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No. 46

## House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. KOLBE].

### DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
April 17, 1997.

I hereby designate the Honorable JIM KOLBE to act as Speaker pro tempore on this day.

NEWT GINGRICH,  
*Speaker of the House of Representatives.*

### PRAYER

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

We know, gracious God, that Your blessings can flood our hearts and give us vision for the new day if we are open to Your good grace and hear Your words of forgiveness and promise. With all the distractions of everyday life and with all the tasks before us, may Your eternal presence and Your reconciling spirit guide, guard, and gird us along life's way so that Your blessings touch us in the depths of our hearts and lead us in the way of truth. In Your name we pray. Amen.

### THE JOURNAL

The SPEAKER pro tempore. 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.

Ms. JACKSON-LEE of Texas. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Chair's approval of the Journal.

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

Ms. JACKSON-LEE of Texas. 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. Pursuant to the provisions of clause 5 of rule I, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

### PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Indiana [Mr. ROEMER] come forward and lead the House in the Pledge of Allegiance.

Mr. ROEMER 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 SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 1003. An act to clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide.

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 914. An act to make certain technical corrections in the Higher Education Act of 1965 relating to graduation data disclosures.

### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain ten 1-minutes on each side.

### ETHICS ASSESSMENT

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

Mr. DELAY. Mr. Speaker, for months the political opponents of Speaker GINGRICH have been on a singular mission to destroy him. That mission has failed.

Today, the Speaker has assured us of his intent to pay the full amount of his ethics assessment out of his own pocket. This is the responsible thing to do, and I support his decision and thank him for his sacrifice.

We can finally put an end to the sad display of bitter partisan attacks that we saw from the other side. They wanted to destroy the Speaker because they have no new ideas. They wanted to destroy him because they have nothing substantial to contribute to mainstream political dialog.

The American people want lower taxes and less Government. And they respect leaders who take responsibility when things go wrong, unlike what we see at the other end of Pennsylvania Avenue.

I applaud the Speaker. I respect the Speaker. I thank the Speaker.

### DEVELOPING FERTILE MINDS

(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, just a month ago on the front page of Time magazine, we have a cover story talking about our children in this country and new, brandnew research coming out how a child's brain develops fertile minds. We find that researchers across our great country are saying that the best time to learn a new language, to learn new things in our educational progress as people, might be between 0 and 5. That is what our researchers and

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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H1621

our parents and our educators are telling us.

At the White House today the President and the First Lady are convening a session on what we do and how we help our families get this information out there even more. But here in the House of Representatives, yesterday in our Committee on Appropriations, the Republicans proposed to slash WIC programs, which are for education and nutrition and development for our children and our families. What better contrast between the White House and our House of Representatives.

Let us invest in our children.

#### DOING THE RIGHT THING

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

Mr. BALLENGER. Mr. Speaker, today, Speaker GINGRICH is doing the right thing. The reimbursement that he is paying is not a fine. The committee itself makes it clear that the reimbursement of legal expenses are for costs only. The Committee on Standards of Official Conduct imposed no restrictions on how the reimbursement could be paid. Speaker GINGRICH could have used campaign funds to reimburse the committee. Others have done this, the gentleman from Missouri [Mr. GEPHARDT], the gentleman from Texas [Mr. FROST], former Congressman Rose.

Speaker GINGRICH could have used the NEWT GINGRICH trust fund approved by the committee for the stated purpose of paying the reimbursement. Instead, the Speaker chose to do the right thing by reimbursing the taxpayers and taking full responsibility with borrowed money under his own name. I commend Speaker GINGRICH for the effort that he is putting forward.

#### PUT EDUCATION FIRST

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

Mr. ETHERIDGE. Mr. Speaker, I rise today to call on the people's House to put education first on our Nation's agenda.

As a former two-term State superintendent in North Carolina, I know firsthand what can happen and what a difference a strong educational system can make in the lives of our people. My State has proven that bold, visionary leadership can make a difference tangibly in the lives of young people when we do the right thing.

Mr. Speaker, when students, parents, teachers, and communities get involved, strong improvement is the result of what happens. Several weeks ago, the rigorous NAEP scores came out, and in our State, North Carolina, students came out near the top in this country.

Mr. Speaker, as the first member of my family to graduate from college, I learned long ago the value of edu-

cational excellence. As a Congressman, I know how important education is to my constituents and to this Nation. We must provide safe healthy schools and we must do it now.

#### NEW DAY IN CONGRESS

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

Mr. SOLOMON. Mr. Speaker, today represents a new day in this Congress. The Speaker has accepted full responsibility for the reimbursement that is owed to the American people. It is now the duty of this Congress to move forward with our agenda, an agenda that the American people have asked us to implement.

That agenda signals a desire to put the country on a new path, a path of greater freedom, more personal responsibility and less interference from Washington. This represents a change in direction, Mr. Speaker. Most Americans agree that the country has been moving in a direction of bigger Government, higher taxes and a decay in the American spirit of unlimited possibilities.

I want to renew that spirit. It is a spirit that attracts over 1 million immigrants to our shores every year. It is a spirit that animates freedom lovers from Tiananmen Square to Moscow. It is a spirit that tells all American children that they can dream their dreams and grow up to be whatever they wish to be and soar to whatever heights their talents and efforts take them. Mr. Speaker, now let us move forward with that renewed spirit. I thank you for your leadership.

#### SPECIAL INTEREST MONEY IN THE PEOPLE'S HOUSE

(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, when will it ever end? When will it ever end with respect to special interest money and public policy in the people's House. Later today we will learn that Speaker GINGRICH will pay his fine for lying to Congress by borrowing it from Bob Dole, Bob Dole who was recently hired by big tobacco to get a settlement in the Congress of the United States for all of the people that tobacco has injured because of addiction and the cancer causing agent. We now have the chief lobbyists for big tobacco financing the payoff of the Speaker's fine for lying to the Congress.

Is there nothing that we cannot do without special interest money? Is there nothing that we cannot do that is on the level? Do we now have to bring in big tobacco to rescue the ethics of the Speaker of the House of Representatives?

This is a very sad day for the House of Representatives when the tobacco

industry is paying the legal fines of Members of Congress.

#### DO THE RIGHT THING

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

Mr. PAXON. Mr. Speaker, the American people have just witnessed a good example of how difficult it is in the environment of the House of Representatives on some days to do the right thing.

The Speaker is going to come to this floor very shortly and do the right thing, set the highest possible standard. He was not required to repay this reimbursement, not a fine, reimbursement for expenses, out of his own funds, but he is going to do so today to move this institution forward on the important agenda of the American people.

Now we just have a Member of this House come forward who decides he is going to continue this battle in the days ahead. That is a mistake. The gentleman who was just at the well is the man who said, NEWT GINGRICH has command and control of the Republicans and we are going to take him out.

Well, they did not take him out and the bitterness is showing today. Mr. GINGRICH, our Speaker, is stepping forward once again to set a high standard of personal responsibility, to pay this reimbursement out of his personal resources. I believe that every Member of this House should step forward and commend the Speaker for his action.

#### NO PRICE ON HONESTY

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

Mr. DOGGETT. Mr. Speaker, it has been said that no price can be placed on honesty, not \$3, not \$300,000.

After 3 months of carefully calculating every angle, of exploring fully the political calculus of every other alternative, the Speaker has reluctantly decided to do what law violators do in America every day: pay the fine for an offense on which a guilty plea was entered and a conviction found.

This decision, though belated, should be accepted by this House on both sides of the aisle, accepted but not applauded, not applauded any more than we would applaud the decision of a major polluter who had injured the public health and welfare through its pollution and then paid a fine for the conviction.

For pollution is what has occurred here, lies and deception that threaten the very fabric of our democracy. Nor does this payment remove other offenses that are still pending, some over 18 months. There is nothing noble about the payment of the fine. There is

something very ignoble about the conduct that produced it.

#### PRIDE IN THE SPEAKER

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

Ms. DUNN. Mr. Speaker, I must say, this is a fascinating debate. Finally we have somebody in this political maelstrom who does the right thing, who goes above and beyond fairness and does the right thing, as the Speaker of the House, and the other side cannot stand it.

I want to tell my colleagues, I am proud of the Speaker. I am proud to be associated with him. I am proud to be part of his leadership team. He did not have to pay this reimbursement for legal services, but he has chosen to do that to set a new standard.

□ 1015

It seems to me when we have a Speaker of the House that is willing to set a standard in the House of Representatives, maybe a standard the White House could take a little information from, we ought to praise him.

I tell my colleagues it is time for the American people, who have helped us to come to this decision, to come back with us and mesh in a partnership, take back the agenda of this House, get the problems solved, the problems we know that are hurting America today, and get off this politicized ethics process. We need to get back to the work at hand.

I call for bipartisanship, I call for great praise of the Speaker of the House.

#### ATTACKS ON ATTORNEY GENERAL JANET RENO UNJUSTIFIED

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

Mrs. KENNELLY of Connecticut. Mr. Speaker, I will do exactly as the gentlewoman suggests. I rise today to speak out for an honest woman, our Attorney General, Janet Reno. We have continued to expect much of her and she continues to conduct herself with grace under pressure and courage under fire.

I understand that many are concerned about her decision not to seek a special prosecutor at this time and, of course, that is their right, but I must speak out against the unjustified attacks on the Attorney General's motives.

Janet Reno knew that her decision would be controversial, so she has relied on the advice of a universally well-regarded team of career attorneys. She has resisted pressure from both sides, declining to act hastily. She has not shut down the investigation, which continues. In short, she has not rushed to judgment, and neither should her critics.

We are indeed fortunate to have a woman of such integrity, an honest woman, leading our Department of Justice.

#### SPEAKER GINGRICH TO COMPENSATE TAXPAYERS FOR COST OF ETHICS INVESTIGATION

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

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, I am one of the freshmen here. I have been here on the job for 4 months, and I had hoped to come to Washington and deal with the matters that my constituents and the people of the country expect us to deal with, cutting taxes, providing tax relief, balancing the budget, returning authority back to the States, and doing things of a noble nature, noble causes.

Instead, I have come here and heard the other side berate our Speaker day after day and try to discredit the institution of Congress for what I consider to be, instead, a rather noble cause and a courageous response.

The Speaker taught a college course on American civilization and disclosed the terms of that course to the Committee on Standards of Official Conduct, apparently not to the satisfaction of the committee. He reached an agreement, and in the process of that agreed to compensate the taxpayers for the cost of the hearings and the investigation.

He stood up to the task and he agreed to participate and to compensate the taxpayers: A courageous act. I ask the American people to contrast that act of courage with the cowardice that we have heard from those who would oppose the Speaker.

#### SPEAKER SHOULD NOT BE APPLAUDED FOR VIOLATING ETHICS LAWS OF HOUSE

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

Ms. DELAURO. Mr. Speaker, I cannot believe what I am hearing today from my Republican colleagues. The Speaker brought discredit upon this House; he admitted that he lied to the Congress. Republicans are celebrating the fact that the gentleman from Georgia, NEWT GINGRICH, is paying a \$300,000 fine for lying to Congress.

There is nothing to celebrate, my friends. The Speaker should not be applauded for violating the ethics law of this body. He should not be applauded for paying this fine after delaying for 4 months. Any American citizen would have had to pay that fine immediately.

The facts on his payment remain sketchy. Is it a loan or a \$350,000 gift from the chief lobbyist of the tobacco industry? Let us not forget, let us not forget that the Speaker pled guilty. It is nothing to celebrate. It is, in fact, a

sad day for the House of Representatives.

#### SPEAKER GINGRICH DID NOT LIE TO CONGRESS

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

Mrs. FOWLER. Mr. Speaker, I have to take umbrage with the comments from my good friend and colleague, the gentlewoman from Connecticut [Ms. DELAURO]. She is totally inaccurate. The Speaker did not lie to the American Congress.

The Committee on Standards of Official Conduct found that the Speaker broke no rules, broke no regulations. The only thing was that due diligence was not exercised in committee correspondence. That is all. This is a fact. Read through the Committee on Standards of Official Conduct finding.

This is a reimbursement for the expenses incurred by that committee, and I commend our Speaker. It is a courageous step he has taken today to accept full personal responsibility, reimbursing the expenses of the Committee on Standards of Official Conduct out of his own personal funds. I think this is a great step for him to take. He has said as Speaker that he has the responsibility to do the right thing and to serve the American people responsibly.

Senator Bob Dole, who was given the Presidential Medal of Freedom by President Clinton, has stepped forward to help a friend. And Bob Dole is not a registered lobbyist, contrary to what the other side has been saying today. He is helping a friend.

So we all need to get together now and move forward and do the work the American people sent us here to this Congress to do.

#### CONGRESS SHOULD DO A BETTER JOB FOR THE AMERICAN PEOPLE

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, there is a need for us to do a much better job on behalf of the American people.

Monday, the Speaker of the House attacked the integrity of the Attorney General because she refused to appoint a special prosecutor, when it was clear that there were individuals with integrity in the Justice Department doing the right thing.

Then on Wednesday, in this House and in a committee, we provided for 350,000 children not to have food by voting against an increase in the WIC Program.

Now, on Thursday, we come today to find that Members have risen to the floor of the House to say that the Speaker has not violated any rules; that there is no problem with the way

he might be paying back this loan; that there is no question on how he would be repaying it and what the structure of the loan might be.

I would say that the American people are telling us we can do a much better job for them. We can recognize when rules have been broken, when the rules of the Committee on Standards of Official Conduct have been broken. We can recognize there is a need to directly pay back a loan from personal funds.

I believe the American people are saying we can do a much better job for us, and we should say just do it.

#### SPEAKER GINGRICH UNDERSTANDS PRINCIPLE OF LEADERSHIP

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

Mr. THUNE. Mr. Speaker, leadership is about many things. One vital aspect of leadership is setting the right example. The Speaker's decision today tells all Members of Congress and the American people that the gentleman from Georgia, NEWT GINGRICH understands this principle of leadership.

The Speaker did not have to take the action he is taking. Indeed, it goes beyond the actions required of other Members of Congress. The Speaker is recognizing a higher standard in sending a clear signal to all that courage and responsibility are essentials of leadership.

The Speaker's courageous decision today brings closure to this matter and allows the Congress to focus on the priorities of the American people. The American people are waiting for Congress to implement the agenda that the majority of voters have expressed a wish to see pursued. Let us move forward today and pursue that agenda.

#### GET CAMPAIGN FINANCE REFORM LEGISLATION PASSED THIS YEAR

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

Mr. KIND. Mr. Speaker, I come to the House floor after completing a meeting of a bipartisan task force on campaign finance reform. It is a freshman task force, six Democrats, six Republicans, working together to try to advance some comprehensive campaign finance reform.

We are taking baby steps. It is a complex, difficult process, but we realize that as freshmen, as new Members of this institution, we are not going to be able to do it on our own. I am here today to ask for the leadership in this Congress to take a lead on this issue, to start responding to the calls for help from the American people and figure out a way to get big money out of the American political process.

I wish I had a magic wand as a freshman and could wave over this House

and get one piece of legislation passed this year, and that is campaign finance reform. We are running out of precious time. We have an off election year. We have to do it in a bipartisan fashion to be successful before we get into another election year cycle.

The people back home in western Wisconsin, the district I represent, have a common refrain. They beg me every time I have town hall meetings to get campaign finance reform passed and to get big money out of politics. Let us start the work now.

#### CONGRESS SHOULD BE MOVING FORWARD TO HELP THE AMERICAN PUBLIC

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

Mr. FOLEY. Mr. Speaker, I am amazed at the hypocrisy of this Chamber. The minority leader had a similar circumstance—a similar fine levied against him by the Federal Election Committee. He paid out of campaign funds. So, while he paid his fine out of campaign funds, we hear this hue and cry from the other side that the gentleman from Georgia [Mr. GINGRICH] is somehow doing wrong.

Had he borrowed the money from the bank, there would have been further questions about the bank's involvement with those funds. The Speaker has done the honorable thing by stepping forward and paying out of his own proceeds.

The gentleman from Florida [Mr. DEUTSCH], offers a privileged resolution wanting interest payments on the fine. The gentleman from Florida, when he ran for this job, loaned his own campaign \$300,000. Upon his election to this Chamber, he went to the PAC community and solicited funds from them in order to repay the loan to himself. Does the American public have the opportunity to go to PAC's to repay their loans as he used a little special-interest venture capital to finance his run for office? Absolutely not. The gentleman from Florida does, and then he files a resolution asking for the payment of interest.

Mr. Speaker, we are putting this behind us and we are moving forward to help the American people.

#### SPEAKER'S COMPENSATION FOR COST OF ETHICS INVESTIGATION

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

Mr. LEWIS of Georgia. Mr. Speaker, I am surprised to see my Republican colleagues on the floor today congratulating Speaker NEWT GINGRICH for doing something he should have done months ago, paying \$300,000 for lying to Congress.

Speaker GINGRICH admitted to bringing discredit on the House of Rep-

resentatives. He has admitted to lying to this House.

Mr. SOLOMON. Mr. Speaker, I ask the gentleman's words be taken down.

The SPEAKER pro tempore (Mr. KOLBE). The gentleman will suspend. The gentleman from Georgia will be seated.

□ 1030

The SPEAKER pro tempore (Mr. KOLBE). The Clerk will report the words.

The Clerk read as follows:

I am surprised to see my Republican colleagues on the floor today congratulating Speaker NEWT GINGRICH for doing something he should have done months ago, paying \$300,000 for lying to Congress. Speaker GINGRICH admitted to bringing discredit on the House of Representatives. He has admitted to lying to this House.

The SPEAKER pro tempore. The Chair is prepared to rule.

The words of the gentleman from Georgia constitute a personality against the Speaker. Under the precedents, the debate should not go to the official conduct of a Member where that question is not pending as a question of privilege on the House floor. The fact that the House has addressed a Member's conduct at a prior time does not permit this debate at this time. Therefore, the gentleman's words are out of order.

Without objection, the gentleman's words will be stricken from the RECORD.

Mr. DOGGETT. Mr. Speaker, I object. The SPEAKER pro tempore. Objection is heard.

The question before the House is: Shall the gentleman's words be stricken from the RECORD?

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 227, noes 190, answered "present" 3, not voting 12, as follows:

[Roll No. 82]

AYES—227

Aderholt	Burr	Davis (VA)
Archer	Burton	Deal
Armey	Buyer	DeLay
Bachus	Callahan	Diaz-Balart
Baker	Calvert	Dickey
Ballenger	Camp	Doolittle
Barr	Campbell	Dreier
Barrett (NE)	Canady	Duncan
Bartlett	Cannon	Dunn
Barton	Castle	Ehlers
Bass	Chabot	Ehrlich
Bateman	Chambliss	Emerson
Bereuter	Chenoweth	English
Bilbray	Christensen	Ensign
Bilirakis	Coble	Everett
Bliley	Coburn	Ewing
Blunt	Collins	Fawell
Boehlert	Combest	Foley
Boehner	Cook	Forbes
Bonilla	Cooksey	Fowler
Bono	Cox	Fox
Brady	Crapo	Franks (NJ)
Bryant	Cubin	Frelinghuysen
Bunning	Cunningham	Gallegly

Ganske Lewis (KY)  
 Gekas Linder  
 Gibbons Livingston  
 Gilchrest LoBiondo  
 Gillmor Lucas  
 Gilman Luther  
 Goodlatte Manzullo  
 Goodling McCollum  
 Goss McCrery  
 Graham McDade  
 Granger McHugh  
 Greenwood McInnis  
 Gutknecht McIntosh  
 Hall (OH) McKeon  
 Hansen Metcalf  
 Hastert Mica  
 Hastings (WA) Miller (FL)  
 Hayworth Minge  
 Hefley Molinari  
 Hergert Moran (KS)  
 Hill Myrick  
 Hilleary Nethercutt  
 Hobson Neumann  
 Hoekstra Ney  
 Horn Northrup  
 Hostettler Norwood  
 Houghton Nussle  
 Hulshof Oxley  
 Hunter Packard  
 Hutchinson Pappas  
 Hyde Parker  
 Inglis Paul  
 Jenkins Paxon  
 Johnson (CT) Thomas  
 Johnson, Sam Peterson (PA)  
 Jones Petri  
 Kasich Pickering  
 Kelly Pitts  
 Kim Pombo  
 Kind (WI) Porter  
 King (NY) Portman  
 Kingston Pryce (OH)  
 Klug Quinn  
 Knollenberg Radanovich  
 Kolbe Ramstad  
 LaHood Regula  
 Largent Riggs  
 Latham Riley  
 LaTourette Rogan  
 Lazio Rogers  
 Leach Rohrabacher  
 Lewis (CA) Ros-Lehtinen

NOES—190

Abercrombie Edwards  
 Ackerman Kleczka  
 Baesler Eshoo  
 Baldacci Etheridge  
 Barcia Evans  
 Barrett (WI) Farr  
 Becerra Fattah  
 Bentsen Fazio  
 Berry Filner  
 Bishop Flake  
 Blagojevich Foglietta  
 Blumenauer Ford  
 Bonior Frank (MA)  
 Borski Frost  
 Boswell Furse  
 Boucher Gejdenson  
 Boyd Gephardt  
 Brown (CA) Gonzalez  
 Brown (FL) Goode  
 Brown (OH) Gordon  
 Capps Green  
 Carson Gutierrez  
 Clay Hall (TX)  
 Clayton Hamilton  
 Clement Hastings (FL)  
 Clyburn Hefner  
 Condit Hilliard  
 Conyers Hinchey  
 Coyne Hinojosa  
 Cramer Holden  
 Cummings Hoolley  
 Danner Hoyer  
 Davis (FL) Jackson (IL)  
 DeFazio Jackson-Lee  
 DeGette (TX)  
 Delahunt Jefferson  
 DeLauro John  
 Dellums Johnson (WI)  
 Deutsch Johnson, E. B.  
 Dicks Kanjorski  
 Dingell Kaptur  
 Dixon Kennedy (MA)  
 Doggett Kennedy (RI)  
 Dooley Kennelly  
 Doyle Kildee

Pascrell Sanders  
 Pastor Sandlin  
 Payne Schumer  
 Pelosi Scott  
 Peterson (MN) Serrano  
 Pickett Sherman  
 Pomeroy Sisisky  
 Poshard Skelton  
 Price (NC) Slaughter  
 Rahall Smith, Adam  
 Rangel Snyder  
 Reyes Spratt  
 Rivers Stabenow  
 Roemer Stark  
 Rothman Stenholm  
 Roybal-Allard Stokes  
 Rush Strickland  
 Sabo Stupak  
 Sanchez Tanner

ANSWERED "PRESENT"—3

Berman Cardin Sawyer

NOT VOTING—12

Allen Davis (IL) Owens  
 Andrews Harman Schiff  
 Costello Istook Tierney  
 Crane Morella Whitfield

□ 1103

Mrs. MALONEY of New York, Ms. FURSE, and Mr. MOAKLEY changed their vote from "aye" to "no."

