I do not think there is anyone who wants to stifle the creativity of these individuals. It is the misuse of the independent contractor status and its serious adverse effect on both employer and worker that concerns me.

My colleague, CHRIS SHAYS, and I became interested in the classification of workers several years ago when we served together on the Employment and Housing Subcommittee of the Government Operations Committee. We found that the current means of determining employment status has had several negative effects: First, it results in similarly situated employers being treated very differently under tax law; second, it allows—and actually encourages—businesses to undercut competitors through unfair practices; third, it leaves some workers exploited and unprotected; and fourth, it deprives the Federal Government of significant revenue.

Under current law, workers are classified as either employees or independent contractors in one of three ways. First, some workers are explicitly categorized as either employees or independent contractors by statute. Second, workers may be classified as independent contractors under statutory ''safe harbors'' enacted in section 530 of the Revenue Act of 1978. Third, if a worker is not classified statutorily, and cannot be classified under the statutory ''safe harbor,'' then the worker is classified by applying a very subjective common law test. Most workers fall under this third category.

Current law allows some employers to misclassify workers if they have a ''reasonable basis'' for classifying employees as independent contractors. Thus, an employer may rely upon a prior IRS audit, including audits not made for employment tax purposes, in holding a reasonable basis for classifying workers. It makes no sense to permit the wrongful classification of workers based on a previous audit which may have had nothing to do with the issue of worker classification. Our legislation eliminates the ''safe harbor'' provisions which allow the misclassification of employees to continue. We thus restore a level playing field and eliminate the unfair competitive advantages which arise due to the misclassification of workers.

Because the common law test is extremely subjective, employers have trouble in properly determining worker classification, and revenue agents often classify workers differently even where the underlying circumstances of their employment are the same. Since a large part of the misclassification of workers is due to a lack of understanding of the laws, clearer rulings and definitions will eliminate a tremendous amount of uncertainty in this area. Our legislation eliminates the restrictions on the IRS to draft regulations and rulings on the employment status of workers for tax purposes.

Employers who have unintentionally misclassified workers should be given the incentive to come into compliance. Therefore, our legislation offers a 1-year amnesty to employers who have misclassified workers on the basis of a good faith interpretation of common law or of section 503. This provision removes the devastating possibility of large assessments for back taxes, interest and penalties and insures compliance in the future.

Misclassification can have a devastating effect on the unsuspecting worker. As a contractor, he or she may receive a higher take-home pay and may be allowed to deduct more business expenses from income taxes. But the loss of financial benefits and of the many protections which are provided to employees can be catastrophic in cases of illness, unemployment and retirement. For example, there is no unemployment compensation for the independent contractor to fall back on between jobs. Health insurance is an individual responsibility and is usually far more costly than an employer's group policy. In the case of work-related injury or illness, there is no worker's compensation available. Our legislation would require prime contractors to notify legitimate independent contractors of all their tax obligations and other statutory rights and protections.

Mr. Speaker, our investigation found that the economic incentives for businesses to misclassify workers as independent contractors are huge. An employer who misclassifies a worker as an independent contractor escapes many obligations, including paying social security taxes, unemployment taxes and workers compensation insurance, withholding income taxes and providing benefits such as vacation, sick and family leave, health and life insurance, pensions, et cetera. Most employers are honest, but the law abiding employer is put at a serious disadvantage since he or she cannot compete on a level playing field with those who illegally cut their labor costs. Law abiding employers will not be able to compete fairly until we provide more clear, objective standards by which businesses and the Government can determine whether an individual is an employee or an independent contractor.

Lastly, Mr. Speaker, billions of dollars in Federal and State tax revenues are being lost as a result of the intentional misclassification of workers. This is one of the few remaining areas where we can help balance the Federal budget deficit without further cutting Government services or levying new taxes. A recent Coopers and Lybrand study found that at least $35 billion in legitimate tax revenue over the next 9 years will be lost by the Federal Government due to the misclassification of employees. At a time when critical services are on the chopping block, we can no longer allow this waste and abuse to continue. We must take steps to curb the continued misclassification of employees.

H.R. 10

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. HASTINGS. Mr. Speaker, H.R. 10 will strip American citizens of their ability to hold wrongdoers accountable and, when necessary, to punish reckless or other outrageous behavior on the part of manufacturers of dangerous products.

There is no explosion in punitive damages claims. In fact, such claims are extremely rare. In one comprehensive study conducted by the U.S. Supreme Court, only 355 punitive damage awards in product liability cases have been awarded over the last 25 years, and a number of those involved asbestos.

Mr. Speaker, Americans would be much worse off if they were unable to hold wrongdoers accountable. Punitive damages make Americans safer and have removed from the market products like flammable children's pajamas, asbestos, and the Dalkon shield. H.R. 10 is unwise and unnecessary.

TRIBUTE TO THE DISTINGUISHED WOMEN ELECTED OFFICIALS OF CALIFORNIA'S 14TH CONGRESSIONAL DISTRICT

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. ESHOO. Mr. Speaker, I rise today during National Women's History Month to salute the remarkable women of California's 14th Congressional District who have been elected to govern it.

This year, as we celebrate the 75th anniversary of women's suffrage, it is fitting that we honor those women who devote their time and talents to local and State government. The efforts and public service of these remarkable women provide our district with extraordinary leadership. While we take time during this month to commemorate historic women and their achievements, we also take this opportunity to honor the contributions women in government are currently making to our communities.

Our region is blessed with superbly capable women leaders. These distinguished women are: State Assemblywoman Jackie Speier; Mary Griffin of the San Mateo County Board of Supervisors; Blanca Alvarado and Dianne McKenna of the Santa Clara County Board of Supervisors; city council members Nanette Chapman and Mayor Dianne Fisher of Atherton; Nancy Levitt, Pam Rianda, and Mayor Adele Della Santina of Belmont; Barbara Koppel and Lauralee Sorenson of Cupertino; Mayor Rose Jacobs Gibson, Myrtle Walker, and Sharifa Wilson of East Palo Alto; Mayor Naomi Patridge and Deborah Ruddock of Half Moon Bay; Patricia Williams and Margaret Bruno of Los Altos; Toni Casey and Mayor Elayne Dauber of Los Altos Hills; Bernie Nevin of Menlo Park; Susan Ayers, Suzanne Hayes-Kane, and Angela Meyer of the Midcoast Community Advisory Council; Dena Bonnell, Mayor Patricia Figueroa, and Maryce Freelen of Mountain View; Liz Kniss, Jean McCown, Micki Schneider, and Lainie Wheeler of Palo Alto; Beverly Fields, Maeva Neale, and Meredith Reynolds of the Pescadero Municipal Advisory Council; Nancy Vian of Portola Valley; Judy Buchan, Mayor Daniela Gasparini, Georgia LaBerge, Diane Howard, and Janet Steinfeld of Redwood City; Sally Mitchell of San Carlos; Robin Parker, Frances Rowe, and Mayor Barbara Waldman of Sunnyvale; and Susan Crocker, Carol Fisch, and Barbara Seitle of Woodside.

Mr. Speaker, I ask my colleagues to join me in saluting these remarkable women and the extraordinary contributions they are making to their communities and our country. These gifted leaders are fitting representatives of the many women who make history every day, and their efforts on behalf of the people of California's 14th Congressional District are invaluable and appreciated by all.