between the rich and the poor has never been wider.

□ 2245

No. 2, despite the end of the cold war, increased military spending at a time, in my view, when we should be cutting back on the military. And then in order to move toward a balanced budget, savage cutbacks which go against low-income elderly people, including people in the northern part of America who will be cold this winter if our heat program is cut.

Programs for homeless people; programs for children; cutbacks in the WIC Program. There is one program that Mr. BECERRA touched upon earlier that I think we have not perhaps discussed enough and that is a $200 million cutback for the veterans of America.

I do not apologize to anybody for being an antiwar Congressman. Yes, I voted against the Persian Gulf war. I think very often we can resolve international conflict without wars.

But it seems to me that if the Government of the United States of America sends people off to war and asks them to put their lives on the line, and they do that, and then they come back to America and 40 or 50 years goes by, as in the case of World War II veterans and these veterans are sleeping down in VA hospitals throughout this country, it seems to me to be very, very wrong to say to those men and women who put their lives on the line, were wounded in body and wounded in spirit, that you say to them now, Hey, guess what? We have got a cutback on the VA hospitals. Thank you very much for putting your life on the line. Thank you for getting wounded, but now we have got a budget problem and we have to give tax breaks to the wealthiest people. We have to build the star wars. We have got to cutback for you.

I think that this particular cut of $200 million is absolutely upcalled for. I fear very much that as the Contract With America progresses, and I had the opportunity of meeting with Jesse Brown, the very fine and excellent Secretary for Veterans Affairs, and he shares this fear, that in the months and months to come there will be increased cutbacks on the needs of our veterans.

So, I think the bottom line is that we have got to get our priorities right and that is we respect those people who put their lives on the line and we will not go forward with those cuts.

Mr. ANDREWS. Mr. Speaker, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from New Jersey.

Mr. ANDREWS. The gentleman from Vermont makes an outstanding point about the veterans issue, and Mr. SANDERS and I have our differences on defense policy and our voting records will reflect that, but let me chime in to support a point he just made and going back to the point I made about the choices that we are not going to be given a chance to make.

This bill cuts $200 million out of this year's expenditures for the veterans' hospital system across the country and it forgives a $50 million loan to the Government of Jordan.

I am going to repeat that. This bill says to the Government of Jordan, You do not have to pay us the $50 million you owe us. We forgive you. Then it says to the veterans across this country, Oh, by the way, we are taking $200 million, four times that amount, out of your VA hospital system.

Now, some of us would like to offer an amendment that would at least reduce that cut of the $200 million by not forgiving the $50 million loan to Jordan. A lot of us would like to be able to say maybe the Jordanians should find the $50 million and pay us back.

I find it ironic that in the Persian Gulf war, which was the first vote that Mr. SANDERS and I cast as Members of this House, at the time of that war the Jordanians chose to remain neutral. They chose not to take the side of the United States for their own reasons.

The men and women who served in our Armed Forces did not choose to remain neutral. They swore allegiance to our country and served us. We are taking money away from them, who put their lives on the line, and then we are forgiving a loan to the Government of Jordan.

Mr. SANDERS. To the best of my knowledge, King Hussein is not exactly on the welfare rolls as well.

Mr. ANDREWS. I would assume King Hussein will not be receiving home heating assistance this winter.

I yield to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. I know that we are running short of time. I want to make sure that any of my colleagues have a chance to express themselves.

I want to quote something that was said by the new chairman of the Committee on the Budget, Mr. JOHN KASICH, who said this about deficit reduction. ''I do not think that Republican special interest programs ought to be spared. I think we ought to look at corporate welfare before this process is over.'' That is a quote in the Washington Post of yesterday.

Well, I think those of us who are here, the four of us who are here, along with a number of my colleagues, I suspect both Democrat and Republican, are going to keep the chairman of the Budget Committee to his word. We want to see those cuts, because quite honestly, we have not seen them in this particular $15.5 billion recision package, but certainly we must see those.

So I would say that in this new ''Newt'' world that we face, that the needs of hard-working, middle-class families should not take a back seat to the needs of the very affluent. But quite honestly, I cannot see anything that says that we are not going in that direction, when everything points to capital gains tax cuts. Cuts to the poor, cuts to the middle income in their programs. Not tax cuts, but spending cuts that would help them. Child Nutrition Program cuts, all of this, yet we are going to increase spending for the military.

And somehow we get into this whole idea about a balanced budget amendment that was up here a couple of weeks ago for debater where we had the Republican majority saying we are going to balance the budget. And they are talking about balancing the budget, which is going to cost us over the

next 5 to 7 years, about $1.2 trillion and if you add the tax cuts that the Republicans are proposing, that adds another $200 billion or so. And if you add the defense billions of dollars in military increases, that adds another $100 billion.

You end up with $1.5 trillion deficit that you have to make up in about 7 years. And I take a look at that and find that they are saying they want to balance the budget and I take a look at where they are cutting now. It makes it clear to me what they are going to do to try to balance this budget, on whose backs they are going to do it, and it scares me.

And I offer my colleagues the final chance to speak.

Mr. SANDERS. I just want to thank the gentleman from California [Mr. BECERRA]. I think this is an enormously important discussion dealing with what the priorities of America should be. And I thank you very much for leading this discussion.

Mr. BECERRA. The gentleman from Virginia.

Mr. SCOTT. I want to thank the gentleman from California. This is an excellent presentation. We have choices to make and we have to look at our priorities and the quality of life and what we are doing here as legislators. And I thank you for giving us the opportunity to bring these facts forward.

Mr. ANDREWS. I join in thanking my friend from California. We are all equal Members of the People's House. We may disagree over what our priorities shall be, but we should never disagree over our right to debate those priorities.

The majority is about to deny us that right unless we defeat the rule that comes before us on Tuesday night.

Mr. BECERRA. I would say that the majority is not just denying the four of us, the majority of this House is now denying the American people the chance to express itself and that must change.