So the motion to strike the words was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. KOLBE). Without objection, the gentleman from Georgia [Mr. LEWIS] may proceed in order.

Mr. SOLOMON. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard from the gentleman from New York [Mr. SOLOMON].

MOTION OFFERED BY MR. DOGGETT

Mr. DOGGETT. Mr. Speaker, I move that the gentleman from Georgia [Mr. LEWIS] be allowed to proceed in order.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DOGGETT] that the gentleman from Georgia [Mr. LEWIS] be allowed to proceed in order.

Mr. SOLOMON. Mr. Speaker, I move to table the motion offered by the gentleman from Texas [Mr. DOGGETT].

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. SOLOMON] to lay on the table the motion offered by the gentleman from Texas [Mr. DOGGETT].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 223, noes 199, not voting 10, as follows:

[Roll No. 83]

AYES—223

Aderholt Baker Bartlett  
 Archer Ballenger Barton  
 Armey Barr Bass  
 Bachus Barrett (NE) Bateman

Bereuter Greenwood Peterson (PA)  
 Billray Gutknecht Petri  
 Billrakis Hansen Pickering  
 Bliley Hastert Pitts  
 Blunt Hastings (WA) Pombo  
 Boehlert Hayworth Porter  
 Boehner Hefley Portman  
 Bonilla Herger Pryce (OH)  
 Bono Hill Quinn  
 Brady Hilleary Radanovich  
 Bryant Hobson Ramstad  
 Bunning Hoekstra Regula  
 Burr Horn Riggs  
 Burton Hostettler Riley  
 Buyer Houghton Rogan  
 Callahan Hulshof Rogers  
 Calvert Hunter Rohrabacher  
 Camp Hutchinson Ros-Lehtinen  
 Campbell Hyde Roukema  
 Canady Inglis Royce  
 Cannon Jenkins Ryun  
 Castle Johnson (CT) Salmon  
 Chabot Johnson, Sam Sanford  
 Chambliss Jones Saxton  
 Chenoweth Kasich Scarborough  
 Christensen Kelly Schaefer, Dan  
 Coble Kim Schaffer, Bob  
 Coburn King (NY) Sensenbrenner  
 Collins Kingston Sessions  
 Combest Klug Shadegg  
 Cook Knollenberg Shaw  
 Cooksey Kolbe Shays  
 Cox LaHood Shimkus  
 Crapo Largent Shuster  
 Cubin Latham Skeen  
 Cunningham LaTourette Smith (MI)  
 Davis (VA) Lazio Smith (NJ)  
 Deal Leach Smith (OR)  
 DeLay Lewis (CA) Smith (TX)  
 Diaz-Balart Lewis (KY) Smith, Linda  
 Dickey Porter Snowbarger  
 Doolittle Livingston Solomon  
 Dreier LoBiondo Souder  
 Duncan Lucas Spence  
 Dunn Manzullo Stearns  
 Ehlers McCollum Stump  
 Ehrlich McCrery Sununu  
 Emerson McDade Talent  
 English McHugh Tauzin  
 Ensign McInnis Taylor (NC)  
 Everrett McIntosh Thomas  
 Ewing McKeon Thornberry  
 Fawell Metcalf Thune  
 Foley Mica Tiahrt  
 Forbes Miller (FL) Traficant  
 Fowler Molinari Upton  
 Fox Moran (KS) Walsh  
 Franks (NJ) Myrick Wamp  
 Frelinghuysen Nethercutt Watkins  
 Gallegly Neumann Watts (OK)  
 Ganske Ney Weldon (FL)  
 Gekas Northrup Weldon (PA)  
 Gibbons Norwood Weller  
 Gilchrest Nussle White  
 Gillmor Oxley Whitfield  
 Gilman Packard Wicker  
 Goodlatte Pappas Wolf  
 Goodling Parker Young (AK)  
 Goss Paul Young (FL)  
 Graham Paxon  
 Granger Pease

NOES—199

Abercrombie Clayton Etheridge  
 Ackerman Clement Evans  
 Allen Clyburn Fattah  
 Baesler Condit Fazio  
 Baldacci Conyers Filner  
 Barcia Coyne Flake  
 Barrett (WI) Cramer Foglietta  
 Becerra Cummings Ford  
 Bentsen Danner Frank (MA)  
 Berman Davis (FL) Frost  
 Berry Davis (IL) Furse  
 Bishop DeFazio Gejdenson  
 Blagojevich DeGette Gephardt  
 Blumenauer Delahunt Gonzalez  
 Bonior DeLauro Goode  
 Borski Dellums Gordon  
 Boswell Deutsch Green  
 Boucher Dicks Gutierrez  
 Boyd Dingell Hall (OH)  
 Brown (CA) Dixon Hall (TX)  
 Brown (FL) Doggett Hamilton  
 Brown (OH) Dooley Hastings (FL)  
 Capps Doyle Hefner  
 Cardin Edwards Hilliard  
 Carson Engel Hinchey  
 Clay Eshoo Hinojosa

Holden  
Hooley  
Hoyer  
Jackson (IL)  
Jackson-Lee  
(TX)  
John  
Johnson (WI)  
Johnson, E. B.  
Kanjorski  
Kaptur  
Kennedy (MA)  
Kennedy (RI)  
Kennelly  
Kildee  
Kilpatrick  
Kind (WI)  
Klecza  
Klink  
Kucinich  
LaFalce  
Lampson  
Lantos  
Levin  
Lewis (GA)  
Lipinski  
Lofgren  
Lowey  
Luther  
Maloney (CT)  
Maloney (NY)  
Manton  
Markey  
Martinez  
Mascara  
Matsui  
McCarthy (MO)  
McCarthy (NY)  
McDermott  
McGovern  
McHale

## NOT VOTING—10

Andrews  
Costello  
Crane  
Farr

□ 1121

So the motion to table was agreed to.  
The result of the vote was announced  
as above recorded.

A motion to reconsider was laid on  
the table.

ANNOUNCEMENT BY THE SPEAKER  
PRO TEMPORE

The SPEAKER pro tempore (Mr.  
KOLBE). The Chair announces that fur-  
ther 1-minute will be postponed until  
the end of the day.

REMOVAL OF NAME OF MEMBER  
AS COSPONSOR OF H.R. 963

Mr. WYNN. Mr. Speaker, I ask unani-  
mous consent to have my name re-  
moved as a cosponsor of H.R. 963.

The SPEAKER pro tempore. Is there  
objection to the request of the gen-  
tleman from Maryland?

There was no objection.

## THE JOURNAL

The SPEAKER pro tempore. Pursuant  
to clause 5 of rule I, the pending  
business is the question of the Speak-  
er's approval of the Journal.

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

## RECORDED VOTE

Mr. DAVIS of Virginia. Mr. Speaker,  
I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic de-  
vice, and there were—ayes 317, noes 100,  
not voting 15, as follows:

[Roll No. 84]

## AYES—317

Aderholt  
Allen  
Archer  
Armey  
Bachus  
Baesler  
Baker  
Ballenger  
Barr  
Barrett (NE)  
Barrett (WI)  
Bartlett  
Barton  
Bass  
Bateman  
Bentsen  
Bereuter  
Berman  
Bilbray  
Bilirakis  
Blagojevich  
Bliley  
Blumenauer  
Blunt  
Boehlert  
Boehner  
Bonilla  
Boswell  
Boucher  
Boyd  
Brady  
Brown (FL)  
Bryant  
Bunning  
Burr  
Burton  
Calvert  
Camp  
Campbell  
Canady  
Cannon  
Capps  
Cardin  
Carson  
Castle  
Chabot  
Chambliss  
Chenoweth  
Christensen  
Clayton  
Clement  
Coble  
Coburn  
Collins  
Combest  
Condit  
Conyers  
Cook  
Cooksey  
Cox  
Coyne  
Cramer  
Crapo  
Cubin  
Cummings  
Cunningham  
Danner  
Davis (IL)  
Davis (VA)  
Deal  
DeLay  
Diaz-Balart  
Dickey  
Dicks  
Dingell  
Dixon  
Dooley  
Doolittle  
Doyle  
Dreier  
Duncan  
Dunn  
Ehlers  
Ehrlich  
Emerson  
Etheridge  
Evans  
Everett  
Fawell  
Foley  
Forbes  
Fowler  
Fox  
Franks (NJ)  
Frelinghuysen  
Gallegly

Thomas  
Thornberry  
Thune  
Thurman  
Tiahrt  
Torres  
Towns  
Traficant  
Turner  
Upton

Vento  
Walsh  
Wamp  
Waters  
Watkins  
Watts (OK)  
Waxman  
Weldon (FL)  
Weldon (PA)  
Weygand

## NOES—100

Abercrombie  
Ackerman  
Baldacci  
Barcia  
Berry  
Bishop  
Bonior  
Borski  
Brown (OH)  
Buyer  
Callahan  
Clay  
Clyburn  
Davis (FL)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dellums  
Deutsch  
Doggett  
Edwards  
Engel  
English  
Ensign  
Fattah  
Fazio  
Filner  
Flake  
Foglietta  
Ford  
Frank (MA)  
Frost  
Furse

Gephardt  
Goode  
Green  
Gutierrez  
Hastings (FL)  
Hefley  
Hilliard  
Hinchee  
Hoyer  
Jackson (IL)  
Jackson-Lee  
(TX)  
Jefferson  
Johnson (WI)  
Johnson, E. B.  
Kanjorski  
Kennedy (RI)  
Kennelly  
Kilpatrick  
Kucinich  
LaFalce  
Lampson  
Lantos  
Levin  
Lewis (GA)  
Lipinski  
Maloney (NY)  
Markey  
McCarthy (NY)  
McDermott  
McGovern  
McNulty  
Meehan  
Meek

Menendez  
Millender  
McDonald  
Miller (CA)  
Neal  
Oberstar  
Olver  
Owens  
Pallone  
Pascrell  
Payne  
Pickett  
Pomeroy  
Poshard  
Ramstad  
Roemer  
Rush  
Sanchez  
Sherman  
Skaggs  
Slaughter  
Stabenow  
Stark  
Strickland  
Stupak  
Tauscher  
Taylor (MS)  
Thompson  
Velazquez  
Watt (NC)  
Weller  
Wexler  
Yates

## NOT VOTING—15

Andrews  
Becerra  
Bono  
Brown (CA)  
Costello

Crane  
Eshoo  
Ewing  
Farr  
Gekas

□ 1142

So the Journal was approved.  
The result of the vote was announced  
as above recorded.

COMMUNICATION FROM THE  
CLERK OF THE HOUSE

The SPEAKER laid before the House  
the following communication from the  
Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, April 17, 1997.

Hon. NEWT GINGRICH,  
*The Speaker, U.S. House of Representatives,*  
Washington, DC.

DEAR MR. SPEAKER: I have the honor to  
transmit herewith a copy of the original cer-  
tificate of election from the Honorable Anto-  
nio O. Garza, Jr., Secretary of State, State  
of Texas, indicating that, at a special run-off  
election held on Saturday, April 12, 1997, the  
Honorable Ciro D. Rodriguez was duly elected  
to the Office of Representative in Con-  
gress from the Twenty-eighth Congressional  
District, State of Texas.

With warm regards,

ROBIN H. CARLE.

SWEARING IN OF THE HONORABLE  
CIRO D. RODRIGUEZ OF TEXAS  
AS A MEMBER OF THE HOUSE

The SPEAKER. Will the Member-  
Elect, Mr. CIRO D. RODRIGUEZ, come  
forward, escorted by the Members of  
the Texas delegation.

Mr. RODRIGUEZ appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion, and that you will well and faithfully discharge the duties of the office on which you are about to enter. So help you God.

The SPEAKER. Congratulations, you are now a Member of the U.S. House of Representatives.

□ 1145

#### WELCOME CIRO D. RODRIGUEZ

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

Mr. GONZALEZ. Mr. Speaker, as the dean of the Texas delegation, it is a pleasure and a very great honor to introduce to the House our newest Member, the gentleman from Texas, CIRO D. RODRIGUEZ.

Not long ago, many of us mourned the tragic passing of our esteemed and loved colleague, Frank Tejeda. Yet, I think Frank would be happy to know that his work will be carried on by an individual like CIRO RODRIGUEZ.

Like Frank, Representative RODRIGUEZ has quite substantial legislative experience; and like Frank, he is a lifelong resident of the city of San Antonio. The gentleman also has that same deep commitment to the community, that same attachment to the people that he serves, and so I think we have in him a most worthy successor.

CIRO RODRIGUEZ served in the House of Representatives of the great State of Texas for 10 years and was an honored and valued member of that body right up to the time of his departure for today's swearing in. He was dean of the county's delegation and served with distinction on many committees, most particularly those that were related to public education.

He began his community service early. He was an educational consultant and he performed social work dealing with the problems of substance abuse and mental health concerns. He served on the local school board for 12 years before being elected to the Texas legislature.

Mr. Speaker, CIRO RODRIGUEZ brings to the House a deep knowledge of his community and long-seasoned experience in the House of Texas legislature. He brings to this House not only this knowledge and experience, but a heart filled with compassion and a soul filled with energy. He is ready to hit the ground running, and I feel certain that, beginning today, all of us will be finding that he is indeed a valued colleague and a very, very promising Member of the House.

I am very pleased and highly honored to introduce and welcome our newest Member.

#### READY TO BEGIN DUTIES AS NEW MEMBER OF HOUSE OF REPRESENTATIVES

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

Mr. RODRIGUEZ. Mr. Speaker, I know my colleagues put this function together just for me; right?

Let me first of all introduce my wife and my daughter. I want to ask them to stand up. Carolina, my wife, is a teacher, and we are real proud she got Teacher of the Year in San Antonio last year.

My daughter, Xochil. And my daughter, Xochil, is a 14-year-old. I also want to recognize some of the other members that have been real supportive, and I ask them to stand up for me today.

Let me just briefly thank my colleagues. There is no doubt that I am here with mixed emotions. I had the pleasure of being in high school when Congressman Tejeda was there, in the same high school in Harlandale. I had the pleasure of being in classes with him when we were in Saint Mary's University.

I also had the pleasure of being in the Texas House when he was in the Texas Senate. And I have had the pleasure of working on a variety of projects with him. And we all mourn the loss of Congressman Tejeda.

Today, I am also humbled in having been elected to this body. I know that my colleagues probably felt the same way I feel now, coming in, kind of in awe. It has not hit me yet. But I do want to thank all my fellow colleagues for allowing me to come in today and allowing my family to come in.

I do want to just indicate a few things. As I ran for office, one of the key things, one of the basic principles I have always had, when I ran for the school board 12 years ago, and I spent 12 years on the school board when I ran for the legislature, was that education is key.

I know President Kennedy once commented, in this same body 35 years ago, on the importance of human development, the importance of recognizing the individual, and in being able to do whatever we can to enhance the quality of that individual. I have always worked from that perspective.

I want to continue to work on that principle, that as far as I am concerned, as we move on to the next century, what is going to be the strength of this country is going to be its people, and we need to invest in ourselves and in our people. With that, come the investment in human development and investment in education and investment in training.

I want to take this opportunity to say it was a big honor for me growing up in San Antonio and having as my Congressman the gentleman from Texas, Congressman HENRY B. GONZALEZ. And for him to have given the introduction, I just want to thank him very much. I have always admired his hard work and his dedication.

So I say to my colleagues, I will be here representing the 28th Congressional District of the State of Texas, and I am looking forward to working with my colleagues. I will try to hit it running as quickly as I can. Muchas gracias.

#### QUESTION OF PERSONAL PRIVILEGE

Mr. GINGRICH. Mr. Speaker, I rise to a point of personal privilege.

The SPEAKER pro tempore. (Mr. KOLBE). The gentleman from Georgia [Mr. GINGRICH] is recognized for 1 hour.

Mr. GINGRICH. Mr. Speaker, I am standing here in the People's House at the center of freedom, and it is clear to me that for America to be healthy, our House of Representatives must be healthy. The Speaker of the House has a unique responsibility in this regard.

When I became Speaker of the House, it was the most moving day I could have imagined. It was the culmination of a dream. Little did I know that only 2 years later, I would go through a very painful time.

During my first 2 years as Speaker, 81 charges were filed against me. Of the 81 charges, 80 were found not to have merit and were dismissed as virtually meaningless. But the American public might wonder what kind of man has 81 charges brought against him?

Under our system of government, attacks and charges can be brought with impunity against a Congressman, sometimes with or without foundation. Some of these charges involved a college course I taught about renewing American civilization.

I am a college teacher by background. After years of teaching, it never occurred to me that teaching a college course about American civilization and the core values that have made our country successful could become an issue. However, as a precaution, I received the Committee on Standards of Official Conduct's approval in advance for teaching the course, and I accepted no payment for teaching the course.

Nonetheless, the course became embroiled in controversy. The most significant problem surfaced not from teaching the course but from answering the Committee on Standards of Official Conduct's inquiries.

Before the 1994 election, the committee asked questions, and I submitted a letter in response. The committee agreed that this letter was accurate. Later, I hired a law firm to assist me in answering additional questions coming from the committee. A letter developed by the law firm became the heart of the problem. I signed that letter, and it became the basis for a later, longer letter signed by an attorney. I was deeply saddened to learn almost 2 years later that these letters were inaccurate and misleading.

While the letters were developed and drafted by my former attorneys, I bear the full responsibility for them, and I accept that responsibility.

Those letters should not have been submitted. The members of the Committee on Standards of Official Conduct should never have to worry about the quality and accuracy of information that that committee receives. Mainly because these two letters contradicted my own earlier and correct letter, the Committee on Standards of Official Conduct spent a great deal of time and money to figure out exactly what happened.

For this time and effort, for which I am deeply sorry and deeply regret, I have agreed to reimburse the American taxpayers \$300,000 for legal expenses and costs incurred by the committee in its investigation.

It was the opinion of the committee and my own opinion that had accurate information been submitted in those two letters, the investigation would have ended much sooner with less cost to the taxpayer. It was not based on violation of any law or for the misuse of charitable contributions. There was no finding by the committee that I purposely tried to deceive anyone. To me, it simply seemed wrong to ask the taxpayers to pay for an investigation that should have been unnecessary. That is why I voluntarily agreed to reimburse the taxpayers.

Never before in history has a Member of Congress agreed to be responsible for the cost of an investigation conducted by a committee of the House. This \$300,000 reimbursement is not a fine, as some have asserted. The settlement itself and the report of the Committee on Standards of Official Conduct makes it clear that it is a reimbursement of legal expenses and costs only.

The committee and its special counsel did not stipulate how the reimbursement should be paid. One option is to pay completely with campaign funds. As a matter of law, the attorneys tell me there is little question that my campaign has the legal authority under existing law and committee rules to pay the reimbursement.

The second option is to pay by means of a legal defense fund. The committee has previously determined that Members may set up such a fund.

A third option is to sue the law firm and apply the proceeds to the reimbursement.

And the fourth option is to pay completely with personal funds.

As we considered these options, we sought to do what was right for the House as it relates to future precedents and for reestablishing the trust of the American people in this vital institution. My campaign could have paid the entire amount, and it would have been legal and within past precedents of the House. Yet, on reflection, it was clear that many Americans would have regarded this as another example of politics as usual and of avoiding responsibility.

□ 1200

A lawsuit against the lawyers who prepared the two documents is a future

possibility for me as a citizen, but that option could take years in court. A legal trust fund was in many ways the most appealing. There is more than adequate precedent for such a fund. Many friends from across the entire country had called to offer contributions. Many of my colleagues on both sides of the aisle felt that this was the safest approach. Yet on reflection it was clear that a legal trust fund would simply lead to a new controversy over my role.

I have a higher responsibility as Speaker to do the right thing in the right way and to serve responsibly. I also must consider what the personal payment precedent would mean to this House as an institution. Many Members in this Chamber, on both sides of the aisle, have raised serious concerns, citing the fear that a personal payment will establish a precedent that could financially ruin Members who were assessed costs incurred by special counsels. In the current environment, who could feel safe? There should be no precedent that penalizes the spouses and children of our Members, but that is what this option could effectively do. This is something we must address.

Yet the question still remains. What is the right decision for me and my wife personally, for my family, for this institution, and for the American people?

Marianne and I have spent hours and hours discussing these options. She is here too today. Let me just say that I have never been prouder of Marianne than over the last few months. Her ability to endure the press scrutiny, to live beyond the attacks, to enjoy life despite hostilities, has been a remarkable thing to observe and a wonderful thing to participate in. But she always came back to the same key question: What is the right thing to do for the right principles? Through the difficult days and weeks as we reviewed the options, it was the courage of her counsel which always led me to do my best. Marianne and I decided whatever the consequences, we had to do what was best, what was right, morally and spiritually. We had to put into perspective how our lives had been torn apart by the weight of this decision. We had to take into account the negative feelings that Americans have about government, Congress, and scandals. We had to take into account the responsibility that the Speaker of the House has to a higher standard.

That is why we came to the conclusion, of our own choice without being forced, that I have a moral obligation to pay the \$300,000 out of personal funds; that any other step would simply be seen as one more politician shirking his duty and one more example of failing to do the right thing.

Therefore, as a person of limited means, I have arranged to borrow the money from Bob Dole, a close personal friend of impeccable integrity, and I will personally pay it back. The taxpayers will be fully reimbursed. The

agreement will be completely honored. The integrity of the House ethics process will have been protected. This is my duty as Speaker, and I will do it personally.

I will also ask the House to pass a resolution affirming that this is a voluntary action on my part and that it will establish no precedent for any other Member in the future. It is vital that we not go down the road of destroying middle-class Members by establishing any personal burden in a nonjudicial system.

It is important to put decisions about politics and Government in perspective. This past year I have experienced some personal losses. I lost my father, and my mother lost her husband of 50 years. My mother, due to serious health problems, is being forced to move into assisted living. My mother has lost her home, her husband, and her life as she knew it.

This week before making this decision I visited my mother in her hospital in Harrisburg. I should say she is now out and is in the assisted living facility. I asked her how she could handle these setbacks with such a positive attitude. She said,

Newtie—she still calls me that. I do not think I am ever going to get to Mr. Speaker with my mother—she says, Newtie, you just have to get on with life.

Coming back from Harrisburg, I realized that she gave me strength and made me realize that for Marianne and myself, moving on with our lives, in the right way, by doing the right thing was our most important goal.

Let me make clear: We endure the difficulties, and the pain of the current political process, but we believe renewing America is the great challenge for our generation. I said on the day I became Speaker for the second time that we should focus on the challenges of race, drugs, ignorance and faith. Over the past few months, I have met with Americans of all backgrounds and all races as we discussed new approaches and new solutions. I am convinced that we can enter the 21st century with a renewed America of remarkable power and ability.

This is a great country, filled with good people. We do have the capacity to reform welfare and help every citizen move from welfare to work. We do have the potential to help our poorest citizens move from poverty to prosperity. We do have the potential to replace quotas with friendship and set-asides with volunteerism. We can reach out to every American child of every ethnic background, in every neighborhood, and help them achieve their Creator's endowed unalienable right to pursue happiness. We cannot guarantee happiness, but we can guarantee the right to pursue.

Recently, I had a chance to have breakfast with the fine young men and women of the 2d Infantry Division in Korea where my father had served. Today South Korea is free and prosperous because young Americans, for 47

years, have risked their lives in alliance with young Koreans.

I was reminded on that morning that freedom depends on courage and integrity; that honor, duty, country is not just a motto, it is a way of life. We in this House must live every day in that tradition. We have much to do to clean up our political and governmental processes. We have much to do to communicate with our citizens and with those around the world who believe in freedom and yearn for freedom. Everywhere I went recently, in Hong Kong, Beijing, Shanghai, Taipei, Seoul, and Tokyo, people talked about freedom of speech, free elections, the rule of law, an independent judiciary, the right to own private property, and the right to pursue happiness through free markets.

We in this House are role models. People all over the world watch us and study us. When we fall short, they lose hope. When we fail, they despair.

To the degree I have made mistakes, they have been errors of implementation but never of intent. This House is at the center of freedom, and it deserves from all of us a commitment to be worthy of that honor.

Today, I am doing what I can to personally live up to that calling and that standard. I hope my colleagues will join me in that quest.

May God bless this House, and may God bless America.

#### 21ST CENTURY PATENT SYSTEM IMPROVEMENT ACT

Mr. MCINNIS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 116 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 116

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified as specified in section 2 of this resolution. The committee amendment in the nature of a substitute, as modified, shall be considered as read. All points of order against the committee amendment in the nature of a substitute, as modified, are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional

Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be fifteen minutes. 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 committee amendment in the nature of a substitute, as modified. 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.

SEC. 2. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in H.R. 400 is modified as follows:

(a) page 14, line 19, after "at" insert "a rate not to exceed"; and

(b) page 46, line 15, strike "activities" and insert in lieu thereof "activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1997".

□ 1215

#### PARLIAMENTARY INQUIRY

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. LAHOOD). The gentlewoman from Texas will state her parliamentary inquiry.

Ms. JACKSON-LEE of Texas. Mr. Speaker, after the conciliatory remarks of the previous speaker, I have an inquiry to the Speaker as to his recollection: In the last 90 years of this House have we any time where this House has voted to censor a Member the entire day by rollcall vote?

I would appreciate a response on that inquiry, Mr. Speaker.

The SPEAKER pro tempore. The Chair would advise the gentlewoman from Texas [Ms. JACKSON-LEE] in the House Manual on page 322, the Chair responded on June 25, 1992, to parliamentary inquiries relating in a practical sense to the pending proceedings but did not respond to requests to place them in historical context.

The gentleman from Colorado [Mr. MCINNIS] is recognized for 1 hour.

Mr. MCINNIS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], pending which I yield myself such time as I might consume. During the consideration of this resolution all time is yielded for the purpose of debate only.

Mr. Speaker, House Resolution 116 is a noncontroversial resolution. The proposed rule is an open rule providing for 1 hour of general debate divided equal-

ly between the chairman and the ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the 5-minute rule.

Furthermore, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill modified as specified in section 2 of House Resolution 1616. The resolution waives all points of order against the committee amendment in the nature of a substitute, as modified, and provides that it shall be considered as read.

Furthermore, Mr. Speaker, the resolution allows the Chair to accord priority recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD, and the Chair may postpone votes in the Committee of the Whole and reduce votes to 5 minutes if those votes follow a 15-minute rule.

At the conclusion of the 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.

Finally, Mr. Speaker, the rule provides one motion to recommit with or without instructions.

Mr. Speaker, this open rule was reported out of the Committee on Rules by a voice vote without any opposition. Under the proposed rule each Member has an opportunity to have their concerns addressed, debated and ultimately voted on, up or down, by this body.

I urge my colleagues to support the bill.

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

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank my colleague, my friend from Colorado [Mr. MCINNIS], for yielding me the customary half hour.

Mr. Speaker, I think this is a day for celebration. We have finally gotten an open rule here on the floor. One of the 13 bills brought to the House by a rule this session, only 3 of them have been open. And as all my colleagues know, Mr. Speaker, we were promised more open rules, so I certainly hope that this is the beginning of a trend and not just a one-time occurrence.

I do find it ironic, Mr. Speaker, however, that just 2 days ago, just 2 days ago my colleagues on the Republican side of the aisle spent an entire afternoon trying to pass a constitutional amendment to require a two-thirds vote for any tax increase. Now they are bringing to the floor a bill that would pose new taxes. They can call them user fees, but I have got a letter from the gentleman from Texas [Mr. ARCHER], chairman of the Committee on Ways and Means, which says these are taxes, and they still increase costs to the American people.

Mr. Speaker, the goals of H.R. 400 are laudable, to strengthen our patent laws and patent process and to bring them into compliance with the standards utilized by the international community. The bill would also establish the U.S. Patent and Trademark Office as a separate Government agency to serve in a more efficient manner for those who utilize its services.

The United States, Mr. Speaker, is No. 1 in the world when it comes to the production of intellectual property. The development of a sound and effective policy for the protection of this property is critically important to our Nation's future dominance in this area.

But having said that, Mr. Speaker, this bill is not without its controversies. Some small inventors and others have some valid concerns with this legislation. But the time and place to address these problems is during the consideration of the bill itself. Under the open rule process, any amendment or substitute that is germane and does not violate any other House rules can be offered at that time.

Hopefully, these concerns will be thoroughly debated and addressed by the full House.

So, Mr. Speaker, I urge passage of this rule so that we may proceed to the consideration of the bill itself.

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

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, the day has finally come, and I rise in support of the rule and in opposition to H.R. 400. I know a lot of people may vote in favor of my substitute to H.R. 400 just to shut me up and to keep me from giving all these special orders all the time, but the day has finally come when we will have a head-to-head discussion on the issue of what the patent law of the United States of America should be, and as I have pointed out on numerous occasions over the last few months, that the bill that was being crafted and, yes, the bill that finally went through the system is taking America in exactly the wrong direction.

Mr. Speaker, the United States of America has had essentially the same patent protections, the strongest patent system in the world up until this date, and if this vote passes today on H.R. 400, America's patent system will be gutted, that is gutted, and we will hear during this debate that they are doing it simply to get out a thing called the submarine patent.

Let me note this: That is very similar by saying the only way we are going to be able to handle Hustler magazine is to destroy all freedom of speech in the United States or the equivalent of saying, "You have a hangnail that might be infected, and the only way to cure it is to cut off your leg," and that is not the case. The Congressional Research Service states that my substitute bill to H.R. 400 will

eliminate the practice of submarine patenting. It never was necessary to cut one's leg off to handle the hangnail.

What we have here is an attempt to use a small problem which can be cured in other ways, the submarine patent problem, as an excuse to gut the strongest patent system in the world.

The essential ingredient, we have offered to compromise time and time again with those people who are supporting H.R. 400, but they came back and were unwilling to compromise on the essential point, which was our country believes that, until a patent is issued, that the patent applicant has a right of confidentiality. This bill as it is written, and it has not changed, they have not exempted any of the small business they claim to have exempted; this bill would mandate that all of our secrets, every one of our secrets that would be held confidential under the current system under what they are proposing is a system that will publish them after 18 months for the world to see. Everyone can understand that.

Mr. Speaker, that is why the American people have risen up and called their Member of Congress to say we do not want to make America's technology vulnerable to foreign theft and the theft from huge corporations domestically. This, after asking for compromise for 2 years, we have not been able to compromise on this point because that is what the purpose of this bill is.

H.R. 400, when it was introduced last session, was called the Patent Publication Act. So all of the other wonderful things that we hear about this bill we have accepted in the substitute. I will be offering in the substitute almost all the wonderful things that we will hear, but the disagreement, the fundamental disagreement, is, No. 1, should we basically gut the patent system by corporatizing the Patent Office and taking it out of the U.S. Government, making it a corporate entity, taking our patent examiners, making them vulnerable to outside influences, No. 1; and No. 2, should we publish the information about our inventors' patent applications even before the patent is granted? If we succeed today or if the other side succeeds today, foreign corporations, whether in China or Japan or elsewhere, will be able to steal this information, use it, go into production, but those proponents say: But we give them the right to sue once the patent is issued.

Mr. and Mrs. America has to decide on that. Is this really an option if the People's Liberation Army is manufacturing some technology developed here and 4 or 5 years later the patent is issued giving the person who owns the patent the right to sue the People's Liberation Army 5 years later? Is that really recourse?

This is setting up, this is a set up for the biggest ripoff of technology in the history of the United States. Our most important ideas will be stolen from us

by our worst adversaries and used against us; and when the court action comes up, what is going to happen? When the court action comes up, they will be using the money for manufacturing with stolen technology to defeat our people in court.

I ask my colleagues to support the rule, I ask my colleagues to oppose H.R. 400, the Steal American Technologies Act, and to support the Rohrabacher substitute.

Mr. MOAKLEY. Mr. Speaker, I would like to inquire of my distinguished colleague from Colorado how many speakers he has left.

Mr. MCINNIS. To my good friend from Massachusetts, I have a number of speakers who have just now signed up, so I assume that I will take the entire 30 minutes.

Mr. MOAKLEY. The only speaker I have is myself to finish our side of the debate, so I will allow my dear friend from Colorado to go forward.

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

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Speaker, I have been called a puppet of the Japanese industrial complex as a result of this bill. I resent it. I have been called worse than that. We have tried to keep this on an evenhanded course, but alas to no avail.

The patent law, Mr. Speaker, as my colleagues know, provides a forum whereby cute, sexy questions can be propounded, but because of the complexity of the subject matters, cute, sexy responses are not that easy to be forthcoming.

This is a good bill. In contrast to what our opponents would have my colleagues believe, H.R. 400 has received more process than any patent bill in history. It is developed over a 2-year period and was the subject of more than 50 negotiating sessions with interested parties and the administration. And incidentally, Mr. Speaker, in addition to the Clinton administration, the Bush and Reagan administrations heartily endorsed this proposal. During this time over 80 witnesses testified at eight different hearings to help craft its contents. I have no pride of exclusive authorship in H.R. 400 since so many fingerprints cover the bill including those of independent inventors, small and big business, industry groups, universities and research laboratories.

□ 1230

Our bill is supported by 75 American companies responsible for 90 percent of the patents issued to American applicants in the United States. Twenty-one CEO's of our Nation's high-technology companies which employ 1.4 million men and women and which hold 55,000 U.S. patents endorse H.R. 400 and oppose the Rohrabacher substitute. Mr. Speaker, pardon my immodesty, but that hardly sounds like a puppet of the Japanese industrial complex.

Title I of H.R. 400 would transform the Patent and Trademark Office, or the PTO, into a Government corporation. It would remain a Federal agency subject to congressional oversight and protected by all of the benefits and safeguards afforded any agency and its employees under title V of the U.S. Code.

The whole point of title I is to allow the PTO to operate more efficiently on a day-to-day basis. To illustrate, the agency would no longer be required to solicit permission from the General Services Administration each time it wished to buy a box of pencils or note pads.

Furthermore, title I would permit the PTO to keep all its funding derived from user fees. Last year alone, \$92 million were diverted from those funds, which are exclusively funded by users, and the intent at the time of collection is to use those fees to operate and maintain the Patent and Trademark Office.

First, H.R. 400 helps American inventors under title II who file for patent protection overseas. Since all other developed countries which have patent systems require publication after 18 months, American inventors have their applications published in the language of the relative host country at this time. In contrast, foreign companies which seek protection in the United States do not reveal their applications until the U.S. patent issues. This is unfair on its face, since foreign companies are therefore able to study our latest technological developments abroad but are not required to reveal their work to our inventors on these same terms here. Eighteen-month publication, therefore, levels the international playing field.

Second, the publication inhibits the practice of patent submarining. My colleagues will hear more about that as this debate develops. A submariner is a bad-faith inventor who attempts to game the existing patent system by indulging in dilatory tactics that prevent the expeditious review of the application. By biding his time, the submariner can eventually identify a company which has independently developed the same idea, then sue for royalties. Quite obviously, this constitutes bad public policy, since the submariner has no intention of using an invention to manufacture a product or create a new job. The motivation of the submariner is to subsist off the work of others, and they do real well at it. I refer my colleagues to a recent article that appeared in last week's Wall Street Journal.

Mr. MOAKLEY. Mr. Speaker, I yield 4 minutes to the gentleman from Michigan [Mr. CONYERS], the ranking member on the Committee on the Judiciary.

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

Mr. CONYERS. Mr. Speaker, I am here in my capacity as ranking mem-

ber to urge that this rule be adopted. I understand that everybody that has spoken on the rule is supporting the rule, so very good. The only thing is that the first speaker, the gentleman from California [Mr. ROHRBACHER], in supporting the rule, said this was a bill that would gut the American patent process, if I heard him correctly. He is nodding, and apparently I did hear him correctly; that this bill, H.R. 400, would gut the U.S. patent process.

This is the same bill that has passed out of two Republican Congresses and two judiciary committees unani- mously, and but for the tremendous acumen of the gentleman from California [Mr. ROHRBACHER] we would unwittingly have passed out last Congress and this Congress a bill that would gut the patent process of the United States of America.

We obviously owe this gentleman from California [Mr. ROHRBACHER] a huge debt. I mean our obligation must go up to the sky. I thank the gentleman from California [Mr. ROHRBACHER] for this great single feat of saving the American legal system from what would happen were it not for his substitute.

Fortunately, however, there is a remedy. The rule will call for the substitute, but until the debate occurs, could the gentleman help us keep the confusion level down to about its norm by refraining from these unsubstantiated statements so far in this debate. I know in the gentleman's mind the gentleman is pretty firm where he is coming from, but for those who may not be committed yet to this bill and who may not be on the substitute, could we have a debate that merely tries to describe what our humble Committee on the Judiciary and two Congresses have attempted to do on this, and if we could do that, I think it would win the approval of all of us in the Congress and it would help us a great deal.

Now, this bill is supported by five of the last six Commissioners of the Patent and Trademark Office. That means that the highest Government officials on this subject in the past have all signed off on this bill. There have been years of negotiation on this bill. We have finally reached, we thought, almost unanimity. It will stop cheating in the patent process by ending the prime delaying tactic, and on this, the gentleman from California [Mr. ROHRBACHER] and I agree, submarine patenting. It will end that process where lawyers now are coming forward representing people that are subverting the patent process.

This is the best thing that has ever happened for the small inventor, and I urge the support of the rule.

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from Florida [Mr. GOSS].

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

Mr. GOSS. Mr. Speaker, I thank the distinguished gentleman from Colorado for yielding me this time.

Mr. Speaker, I appreciate and I rise in strong support of this wide-open rule providing for consideration of H.R. 400. This open rule will allow for full debate on this very complex and controversial measure.

Mr. Speaker, the objective of this legislation is to promote greater efficiency in our patent system, and of course put us on an even footing overseas, at the same time balance this with fair protection for the independent inventor, and this is obviously a very delicate process.

My district is home to the Edison Inventors Association. We are very proud of that. They have directly and personally conveyed to me their very real concerns with the legislation as it is written, and I am sure the gentleman from California [Mr. ROHRBACHER] is going to speak to several of those issues as the day goes along. I have also spoken with proponents of H.R. 400, and they have made a compelling case for certain items in H.R. 400. So it seems we are getting most of the good issues out.

Among the inventors, there is a real concern that the 18-month publication period provision in this bill will pose a risk to the little guy, the independent inventor. We certainly do not want to inadvertently create a situation, unintended negative consequences, where these entrepreneurs are squeezed out in the courtroom by large corporations. This is a real concern, and I know it will be addressed today.

On the other hand, I think we all agree that the proposed diversion of fees paid to the Patent and Trademark Office in the Clinton budget is a very bad idea. There was unanimity on this issue yesterday, I believe, in the Committee on Rules, and I am gratified that H.R. 400 hits this right on. Our inventors need to know that these fees are not being diverted to fund other initiatives, but are helping to speed the patent process along.

Mr. Speaker, I am not certain that the promised benefits in H.R. 400 are not outweighed by the potential setbacks. I am waiting to be convinced by the debate. Whenever we consider sweeping reform we would be wise, in my view, to follow the model of the medical profession. First, do no harm. While I remain uncertain that H.R. 400 is truly a step forward, I am glad that we are going to be able to have vigorous debate on this floor where both sides can make their case, and I certainly appreciate the hard work and long efforts of the committee on this process.

What we have here today is deliberative democracy at work in the people's House. I urge support for this good rule for that reason, and I commend the gentleman from New York [Mr. SOLOMON] and the gentleman from Colorado [Mr. MCINNIS] for bringing this rule forward.

Mr. MOAKLEY. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I really cannot pass this opportunity to mention one more time that this bill contains a revenue increase. This bill contains a tax increase.