I thank all of my colleagues for being here

Mr. MONTGOMERY. Mr. Speaker, as the ranking member of the Committee on Veterans Affairs, I rise to urge all my colleagues to support an amendment to the rescission bill reported last Thursday by the Appropriations Committee. The amendment is modest in scope but vital to VA health care. It would restore the $206 million for veterans programs which the Committee on Appropriations proposes to rescind.

These rescissions don't make good sense. These funds were appropriated by Congress only a few months ago, primarily to help meet a critical need to improve veterans' access to outpatient care. The six VA projects which the committee now proposes to cancel would serve areas where more than 1.2 million veterans reside.

The budget for construction of veterans medical facilities has been pretty lean for the past 5 or 6 years. As a result, the VA says it now has almost 60 projects to improve outpatient services waiting to be funded. The VA could award construction contracts on these six projects in the next several months. We shouldn't put these projects off 1 day.

These are projects that can make VA health care delivery more cost-effective. This rescission bill would slam the door on veterans across this country. In some parts of the country, the VA doesn't have health facilities that meet veterans needs. In other places, the clinics are just too small. At one clinic, space is so tight that doctors are forced to perform eye examinations in the hallways. Veterans deserve better than this.

An increasing number of veterans are women; over 1.2 million. Many VA outpatient clinics still lack privacy for women veterans. In the face of such conditions, the rescission bill is a giant step backward.

Likewise, cutting funds for replacement equipment—as proposed by the rescission measure—forces VA to choose between obtaining a needed service at increased cost through contracting or continuing to use inefficient or even obsolete equipment. The VA's medical equipment backlog is more than $800 million. We must assure that VA care is care of high quality. Cutting back on VA funds to replace old equipment is putting our veterans at risk.

I want to commend all of the Members who are working hard to restore these funds—the gentlewomen from Florida, Ms. BROWN and Mrs. THURMAN, the gentlewoman from Connecticut, Ms. DELAURO, Mr. VOLKMER, Mr. SCOTT, Mr. ROMERO-BARCELÓ and the other Members who are gathered here tonight. They are all doing a good job looking out for our Nation's veterans.

GETTING OUR FINANCIAL HOUSE IN ORDER

The SPEAKER pro tempore (Mr. LONGLEY). Under the Speaker's announced policy of January 4, 1995, gentleman from Connecticut [Mr. SHAYS] is recognized for 30 minutes as the designee of the majority leader.

Mr. SHAYS. Mr. Speaker, I thank my colleagues for the dialogue they had. This is going to be a long process and hopefully when we are done we will find some common ground.

Mr. Speaker, I am speaking tonight on an issue that to me is extraordinarily important and that is getting our financial House in order. And I think in terms of this, what I have looked at as I have served now in Congress for 7 years and have been a State legislator 13 years before, I see a society where we have 12-year-olds having babies; a society where we have 14-year-olds selling drugs and 15-year-olds killing each other; a society where our 18-year-olds who have diplomas cannot even read their diplomas. I see a society where we have 25-year-olds who have never worked and 30-year-olds who are grandparents.

That is a society I see in our country, and I believe a society like that cannot long endure.

I also am seeing a society where we have had for the last 20 years extraordinarily large budget deficits. We have seen the national debt go up and up and up, our annual deficits adding to the national debt each year.

And I do not single out any one party. We all shared in that to the extent that we were a part of it. I would like to think that I was a force for restraint in this, but we had Republicans who did not want to cut defense and we had Democrats who did not want to control the growth of entitlements.

And Gramm-Rudman only focused in on what we called discretionary spending. It never dealt with entitlements. What we had was a Republican President, and now a Democratic President, who are willing to have the status quo continue.

And I have often been asked what do I think about a balanced budget amendment. I think it would be great if we did not need it. And we do not need it if we have a President who submits a balanced budget, be he a Republican or Democrat. We would not need it if we had a Congress that decided to reject unbalanced budgets. And we would not need it if we had a President, who was receiving a budget that was not balanced, that would simply decide to veto it.

But that has not been the case and that is why I have become convinced that the only way we are going to see some sanity to what we have is to require a balanced budget amendment. The White House to submit a balanced budget and Congress to vote out a budget that is, in fact, balanced.

I thought long and hard about how much have I, as a Member of Congress, or in the State House, been a part of the solution and a part of the problem. And when I was elected 7 years ago, I was determined that I could look my family in the eye and my constituents, go to a town meeting and say, I have voted to control the growth in spending. I have voted to get our financial house in order.

I am finally going to see the opportunity to have that come to fruition in a real way. When I first started out, there were about 30 of us who were voting to control the growth in spending. That number grew to about 60. It then got to be about 80, including Republicans and some Democrats. And then there were times that we were up to about 160 during the last session.

In fact, during the Penny-Kasich debate, when Republicans and Democrats, 15 Republicans, 15 Democrats, got together, led by Mr. KASICH and Mr. Penny, the Democrat, Mr. KASICH the Republican, and we put together a package of $90 billion of cuts in spending.

And I went to the White House and spoke to Leon Panetta and asked him to support this proposal and I said, ''If you cannot support it, at least do not oppose it.'' I received my answer a week after my visit when the White House decided to oppose, for the very first time in Congress, a bipartisan effort to control spending.

I will tell you that was probably one of the most disheartening things that has happened, because I thought you want to nurture that. You want, if you

have Republicans and Democrats who are willing to cut spending in Congress, no less, you want to nurture that. But it was not nurtured. It was an attempt to stamp it out. The vote failed by just four votes.

So I guess I could take some real satisfaction we came so close. And how encouraging that would have been to have seen that bipartisan effort succeed. It did not succeed and our deficits continue and Congress still is wrestling with how we get our financial house in order.

I often think about whether we are a caretaking society or a caring society. And I describe it this way: a caretaking society is a society that tries to take care of people, and then those who vote for the bills that take care of people feel good that they have voted for something that takes care of someone, without asking what are they actually doing.