The fee in question is clearly a revenue increase, under the Speaker's guidelines on jurisdictional concepts distinguishing user fees from taxes. The guidelines were announced again on opening day, January 7, 1997, page H32, CONGRESSIONAL RECORD. The proceeds will be used to benefit some who did not pay the charge, and thus cannot be construed as a user fee. There are substantive charges to the existing patent fee so as to make this charge a tax.

Mr. Speaker, I include for the RECORD at this time a letter from the gentleman from Texas [Mr. ARCHER], the chairman of the Committee on Ways and Means, making it very clear that this fee is a tax.

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
Washington, DC, April 16, 1996.

Hon. HENRY J. HYDE,  
Chairman, House Committee on Judiciary, Rayburn HOB, Washington, DC.

DEAR CHAIRMAN HYDE: As you know, H.R. 400, the "21st Century Patent System Improvement Act," would make various changes regarding the Patent and Trademark Office. In particular, section 122 would extend permanently these patent and trademark fee surcharges. In addition, it would also permit the imposition and collection of new fees to recover the costs of publication of patent applications and reexamination proceedings.

In determining what is a revenue measure within the jurisdiction of the Committee on Ways and Means, the Committee relies upon the statement issued by Speaker Foley in January 1991 (and reiterated by Speaker Gingrich on January 7, 1997) regarding the jurisdiction of the House Committees with respect to fees and revenue measures. Pursuant to that statement, the Committee on Ways and Means generally will not assert jurisdiction over "true" regulatory fees that meet the following requirements:

(i) The fees are assessed and collected solely to cover the costs of specified regulatory activities (not including public information activities and other activities benefiting the public in general);

(ii) The fees are assessed and collected only in such manner as may reasonably be expected to result in an aggregate amount collected during any fiscal year which does not exceed the aggregate amount of the regulatory costs referred to in (i) above;

(iii) The only persons subject to the fees are those who directly avail themselves of, or are directly subject to, the regulatory activities referred to in (i) above; and

(iv) The amounts of the fees (a) are structured such that any person's liability for such fees is reasonably based on the proportion of the regulatory activities which relate to such person, and (b) are nondiscriminatory between foreign and domestic entities.

Additionally, pursuant to the Speaker's statement, the mere reauthorization of a preexisting fee that had not historically been considered a tax would not necessarily require a sequential referral to the Committee on Ways and Means. However, if such a preexisting fee were fundamentally changed, it

properly should be referred to the Committee on Ways and Means.

On October 20, 1995, I wrote to you regarding a fee provision adopted by the Committee on Judiciary during its budget reconciliation recommendations. That provision would have extended the expiration date of certain patent and trademark fee surcharges for four years, until 2002. Although the Committee on Ways and Means did not assert any jurisdictional claim over the fee at that time, I expressed my strong interest in working with you to conform this provision as closely as possible to a true "fee." With respect to similar "fees" that raise more revenue than is reasonable, the Committee on Ways and Means has worked with other committees on jurisdiction to design a means of reducing the "fees" over time so that the charges become true "fees" that are tied to the cost of the regulatory activity. I extended the same offer to work with you and the Appropriations Committee to reduce these charges over time so that they become true regulatory fees.

I understand that H.R. 400 is intended to make the current fees more closely resemble true "fees." Since he surcharge was imposed by the Omnibus Budget Reconciliation Act of 1990, only a portion of the surcharge proceeds have been made available to the PTO. The balance of the proceeds have been diverted to finance other governmental activities. By making the PTO fully financed through fees, this excessive imposition of PTO fees should be substantially reduced.

Nonetheless, the surcharge and the reexamination fee (due to its 50% reduction for qualified small entities) do not meet all four requirements set forth above. To the extent that any fee is set at a level to recover completely an agency's costs associated with a particular entity, a surcharge, by definition, will be excessive and therefore cause the "fees" to exceed the agency's costs associated with the entity. Moreover, at least a portion of the activities of the PTO benefit the public generally and cannot be recovered through narrowly-based fees.

With respect to the reexamination fee, to the extent that it is based upon the size of the affected entity, rather than the costs associated with that entity, it would violate (iv) above. Accordingly, I have been advised that the bill in its present form would violate Rule XXI clause 5(b) to the Rules of the House, which provides that no bill carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures.

Although the amount of fees and the manner in which they are imposed do not conform to the criteria discussed above, the modifications made by the bill would make PTO fees generally less of a revenue measure than they are currently. I also understand that H.R. 400 reflects a carefully constructed balance of competing interests, and is shortly due to be considered on the House Floor. Accordingly, I will not seek a sequential referral, or object to consideration of H.R. 400 on the Floor at this time.

However, this is being done with the understanding that the Committee will be treated without prejudice in the future as to its jurisdictional prerogatives on this or similar provisions, and it should not be considered as precedent for consideration of matters of jurisdictional interest to the Committee on Ways and Means in the future. It is also being done with the understanding that you will contact me if the fees are modified on the House floor or in conference, in which case I reserve the right to seek to have Members of the Committee on Ways and Means named as additional conferees. Finally, I would appreciate your response to this letter, confirming this understanding with respect to H.R. 400.

Thank you for your cooperation in this matter. With best personal regards,

Sincerely,

BILL ARCHER,  
Chairman.

Since it is a tax increase, Mr. Speaker, I am waiting to see if my colleagues who supported the constitutional amendment to seek to amend the rule to require two-thirds vote to increase taxes will come forward because this is an open rule. They can come forward and put an amendment in to increase the vote by two-thirds in order to pass this bill because it has a tax increase.

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

Mr. MCINNIS. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Speaker, I thank my friend for yielding this time to me. I thank all of the Members of this debate, because I think we are starting to frame the debate fairly effectively.

Let me say first that the gentleman from Illinois [Mr. HYDE], the chairman of the full committee, is one of the giants of this legislature, and I think we all recognize him as such on both sides of the aisle; the gentleman from North Carolina [Mr. COBLE], my good friend, who is the chairman of the subcommittee, one of my finest friends ever in the House of Representatives, and a superb legislator and a guy for whom I have a lot of respect. I know both gentlemen have worked long and hard on this bill.

Let me say that as we move along in this body, we begin to realize more and more how easy it is to get up and complain about something that is a work product that other folks have done a lot of work on, and we should not take that role or that opportunity frivolously.

Mr. Speaker, I thought one of the last things that the gentleman from Florida [Mr. GOSS] said was a very important thing. He said that the first rule of the physician is do no harm.

□ 1245

While I think there are a lot of good things in H.R. 400, I think there are a few fatal defects that do some harm.

The other thing that I think we have to realize when we go into this debate is that this is an enormous debate because it has a great deal to do with our most important property rights, our intellectual property rights; the centerpiece of America, the idea, the creator of technology, the innovator. And this property is just as valuable as real property that we cherish, the right to have real property; this right of an inventor to go out, come up with an idea, and get paid for that idea. We have a system that accords certain rights and privileges to that inventor. We are changing those rights and privileges markedly in this bill.

There are two sides to this debate, I think that is something we need to establish early, two legitimate sides to the debate. I was just going through the list of people who oppose the bill.

Dr. Forrest Bird, inventor of the neonatal respirator; Dr. Paul Burstein, the inventor of rocket motor inspection system. Raymond Damadian, inventor of the MRI. He is opposed to the bill.

We have several Nobel laureates here: Gertrude Elion, the inventor of leukemia-fighting and transplant rejection drugs, Nobel laureate; the inventor of the Hovercraft, Charles Fletcher; Franco Modigliani, the inventor of the credit management system, Nobel laureate.

There are legitimate arguments on the other side of this bill. We are going to lay those out. The one thing that I am going to concentrate on is publication, because every inventor needs a period of secrecy, and there is no substitute for secrecy. I think that is what we are going to find out as this debate goes on. If we publish, if we expose this inventor's secrets 18 months after he has applied, it is going to kill him. I think we can lay that out clearly in the debate. I thank the gentleman for yielding me this time, and I like the rule.

Mr. MOAKLEY. Mr. Speaker, it gives me great pleasure to yield 4 minutes to the gentlewoman from California [Ms. LOFGREN].

Ms. LOFGREN. Mr. Speaker, I think there has been a great debate in the public that has unnecessarily and I think unduly alarmed Americans who are not immersed or totally familiar with the arcane details of patent law, and it has become very difficult for people to sort through the various arguments that are being made back and forth, and I am sure being made in good faith.

But I thought it would be helpful to this House to hear the comments made by the technology chairs of the White House Conference on Small Business, because much has been said that this might be a bill between the big guys and the little guys.

For those of us who have spent the past 2½ years sorting through this bill line by line so it would represent a good, solid, bipartisan effort to protect American industry, we were encouraged that the technology chairs of the White House Conference on Small Business were assigned by the other small business men and women of America to take a look at the bill and to examine the various claims being made.

It was very gracious of them to give the following report. I will not read their entire comments, but I would like to quote a few specific items. This is a direct quote: "During the past year," all 10 chair persons say, "Independent inventors and the small business community have been subjected to an intense campaign of fear, xenophobia, and misinformation. The White House Conference on Small Business researched many of the most emotional issues and found that much of the information being promulgated is simply wrong. Legislation based on bad data is bad legislation."

And then they go through the issues. First, the 20-year system. They con-

clude that "We believe most of the hysteria over the new 20-year term is based on misinformation."

Regarding the publication of patent applications, they say, "The vast majority of American patent applications are also filed in foreign countries where they are automatically published. Failure to publish these applications in the United States gives our foreign competitors a huge advantage. They can read our applications but we cannot read theirs. We need a level playing field with our foreign competitors."

Finally, on the issue of stealing American inventions, the small business men and women said, "It is misleading to suggest that the opportunity to copy U.S. inventions would be newly created by either of these bills." To that they refer to the predecessor bills to both H.R. 400 and the Rohrabacher amendment.

Mr. Speaker, the feared opportunity already exists. Foreigners are presently free to read and copy any U.S. patent. The publication provision of either of these bills will have no effect on this reality. "Stealing" is a false issue.

"The barrage of misinformation has caused great confusion and alarm," they say. "Further attention has been diverted from the much-needed modernization of U.S. Patent Law." Then they go on to endorse the elements that are encompassed in H.R. 400.

Mr. Speaker, it is important for the many citizens and Congress Members who are watching this debate today to understand that it is easy to make wild allegations, but hard, to do the tough work done by the gentleman from Michigan [Mr. CONYERS] and the gentleman from Illinois [Mr. HYDE], by the gentleman from North Carolina [Mr. COBLE] and the gentleman from Massachusetts [Mr. FRANK]—to go through the bill that protects American inventions and fosters prosperity for this country.

Mr. MCINNIS. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. FORBES].

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

Mr. FORBES. Mr. Speaker, I rise today in support of the rule and in vehement opposition to H.R. 400.

My dear friends, much has been made just a moment ago about small business. I could tell the Members that the Small Business Legislative Council, the Small Business Survival Caucus and Committee, and the Small Business Technological Committee and Coalition have all opposed H.R. 400 because they believe that it will be bad for small businesses and even more horrendous for entrepreneurs and the people out there who are working full-time jobs and spending extra hours at their garage or kitchen table coming up with a new invention. We are talking about Americans coming up with ideas that they will try to market here in America, not abroad.

I would just reference two wonderful books, which are two of many. If Members would remember, there are so many young children out there who go to the fourth grade or fifth grade, they go to the library and they take out books about Eli Whitney and books about Thomas Edison, and the great inventors of this Nation. They come home and they get energized about the greatness of America and that all things are possible.

H.R. 400 would kill that off, and it would make the entrepreneur extinct as far as the current patent situation as we know it today.

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. CAMPBELL].

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

Mr. CAMPBELL. Mr. Speaker, there are two very serious errors in H.R. 400. Let me just start with these and try to return to these frequently. They are these.

First of all, if you are an inventor, you should not have to publish what your invention is until you get the patent. You should not have to. The reason for that is that if you do not want to make it known to the world at large, you should not have to, because you might be able to market it to a company as a trade secret. The reward to inventors sometimes is not to get it patented but to apply a trade secret. That is what Coca-Cola has done for more than a century.

This bill, H.R. 400, requires that even if you have not gotten the patent, when 18 months have run from the time that you have applied, you have to publish. That is a mistake.

The second error is this: When there is a prior user, somebody else who has been using this idea in a commercial way, under existing law that person does not win over the person who invents, the person who files the patent. That person has the right to that invention. But H.R. 400 says no, if there is a prior commercial user, that prior commercial user can continue, and not only continue, he or she can expand. If they were making 10 products a month, they can go to a thousand, and then if they are seeking to be acquired by a company, what they can do is say, "Look, here is the crown jewel. We have a prior commercial use as to this patent. Take over our company, and maybe we do not have the ability to go from 10 to 1 million units, but you do."

On these two points there is a very serious taking away from the patent applicant in the United States law from the present system. Somebody who spends the time to invent right now has the right to go around and market their idea and say, you know, it is a patent pending right now. If we get the patent, I am willing to sell it to you. If we do not, I am going to find that out from the Patent Office and keep it secret and try to sell you a trade secret. That would now change.

These are very significant differences. I have to ask the question: For what purpose? The answer we most frequently get is because there are submarine patents out there, and this is the term of art we will hear very frequently. The submariner is somebody who is gaming the system. That person can be dealt with explicitly, with a laser beam instead of with a floodlight.

The individual who is attempting to game the system is somebody who files a patent application and then asks that it be continued, and asks that it be continued and then delayed and delayed, waiting for some other company to take the idea, turn it into a profitable enterprise, and then the submarine surfaces and fires its torpedoes.

The solution to that is to deal with the person who is gaming the system. In other words, let us just say that the publication requirement, which obviously defeats this strategy, ought to apply if you have filed applications to continue to delay, to postpone.

So I went to my good friend and colleague, the gentleman from California [Mr. ROHRBACHER], and asked if he could add that to his bill, because I thought that the high-tech companies had a good point, that there might be an occasional instance of this submarine strategy, and he graciously agreed to do so.

My colleague and dear friend, the gentleman from North Carolina, entertained the idea, but in the final event, he was not able to accept it. So in H.R. 400, what we have is a very, very broad solution to a very narrow problem, with the result that the inventor loses what he or she has under American law.

We have heard already that H.R. 400 is supposed to level the playing field. Let me assure my colleagues, the level playing field exists right now. If you file in Europe, whether you are European, Asian, African, or American, you have to disclose after 18 months. If you file in America, whether you are Asian, European, American, or African, you do not. So there are two systems in the world. They are fair to everybody in each system, but the systems are different.

I wish to conclude with a personal note of gratitude to the chairman, the gentleman from North Carolina, HOWARD COBLE. This man is not engaged with any intent to do harm to the American public or to do harm to our patent system, by his lights.

I have respectfully come to the conclusion that I cannot support his bill, but that does not diminish in the slightest my respect for him or the intentions that motivate him, which I believe are of the highest order. It is only my regret that after 2 months of good faith negotiations, we were not able to reach the accommodations in H.R. 400 that I was able to achieve with H.R. 811 and H.R. 812.

I support the rule because it allows the Rohrabacher alternative to be in order, and that, to me, is the preferable bill.

Mr. MOAKLEY. Mr. Speaker, in the spirit of comity, I yield 2 minutes to the gentleman from Indiana [Mr. PEASE], on the other side of the aisle.

Mr. PEASE. Mr. Speaker, I thank the gentleman for yielding time to me.

I had not intended that my first remark to this body would be without aid of a script prepared by my staff; however, the script prepared by my staff will be reserved for the later debate this afternoon.

Let me just say this. I bring, I hope, to this discussion a different perspective. As many of the Members know, I am fortunate to have come from higher education, and there, though I do not speak for higher education, I have spoken extensively with the higher education community on this subject. They bring to us a perspective that is reflective of the inventor's community.

We have solo practitioners, faculty members, and students who work on their own in the invention field, and we have those who work under contract with major international corporations.

□ 1300

So we come from the higher education community with the perspective that includes all of the players that one would hope would be protected in this legislation that is before us.

The higher education community has debated extensively about the proposals in H.R. 400, and we have stayed in contact with them throughout the time that I have been involved in this discussion as well. Though most of them have not taken a position in terms of opposition or support of the proposed legislation, I am convinced, particularly with the amendments that will be offered through the floor managers' work, that the concerns that have been raised on this floor today will be addressed in the amended bill and that it will protect both the small inventors and the major corporate inventors and be good for the country.

I urge Members' support of the rule and of the bill.

Mr. McINNIS. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman from Colorado for yielding me this time. I rise in support of the rule and in strong support of H.R. 400.

This is a very good bill and a very, very important bill to protect the competitiveness of American business and American inventors, large and small. Let me make that point very, very clear.

I commend the gentleman from North Carolina [Mr. COBLE], my good conservative friend, and the gentleman from Illinois, the chairman of the Committee on the Judiciary, for pushing this legislation forward. Mr. HYDE and Mr. COBLE know how important this legislation is for the American people.

We are not dealing with what the opponents would tell us is the Steal American Technologies Act. We are

dealing with a situation where we have got to act and act now to protect American inventors from a situation where that technology is being stolen under current law.

Under current law, every single patent that is filed in the other major industrial countries around the world is published after 18-months, in Japanese, in German, in French, for those inventors and those countries to see. Forty-five percent of all the patents filed with the U.S. Patent Office are filed by foreign inventors, and U.S. inventors do not get to see that technology filed here in the United States.

This bill provides greater protection for the small inventor by improving the patent pending provisions of the law. This bill protects the small inventor in this country by giving them the opportunity to get capital behind those inventions much sooner than they get under current law.

The opponents would tell us that under the 18 month publication, they are going to have a gap between that publication, when they get the patent, and somebody is going to steal their ideas. That is not the experience they have had in Europe.

In Europe they get that capital sooner because the entrepreneurial investors in Europe know that that particular inventor is the lead inventor on that item because it has been published, published ahead of anybody else who might be in the system ahead of them. We have no way of knowing that in this country. So the capital does not come here until the patent is issued. In Europe that has changed.

This will help small inventors by giving them the opportunity to get that capital, get that product on the market sooner. It will give them the opportunity not to have to reinvent the wheel because they will know whether somebody else is already in the marketplace with that idea.

This is a good bill. It is a good bill for the little guy, and we should vote for the rule and vote for the bill and get this major improvement, major improvement to competitiveness in the United States against our foreign competition done.

Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio [Ms. KAPTUR].

(Ms. KAPTUR asked and was given permission to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, I reluctantly rise in support of this rule because, once it is passed, Members like myself who oppose H.R. 400 are going to be given about 15 minutes out of the hour, only one-quarter of the time to present our views. That is typical of what has been happening on this extremely important bill.

I understand what the floor managers have to do here, but I truly object to the fact that we are not given equal time during debate to handle a bill of

this magnitude. There is absolutely no question that this bill concerns America's future. It concerns our jobs. It concerns who controls our technology.

To be muzzled on the floor when we consider a bill that has constitutional implications is beyond my wildest dreams. Why would they do this to us? We know the Committee on Small Business has not been able to hold hearings because small inventors have not been allowed to present their case to the Congress. Now on the floor we will also have our hands tied behind our backs and be allowed so little time to discuss the merits.

In view of that, I say to the Members who are listening to this debate and to the people of the country, how many complaints have you ever gotten from your inventors about the current patent system? The United States leads the world in patent filings. We have 10 times more intellectual property breakthroughs than any other Nation in the world. Why would we want to change our system?

I heard the prior speaker say, "Japan or some other country." But, we lead the world. Why would we want to do anything to harm the system that has created the largest industrial and agricultural power on the face of the Earth? There is much at stake here, and there are many private interests that want to get their hands into what is happening at our Patent Office. We understand that well.

But there is more at stake here than just arcane rules that may be administered by a department that handles our patents.

I say to the membership, if they have not read this bill, if they do not understand its implications, vote no on H.R. 400 and vote for the substitute.

We will talk a lot about how the period is shortened for our inventors where, if you file a patent, in 18 months they will be able to get your blueprints. Your work will not be kept secret as it is today until the patent is issued. That is absolutely wrong. Why would we want to do that to the people who are creating our future in this country?

Why would we want to corporatize the Patent Office and take away the objectivity of its examiners? And why in heaven's name would you want to produce a bill, page 11, lines 15 through 17, which permits this Office, which will not have the same kind of control we have today, to accept monetary gifts or donations of services, of real estate, personal or mixed property in order to carry out the functions of the Office? We have seen all kinds of bribes in this city.

I hear from the chairman that may be out. Well, I will be really interested in what else is out of the bill because this truly is a work in progress. It is unfair to the membership. It is unfair to the people of this country who are creating our future to be muzzled here on this floor.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

As I said before, just a couple days ago there was a bill to amend the Constitution that required two-thirds to increase taxes. This bill increases taxes. And I was waiting to hear the amendment to the rule to require two-thirds vote for this bill to pass because it does raise taxes, but evidently it is not coming forward.

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

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

I would like to clarify the comments just made by the gentlewoman from the State of Ohio. Her remarks were that she would be and, for some reason, Members that favor her position were being muzzled on the House floor. It is unfortunate that she was not in here for the previous conversations that we have had, but to assist her knowledge, I would suggest that she study an open rule. This is an open rule. No one is being muzzled here. An open rule allows open debate.

I notice that the gentlewoman on a number of occasions, at least two, during her comments used the word "muzzled." I think it is that kind of rhetoric, frankly, that heats up the debate here unnecessarily. It is an open rule.

Mr. Speaker, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], distinguished chairman.

The SPEAKER pro tempore (Mr. HOBSON). The gentleman from Illinois [Mr. HYDE] is recognized for 2½ minutes.

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

Mr. HYDE. Mr. Speaker, I say to my dear friend from Toledo, it is too bad she did not come up to the Committee on Rules and ask to structure a rule that would give her all the time she wants. But she did not, and we got an hour's debate. And out of the goodness of our hearts, we are yielding 7½ minutes, I assume the gentleman from Michigan [Mr. CONYERS], out of the goodness of his heart, will yield 7½ minutes, and there is 15 minutes plus an open rule. I think that ought to be enough, at least that is my humble opinion.

Ms. KAPTUR. Mr. Speaker, will the gentleman yield?

Mr. HYDE. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Out of an hour, then I understand, Mr. Speaker, we will receive 15 minutes?

Mr. HYDE. We each have a half hour. We have a half hour over here. We are going to give the gentlewoman 7½ minutes of it. She is against our bill, yes.

Ms. KAPTUR. So 15 over 60 is 25 percent. So we are not being given equal time.

Mr. HYDE. Mr. Speaker, the gentlewoman can talk to 6 p.m. or beyond this evening because we have an open rule. The gentleman from Massachusetts [Mr. MOAKLEY] wanted it open.

Ms. KAPTUR. Mr. Speaker, the rule is open to some, not all.

Mr. HYDE. Mr. Speaker, let me just suggest to my friends that H.R. 400 is a very good bill. We have heard about corporatizing the U.S. Patent Office, new word, "corporatizing." There is more oversight over the corporate U.S. Patent Office than if we kept it as a bureau of the Department of Commerce. There will be an inspector general. There are reporting requirements to Congress. There are reporting requirements to the administration. The Government Cooperation Control Act has over 100 accountability provisions plus there is an advisory board, so that is a red herring.

What is really at stake in this issue, and I could not imagine patent law could be made exciting or interesting, but we have submarines floating around. I expect to see periscopes surfacing during this debate because that is what this is all about, protecting people who do not invent to make society a better place but to make a fast buck.

They file their applications and God forbid they should be published. They want to keep it below the surface so some poor guy who goes into business and is using a process and they find out about it, they surface, up periscope, and sue. And one person made \$450 million doing that. His lawyer made \$150 million, and they tell us submarine patenting is not a problem.

If you want to protect your invention, you have to file overseas. And when you file, it is published after 18 months. The whole patent system was set up to give you exclusivity for a term of years, hopefully 20 years, in exchange for sharing your deep, dark secret with the world and making this a better place to live. That is the trade-off. If you do not want to have your secret published, do not file for a patent. Keep it as a trade secret.

Now, not publishing protects the submarine patent gamester who is out not to assist the economy but to fatten his personal treasury. It is, as I have said, the foreign patents. If you want protection overseas, you have got to file overseas in their language. They file here and it is not published. Nobody can find it. We want to play by the same rules overseas as we play here.

This is a good bill. I have a letter from the commissioners of patents under Nixon, Ford, Reagan, Bush; all say this is an excellent bill. And the Democratic administration presently, the President's administration supports it.

I say, pay attention, something is going on here. One of the handouts says, "Don't be fooled." Those are good words. Do not be fooled. Do not protect the submarine patent gamesters who use the system not to assist society but to make a fast buck.

Mr. MCINNIS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered. The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1314

The SPEAKER pro tempore (Mr. HOBSON). Pursuant to House Resolution 116 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 400.

The Chair designates the gentleman from Illinois [Mr. LAHOOD] as Chairman of the Committee of the Whole, and requests the gentleman from Michigan [Mr. CAMP] to assume the Chair temporarily.

□ 1315

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes, with Mr. CAMP, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from North Carolina [Mr. COBLE] and the gentleman from Michigan [Mr. CONYERS] each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I yield myself such time as I may consume and say, before I get into this, that I want to extend what the gentleman from Illinois [Mr. HYDE] said to the gentlewoman from Ohio earlier about being muzzled and having their hands tied.

We have, in the ultimate sense of fairness and comity, agreed to give 7½ minutes to the gentleman from California [Mr. ROHRBACHER] to manage as he sees fit, but that in no way binds the gentleman from Michigan [Mr. CONYERS]. That was an agreement on this side, and the gentleman from Michigan may do as he likes.

I just wanted to get that on the table, Mr. Chairman.

Mr. Chairman, I ask unanimous consent to yield 7½ minutes to the gentleman from California [Mr. ROHRBACHER] and that he be permitted to control that time.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ROHRBACHER. Mr. Chairman, I yield myself such time as I may consume to thank the gentleman from North Carolina [Mr. COBLE] very much for the courtesy of being able to participate in this debate as it goes along.

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

PARLIAMENTARY INQUIRIES

Mr. HYDE. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state his parliamentary inquiry.

Mr. HYDE. Mr. Chairman, it was our intention that the gentleman from California [Mr. ROHRBACHER] be given 7½ minutes from our side. We had hoped, and I had not had the opportunity to ask the gentleman from Michigan [Mr. CONYERS] to give him 7½ minutes. The purpose was so that he could go first and get his statements out and then we could proceed with the rest of the debate.

Evidently, Mr. Chairman, the gentleman wants to go last. So if the gentleman wishes to reserve his time and then go last, that is not in the contemplation of our agreement or our wish.

Mr. Chairman, I would ask the gentleman from Michigan if he is so inclined to give 7½ minutes to the gentleman from California?

Mr. CONYERS. Mr. Chairman, I hate to reveal my inclination at this time, but there has been nobody that has requested it.

Mr. ROHRBACHER. Mr. Chairman, the gentlewoman from Ohio [Ms. KAPTUR] was probably not informed of the agreement.

Mr. HYDE. Mr. Chairman, on my parliamentary inquiry, I yield to the gentleman from California.

The CHAIRMAN pro tempore. The gentleman may not yield on a parliamentary inquiry.

The Chair would state that three Members are in control of time and would ask which Member chooses to yield time.

Mr. ROHRBACHER. Point of information, Mr. Speaker.

The CHAIRMAN pro tempore. Does the gentleman wish to state a parliamentary inquiry?

Mr. ROHRBACHER. Yes, or point of information.

Mr. Chairman, when someone yields a 7½-minute segment during a debate like this, it is possible for us to have an interchange so that the whole 7½ minutes is not used up at one moment, is it not, so that we can actually have an exchange of ideas rather than just having one person express their point of view and having the rest of the time being used to refute those arguments?

The CHAIRMAN pro tempore. The gentleman controls his time and may reserve it.

Mr. COBLE. Point of inquiry, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman will state his parliamentary inquiry.

Mr. COBLE. Mr. Chairman, my point of inquiry is that I assume I have the right to close debate; is that correct?

The CHAIRMAN pro tempore. The gentleman from North Carolina is correct; he has the right to close debate.

Mr. ROHRBACHER. Mr. Chairman, I would ask permission from the gentleman from Michigan [Mr. CONYERS] if I can claim the 7½ minutes and yield it to the gentlewoman from Ohio [Ms. KAPTUR] if she does show up here for the debate.

Mr. CONYERS. Mr. Chairman, if the gentleman would yield, I have never

yielded a Republican Democratic time in that large amount.

Mr. ROHRBACHER. So the gentlewoman from Ohio [Ms. KAPTUR], another Democrat, would have to come forward for that time to be yielded to.

I am told the gentlewoman is on the way, by the way.

The CHAIRMAN pro tempore. The Chair must insist on some Member using his time.

Mr. COBLE. Mr. Chairman, to alleviate the problem, I will do that with the understanding that our side has the right to close, which the Chairman just assured me of.

The CHAIRMAN pro tempore. The gentleman from North Carolina [Mr. COBLE] is recognized.

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

Rhetoric is conventionally defined as the art of speaking or writing effectively, but it may also be defined as speaking or writing redundantly, deceptively, misleadingly, inaccurately, or untruthfully. All these versions, Mr. Chairman, have surfaced during the debate that has surrounded H.R. 400.

Patent law is complex and arcane. It is not sexy or engaging when seriously discussed, especially on television or radio. And when the rhetoric pertaining to such a subject is clearly manipulated and twisted to distort the facts, the complexity of the issue is compounded, and utter confusion is the result.

Mr. Chairman, I am not a patent lawyer, but the members of the Subcommittee on Courts and Intellectual Property are not assigned the duty of litigating contested patent cases. Our responsibility is to draft and promote the enactment of responsible legislation as it applies to the patent and trademark community, including the PTO, the Patent and Trademark Office, inventors, small and large, those with limited means and others blessed with more generous resources. The ultimate beneficiary of our work is the American consumer.

One need not possess the intellect of a rocket scientist, and incidentally, neither am I a rocket scientist, to conclude that H.R. 400 is sound, fair legislation that will benefit American consumers and American inventors, contrary to some of the aforementioned rhetoric that has been widely disseminated on the subject at hand.

Mr. Chairman, title I of H.R. 400 consists of those changes needed to streamline the Patent and Trademark Office into a modern government agency subject to the oversight authority of Congress. Currently, patent filings have greatly increased, but the PTO, as a result of government restrictions may not hire, train, and retain with extra pay additional examiners. This regulatory burden only results in fewer patents being processed expeditiously, which hurts the users of the system who fund the agency.

Under H.R. 400, the agency will have the authority to earmark the necessary funds more quickly, to hire

more examiners. Another prominent feature of title I is that all application or user fees paid to the PTO will remain with the agency. Last year, \$54 million of PTO money was spent elsewhere, and this next fiscal year, \$92 million is proposed. This practice will cease under H.R. 400.

I should also emphasize that nothing in title I compromises the ability of the PTO employees to discharge their duties in a professional manner. All workers under the bill are protected by the full panoply of title 5 civil service safeguards.

Title II of H.R. 400 contains major improvements to our examining procedures for patents. The first of these will require, in most instances, the publication of a patent application after 18 months from the date of filing. Since the entire patent system is predicated on bringing new inventions into the public light for development, no inventor who seeks court-enforced patent protection can credibly assert his inventions should be kept secret based on a personal whim. If so, such an inventor may pursue protection provided by State trade secret and unfair competition statutes.

Most patents are granted within a 20- to 22-month timeframe, and all patents under the current system are published upon grant. Why make the change to 18 months?

First, it will enable small inventors to advertise or shop their ideas to prospective backers. This is important because small investors lack the necessary venture capital to commercialize an idea.

Second, it levels the playing field between our inventors and foreign corporations. Under present law, all other developed countries have an 18-month publication requirement. This means that an American inventor filing for protection abroad, and incidentally, Mr. Chairman, 75 to 78 percent of all patents filed in this country are filed abroad, this means the American inventor filing for protection abroad has his application published after 18 months in the language of the host country, enabling foreign companies to review the latest developments in American technology.

In contrast, however, a foreign corporation, filing in the United States, does not have its application published within the same time frame. This is unfair, since the practical effect is that they can study our technology overseas while our inventors are denied the same right to inspect their work in the United States.

The 18-month publication provision of H.R. 400 will, therefore, level this playing field between American inventors and their foreign counterparts.

Finally, publication at 18 months helps to deter an ongoing abuse in the current system, previously mentioned, "patent submarining." Submarining is appropriately described as those efforts in which a patent filer games the existing system by indulging in dilatory practices.

I quoted the words of a country song yesterday entitled "Playin' Possum and Layin' Low." That is precisely, Mr. Chairman, what a submarine patent applicant does. But to what end? Such an ill-intentioned inventor has no desire to help the Patent and Trademark Office process his or her application to secure a patent as quickly as possible.

Instead, the submariner waits to identify an unsuspecting inventor who has no knowledge of the unpublished application. Upon locating a company or inventor that has developed its idea independently and which has commercialized it through investment, manufacturing and the creation of jobs, the submariner surfaces and sues the company for infringement.

Mr. Chairman, this activity damages the American economy by promoting duplicative research, distorting financial decisionmaking and encouraging unnecessary litigation.

The 18-month publication requirement will place the good-faith company and inventor in this illustration on notice that a patent is pending on an invention it wishes to develop. The inventor may then decide how to devote or expend the financial resources to other endeavors.

Notwithstanding these benefits that accrue from the publication requirements of title II, a special provision has been inserted in H.R. 400 that will protect the independent inventors and small businesses who are genuinely unsure as to the patentability of an idea. The Manager's Amendment to H.R. 400, which we will discuss later, gives an independent inventor or small business who does not file abroad the option to withdraw his application up to 3 months prior to publication if the PTO has made two determinations that a patent will not issue. The inventor may then refine the application and try again, or seek protection under State trade secrecy law.

Most importantly, title II of the bill creates the presumption that any good-faith inventor who has diligently assisted the PTO in prosecuting his application is the victim of unusual administrative delay after 3 years of nonissuance, and at that point, the applicant is granted a day-for-day protection once the patent issues, in other words, a guarantee for a minimum of 17 years of term.

Finally, current law affords no protection against any third party which appropriates the subject of a patent and commercializes it before the patent is granted. H.R. 400 corrects this problem by establishing a new inventor entitlement, a provisional right to compensation, which addresses the problem the gentlewoman from Ohio mentioned. This would allow an inventor to receive fair compensation from any third party who commercializes his or her idea between the time of publication and the time the patent issues.

Title III of the bill addresses the issue of prior domestic commercial use of a patented technology.

I want to speed this up so I can give my chairman some time.

Title IV of H.R. 400 is designed to protect novice inventors from unscrupulous invention development firms which often charge unsuspecting clients thousands of dollars for little work that rarely results in a patent or a commercial use of the invention.

Title V makes needed but limited changes to PTO reexamination procedures. The existing system was intended to provide an efficient and inexpensive way for the PTO to consider whether an issued patent was violated in light of patents and printed materials which an examiner may have overlooked during the initial examination.

□ 1330

H.R. 400 amends the existing reexamination process to provide more due process for a third party.

Mr. Chairman, this concludes my general description of the contents of H.R. 400. The legislation will benefit members of the patent and trademark communities as well as the public at large.

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

Mr. CONYERS. Mr. Chairman, I rise to announce that, as Chairman HYDE indicated, out of the goodness of my heart, I will yield to the gentlewoman from Ohio [Ms. KAPTUR], a dear friend of mine, 7½ minutes for her to dispense with as she chooses.

The CHAIRMAN pro tempore (Mr. CAMP). Without objection, the gentlewoman from Ohio [Ms. KAPTUR] will control 7½ minutes.

There was no objection.

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume. I thank the gentleman for yielding me the time. Though I hoped it would be more, we will take what we can get at this point, so I thank the gentleman very much.

Mr. Chairman, I rise in obvious strong opposition to H.R. 400. If this bill were so wonderful, then why are America's preeminent inventors opposed to it? Dr. Raymond Damadian, inventor of magnetic resonance scanning, Dr. Wilson Greatbatch, inventor of the cardiac pacemaker, Dr. Stephanie Kwoleck, inventor of Kevlar, Dr. Jay Forrester, inventor of core memory, the first practical RAM. If this is such a great idea, then why are the people who have created America's future opposing it?

I have to say this bill is about a whole lot more than just arcane patent law. It is about what our Constitution guaranteed, and that is the property rights of our inventors. I hear all this concern about foreign countries and putting us on an equal footing with foreign countries. The facts are, we are the leader in the world.

Why should we want to dumb down our system or make it easier for others to tap into the inventions that our people produce? Why should we ask our inventors to have a greater burden of

proof? Why should we make them be forced to get into this reexamination system? Why should we do this to the people who have built the greatest industrial and agricultural power on the face of the Earth?

I say to the membership, how many complaints have my colleagues received from their small inventors except on this bill? The system works for them. The only complaint one might get is about the maintenance fees, how much they have to pay to maintain a patent, and truly that needs to be improved. But we have a wonderful system that says if you have an idea, you file it at our patent office, that that idea is yours, it is secret until that patent is issued. Why would we want to change that system?

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

Ms. KAPTUR. I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, I thank my friend for yielding.

The theme has been that we should be like Europe and Japan, but the fact is that high technology startups are something that is uniquely American. There are very few high technology startup companies in Europe and Japan. That is because they lose the one thing which is central to their success, and that is secrecy, because once they publish in 18 months, the big companies come in and sweep them off the map by patenting around them, which is called patent flooding. The gentleman is absolutely right.

Ms. KAPTUR. Mr. Speaker, reclaiming my time, I thank the gentleman for that comment. This whole question of submarine patents and so forth, there is less than  $\frac{1}{1000}$  percent of those that even affect this entire system, and even then we have to be about the task of protecting American inventors' rights. To the extent we can get other nations to conform their systems to ours, terrific, but why should we try to conform our system to theirs? Why should we make it more difficult for our inventors to pay the fees?

This office I am told has been changed as we are sitting here today. With this corporatization of the patent office, that now apparently is not going to be allowed to accept gifts and real estate, because of pressure from Members of Congress like myself, as it is in the base bill, when I read the amendment, and I really do not have a copy of it here, but it basically says you are going to require gift rules be drafted to ensure that gifts to this new office are not only legal but avoid any appearance of impropriety. Why should they be given those gifts in the first place? Why should that be happening under this bill? And why should we take away the objectivity of our patent examiners who are completely insulated from any kind of economic coercion by the current system?

I have to say that patents are the trade routes for the 21st century. America under H.R. 400 is throwing

away our technological lead by publishing patent applications much earlier and taking away the secrecy that is inherent in our system to our inventors and making other radical changes which, by the way, to the membership, if anybody has a final copy of this bill I hope they will give it to me because somebody who has been as involved in this issue as any other Member, I cannot give my colleagues a bill that we will be asked to vote on here today that is accurate in terms of legislative language.

We have the choice here today to create prosperity for our Nation, to provide opportunities to our children, but if we change the patent system as H.R. 400 proposes, we will be throwing away the American dream of opportunity embedded in the Constitution of the United States. I guarantee my colleagues if this bill passes, there is going to be decades of litigation as the American people fight for the rights they were granted under our Constitution.

Our patent system is the heart of our economic strength because it creates new money, jobs, and new industries. I ask the membership to vote no on H.R. 400.

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

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

Mr. COBLE. Mr. Chairman, I yield  $6\frac{1}{2}$  minutes to the gentleman from the Roanoke Valley of Virginia [Mr. GOODLATTE] who has been very helpful in the movement of this bill, H.R. 400.

Mr. GOODLATTE. Mr. Chairman, I rise in strong support of H.R. 400, the 21st Century Patent System Improvement Act. Just remember that title. That is what this is about, improving our patent system. I would like to thank the gentleman from North Carolina [Mr. COBLE], chairman, for his hard work and dedication on this important issue.

This legislation has been subject to a great deal of confusion in recent weeks, due largely to the blatant misrepresentations of its opponents. People who make their livings gaming our patent laws will stop at nothing in their effort to prevent meaningful and necessary reform of the system. Opponents of patent reform have engaged in a campaign of deliberate misrepresentation and confusion in the hopes that they might convince Members that H.R. 400 is an international sellout that will undermine the patent system created by our Founding Fathers. Nothing could be further from the truth.

H.R. 400 is one of the most thoroughly debated bills to come before the House this year. The provisions contained in this bill have been developed over the last 2 years and have been the subject of 10 full days of hearings with over 80 witnesses. Patent and trademark commissioners who dedicate themselves to the integrity of our patent system, from the Nixon, Ford, Reagan, Bush, and Clinton administra-

tions support the major provisions of H.R. 400. These experts also oppose the major provisions of the Rohrabacher substitute, which was written on behalf of those who ignore the intent of our Founding Fathers by using subterfuge to destroy the integrity of the U.S. patent system. Taking the word of patent submariners on patent reform is like asking a fox for advice on how to guard the henhouse.

H.R. 400 is the unanimous product of the Committee on the Judiciary. Unanimous, 35 members of the committee. Not one voted against this, not one Democrat, not one Republican. Yet this issue has been demagogued by a very few. Through the legislative process, the committee has worked with independent inventors, small businesses, universities, industry groups, the White House Conference on Small Business, and the Senate. Over 75 U.S. companies, large and small alike, which employ 1.4 million American workers and hold 55,000 U.S. patents, support H.R. 400.

This legislation is critical to ensuring that America maintains our position as the world leader in intellectual property. H.R. 400 benefits independent inventors, small businesses, and other Americans who utilize our patent system in four key areas.

First, it guarantees diligent patent applicants at least 17 years of patent term and ensures that they will not lose their rights due to delays by the patent office. Second, the bill protects early domestic commercial inventors, including universities and researchers who use later patented technologies. Third, the legislation deters invention promoters from defrauding unsuspecting inventors. Finally, H.R. 400 gives all Americans a new property right while their patents are pending before the Patent Office.