To me, the preferable one is the caring society. The caretaking society gives the food; the caring society shows someone how to grow the seed so it becomes food and feeds them until they get to that point.

Now, the stereotype I have of a liberal is an individual who sees someone drowning 50 feet out and runs to the end of the pier and grabs 100 feet of rope and throws that rope out to the person who is drowning 50 feet out.

□ 2300

The person who is drowning is trying to grab onto the rope and make it taut, ready to be pulled in. The stereotype liberal, when the line is taut, drops the line and says, ''I have done my good deed. Now on to the next good deed.''

I have just as discomforting a view of the stereotyped conservative who sees someone drowning 50 feet out, grabs 25 feet of line, throws it to the individual, it does not quite reach him, and says, ''You swim halfway, and I will do my part and I will pull you in.''

I have to feel that somewhere between that stereotype of the liberal and the stereotype of the conservative is a sensible program that tries to reach out to the person who is drowning, takes the temporary step of pulling them in, throwing them enough line to work, making sure the program works, not walking on to the next program, pulls the individual in, and then just does not part company, but teaches that person how to swim.

Mr. Speaker, what I wrestle with is the fact that as I look at this budget chart, and the task that I have as a member of the Committee on the Budget, what is in the dark green is basically what we call entitlements; Social Security. Entitlement is not a bad word, it means someone is truly entitled. It has gotten to mean something that is not always positive, but someone who has paid into Social Security is entitled because they put money into a system and expect to receive it back in retirement.

In the shades of different green there is Medicare, that is 10 percent of the budget; there is Medicaid, which is 5.7. Then there are other entitlements that are 121.3 percent. These entitlements add up to 50 percent of the budget. They are on automatic pilot.

I have been here since 1987, and I rarely get an opportunity to vote on these, because they are in the law, and if the law is not changed, they just keep happening. The numbers keep growing, and the costs keep growing. They begin to consume more and more of our Federal budget.

No one, Mr. Speaker, Republican and Democrat, has yet to truly address entitlements. We also have something else that is on automatic pilot for the most part. It is in yellow, and it is interest in the national debt.

Collectively, entitlements, 49 percent of our budget; interest on the national debt, 15 percent of our budget—and by the way, interest on the national debt is $234 billion—two-thirds of our budget are on automatic pilot.

What do I vote on? I get to vote on 36 percent, which is in the 3 tones of pink, domestic discretionary spending. It funds the judicial, legislative, executive branch, all the departments of the executive branch, all the grants of the executive branch, minus the Defense Department.

The Defense Department is so large that we just isolate it as a similar expenditure. It is almost identical, it is 1 percent more than discretionary domestic spending. Defense is 1 percent more. Then we have what we call international, about 1.4 percent. That is the State Department and foreign aid.

I vote, when I get the Committee on Appropriations expenditure bill, I vote on one-third of this entire pie. Two-thirds has been on automatic pilot, and growing.

Mr. Speaker, what do we need to do? We need to take an honest look at what we can control. Democrats and Republicans, candidly, have done a pretty good job of trying to control the growth in discretionary spending, both defense and nondefense. You see a good example of it right here.

You see the growth in spending for each of the next, from 1995 to the year 2000, and you see the annual growth. What was in the solid greens, the entitlements, different shades, they are growing at extraordinary rates: Social Security, 5.2; Medicare, 9.6; Medicaid, 9.1. The numbers we have from CBO, Congressional Budget Office, are higher, but I used the President's own numbers. Other entitlements are at 6.1 percent.

What is happening is interest on the national debt is going up nearly 6 percent. The entitlements are growing, they are 50 percent of the budget. They are on automatic pilot. What I vote on, defense spending, will go down three-tenths, will go down less than a percent, three-tenths of 1 percent. Foreign aid and the State Department will go down about 1.9 percent during each of the next 5 years. Domestic spending is only going to go up a tenth of 1 percent.

So what I vote on, what we debate, the discretionary spending out of Committee on Appropriations is basically, for the next 5 years, at a standstill. This is what we have to address. We have to address the extraordinary growth of Medicare and Medicaid.

Mr. Speaker, there was discussion earlier on about the food and nutrition program. I will use this as an example of what makes the debate difficult. What makes the debate difficult is that people simply are not leveling with the American people about what is truly happening. We may disagree with the WIC Program and the School Lunch Program as proposed by the Republicans, but we know that the School Lunch Program is going to go up at 4.5 percent during each of the next 5 years. This is in the solid blue. The black is the number that it would grow without our program. It would be slightly more expensive, ever so slightly. You probably cannot even see it.

The program devised by the Republicans will allow spending on the School Lunch Program to go up 4.5 percent during each of the next 5 years. The WIC Program is seen in the red. It also will continue to grow at that basic rate of over 4 percent a year. We can call it a cut in spending, yes, I guess you could call it that. It would not be accurate, but you could call it.

What you can call it is a growth in spending, a significant growth in spending of 4.5 percent as it relates to the School Lunch Program.

The problem we have in Washington is, and I did not have it when I was in the State House, we could never get away with it in the State House, but when I came down here I would always hear how we were cutting spending, yet I was finding that spending was continuing to grow. I could not figure out how we could call it a cut in spending if it was continuing to grow.

Then I learned after just watching this process for a while that if a program cost $100 million to run this year, and $105 next year, and we appropriate $103 million, Washington, the White House, Congress, both parties, have historically, and the press, have historically called it a $2 million cut in spending. Even though it went from $100 to $103 million, they are going to call it a $2 million cut in spending, because they said it should have gone up to $105. What most people would call it is a $3 million increase in spending.

We are not going to succeed in balancing our budget unless we are able to get a handle on the entitlement spending that is on automatic pilot and slow the growth.

What we anticipate by the year 2002 is that spending, without our taking any action, will grow over $3 trillion of new money. We want to bring that down to a level of growth of about $1.9 trillion, almost $2 trillion. We want it

to grow, we just do not want it to grow as quickly.

The reason we want it not to grow as quickly is we want to eliminate the deficits. We want to make the interest of what we pay on the national debt smaller. I think of the generations that have preceded me in Congress, the Members that preceded and voted out these large deficits, and those that were here while I was here who continue to vote out large deficits.

We now spend $234 billion on interest on the national debt. Think of what we could do with that money if it was not interest on the national debt. Think of the programs that we could do, that would be meaningful.

Mr. Speaker, I do not think we are going to succeed in slowing the growth of Medicare and Medicaid unless it is bipartisan. I'm not sure how that is going to happen, because the dialog to date has not been encouraging. We have not had the President come in with a recommendation on how he would suggest we slow the growth in spending; still spend more, just not spend as much.

We are having a dialog now where Republicans are saying we need to take tough stands on some of these programs, tough; we are going to allow the nutrition program to go up 4.5 percent, instead of 5.2 percent. I guess we could call it tough. I think it makes sense.

I think it makes sense to block grant the program. I think it makes sense to spend more of the money on the poor children in our school districts. I had some of the school nutrition people come to my office and tell me they did not want that to happen, they want to subsidize lunch for all students. I said ''I want it to go to the students who cannot pay for it.''

They said ''We do not want two lines in our school system, the poorer kids, and the kids who can afford that.'' I said ''Do not have two lines, have one line, but give one of the students a voucher, a coin, something that enables him to have a subsidized lunch.''

So as I think about this debate, and wonder if we are going to continue the way we are going, or whether we are going to have change, I am encouraged. I think that there are a number of Republicans who are willing to take some tough votes and take responsible votes. I think there are going to be a number of Democrats who will as well. I think we are going to have an honest debate about what was discussed earlier about taxes. To me, deficit reduction comes before cutting taxes.

I might have a disagreement as to what the tax cuts do. I happen to think a capital gains cut makes sense. I happen to think that what we need to worry about is what happens to the money once it is provided to that taxpayer, what do they do with it.

If we can provide tax cuts where a person takes the money and invests it in new plant and equipment and increases productivity, and it means more jobs for Americans, I think it makes sense. If it means that it is not going to encourage growth, then I have a question mark.

□ 2310

The jury is still out as to what is going to happen to the tax cuts. They will be funded. I think they will pass, but ultimately what the Senate will do for me, I am going to vote to control the growth in spending. I am going to allow my Government to spend more money on these very needed programs. I am just going to have the growth be more sensible and not so out of control. And I am going to vote to make rational controls as well to some of the discretionary spending that we see.

We need to slow the growth in spending. We are going to spend more, we are just not going to spend as much as we have been spending.

With that, Mr. Speaker, I would like to thank you and the staff who are here staying up late to allow us to share our views on what we think are some very important issues.

RULES OF PROCEDURE FOR THE JOINT COMMITTEE ON PRINTING FOR THE 104TH CONGRESS

(Mr. THOMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. THOMAS. Mr. Speaker, pursuant to and in accordance with clause 2 (a) of rule XI of the Rules of the House of Representatives and clause B of rule I of the Rules of the Joint Committee on Printing, I submit for publication in the CONGRESSIONAL RECORD a copy of the rules of the Joint Committee on Printing for the 104th Congress as approved by the Committee on March 6, 1995.

JOINT COMMITTEE ON PRINTING

RULE 1—COMMITTEE RULES

(a) The rules of the Senate and House insofar as they are applicable, shall govern the Committee.

(b) The Committee's rules shall be published in the Congressional Record as soon as possible following the Committee's organizational meeting in each odd-numbered year.

(c) Where these rules require a vote of the members of the Committee, polling of members either in writing or by telephone shall not be permitted to substitute for a vote taken at a Committee meeting, unless the ranking minority member assents to waiver of this requirement.

(d) Proposals for amending Committee rules shall be sent to all members at least one week before final action is taken thereon, unless the amendment is made by unanimous consent.

RULE 2—REGULAR COMMITTEE MEETINGS

(a) The regular meeting date of the Committee shall be the second Wednesday of every month when the House and Senate are in session. A regularly scheduled meeting need not be held if there is no business to be considered and after appropriate notification is made to the ranking minority member. Additional meetings may be called by the chairman as he many deem necessary or at the request of the majority of the members of the Committee.

(b) If the chairman of the Committee is not present at any meeting of the Committee, the vice-chairman or ranking member of the majority party on the Committee who is present shall preside at the meeting.

RULE 3—QUORUM

(a) Five members of the Committee shall constitute a quorum which is required for the purpose of closing meetings, promulgating Committee orders or changing the rules of the Committee.

(b) Three members shall constitute a quorum for purposes of taking testimony and receiving evidence.

RULE 4—PROXIES

(a) Written or telegraphic proxies of Committee members will be received and recorded on any vote taken by the Committee, except at the organization meeting at the beginning of each Congress or for the purpose of creating a quorum.

(b) Proxies will be allowed on any such votes for the purpose or recording a member's position on a question only when the absentee Committee member has been informed of the question and has affirmatively requested that he be recorded.

RULE 5—OPEN AND CLOSED MEETINGS

(a) Each meeting for the transaction of business of the Committee shall be open to the public except when the Committee, in open session and with a quorum present, determines by roll call vote that all or part of the remainder of the meeting on that day shall be closed to the public. No such vote shall be required to close a meeting that relates solely to internal budget or personnel matters.

(b) No person other than members of the Committee, and such Congressional staff and other representatives as they may authorize, shall be present in any business session which has been closed to the public.

RULE 6—ALTERNATING CHAIRMANSHIP AND VICE CHAIRMAN BY CONGRESSES

(a) The chairmanship and vice chairmanship of the Committee shall alternate between the House and the Senate by Congresses. The senior member of the minority party in the House of Congress opposite of that of the chairman shall be the ranking minority member of the Committee.