Unfortunately, opponents of patent reform are unwilling to give up the loopholes through which they undermine the integrity of America's patent system. Their proposal, offered today by the gentleman from California [Mr. ROHRABACHER] as a substitute to H.R. 400, would encourage abuses of our patent system that currently cost American taxpayers and consumers hundreds of millions of dollars. Although they may argue otherwise, the Rohrabacher substitute is nothing more than a recipe for economic disaster.

Since opponents of meaningful patent reform allege that H.R. 400 is a huge corporate giveaway, I would like to respond by highlighting the ways in which H.R. 400 benefit small inventors. First, under H.R. 400, small inventors will be able to acquire venture capital to market their inventions more quickly and easily. This will put small inventors on a more level playing field with large multinational corporations, allowing individuals and small businesses to fully compete in the global marketplace.

Mr. Chairman, H.R. 400 also gives small inventors greater protection

against those who try to steal their ideas. Under current law, small inventors have no protection against would-be thieves that steal the subject of a patent and commercialize it before the patent is granted. These inventors are then helpless to stop the commercialization of their inventions or to share in the profits until the patents are granted.

I should also note that the Rohrabacher substitute does nothing to help small inventors with this problem.

H.R. 400, however, allows small inventors to receive fair compensation from any third party who commercializes their ideas between the time of publication and the time the patent issues. Every one of us has seen the words "patent pending" on a product, but in the current system, these words do not provide any legal protection.

Under H.R. 400, small inventors will be given a new property right while their patents are pending, so they can punish intellectual property thieves who try to steal their ideas.

Additionally, H.R. 400 gives small inventors longer patent protection than they receive under current law. Under the old system, which the Rohrabacher substitute seeks to resurrect, patent protection was only available for 17 years from the date a patent was granted.

H.R. 400, however, guarantees good-faith patent applicants a minimum of 17 years of patent protection, with most applicants receiving more. The bill also provides extended protection for up to 10 years in cases where the Patent Office fails to give applicants firm rulings on their applications in a timely manner.

Finally, H.R. 400 gives small inventors a special option to avoid publication of their patents. During the application process, some inventors may have second thoughts about publishing their applications, especially in cases where an initial Patent Office review is not favorable.

Under H.R. 400, inventors may withdraw their applications prior to publication and either refile them in the future or seek protection under State trade secrecy law.

Mr. Chairman, the Framers of our Constitution created a system in which the Government grants exclusive rights to inventors for a fixed period of time, in exchange for the prompt public disclosure of their inventions. This exchange allows all of American society to benefit from the creation of new ideas.

H.R. 400 is exactly what our Founding Fathers intended. It promotes invention by guaranteeing longer patent terms, prevents fraud and abuse by stopping patent submariners from swindling American taxpayers out of hundreds of millions of dollars, and protects small inventors by giving them new property rights in their pending patent applications.

I urge my colleagues to vote for H.R. 400 and against the misguided Rohrabacher substitute.

Mr. ROHRABACHER. Mr. Chairman, I yield 1 minute to the gentleman from Maryland [Mr. ROSCO BARTLETT], one Member of Congress who has 20 patents to his name and who can speak with expertise on the issue of patents.

Mr. BARTLETT of Maryland. Mr. Chairman, as the holder of 20 patents myself, I feel compelled to rise today in support of the Rohrabacher substitute. For over 200 years, the American patent system has empowered inventors to make this country the most innovative in the world.

If H.R. 400 becomes law, small businesses and inventors will be forced to publish their patents before receiving a patent. This opens the door for every copycat in the world to steal this information and begin manufacturing and marketing before the inventor has patent protection.

Ladies and gentlemen, our Founding Fathers had the wisdom to recognize the need for a patent system unlike anywhere else in the world that promoted the concept of entrepreneurship and protected ingenuity.

□ 1345

Their foresight has resulted in the greatest industrial power this world has ever seen. Let us not weaken this protection in the name of international harmonization.

Next week I will hold hearings in the Subcommittee on Government Programs of the Committee on Small Business on this issue. I look forward to continuing this dialog.

Mr. COBLE. Mr. Chairman, I have only one speaker remaining. As I have the right to close, I will reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 3½ minutes to the gentlewoman from California [Ms. LOFGREN], in whose district there are an incredible number of inventors and biotech people.

Ms. LOFGREN. Mr. Chairman, I rise in strong support of H.R. 400 and urge my colleagues to join me in voting for this important legislation.

As the gentleman from Michigan [Mr. CONYERS] has just indicated, I represent Silicon Valley in California. I know well the importance of ideas and the value of intellectual property. Our thriving economy back home is based on ideas and on technology.

It is worth pointing out to many Members who do not have exposure to high technology in their own districts the origin and history of our system of patent law. As my colleagues know, our Founding Fathers recognized the value of ideas in American ingenuity, and they put in our Constitution the authority of Congress to, "promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." That is in section 8, article I of the Constitution. By sharing ideas, in-

ventors would advance the body of human knowledge and they would avoid the duplication of other scientists and knowledgeable people, and in exchange for sharing their ideas to advance human knowledge the inventors would receive for a period of time the exclusive ownership of that idea; and that really is the gist of patent law then and now.

Obviously the patent system today is different than it was in the 19th century. The original patent reform legislation was in 1836. We had revisions again in 1952. And here we are at the dawn of the 21st century once again updating patent law for the information society. H.R. 400 does that very well, as many of the speakers have already indicated.

I do, however, want to talk about some of the comments that have been made in criticism of the bill because it is important that they be put in the context of what is actually part of the law.

First, I have heard today and elsewhere the issue of gifts. I think that is quite a stretch, but it has confused many Members of this House because H.R. 400 does not change the current law in any respect relative to gifts. In fact, the Patent Trademark Office presently enjoys the right to use the authority to accept gifts and bequests granted to the Secretary of Commerce, and they are not unique in that regard.

For example, the Library of Congress is able to accept gifts and bequests along with the Secretary of Agriculture for the national ag lobby. We have taken it out. Unfortunately we have taken it out in the manager's amendment only to deal with an issue that did not need to be dealt with in reality.

There has been a lot of discussion that all of the inventors and all of the innovators are opposed to H.R. 400. Nothing could be farther from the truth. I would like to tell my colleagues that of the really thousands and thousands of people who are immersed and employed in technology, the overwhelming thrust from Silicon Valley is in favor of this reform of our patent bill, and of the high-tech companies who have been in communication with me, I would say there have been none, none who have opposed H.R. 400. Hewlett-Packard, Intel, and the inventors at IBM all beg us to adopt H.R. 400. I must say also they are considerably confused by the controversy that has erupted over this and cannot understand any of the argument being made in opposition since those arguments bear so little relationship to the law, to the facts and to the need for this update.

Mr. ROHRABACHER. Mr. Chairman I yield myself 1 minute.

So we have heard the submarine patent, that is the reason why we have to change the fundamental patent law of the United States that has been in place, the protections have been in place since the founding of our country. This is the equivalent of saying

that because Hustler magazine is out, we have got to eliminate freedom of speech and totally restructure the civil liberties concerning freedom of speech in our country.

That is absolutely ridiculous. It is like saying, you got a hang nail, thus you got to amputate your whole leg in order to solve that problem.

No, the submarine patent issue is not the issue here. I put it into my substitute, I have been willing to end this problem all along. Congressional Research Service has found, has a finding, that my substitute ends the practice of submarine patenting. This is being used as a fig leaf to cover one of the most grotesque power grabs in the history of this country.

Little ROSCOE BARTLETT, the ROSCOE BARTLETT'S out there who discovered the wonderful things that change our lives, are being put at risk. It was very simple. We heard him say they are going to publish everything that he does so that everybody in the world can steal it and then say, "Sue them," to get it back.

Ms. KAPTUR. Mr. Chairman, I yield 1¼ minutes to the gentleman from Cleveland, OH [Mr. KUCINICH], our esteemed colleague.

Mr. KUCINICH. Mr. Chairman, I rise in opposition to H.R. 400.

The essence of this bill is a hostile takeover of the American patent system by private interests. The American patent system is a public trust. It is operated by a responsible government organization for the benefit of the American people and individual inventors. It exists to enhance the capacity of our economy to cultivate and commercialize new technologies.

If H.R. 400 becomes law, the integrity and independence of the patent system will be undermined. H.R. 400 would convert the Patent and Trademark Office, now part of the Department of Commerce, into a "corporate body not subject to direction or supervision by any department of the United States."

Another disturbing aspect of H.R. 400 is the establishment of a management advisory committee composed of corporate and management executives who will oversee the policies, goals and performance, budget, and user fees of this new government corporation. Even though the director of the Patent and Trademark Office would be appointed by the President of the United States, the director would be compelled to consult with a private sector board on all major decisions. The transformation of the PTO into a corporate body combined with the influence of the management advisory committee places our Nation on a slippery slope to corporate domination of the patent system and the destructive undermining of the democratic tradition which has produced some of the greatest inventions in the world from the American people.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts [Mr. DELAHUNT].

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

Mr. DELAHUNT. Mr. Chairman, as a member of the committee and a cosponsor of House Resolution 400, I rise in support of the manager's amendment, and I want to commend our subcommittee chair, the gentleman from North Carolina [Mr. COBLE], for the fine work and for the patient and thoughtful way he has tried to reconcile all interests to perfect this legislation.

The critics have claimed that publication would enable foreign competitors to appropriate American ideas. The truth is that competitors who appropriate an invention after publication are liable for damages to the applicant, just as they would be once a patent is granted. The real issue is reciprocity.

The vast majority of American inventors seek patent protection not only at home but in foreign countries as well. To do so, they must publish their application in foreign countries 18 months after filing. But since America is the only industrialized Nation that does not have such a requirement, foreign companies seeking U.S. patent protection have no obligation to publish in the United States.

In other words Americans have to publish abroad while foreigners do not have to publish here. This puts U.S. inventors at a serious disadvantage which the bill would correct.

This bill is about protecting American inventors, American businesses and American workers, and I urge passage of House Resolution 400.

Mr. Chairman, as a member of the committee and a cosponsor of H.R. 400, I rise in support of the manager's amendment and in opposition to the amendment in the nature of a substitute which will be offered by the gentleman from California.

I want to commend our subcommittee chairman, Mr. COBLE, for the patient and thoughtful way in which he has worked with all interested parties to refine and perfect this legislation over the past 3 years. I also wish to thank the ranking member, Mr. FRANK, and the chairman and ranking member of the full committee, Mr. HYDE and Mr. CONYERS, for their efforts on behalf of this legislation.

As a new member of the Subcommittee on Courts and Intellectual Property, I can sympathize with those of my colleagues who may feel intimidated by this complex and arcane subject. Unfortunately, that feeling has been compounded by a well-orchestrated campaign waged by opponents of this legislation to convince independent inventors and small businesses that this bill would benefit large international corporations at their expense.

I am proud to have many independent scientists, inventors, and startup companies in my district, and was appalled at what I was hearing from some of them about this bill. If what they were saying was true, this was David against Goliath, and I was not about to side with the Philistine. Frankly, I was ready to get out my slingshot too, until I learned the facts.

And the facts told a different story. I listened carefully to the testimony and studied the lan-

guage of the bill, and found that this legislation had been totally mischaracterized by its opponents. The truth is that this bill benefits not only the major corporations and universities in my region who enthusiastically support it. It benefits every inventor and developer of advanced technology, whether large or small—from software developers and biotechnology companies on the South Shore to marine biologists at Woods Hole.

H.R. 400 creates a level playing field between U.S. patent applicants and their international competitors. It modernizes the patent office and reduces administrative delays. It protects inventors even before a patent is granted through publication of patent applications, and creates a "prior user" defense against claims of infringement for those who have independently developed and used inventions that are subsequently patented. These reforms will help ensure that the U.S. patent system keeps pace with the demands of the 21st century.

But what will all this mean for the independent inventor? Critics of the bill have claimed that requiring patent applicants to publish their application 18 months after filing would enable others to rob them of their work. The truth is that by publishing the application, the inventor gains a form of provisional protection not available under current law. Today, an inventor has no protection against a third party who exploits the inventor's idea while the application is pending. The phrase "patent pending" announces to the world that an application has been filed but affords no legal protection. By publishing the application, the inventor stakes a claim that entitles him or her to compensation for infringement from any third party that makes use of the idea between the date of publication and the date the patent issues.

Perhaps even more important for a small business or an independent inventor is the fact that other applicants must publish, too. Under current law, an applicant has no way of knowing whether another has filed first until one of them receives a patent. By then, the losing party may have invested everything it has in an idea that belongs to someone else. Under H.R. 400, an applicant will know if a patent has already been applied for.

The critics have claimed that publication would enable foreign competitors to appropriate American ideas. The truth is that competitors who appropriate an invention after publication are liable for damages to the applicant, just as they would be once a patent is granted. The real issue is reciprocity: The vast majority of American inventors seek patent protection not only at home but in foreign countries as well. To do so, they must publish their application in the foreign country 18 months after filing. But since America is the only industrialized nation that does not have such a requirement, foreign companies seeking U.S. patent protection have no obligation to publish in the United States. In other words, Americans have to publish abroad, while foreigners do not have to publish here. This puts U.S. inventors at a serious disadvantage which the bill would correct.

But what about inventors who have no intention of applying for a patent overseas? The critics have claimed that they have no recourse. The truth is that the bill will allow inventors applying for a patent exclusively in the United States to delay publication until 3 months after the Patent and Trademark Office

has taken a second action with respect to the application. Since, in most cases, the second Office action is the issuance of the patent itself, this provision effectively exempts independent inventors and small businesses from the publication requirements. On the other hand, if the second Office action is a determination that a patent is unlikely to be issued, the applicant may withdraw the application and seek protection under the trade secret and unfair competition laws.

The other major claim made by critics of the bill is that the proposed term of 20 years from the date the application is filed would give inventors less protection than the current term of 17 years from the date the patent is granted. The truth is that those who apply in good faith and do not attempt to delay their applications are guaranteed a minimum of 17 years under the bill. Most applicants will receive more than 17 years of protection, since most applications are processed within less than 2 years. A diligent applicant who is forced to wait more than 3 years would be granted an extra day of patent protection for each day of delay.

I do not mean to suggest that all of the concerns that have been raised about this legislation are illegitimate. What I do believe is that the legitimate concerns raised by the gentleman from California and other critics of the legislation as originally drafted have been addressed. H.R. 400 includes numerous amendments that effectively respond to these and many other concerns raised over the 3 years that this legislation has been on the drawing board.

Those are the facts. It is unfortunate that the truth has been obscured by misinformation and demagoguery. But the loudest voices are not always right, and the constant repetition of a falsehood does not make it true. H.R. 400 is good for inventors, both large and small. It is good for our Nation as a whole. I urge my colleagues to reject the Rohrabacher amendment and pass the bill.

Mr. ROHRABACHER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, it should be apparent by now that there are some fundamental issues at play here between two people over a disagreement, an honest disagreement. Let me note this: that everything that has been said that is good about H.R. 400 has been included in my alternative bill which will be offered as a substitute on the floor.

What we have now are several issues that differentiate us, and one is, of course, after 18 months all of our technological information will be made public to the world. Why is this? Why are they insisting on publication? They say it is to handle the submarine patent issue, although we have already solved that according to the Congressional Research Service. It is because there has been an agreement made with Japan that I have put in the CONGRESSIONAL RECORD, time and time again, to harmonize our law; in other words, make American law like Japan's.

Mr. Chairman, if our colleagues listen very carefully to the arguments we have heard today that is what is being said. We have got to have a law like they have in Japan and in Europe. How

has it worked in Japan? The little guy gets kicked and smothered and beaten down. We do not want a system like that here.

Mr. COBLE. Mr. Chairman, as I said previously. I only have one speaker left, and I have the right to close.

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

Mr. ROHRABACHER. Mr. Chairman, how much time is remaining?

The CHAIRMAN. The gentleman from California [Mr. ROHRABACHER] has 4½ minutes remaining, the gentleman from North Carolina [Mr. COBLE] has 5 minutes remaining, the gentleman from Michigan [Mr. CONYERS] has 16½ minutes remaining, and the gentleman from Ohio [Ms. KAPTUR] has 1¼ minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield myself as much time as I may consume.

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

Mr. CONYERS. Mr. Chairman, we are gathered here under unique circumstances. We have a manager's amendment which I think will clear up many of the problems, I hope, that the gentleman from California [Mr. ROHRABACHER] has posed. I do not know if he is familiar with the manager's amendment. Apparently he is not.

Mr. ROHRABACHER. It would be very difficult because it did not come on the floor or was available to us until just a few hours ago.

Mr. CONYERS. Then the gentleman from California is not familiar with it. Just a moment; I have not yielded.

Mr. ROHRABACHER. I thought the gentleman from Michigan was asking me a question. I am sorry.

Mr. CONYERS. No, I will handle this. The gentleman is not familiar with it, and it just came on the floor. It was brought forward at the Committee on Rules hearing yesterday that the gentleman attended with myself and the chairman of the Committee on the Judiciary.

Mr. ROHRABACHER. If the gentleman would yield, I am sorry I was not.

Mr. CONYERS. Mr. Chairman, I did not yield to the gentleman from California. Please. I know this is an anxious moment which the gentleman awaited a long time, and we have granted him time, but he cannot interrupt me.

□ 1400

Now, the manager's amendment might help bridge the difference between the unanimous conclusions of every Democrat and Republican on the Committee on the Judiciary and the distinguished gentleman from California. Manager's amendments have a way of coming up at Committee on Rules hearings. If it had been prepared earlier, we would have brought it out with the bill.

So I would propose that myself and the chairman of this committee make

available to the gentleman from California [Mr. ROHRABACHER] the amendment, if the gentleman has not seen it, to see if it actually bridges any of the differences that we have, or if it fails, because if it does not, it limits what we are doing.

Now, according to the gentleman from California [Mr. ROHRABACHER] and the document the gentleman has held on the floor, the submarine issue is resolved. We resolved it, the gentleman resolved it, it is not in contention from the gentleman's position. The manager's amendment also might help resolve some more issues. I am just trying to reach some resolution here. So hopefully, that will happen.

Now, the vast majority of patents are filed both in the United States and abroad simultaneously, 80 percent of them. Abroad they are required to be published. So this requirement will not affect 80 percent of the patents. There is an exemption from the publications requirement for small businesses, and for the small inventor there is an exemption. This is relatively fundamental. It is in our bill.

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

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

Mr. HUNTER. Mr. Chairman, it is not in the bill, and I would like to ask a question about that. As I read the manager's amendment, there is the opportunity for a small business to opt, if they have had two office actions, to either opt out of the patent system or to delay publication for 3 months, but they still have the publication mandate after 18 months, from the way I read the manager's amendment, and I ran that by the inventors.

Mr. CONYERS. Mr. Chairman, as far as the Rohrabacher group goes then, we do not solve that.

Then let me try the prior-use doctrine. The prior-use doctrine here protects the first to invent, not the person who steals the intellectual property, and we are attempting to give that protection, which does not exist now, and that is why publication in the end, I say to my colleagues, is so important. It stops the process whereby foreign competitors can game our patent system process by filing incomplete patent applications and extend their legal monopoly rights up to 40 years.

Now, the Wall Street Journal is not for or against H.R. 400 or the Rohrabacher substitute, but they are writing about Americans who are gaming the system. That is what we are trying to stop. Hence, the bill.

So there is something missing here in this debate. After years of working with both sides, inventors, lawyers, former patent commissioners, the administration, we finally come to closure with a unanimous vote in this Congress, and the last, and now the gentleman is telling us that this thing really was not cured. And I am stunned to find the Wall Street Journal pointing out that these kinds of fellows are

the ones that we are trying to stop with this H.R. 400 and that we are not undermining the American patent process, we are really undergirding it and bringing the protection to small inventors.

That is why this Member supports the bill. I am not a shill for big corporations or any other kind of association, but the fact of the matter is, we are making this a better patent law by improving the defects that have existed for a considerable number of years. I urge Members to think of these arguments.

We will have the 5-minute rule in effect, and I hope that we can take care of every one of the reservations that my dear friend from Ohio [Ms. KAPTUR] has so articulately put forward in this debate, because that is what we are here for. We want to do the right thing, and I hope that my colleagues will move our debate along in that spirit.

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

Mr. ROHRBACHER. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. CAMPBELL] who represents the Silicon Valley area.

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

Mr. CAMPBELL. Mr. Chairman, I wish to speak on the question of who is on which side. I think that is a useful way to analyze the factors in these bills.

The inventors want to keep the rights that they have when they invent and do not want to be forced to disclose. The commercializers want to have as much disclosure as possible so that they can make use of those inventions.

I am not condemning either side, but by identifying them, I think we see that if we can achieve the commercializers' legitimate interests without undercutting the inventors, then we have achieved something. That is what is in the Rohrabacher bill.