(b) In the event the House and Senate are under different party control, the chairman and vice chairman shall represent the majority party in their respective Houses. When the chairman and vice chairman represent different parties, the vice chairman shall also fulfill the responsibilities of the ranking minority member as prescribed by these rules.

RULE 7—PARLIAMENTARY QUESTIONS

Questions as to the order of business and the procedures of the Committee shall in the first instance be decided by the chairman, subject always to an appeal to the Committee.

RULE 8-HEARINGS: PUBLIC ANNOUNCEMENTS AND WITNESSES

(a) The chairman, in the case of hearings to be conducted by the Committee, shall make public announcement of the date, place and subject matter of any hearing to be conducted on any measure or matter at least one week before the commencement of that hearing unless the Committee determines that there is good cause to begin such hearing at an earlier date. In the latter event, the chairman shall make such public announcement at the earliest possible date. The staff director of the Committee shall promptly notify the Daily Digest of the Congressional Record as soon as possible after such public announcement is made.

(b) So far as practicable, all witnesses appearing before the Committee shall file advance written statements of their proposed testimony at least 48 hours in advance of their appearance and their oral testimony shall be limited to brief summaries. Limited insertions or additional germane material will be received for the record, subject to the approval of the chairman.

RULE 9—OFFICIAL HEARING RECORD

(a) An accurate stenographic record shall be kept of all Committee proceedings and actions. Brief supplemental materials when required to clarify the transcript may be inserted in the record subject to the approval of the chairman.

(b) Each member of the Committee shall be provided with a copy of the hearings transcript for the purpose of correcting errors of transcription and grammar, and clarifying questions or remarks. If any other person is authorized by a Committee member to make his corrections, the staff director shall be so notified.

(c) Members who have received unanimous consent to submit written questions to witnesses shall be allowed two days within which to submit these to the staff director for transmission to the witnesses. The record may be held open for a period not to exceed two weeks awaiting the responses by witnesses.

(d) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Committee. Testimony received in closed hearings shall not be released or included in any report without the approval of the Committee.

RULE 10—WITNESSES FOR COMMITTEE HEARINGS

(a) Selection of witnesses for Committee hearings shall be made by the Committee staff under the direction of the Chairman. A list of proposed witnesses shall be submitted to the members of the Committee for review sufficiently in advance of the hearings to permit suggestions by the Committee members to receive appropriate consideration.

(b) The Chairman shall provide adequate time for questioning of witnesses by all members, including minority members, and the rule of germaneness shall be enforced in all hearings.

(c) Whenever a hearing is conducted by the Committee upon any measure or matter, the minority of the Committee shall be entitled, upon unanimous request to the Chairman before the completion of such hearings, to call witnesses selected by the minority to testify with respect to the measure or matter during at least one day of hearing thereon.

RULE 11—CONFIDENTIAL INFORMATION FURNISHED TO THE COMMITTEE

The information contained in any books, papers or documents furnished to the Committee by any individual, partnership, corporation or other legal entity shall, upon the request of the individual, partnership, corporation or entity furnishing the same, be maintained in strict confidence by the members and staff of the Committee, except that any such information may be released outside of executive session of the Committee if the release thereof is affected in a manner which will not reveal the identity of such individual, partnership, corporation or entity in connection with any pending hearing or as a part of a duly authorized report of the Committee if such release is deemed essential to the performance of the functions of the Committee and is in the public interest.

RULE 12—BROADCASTING OF COMMITTEE HEARINGS

The rule for broadcasting of Committee hearings shall be the same as Rule XI, clause 3, of the Rules of the House of Representatives.

RULE 13—COMMITTEE REPORTS

(a) No Committee report shall be made public or transmitted to the Congress without the approval of a majority of the Committee except when Congress has adjourned; Provided, that any member of the Committee may make a report supplementary to or dissenting from the majority report. Such supplementary or dissenting reports should be as brief as possible.

(b) Factual reports by the Committee staff may be printed for distribution to Committee members and the public only upon authorization of the chairman either with the approval of a majority of the Committee or with the consent of the ranking minority member.

RULE 14—CONFIDENTIALITY OF COMMITTEE REPORTS

No summary of a Committee report, prediction of the contents of a report, or statement of conclusions concerning any investigation shall be made by a member of the Committee or by any staff member of the Committee prior to the issuance of a report of the Committee.

RULE 15—COMMITTEE STAFF

(a) The Committee shall have a professional and clerical staff under the supervision of a staff director. Staff operating procedures shall be determined by the staff director, with the approval of the chairman of the Committee, and after notification to the ranking minority member with respect to basic revisions of existing procedures. The staff director, under the general supervision of the chairman, is authorized to deal directly with agencies of the Government and with non-Government groups and individuals on behalf of the Committee.

(b) The chairman and vice chairman, on behalf of their respective bodies of Congress, shall be entitled to designate two senior staff members each. During any Congress in which both Houses are under the control of the same party, the ranking minority member, on behalf of his party, shall be entitled to designate two senior staff members.

(c) All other staff members shall be selected on the basis of their training, experience and attainments, without regard to race, religion, sex, color, age, national origin or political affiliations, and shall serve all members of the Committee in an objective, non-partisan manner.

RULE 16—COMMITTEE CHAIRMAN

The chairman of the Committee may establish such other procedures and take such actions as may be necessary to carry out the foregoing rules or to facilitate the effective operation of the Committee. Specifically, the chairman is authorized, during the interim periods between meetings of the Committee, to act on all requests submitted by any executive department, independent agency, temporary or permanent commissions and committees of the Federal Government, the Government Printing Office and any other Federal Government, the Government Printing Office and any other Federal entity, pursuant to the requirements of applicable Federal law and regulations.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LOBIONDO (at the request of Mr. ARMEY) until 4 p.m. today, on account of a medical emergency.

Mrs. CUBIN (at the request of Mr. ARMEY) after 2:50 p.m. today through tomorrow, on account of surgery.

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 Mr. KENNEDY of Rhode Island) to revise and extend their remarks and include extraneous material:)

Mr. WYNN, for 5 minutes, today.