Some of my colleagues on the other side have spoken about the high-tech companies who support H.R. 400, and I agree they do. But it is very interesting to me that the university community has been silent and has not rushed to support H.R. 400. In fact, I have had extensive dealings with the university community and they are staying off, because they are worried about what this might do to the inventive process.

Mr. Chairman, I would conclude with one last observation, and that is that people speak of a level playing field with Europe. I say to my colleagues, I do not want a level playing field. We are better.

Mr. ROHRBACHER. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FORBES].

Mr. FORBES. Mr. Chairman, much has been made about previous administrations supporting this kind of initiative. Well, I have in my hand a Commerce Department news release which shows clearly what this is really about.

It is not about submarines. It is about gaining access to foreign markets.

In this news release it says, quite specifically, that in exchange for loosening up U.S. patent protections that we will make concessions to other nations, and that clearly is what it is about, access to foreign markets. It is no secret why the political appointees want this for access to greater markets overseas, but let us talk about why we need to protect American ideas, American patents within America's borders. That is the key here.

Patent examiners, their association, oppose this bill. They find it horrendous. And it will hurt the small business people and the entrepreneurs, and if we care about small business and the entrepreneurs, the little guy, then my colleagues will support my amendment to this legislation.

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

Mr. Chairman, our hearings have revealed, and this is why we support the bill, it showed that 300 foreign companies were able to come into this country and game the process, so the previous speaker who says that this is all just about domestic, well, it is about foreign companies coming onto our turf, sir, and taking our patents. That is what we are trying to stop.

So to say that it does not involve foreign companies, it involves 300 foreign companies, according to our hearings. In one case, a British pharmaceutical company was so effective at the submarining game that the United States competitor had to relocate its operations abroad to be able to produce a competing product.

So we have our companies going out of the United States to come back in because of the submarine system, and some say this is just a domestic problem. It is not. It is a national, international problem.

Now, the submarine patents which we claim are now corrected on both sides, I would point out that there was one American, and this is not a foreign entrepreneur, was able to get \$500 million in royalties. For doing what? For simply delaying for 35 years in some instances, the prosecution of a patent, and then suing other manufacturers who, in the meantime, not knowing about it, started using the process. Gilbert Hyatt submarined his patent for 20 years and extracted \$70 million from Texas Instruments, who started using the same computer chip technology, totally unaware of Hyatt's submarine patent.

If the Rohrabacher bill cures it and the bill discussed by all of the members of the Committee on the Judiciary and two Congresses, what is wrong with H.R. 400? As a matter of fact, the gentleman from California [Mr. ROHRBACHER] came before the committee, and his ideas and discussion were taken into consideration, and we thought that we treated him very kindly.

So this is a big problem we are curing. It is not overturning the patent

system; it is not undermining the American process which we have put together; it is really taking care of a problem that has to be addressed and is being addressed in the committee bill. Mr. Chairman, I urge its continued support.

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

Mr. ROHRBACHER. Mr. Chairman, I yield 1½ minutes to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding.

We were told in some previous statements, I think the gentleman from Virginia [Mr. GOODLATTE] pointed to Japan and Europe and said, why can we not be like them? This poster shows the number of Noble Laureates in science and technology from the United States as opposed to the number from Japan. There are 175 from the United States, that is our broken system; and there are 5 from Japan, that is the good system.

Now, why are there so many from the United States and why are there so few from Japan? And I think my colleagues would see exactly the same numbers with Europe. Why are there almost no high-technology startup businesses in Japan and Europe and lots of them in the United States? Secrecy. Being able to keep one's idea under a cloak while one lines up the money and the power to get it into production.

□ 1415

You can do that in the United States. You cannot do it in Japan, you cannot do it in Europe. There is no running room.

We want to give our innovators running room. Do Members know something? We give it to them. They have some secrecy. There is no substitute for that secrecy, because after two of these office actions, we still are going to publish under the main bill, we are going to publish those folks. That is what we have said. The Patent Office tell us that clearly, more than 30 percent of the patents that are ultimately issued go past two office actions. So that means those folks are going to be exposed.

Submarine patents, do Members know how many submarine patents there have been in the last 2.3 million patents that have been issued? Three hundred and seventy. We do not need to expose all of our people to cut out 370.

Mr. COBLE. Mr. Chairman, will the gentleman from Michigan [Mr. CONYERS] yield 2 minutes to me?

Mr. CONYERS. I yield 2 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I had not planned to, but it is tough to remain silent here. As my friend, the gentleman from Michigan, said, there has probably been more excitement surrounding the law of patents than has happened in the last 15 years. But the gentleman from New York stood in the

well and said, this is not about submarine patenting. Mr. Chairman, it is about submarine patenting.

I direct the gentleman's attention to the front page of the Wall Street Journal, to which the gentleman from Michigan previously alluded, indicating in broad print that it is a big-time problem, submarine patenting. For the benefit of the uninformed, the last time I checked, the Wall Street Journal is not a yellow journalistic sheet, so I think there is some authenticity behind that.

I say to my good friend, the gentleman from California [Mr. CAMPBELL], one of the most learned people in this body, he mentioned the university system. He will recall that in the dialog in which he and I engaged we made amendments in order, and the manager's amendment reflects some of that, that satisfies the university community. They came back to me, and perhaps to others on the committee, telling us that it is far better than it was earlier. I think they are taking no position on either bill. So we did do some good work on that.

Mr. ROHRABACHER. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore. The gentleman from California [Mr. ROHRABACHER] is recognized for his remaining 1 minute.

Mr. ROHRABACHER. Mr. Chairman, that is why this is not about submarine patents, because the Congressional Research Service has found that my bill, as well as the bill we are talking about, H.R. 400, deals with submarine patents. What we are talking about is a subterranean agreement with Japan, which I have held up, put in the CONGRESSIONAL RECORD, no one wants to comment on it, to harmonize our law with Japan's; Japan, where economic shoguns beat their people into submission because all of the secrets of the average person are made vulnerable to the big guys coming in and stealing it legally.

It does not make me feel any better that you have given the rights to the American people, after exposing them to theft, to sue Mitsubishi Corp. or the People's Liberation Army if they come over here and start stealing from our people.

This is about exposing the gentleman from Maryland [Mr. ROSCOE BARTLETT] and every other inventor in this country, and the five Nobel laureates who support my substitute bill, to grand theft and the lowering of the American standard of living because we have lost our technological edge, because we have given it away.

We have exposed it to theft, and if we pass this bill, a bill that opens up all of our secrets for our enemies to steal, we deserve it.

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

Mr. Chairman, we heard about a secret agreement with Japan that no one speaks about. I am happy to find out about it. I presume that the gentleman

from California is referring to a part of the GATT conference?

At any rate, I will be happy to deal with that in the 5 minutes.

Mr. Chairman, could I just review a few circumstances that may come out as the debate goes on. The substitute of the gentleman from California [Mr. ROHRABACHER] provides that applications filed in this country may not be published sooner than 5 years after they are filed, and then, not if the application is under appellate review.

This is one of the ways a submariner delays its own application, is to file spurious law claims and appeals. In addition, the director of the PTO must find that the application is not being pursued by an applicant before the publication can occur. I think we have some problems, because as anyone can imagine, it is almost impossible to identify maneuvers by patent lawyers to delay the processing of their applications.

So this provision is not very helpful in eliminating submarining, and is almost impossible to enforce, from my perspective. Imagine telling a judge that he can only allow the public to see the court documents relating to a case when a finding was made as to whether the merits were diligently pursued.

All judges, patent judges included, must give the benefit of the doubt to the filers that they are proceeding in good faith, and that they are legitimately pursuing their claims, or the whole system goes down.

The Rohrabacher substitute, as I understand it, demands a presumption of guilt in order to require publishing. This is a presumption that almost never can be established, and therein lies a serious grievance between the substitute and the bill, H.R. 400.

Mr. Chairman, what we are saying here is that we have a little submarining going on here on the floor. We have one bill that corrects submarining, a substitute that says, but we do, too, and then when we look at it a little more carefully there are a number of questions. And they may be drafting problems, or they may just not have been as tightly drawn, but they certainly cannot equally be said to deal with the problem of submarining. I do not think that is the case.

There is another way to game the system, under the Rohrabacher substitute. An applicant could file appeals, and listen carefully to this, an applicant under the Rohrabacher substitute could file an appeal to the Board of Patent Appeals which, while unlikely to succeed, are not so frivolous as to draw sanctions. That is what submariners love, new ways to game the system.

I am not saying this is done in bad faith. I am sure he is trying to cure it. But it simply does not cure it. That is why 37 members on the Committee on the Judiciary took this approach in H.R. 400.

#### PARLIAMENTARY INQUIRY

Mr. ROHRABACHER. Parliamentary inquiry, Mr. Chairman. If a Member is referred to by name on the floor and a question is asked, is it out of order for the Member then to ask if the person wants an answer to the point?

The CHAIRMAN pro tempore. The Member who controls the time decides if he wants to relinquish the time.

Ms. KAPTUR. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore. The gentlewoman from Ohio [Ms. KAPTUR] is recognized for 1¼ minutes.

Ms. KAPTUR. Mr. Chairman, I say to the Members, if they have not read H.R. 400, I say vote "no." No one will have been able to read it because it has been changed so much, there is no final bill for Members to review.

Support the substitute. Remember, the United States leads the world in intellectual property breakthroughs by 10 times. Why change a system that is working, for a bill which Members have no final copy of to review? Why support a bill that takes away the guaranty of secrecy our patent applicants receive until their patent is granted? Why do that to them?

Why support H.R. 400, when it puts a greater burden of proof on our inventors to defend themselves, forcing them to sue, forcing them to greater re-examination procedures? Why do this to them?

Why support a bill that undermines the objectivity of our patent examiners, and changes our Patent Office?

This is a battle that goes to the heart of the constitutional rights of our citizens to invent opportunity in the 21st century. Vote "no" on H.R. 400. Support the substitute.

Mr. COBLE. Mr. Chairman, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

The CHAIRMAN pro tempore. The gentleman from Illinois [Mr. HYDE] is recognized for 5 minutes.

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

Mr. HYDE. Mr. Chairman, this is about submarine patenting, and lest anyone be confused, a submarine patent is an application made by somebody who does not really want a quick and speedy issuance or grant of a patent. He wants to keep his application alive below the surface, hoping that somebody else will come along and start marketing, start manufacturing, start using an idea which is a part of his application. Then he surfaces suddenly, periscope up, and sues.

That may sound convoluted, but there are people making millions and millions of dollars, and the only way to effectively dispel that gaming of the system is to expose the applicant to publication after a reasonable length of time. Eighteen months has been determined by the world and us to be a reasonable length of time.

The gentleman from California [Mr. ROHRBACHER], claims that his substitute effectively dispels the submarine problem. That is, forgive me, nonsense. Here is how he dispels the submarine problem.

His amendment provides for publication no sooner than 5 years after the filing date, but not even then, if the submariner files an appeal, which may or may not be legitimate.

□ 1430

That is a way to stretch this thing out. So under his curative amendment, submarines must surface after 5 years. That is a lifetime in the computer business. That is a lifetime in the pharmaceutical business. That is a lifetime in the biotech industry.

It is just no cure. I just think it is a convoluted way to continue gaming the system.

We have heard about stealing secrets. My God, we Americans are so brilliant and we invent these things and we clutch them to our bosom and nobody is going to steal them. Well, the problem is, if you want to be protected in Japan, if you want to be protected in France or Germany, you have to file over there. And if you file over there, you are going to be published in 18 months. On the other hand, 45 percent of the applications for patents in our country are from foreign countries, foreign inventors, rather, and they are not published under our present law, so we cannot see what they are doing; but, boy, they can see what we are doing.

Now, after publication, which is a healthy, good thing, not a poisonous thing, publication gives rise to what are called provisional rights, which means after your idea has been published but before you get a patent, you have rights which are enforceable in damages should somebody steal your idea and infringe your patent. So those things have to be taken into consideration.

This patent law is esoteric. It is difficult. But it is darned important to our economy and it is critical to our international competitiveness. I have heard language I expect to hear in the early 1940s about this country can go it alone, we are not involved in an international trade situation. Oh, yes we are. And this committee, the Committee on the Judiciary, has been involved in hearings and the study of this legislation for 3 years. There have been full and open hearings on this issue, and we have heard from scores of witnesses.

Mr. Chairman, the committee has marked up the bill twice, and both times key improvements were made to address the reasonable concerns of the parties involved. I ask that Members consider the fact that the Committee on the Judiciary has produced a bill that has twice been unanimously approved by voice vote.

Yes, the United States is the world's largest producer of intellectual property, but this success is dependent on a rational and sound and modern system

of protection. To stay on top of an ever-changing technology and ever-changing economy, we have to make a number of changes in our patent code over the years. And we cannot ignore what is going on overseas.

First, in an era of unprecedented competition, the intellectual property industries have emerged as an area of American strength; and, second, technological innovations, especially in the areas of biotechnology and computer science, have increased substantially.

Today there are more than 1,300 companies employing more than 100,000 Americans in the biotech industry. That is just one industry that would not exist if we did not have strong patent protection.

Mr. WELDON of Florida. Mr. Chairman, I rise to express my concerns about H.R. 400, patent reform legislation. As the bill is currently drafted, I cannot support this legislation. While I appreciate the concerns by Members on both sides of this issue, I believe that H.R. 400 has some flaws that I cannot overlook.

For the past 200 years, the U.S. patent system has been the envy of the world. I believe that H.R. 400 as brought to the House floor would significantly alter this system which has done so much throughout our history to make the United States the world's leading source of innovation. We must carefully guard against any changes that might adversely impact the United States.

If major issues are not addressed during the debate on this bill, I will cast a no vote when we take a final vote on H.R. 400.

I thank the chairman for giving me this opportunity to speak on this matter.

Mr. SPENCE. Mr. Chairman, I rise in support of the manager's amendment to H.R. 400, the 21st Century Patent System Improvement Act.

Section 202 of this act would require the publication of patent applications 18 months after they are filed with the Patent and Trademark Office. This is a significant departure from the current practice, whereby this information is not published until after the patent is granted. There is a national security issue here. Under the current process, before a patent is issued a review of the patent application is conducted to determine if it contains technical information that is sensitive from a national security standpoint. If, after a review by the Department of Defense and the Department of Energy it is determined that the public release of the information in the patent application would be detrimental to national security, the patent application is put under a secrecy order prohibiting its public release.

In reviewing the original draft of H.R. 400, I was concerned that it would require the publication of the patent application before the Defense Department had completed its security review. A historical review determined that during fiscal years 1994 and 1995 eight of the patent applications that were eventually placed under secrecy orders did not have security review completed within 18 months. While that number is small, in 2 years there would have been eight instances in which classified technical information would have been publicly released under the procedures proposed by H.R. 400.

To address this problem, I submitted an amendment on behalf of the National Security

Committee to the Judiciary Committee that would prevent the publication of patent applications until the secrecy reviews have been completed and it is found that their publication would not be detrimental to national security. I am pleased to report that the chairman of the Courts and Intellectual Property Subcommittee, Mr. COBLE, has agreed to accept this change and thereby fix this problem.

I want to thank the Judiciary Committee and its staff for their assistance and for working with us to ensure that sensitive national security information is not inadvertently released as a consequence of reforming the patent system.

Mrs. KELLY. Mr. Chairman, I rise in strong support of H.R. 400, the 21st Century Patent System Improvement Act, legislation which might be more aptly titled the Keep America Competitive Act.

H.R. 400 makes a number of commonsense improvements to our patent system, but I want to focus on one particular problem inherent in the current system that this legislation will correct.

I'm talking about the problem of so-called submarine patents, situations where a patent applicant intentionally delays the issuance of a patent, sometimes for a decade or more, through repeated refilings, which has the effect of submerging their original application from public view.

At the same time, other individuals or companies, without knowledge of that pending application, develop and market the same new technology. The original filer then allows his pending application to issue as a patent—the submarine surfaces—and then proceeds to hit unknowing businesses with costly royalty claims.

Mr. Chairman, this is not how our patent system was intended to work. We need a system which encourages innovation and protects legitimate inventors who develop new ideas with the intention of bringing those ideas to market—not a system which encourages sham artists who file patent applications with no intention of developing a product, but every intention of hitting unsuspecting companies with huge royalties.

This is a very real problem for one of the major employers in my district—IBM. Time and time again, IBM is hit with royalty claims from patents that were filed as much as 20 years ago, but only recently surface as the patent issues. This is not rhetoric, Mr. Chairman, this is real; it costs the company millions of dollars and it hurts their ability to compete.

Now let me share with you some additional facts. The information technology industry is characterized by very short product cycles. A technology that is developed and goes to market today could be obsolete less than a year from now. Our patent system has not kept up with the pace of technology development in today's economy. We need a patent system that will take us into the 21st century, and yet forcing companies like IBM to wait 5 years or more before a patent application is published is totally out of step with the realities of the information age.

A 5-year publication requirement will accomplish one of two things: You will either inhibit new technologies from coming to market or you will ensure that submarine patents remain a problem, or both.

An 18-month publication requirement, as included in H.R. 400, gets the technology to the

marketplace quicker and, most importantly, ensures that the inventor enjoys the royalty proceeds from their invention sooner.

I urge my colleagues to join me in supporting this important legislation to keep America competitive in the 21st century. Vote for H.R. 400. Thank you, Mr. Chairman.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill, modified as specified in section 2 of House Resolution 116, shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

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

H.R. 400

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "21st Century Patent System Improvement Act".

**SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. Table of contents.

**TITLE I—PATENT AND TRADEMARK OFFICE MODERNIZATION**

Sec. 101. Short title.

Subtitle A—United States Patent and Trademark Office

Sec. 111. Establishment of Patent and Trademark Office as a Government corporation.

Sec. 112. Powers and duties.

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Sec. 114. Management Advisory Board.

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Sec. 118. Suits by and against the Office.

Sec. 119. Annual report of Director.

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Sec. 122. Extension of surcharges on patent fees.

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Subtitle B—Effective Date; Technical Amendments

Sec. 131. Effective date.

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Subtitle C—Miscellaneous Provisions

Sec. 141. References.

Sec. 142. Exercise of authorities.

Sec. 143. Savings provisions.

Sec. 144. Transfer of assets.

Sec. 145. Delegation and assignment.

Sec. 146. Authority of Director of the Office of Management and Budget with respect to functions transferred.

Sec. 147. Certain vesting of functions considered transfers.

Sec. 148. Availability of existing funds.

Sec. 149. Definitions.

**TITLE II—EXAMINING PROCEDURE IMPROVEMENTS; PUBLICATION WITH PROVISIONAL ROYALTIES; TERM EXTENSIONS; FURTHER EXAMINATION**

Sec. 201. Short title.

Sec. 202. Publication.

Sec. 203. Time for claiming benefit of earlier filing date.

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Sec. 206. Cost recovery for publication.

Sec. 207. Conforming changes.

Sec. 208. Patent term extension authority.

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Sec. 210. Last day of pendency of provisional application.

Sec. 211. Reporting requirement.

Sec. 212. Effective date.

**TITLE III—PROTECTION FOR PRIOR DOMESTIC USERS OF PATENTED TECHNOLOGIES**

Sec. 301. Short title.

Sec. 302. Defense to patent infringement based on prior domestic commercial or research use.

Sec. 303. Effective date and applicability.

**TITLE IV—ENHANCED PROTECTION OF INVENTORS' RIGHTS**

Sec. 401. Short title.

Sec. 402. Invention development services.

Sec. 403. Technical and conforming amendment.

Sec. 404. Effective date.

**TITLE V—IMPROVED REEXAMINATION PROCEDURES**

Sec. 501. Short title.

Sec. 502. Definitions.

Sec. 503. Reexamination procedures.

Sec. 504. Conforming amendments.

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**TITLE VI—MISCELLANEOUS IMPROVEMENTS**

Sec. 601. Provisional applications.

Sec. 602. International applications.

Sec. 603. Plant patents.

Sec. 604. Electronic filing.

Sec. 605. Divisional applications.

**TITLE I—PATENT AND TRADEMARK OFFICE MODERNIZATION**

**SEC. 101. SHORT TITLE.**

This title may be cited as the "Patent and Trademark Office Modernization Act".

**Subtitle A—United States Patent and Trademark Office**

**SEC. 111. ESTABLISHMENT OF PATENT AND TRADEMARK OFFICE AS A GOVERNMENT CORPORATION.**

Section 1 of title 35, United States Code, is amended to read as follows:

**"§1. Establishment**

"(a) ESTABLISHMENT.—The United States Patent and Trademark Office is established as a wholly owned Government corporation subject to chapter 91 of title 31, separate from any department of the United States, and shall be an agency of the United States under the policy direction of the Secretary of Commerce. For purposes of internal management, the United States Patent and Trademark Office shall be a corporate body not subject to direction or supervision by any department of the United States, except as otherwise provided in this title.