Mr. VOLKMER, for 5 minutes, today.

Mrs. CLAYTON, for 5 minutes, today.

Mr. SANDERS, for 5 minutes, today.

Mr. FIELDS of Louisiana, for 5 minutes, today.

Mr. HOYER, for 5 minutes, today.

(The following Members (at the request of Mr. TALENT) to revise and extend their remarks and include extraneous material:)

Mr. ENSIGN, for 5 minutes, today.

Mr. WHITFIELD, for 5 minutes, today.

Mr. BRYANT of Tennessee, for 5 minutes, today.

Mr. KINGSTON, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. HAYWORTH, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. FROST, to include extraneous matter in the CONGRESSIONAL RECORD, on House Resolution 109, in the House today.

(The following Members (at the request of (Mr. KENNEDY of Rhode Island) and to include extraneous matter:)

Mr. MATSUI in two instances.

Mr. ABERCROMBIE.

Mr. GEJDENSON.

Mr. LANTOS.

Mrs. LOWEY.

Mr. WAXMAN.

Mr. ACKERMAN.

Ms. KAPTUR.

Mr. HASTINGS of Florida.

Mr. HAMILTON.

Mr. MANTON.

Mr. RICHARDSON.

Ms. ESHOO in three instances.

Mr. PALLONE.

(The following Members (at the request of Mr. TALENT) and to include extraneous matter:)

Mr. COMBEST.

Mr. STUMP.

Mr. KIM.

Mr. PETRI.

Mr. NEY.

Mr. BILBRAY.

Mr. BARR.

ADJOURNMENT

Mr. SHAYS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 10 minutes p.m.), the House adjourned until tomorrow, Friday, March 10, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

509. A communication from the President of the United States, transmitting the fifth monthly report on the situation in Haiti, pursuant to 50 U.S.C. 1541 note; to the Committee on International Relations.

510. A communication from the President of the United States, transmitting a report on the status of efforts to obtain Iraq's compliance with the resolutions adopted by the U.N. Security Council, pursuant to Public Law 102–1, section 3 (105 Stat. 4); to the Committee on International Relations.

511. A communication from the President of the United States, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

512. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of the Department's intent to reprogram certain fiscal year 1995 funds made available to monitor the cease-fire between Ecuador and Peru, pursuant to Public Law 103–306, section 515; to the Committee on International Relations.

513. A letter from the Auditor, District of Columbia, transmitting a copy of a report entitled ''Audit of the Operations of the Office of the Campaign Finance,'' pursuant to D.C. Code, section 47–117(d); to the Committee on Government reform and Oversight.

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. YOUNG of Alaska: Committee on Resources. H.R. 402. A bill to amend the Alaska Native Claims Settlement Act, and for other purposes (Rept. 104–73). 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. CAMP (for himself and Mr. LEVIN):

H.R. 1178. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of effectively connected investment income of insurance companies; to the Committee on Ways and Means.

By Mr. CLEMENT (for himself and Mr. DUNCAN):

H.R. 1179: A bill to authorize appropriations for the preservation and restoration of historic buildings at historically black colleges and universities; to the Committee on Resources.

By Mr. UPTON (for himself, Mr. BOUCHER, and Mr. BONIOR):

H.R. 1180. A bill to amend the Solid Waste Disposal Act to provide congressional authorization for restrictions on receipt of out-of-State municipal solid waste and for State control over transportation of municipal solid waste, and to clarify the authority for certain municipal solid waste flow control arrangements, and for other purposes; to the Committee on Commerce.

By Mr. FLAKE:

H.R. 1181. A bill to strengthen families receiving aid to families with dependent children through education, job training, savings, and investment opportunities, and to provide States with greater flexibility in administering such aid in order to help individuals make the transition from welfare to employment and economic independence; to the Committee on Ways and Means.

By Mr. FRANK of Massachusetts:

H.R. 1182. A bill to permit certain Federal employees who retired or became entitled to receive compensation for work injury before December 9, 1980, to elect to resume coverage under the Federal employees' group life insurance program; to the Committee on Government Reform and Oversight.

By Mrs. MALONEY:

H.R. 1183. A bill to amend title II of the Social Security Act to provide more appropriate remedies for failures to report information relating to the earnings test; to the Committee on Ways and Means.

By Mr. MCCOLLUM (for himself, Mr. LEACH, Mrs. ROUKEMA, Mr. BEREUTER, Mr. ROTH, Mr. BAKER of Louisiana, Mr. LAZIO of New York, Mr. BACHUS, Mr. CASTLE, Mr. KING, Mr. ROYCE, Mr. WELLER, Mr. EHRLICH, Mr. CHRYSLER, Mr. CREMEANS, Mr. HEINEMAN, and Mr. LOBIONDO):

H.R. 1184. A bill to amend the Truth in Lending Act to clarify the intent of such act and to reduce burdensome regulatory requirements on creditors; to the Committee on Banking and Financial Services.

By Mr. MICA:

H.R. 1185. A bill to amend chapters 83 and 84 of title 5, United States Code, to increase the percentage of basic pay required to be contributed by individuals; to change the method for computing average pay; and for other purposes; to the Committee on Government Reform and Oversight.

By Mr. OXLEY:

H.R. 1186. A bill to provide for the safety of journeymen boxers, and for other purposes; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Commerce, 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. PETRI (for himself (by request) and Mr. LAUGHLIN):

H.R. 1187. A bill to increase the safety for the public health and the environment by reducing the risks associated with the pipeline transportation of natural gas and hazardous liquids, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Commerce, 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. RAHALL:

H.R. 1188. A bill to provide for the preservation of the coal mining heritage of southern West Virginia, and for other purposes; to the Committee on Resources.

By Mr. SCHUMER:

H.R. 1189. A bill to prohibit arms transfers and other military assistance to certain countries unless the President certifies that a state of war does not exist between the country concerned and Israel and that such country has accorded formal recognition to the sovereignty of Israel; to the Committee on International Relations.

By Mr. SCHUMER (for himself, Mrs. MALONEY, Mr. NADLER, Ms. VELAZQUEZ, Mr. MANTON, Mr. ENGEL, Mrs. LOWEY, and Mr. TORRICELLI):

H.R. 1190. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of cooperative housing corporations; to the Committee on Ways and Means.

By Mr. SCHUMER:

H.R. 1191. A bill to prohibit insurers from denying health insurance coverage or benefits or varying premiums based on the status of an individual as a victim of domestic violence, and for other purposes; to the Committee on Commerce, and in addition to the Committees on the Judiciary, and Economic and Educational Opportunities, 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.

H.R. 1192. A bill to amend the Export Administration Act of 1979 to grant a private right of action to persons injured by reason of a violation of the antiboycott provisions, and for other purposes; to the Committee on International Relations, and in addition to the Committee on the Judiciary, 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.

H.R. 1193. A bill to require that the United States Government hold certain discussions and report to the Congress with respect to the secondary boycott of Israel by Arab countries; to the Committee on International Relations, and in addition to the Committee on Ways and Means, 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. SHAYS (for himself and Mr. PARKER):

H.R. 1194. A bill to require recreational camps to report information concerning deaths and certain injuries and illnesses to the Secretary of Health and Human Services, to direct the Secretary to collect the information in a central data system, to establish a President's Advisory Council on Recreational Camps, and for other purposes; to the Committee on Economic and Educational Opportunities.

By Mr. STUMP (for himself, Mr. CALLAHAN, and Mr. EVERETT):

H.R. 1195. A bill to impose certain requirements on health care liability claims; to the Committee on the Judiciary.

By Mr. MCDERMOTT (for himself, Mr. WAXMAN, Mr. CONYERS, Mr. ABERCROMBIE, Mr. PAYNE of New Jersey, Ms. VELAZQUEZ, Mr. OBERSTAR, Mr. STARK, Mr. SCOTT, Mr. VENTO, Mr. GONZALEZ, Mr. YATES, Mr. DELLUMS, Mr. BECERRA, Ms. WOOLSEY, Mr. SANDERS, Mr. MARTINEZ, Mr. DIXON, Mr. OLVER, Mrs. COLLINS of Illinois, Mr. GIBBONS, Mr. WATT of North Carolina, Mr. GUTIERREZ, Mr. HINCHEY, Mr. EVANS, Mr. ENGEL, Mr. FRANK of Massachusetts, Ms. PELOSI, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MILLER of California, Mr. COYNE, Mr. SABO, Mr. CLAY, Mr. BERMAN, Mrs. MEEK of Florida, Mr. TORRES, Mr. OWENS, Mr. SCHUMER, Mr. STOKES, Mr. ROMERO-BARCELO, Mr. LEWIS of Georgia, Mr. STUDDS, Mr. TOWNS, Mr. NADLER, Ms. NORTON, Mr. FATTAH, Mr. SERRANO, Mr. FORD, Mr. RANGEL, Mrs. MINK of Hawaii, Mr. FRAZER, Ms. RIVERS, Mr. FLAKE, Mr. MOAKLEY, Mr. KENNEDY of Massachusetts, and Ms. WATERS):

H.R. 1200. A bill to provide for health care for every American and to control the cost and enhance the quality of the health care system; to the Committee on Commerce, and

in addition to the Committees on Ways and Means, Government Reform and Oversight, National Security, and Veterans' Affairs, 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. ENGEL (for himself, Mr. MCCOLLUM, Mr. ANDREWS, Mr. LINDER, and Mr. PALLONE):

H. Con. Res. 35. Concurrent resolution expressing the sense of the Congress that Pakistan should be designated as a state sponsor of terrorism; to the Committee on International Relations.

By Mr. SCHUMER:

H. Con. Res. 36. Concurrent resolution concerning the 3,000th anniversary of King David's establishment of Jerusalem as the capital of the Jewish kingdom; to the Committee on International Relations.

H. Con. Res. 37. Concurrent resolution concerning the 28th anniversary of the reunification of Jerusalem; to the Committee on International Relations.

By Mr. GONZALEZ (for himself, Mr. LAFALCE, Mr. VENTO, Mr. SCHUMER, Mr. KENNEDY of Massachusetts, Mr. FLAKE, Mr. MFUME, Ms. WATERS, Mr. SANDERS, Mrs. MALONEY, Mr. GUTIERREZ, Ms. ROYBAL-ALLARD, Mr. BARRETT of Wisconsin, Ms. VELAZQUEZ, Mr. WYNN, Mr. FIELDS of Louisiana, Mr. WATT of North Carolina, Mr. HINCHEY, and Mr. ACKERMAN):

H. Res. 110. Resolution affirming the support of the House of Representatives for the American consumer banking bill of rights; to the Committee on Banking and Financial Services.

By Mr. STOCKMAN:

H. Res. 111. Resolution providing for consideration of the bill (H.R. 807) to protect the Constitution of the United States from unauthorized encroachment into legislative powers by the executive branch, and to protect the American taxpayer from unauthorized encroachment into his wallet by an unconstitutional action of the President; to the Committee on Rules.

H. Res. 112. Resolution providing for consideration of the bill (H.R. 807) to protect the Constitution of the United States from unauthorized encroachment into legislative powers by the executive branch, and to protect the American taxpayer from unauthorized encroachment into his wallet by an unconstitutional action of the President; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mrs. FOWLER:

H.R. 1196. A bill to extend the deadline for the conversion of the vessel M/V *Twin Drill;* to the Committee on Transportation and Infrastructure.

By Mr. KENNEDY of Rhode Island:

H.R. 1197. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for each of 10 vessels, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. REED:

H.R. 1198. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle;* to the Committee on Transportation and Infrastructure.

H.R. 1199. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the fisheries for the vessel *Aboriginal;* to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 44: Mr. MCDERMOTT, Mr. OBERSTAR, Mr. ORTON, Mr. MINETA, and Ms. LOWEY.

H.R. 62: Mr. BAKER of California.

H.R. 70: Mr. POSHARD.

H.R. 118: Mr. HEINEMAN and Mr. HERGER.

H.R. 127: Mrs. KELLY, Mr. PAXON, Mr. OBERSTAR, and Mr. FAWELL.

H.R. 139: Mr. PORTER.

H.R. 208: Mr. PAXON.

H.R. 224: Mr. EMERSON.

H.R. 244: Mr. QUINN, Mr. HINCHEY, Mr. TORRICELLI, Ms. VELAZQUEZ, Mr. KLUG, Mr. MARTINI, and Mr. RUSH.

H.R. 248: Mr. GEJDENSON.

H.R. 485: Mr. FOX.

H.R. 553: Mr. MENENDEZ.

H.R. 559: Mr. SERRANO.

H.R. 567: Mr. BRYANT of Texas, Mr. FATTAH, and Ms. LOWEY.

H.R. 598: Mr. CALVERT, Mrs. LINCOLN, Mr. TIAHRT, Mr. GREENWOOD, Mr. KLUG, Mr. NORWOOD, Mr. TAYLOR of North Carolina, and Mr. MOORHEAD.

H.R. 613: Mr. LIPINSKI.

H.R. 739: Mr. BAKER of Louisiana.

H.R. 755: Ms. RIVERS and Mr. DEAL of Georgia.

H.R. 801: Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BALDACCI, Mr. BERMAN, Mr. BEILENSON, Mr. BISHOP, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CLAY, Mrs. CLAYTON, Mr. CONYERS, Mr. DEFAZIO, Mr. DELLUMS, Mr. DICKS, Mr. DICKEY, Mr. DIXON, Mr. ENGLE, Ms. ESHOO, Mr. EVANS, Mr. FARR, Mr. FIELDS of Louisiana, Mr. FILNER, Mr. FROST, Ms. FURSE, Mr. PETE GEREN of Texas, Mr. HILLIARD, Mr. HOLDEN, Mr. HOYER, Ms. JACKSON-LEE, Ms. KAPTUR, Mr. LEWIS of Georgia, Mr. LIPINSKI, Ms. LOFGREN, Ms. LOWEY, Mrs. MALONEY, Mr. MATSUI, Mr. MCHALE, Ms. MCKINNEY, Mrs. MEEK of Florida, Mr. MEEHAN, Mr. MFUME, Mrs. MINK of Hawaii, Mr. MINETA, Mr. NADLER, Mr. NEAL of Massachusetts, Mr. OLVER, Mr. PASTOR, Ms. PELOSI, Mr. POMEROY, Mr. PORTER, Mr. RAHALL, Mr. RICHARDSON, Ms. RIVERS, Ms. ROYBAL-ALLARD, Mr. ROEMER, Mr. SABO, Mr. SANDERS, Mr. SAWYER, Mr. SERRANO, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SPRATT, Mr. STARK, Mr. STUDDS, Mr. STUPAK, Mr. TAYLOR of North Carolina, Mr. TRAFICANT, Ms. VELAZQUEZ, Mr. VENTO, Mr. VOLKMER, Mr. WYNN, and Mr. WICKER.

H.R. 809: Mr. FOX.

H.R. 914: Mr. OBEY, Mr. FRANK of Massachusetts, and Mr. BEREUTER.

H.R. 977: Mr. PAXON.

H.R. 987: Mr. SKEEN, Mr. GENE GREEN of Texas, Mr. FROST, and Mr. ROGERS.

H.R. 1000: Mr. BORSKI, Mr. FATTAH, Ms. LOWEY, Mr. MCDERMOTT, Mrs. MALONEY, Mr. MINETA, and Mr. PETERSON of Minnesota.

H.R. 1020: Mr. SPRATT, Mr. FAWELL, Mr. PETERSON of Florida, Mr. CANADY, and Mr. PORTER.

H.R. 1066: Mr. WALSH, Mr. PACKARD, and Mr. KNOLLENBERG.

H.R. 1085: Mr. JACOBS.

H.R. 1104: Mr. ROYCE, Mr. MEEHAN, Mr. HEINEMAN, Mr. MCINTOSH, Mr. MCINNIS, Mr. LAHOOD, and Mr. BLUTE.

H.R. 1110: Mr. KNOLLENBERG, Mr. HANCOCK, Mr. PORTER, Mr. KLUG, and Mr. BARTLETT of Maryland.

H.R. 1120: Mr. HEINEMAN, Mr. HOBSON, Ms. MOLINARI, and Mr. LIVINGSTON.

H.R. 1145: Mr. CUNNINGHAM and Ms. LOFGREN.

H.J. Res. 3: Mr. LAHOOD.

H. Con. Res. 12: Mrs. COLLINS of Illinois, Mr. DUNCAN, and Mr. STUMP.

H. Con. Res. 19: Mrs. CHENOWETH and Mr. CALVERT.

H. Res. 102: Mrs. MYRICK.

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. 1120: Mr. STEARNS.

PETITIONS, ETC.

Under clause 1 of rule XXII,

3. The Speaker presented a petition of Western Shoshone National Council, Indian Springs, NV, relative to the Shoshone nation reaffirmation of their sovereignty; which was referred to the Committee on Resources.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.J. RES. 2

OFFERED BY: MR. HOYER

AMENDMENT NO. 26: 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. 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. Any 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. ORTON

AMENDMENT NO. 27: 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—

''No person shall be elected to the office of Representative more than six times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than one year. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.''.

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 28: 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 it submission for ratification:

''ARTICLE—

''SECTION 1. The term of office of Representatives shall be four years and shall begin at noon on the third day of January of the year in which the term of office of the President begins.

''SECTION 2. No person shall be elected to the office of Representative more than three times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than two years. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.''.

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 29: 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 of 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.''.

''Person shall be elected to the office of Representative more than six times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than one year. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.''.