"(b) OFFICES.—The United States Patent and Trademark Office shall maintain its principal office in the metropolitan Washington, D.C. area, for the service of process and papers and for the purpose of carrying out its functions. The United States Patent and Trademark Office shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located, except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Office may establish satellite offices in such other places as it considers necessary and appropriate in the conduct of its business.

"(c) REFERENCE.—For purposes of this title, the United States Patent and Trademark Office shall also be referred to as the 'Office' and the 'Patent and Trademark Office'."

**SEC. 112. POWERS AND DUTIES.**

Section 2 of title 35, United States Code, is amended to read as follows:

**"§2. Powers and duties**

"(a) IN GENERAL.—The United States Patent and Trademark Office, under the policy direction of the Secretary of Commerce—

"(1) shall be responsible for the granting and issuing of patents and the registration of trademarks;

"(2) may conduct studies, programs, or exchanges of items or services regarding domestic and international law of patents, trademarks, and other matters, the administration of the Office, or any function vested in the Office by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

"(3)(A) may authorize or conduct studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with patents, trademarks, and other matters; and

"(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and other matters; and

"(4) shall be responsible for disseminating to the public information with respect to patents and trademarks.

The special payments under paragraph (3)(B) shall be in addition to any other payments or contributions to international organizations described in paragraph (3)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

"(b) SPECIFIC POWERS.—The Office—

"(1) shall have perpetual succession;

"(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

"(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings, subject to the provisions of section 7;

"(4) may indemnify the Director, and other officers, attorneys, agents, and employees (including members of the Management Advisory Board established in section 5) of the Office for liabilities and expenses incurred within the scope of their employment;

"(5) may adopt, amend, and repeal bylaws, rules, regulations, and determinations, which—

"(A) shall govern the manner in which its business will be conducted and the powers granted to it by law will be exercised;

"(B) shall be made after notice and opportunity for full participation by interested public and private parties;

"(C) shall facilitate and expedite the processing of patent applications, particularly those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;

"(D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office; and

"(E) recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1) of this title;

"(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

“(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 and following), the Public Buildings Act (40 U.S.C. 601 and following), and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 and following); and

“(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

“(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

“(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

“(10) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

“(11) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and the Act of July 5, 1946 (commonly referred to as the ‘Trademark Act of 1946’);

“(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);

“(13) shall have the priority of the United States with respect to the payment of debts from bankrupt, insolvent, and decedents’ estates;

“(14) may accept monetary gifts or donations of services, or of real, personal, or mixed property, in order to carry out the functions of the Office;

“(15) may execute, in accordance with its by-laws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

“(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance.

“(c) CONSTRUCTION.—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.”

#### SEC. 113. ORGANIZATION AND MANAGEMENT.

Section 3 of title 35, United States Code, is amended to read as follows:

##### “§3. Officers and employees

“(a) DIRECTOR.—

“(1) IN GENERAL.—The management of the United States Patent and Trademark Office shall be vested in a Director of the United States Patent and Trademark Office (in this title re-

ferred to as the ‘Director’), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who, by reason of professional background and experience in patent or trademark law, is especially qualified to manage the Office.

“(2) DUTIES.—

“(A) IN GENERAL.—The Director shall be responsible for the management and direction of the Office, including the issuance of patents and the registration of trademarks, and shall perform these duties in a fair, impartial, and equitable manner.

“(B) ADVISING THE PRESIDENT.—The Director shall advise the President, through the Secretary of Commerce, of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Director shall also recommend to the President, through the Secretary of Commerce, changes in law or policy which may improve the ability of United States citizens to secure and enforce patent rights or trademark rights in the United States or in foreign countries.

“(C) CONSULTING WITH THE MANAGEMENT ADVISORY BOARD.—The Director shall consult with the Management Advisory Board established in section 5 on a regular basis on matters relating to the operation of the Office, and shall consult with the Advisory Board before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations.

“(D) SECURITY CLEARANCES.—The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.

“(3) TERM.—The Director shall serve a term of 5 years, and may continue to serve after the expiration of the Director’s term until a successor is appointed and assumes office. The Director may be reappointed to subsequent terms.

“(4) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Office.

“(5) COMPENSATION.—The Director shall receive compensation at a rate not to exceed the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5 and, in addition, may receive as a bonus, an amount which would raise the Director’s total compensation to not more than the equivalent of the level of the rate of pay in effect for level I of the Executive Schedule under section 5312 of title 5, based upon an evaluation by the Secretary of Commerce of the Director’s performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable goals as delineated in an annual performance plan agreed to by the Director and the Secretary.

“(6) REMOVAL.—The Director may be removed from office by the President. The President shall provide notification of any such removal to both Houses of Congress.

“(7) DESIGNEE OF DIRECTOR.—The Director shall designate an officer of the Office who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director.

“(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

“(1) COMMISSIONERS.—The Director shall appoint a Commissioner for Patents and a Commissioner for Trademarks for terms that shall expire on the date on which the Director’s term expires. The Commissioner for Patents shall be a person with demonstrated experience in patent

law and the Commissioner for Trademarks shall be a person with demonstrated experience in trademark law. The Commissioner for Patents and the Commissioner for Trademarks shall be the principal policy and management advisers to the Director on all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively.

“(2) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

“(A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and

“(B) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.

“(c) CONTINUED APPLICABILITY OF TITLE 5.—Officers and employees of the Office shall be subject to the provisions of title 5 relating to Federal employees. Section 2302 of title 5 applies to the Office, notwithstanding subsection (a)(2)(B)(i) of such section.

“(d) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Modernization Act, with respect to such Office (as then in effect).

“(e) CARRYOVER OF PERSONNEL.—

“(1) FROM PTO.—Effective as of the effective date of the Patent and Trademark Office Modernization Act, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Office, without a break in service.

“(2) OTHER PERSONNEL.—Any individual who, on the day before the effective date of the Patent and Trademark Office Modernization Act, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Office if—

“(A) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

“(B) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent’s work time, as determined by the Secretary of Commerce; or

“(C) such transfer would be in the interest of the Office, as determined by the Secretary of Commerce in consultation with the Director.

Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

“(3) ACCUMULATED LEAVE.—The amount of sick and annual leave and compensatory time accumulated under title 5 before the effective date described in paragraph (1), by those becoming officers or employees of the Office pursuant to this subsection, are obligations of the Office.

“(f) TRANSITION PROVISIONS.—

“(1) INTERIM APPOINTMENT OF DIRECTOR.—On or after the effective date of the Patent and Trademark Office Modernization Act, the President shall appoint an individual to serve as the Director until the date on which a Director qualifies under subsection (a). The President shall not make more than one such appointment under this subsection.

“(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—(A) The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Modernization Act may serve as the Commissioner for Patents until the date on

which a Commissioner for Patents is appointed under subsection (b).

“(B) The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Modernization Act may serve as the Commissioner for Trademarks until the date on which a Commissioner for Trademarks is appointed under subsection (b).”.

**SEC. 114. MANAGEMENT ADVISORY BOARD.**

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 4 the following:

**“§5. Patent and Trademark Office Management Advisory Board**

“(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

“(1) APPOINTMENT.—The United States Patent and Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the ‘Advisory Board’) of 12 members, 4 of whom shall be appointed by the President, 4 of whom shall be appointed by the Speaker of the House of Representatives, and 4 of whom shall be appointed by the majority leader of the Senate. Not more than 3 of the 4 members appointed by each appointing authority shall be members of the same political party.

“(2) TERMS.—Members of the Advisory Board shall be appointed for a term of 4 years each, except that of the members first appointed by each appointing authority, 1 shall be for a term of 1 year, 1 shall be for a term of 2 years, and 1 shall be for a term of 3 years. No member may serve more than 1 term.

“(3) CHAIR.—The President shall designate the chair of the Advisory Board, whose term as chair shall be for 3 years.

“(4) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the Patent and Trademark Office Modernization Act, and vacancies shall be filled within 3 months after they occur.

“(5) VACANCIES.—Vacancies shall be filled in the manner in which the original appointment was made under this subsection. Members appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor is appointed.

“(6) COMMITTEES.—The Chair shall designate members of the Advisory Board to serve on a committee on patent operations and on a committee on trademark operations to perform the duties set forth in subsection (e) as they relate specifically to the Office’s patent operations, and the Office’s trademark operations, respectively.

“(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent and Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.

“(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Advisory Board shall be special Government employees within the meaning of section 202 of title 18.

“(d) MEETINGS.—The Advisory Board shall meet at the call of the chair to consider an agenda set by the chair.

“(e) DUTIES.—The Advisory Board shall—

“(1) review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office, and advise the Director on these matters; and

“(2) within 60 days after the end of each fiscal year, prepare an annual report on the matters referred to in paragraph (1), transmit the report to the President and the Committees on the Judiciary of the Senate and the House of Representatives, and publish the report in the Patent and Trademark Office Official Gazette.

“(f) COMPENSATION.—Members of the Advisory Board shall be compensated for each day (including travel time) during which they are attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

“(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.”.

**SEC. 115. CONFORMING AMENDMENTS.**

(a) DUTIES.—Chapter 1 of title 35, United States Code, is amended by striking section 6.

(b) REGULATIONS FOR AGENTS AND ATTORNEYS.—Section 31 of title 35, United States Code, and the item relating to such section in the table of sections for chapter 3 of title 35, United States Code, are repealed.

**SEC. 116. TRADEMARK TRIAL AND APPEAL BOARD.**

Section 17 of the Act of July 5, 1946 (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1067) is amended to read as follows:

“SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

“(b) The Trademark Trial and Appeal Board shall include the Director, the Commissioner for Patents, the Commissioner for Trademarks, and administrative trademark judges who are appointed by the Director.”.

**SEC. 117. BOARD OF PATENT APPEALS AND INTERFERENCES.**

Chapter 1 of title 35, United States Code, is amended by striking section 7 and inserting after section 5 the following:

**“§6. Board of Patent Appeals and Interferences**

“(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent and Trademark Office a Board of Patent Appeals and Interferences. The Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Director.

“(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a). Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Director. Only the Board of Patent Appeals and Interferences may grant rehearings.”.

**SEC. 118. SUITS BY AND AGAINST THE OFFICE.**

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 6 the following new section:

**“§7. Suits by and against the Office**

“(a) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the United States Patent and Trademark Office is a party is deemed to arise under the laws of the United States. The Federal courts shall have exclusive jurisdiction over all civil actions by or against the Office.

“(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trade-

mark Office shall be deemed an agency of the United States for purposes of section 516 of title 28.

“(c) PROHIBITION ON ATTACHMENT, LIENS, ETC.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Office.”.

**SEC. 119. ANNUAL REPORT OF DIRECTOR.**

Section 14 of title 35, United States Code, is amended to read as follows:

**“§14. Annual report to Congress**

“The Director shall report to the Congress, not later than 180 days after the end of each fiscal year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, and other information relating to the Office. The report under this section shall also meet the requirements of section 9106 of title 31, to the extent that such requirements are not inconsistent with the preceding sentence. The report required under this section shall not be deemed to be the report of the United States Patent and Trademark Office under section 9106 of title 31, and the Director shall file a separate report under such section.”.

**SEC. 120. SUSPENSION OR EXCLUSION FROM PRACTICE.**

Section 32 of title 35, United States Code, is amended by inserting before the last sentence the following: “The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section.”.

**SEC. 121. FUNDING.**

Section 42 of title 35, United States Code, is amended to read as follows:

**“§42. Patent and Trademark Office funding**

“(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Patent and Trademark Office shall be payable to the Office.

“(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Patent and Trademark Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Office under this title shall be used for the processing of patent applications and for other services and materials relating to patents. Fees available to the Office under section 31 of the Act of July 5, 1946 (commonly referred to as the ‘Trademark Act of 1946’; 15 U.S.C. 1113), shall be used only for the processing of trademark registrations and for other services and materials relating to trademarks.

“(c) BORROWING AUTHORITY.—The United States Patent and Trademark Office is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as ‘obligations’) to assist in financing its activities. Borrowing under this subsection shall be subject to prior approval in appropriations Acts. Such borrowing shall not exceed amounts approved in appropriations Acts. Any borrowing under this subsection shall be repaid only from fees paid to the Office and surcharges appropriated by the Congress. Such obligations shall be redeemable at the option of the Office before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the Office with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding

the issuance of the obligation as determined by the Secretary of the Treasury. The Secretary of the Treasury shall purchase any obligations of the Office issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this subsection of the purchase price of such obligations of the United States Patent and Trademark Office shall be treated as public debt transactions of the United States."

**SEC. 122. EXTENSION OF SURCHARGES ON PATENT FEES.**

(a) IN GENERAL.—Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended to read as follows:

**"SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.**

"(a) SURCHARGES.—There shall be a surcharge on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code, in order to ensure that the amounts specified in subsection (c) are collected.

"(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, all surcharges collected by the Patent and Trademark Office—

"(1) shall be credited to a separate account established in the Treasury and ascribed to the activities of the United States Patent and Trademark Office as offsetting collections,

"(2) shall be collected by and available to the United States Patent and Trademark Office for all authorized activities and operations of the Office, including all direct and indirect costs of services provided by the office, and

"(3) shall remain available until expended.

"(c) ESTABLISHMENT OF SURCHARGES.—The Director of the United States Patent and Trademark Office shall establish surcharges under subsection (a), subject to the provisions of section 553 of title 5, United States Code, in order to ensure that \$119,000,000, but not more than \$119,000,000, are collected in fiscal year 1999 and each fiscal year thereafter.

"(d) APPROPRIATIONS ACT REQUIRED.—Notwithstanding subsections (a) through (c), no fee established by subsection (a) shall be collected nor shall be available for spending without prior authorization in appropriations Acts."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1998.

**SEC. 123. TRANSFERS.**

(a) TRANSFER OF FUNCTIONS.—Except to the extent that such functions, powers, and duties relate to the direction of patent or trademark policy, there are transferred to, and vested in, the United States Patent and Trademark Office all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this title, and in the officers and components of such Office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the United States Patent and Trademark Office, on the effective date of this title, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable, which are related to functions, powers, and duties which are vested in the Patent and Trademark Office by this title.

**SEC. 124. GAO STUDY AND REPORT.**

The Comptroller General shall conduct a study of and, not later than the date that is 2

years after the effective date of this title, submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on—

(1) the operations of the Patent and Trademark Office as a Government corporation; and

(2) the feasibility and desirability of making the trademark operations of the Patent and Trademark Office a separate Government corporation or agency.

**Subtitle B—Effective Date; Technical Amendments**

**SEC. 131. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect 4 months after the date of the enactment of this Act.

**SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) AMENDMENTS TO TITLE 35.—

(1) The item relating to part I in the table of parts for chapter 35, United States Code, is amended to read as follows:

**"I. United States Patent and Trademark Office ..... 1".**

(2) The heading for part I of title 35, United States Code, is amended to read as follows:

**"PART I—UNITED STATES PATENT AND TRADEMARK OFFICE".**

(3) The table of chapters for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:

**"1. Establishment, Officers and Employees, Functions ..... 1".**

(4) The table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

**"CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS**

**"Sec.**

"1. Establishment.

"2. Powers and duties.

"3. Officers and employees.

"4. Restrictions on officers and employees as to interest in patents.

"5. Patent and Trademark Office Management Advisory Board.

"6. Board of Patent Appeals and Interferences.

"7. Suits by and against the Office.

"8. Library.

"9. Classification of patents.

"10. Certified copies of records.

"11. Publications.

"12. Exchange of copies of patents with foreign countries.

"13. Copies of patents for public libraries.

"14. Annual report to Congress."

(5) Section 155 of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director".

(6) Section 155A(c) of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director".

(7) Section 302 of title 35, United States Code, is amended by striking "Commissioner of Patents" and inserting "Director".

(8) Section 303(b) of title 35, United States Code, is amended by striking "Commissioner's" and inserting "Director's".

(9) Title 35, United States Code, is amended by striking "Commissioner" each place it appears and inserting "Director".

(10) Section 41(a)(8)(A) of title 35, United States Code, is amended by striking "On" and inserting "on".

(b) OTHER PROVISIONS OF LAW.—

(1) (A) Section 45 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1127), is amended by striking "The term 'Commissioner' means the Commissioner of Patents and Trademarks." and inserting "The term 'Director' means the Director of the United States Patent and Trademark Office."

(B) The Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1051 and following), except for section 17, as amended by section 116 of this Act, is amended by striking "Commissioner" each place it appears and inserting "Director".

(2) Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

"(R) the United States Patent and Trademark Office."

(3) Section 500(e) of title 5, United States Code, is amended by striking "Patent Office" and inserting "United States Patent and Trademark Office".

(4) Section 5102(c)(23) of title 5, United States Code, is amended to read as follows:

"(23) administrative patent judges and designated administrative patent judges in the United States Patent and Trademark Office";

(5) Section 5316 of title 5, United States Code (5 U.S.C. 5316) is amended by striking "Commissioner of Patents, Department of Commerce.", "Deputy Commissioner of Patents and Trademarks.", "Assistant Commissioner for Patents.", and "Assistant Commissioner for Trademarks."

(6) Section 9(p)(1)(B) of the Small Business Act (15 U.S.C. 638(p)(1)(B)) is amended to read as follows:

"(B) the Director of the United States Patent and Trademark Office; and"

(7) Section 12 of the Act of February 14, 1903 (15 U.S.C. 1511) is amended by striking "(d) Patent and Trademark Office;" and redesignating subsections (a) through (g) as paragraphs (1) through (6), respectively.

(8) Section 19 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831r) is amended—

(A) by striking "Patent Office of the United States" and inserting "United States Patent and Trademark Office"; and

(B) by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(9) Section 182(b)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2242(b)(2)(A)) is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director of the United States Patent and Trademark Office".

(10) Section 302(b)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2412(b)(2)(D)) is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director of the United States Patent and Trademark Office".

(11) The Act of April 12, 1892 (27 Stat. 395; 20 U.S.C. 91) is amended by striking "Patent Office" and inserting "United States Patent and Trademark Office".

(12) Sections 505(m) and 512(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(m) and 360b(o)) are each amended by striking "Patent and Trademark Office of the Department of Commerce" and inserting "United States Patent and Trademark Office".

(13) Section 702(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(d)) is amended by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(14) Section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) is amended by striking "United States Patent Office" and inserting "United States Patent and Trademark Office".

(15) Section 1295(a)(4) of title 28, United States Code, is amended—

(A) in subparagraph (A) by inserting "United States" before "Patent and Trademark"; and

(B) in subparagraph (B) by striking "Commissioner of Patents and Trademarks" and inserting "Director of the United States Patent and Trademark Office".

(16) Section 1744 of title 28, United States Code is amended—

(A) by striking "Patent Office" each place it appears in the text and section heading and inserting "United States Patent and Trademark Office";

(B) by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office"; and

(C) by striking "Commissioner" and inserting "Director".

(17) Section 1745 of title 28, United States Code, is amended by striking "United States Patent Office" and inserting "United States Patent and Trademark Office".

(18) Section 1928 of title 28, United States Code, is amended by striking "Patent Office" and inserting "United States Patent and Trademark Office".

(19) Section 151 of the Atomic Energy Act of 1954 (42 U.S.C. 2181) is amended in subsections c. and d. by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(20) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) is amended by striking "Commissioner of Patents" each place it appears and inserting "Director of the United States Patent and Trademark Office".

(21) Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) is amended—

(A) in subsection (c) by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office (hereafter in this section referred to as the "Director")"; and

(B) by striking "Commissioner" each subsequent place it appears and inserting "Director".

(22) Section 12(a) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(a)) is amended by striking "Commissioner of the Patent Office" and inserting "Director of the United States Patent and Trademark Office".

(23) Section 1111 of title 44, United States Code, is amended by striking "the Commissioner of Patents,".

(24) Section 1114 of title 44, United States Code, is amended by striking "the Commissioner of Patents,".

(25) Section 1123 of title 44, United States Code, is amended by striking "the Patent Office,".

(26) Sections 1337 and 1338 of title 44, United States Code, and the items relating to those sections in the table of contents for chapter 13 of such title, are repealed.

(27) Section 10(i) of the Trading With the Enemy Act (50 U.S.C. App. 10(i)) is amended by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(28) Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in paragraph (1)—

(i) by striking "and" before "the chief executive officer of the Resolution Trust Corporation";

(ii) by striking "and" before "the Chairperson of the Federal Deposit Insurance Corporation";

(iii) by striking "or" before "the Commissioner of Social Security,"; and

(iv) by inserting "or the Director of the United States Patent and Trademark Office;" after "Social Security Administration,"; and

(B) in paragraph (2)—

(i) by striking "or" before "the Veterans' Administration,"; and

(ii) by striking "or the Social Security Administration" and inserting "the Social Security Administration, or the United States Patent and Trademark Office".

#### Subtitle C—Miscellaneous Provisions

##### SEC. 141. REFERENCES.

(a) IN GENERAL.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department or office from which a function is transferred by this title—

(1) to the head of such department or office is deemed to refer to the head of the department or office to which such function is transferred; or

(2) to such department or office is deemed to refer to the department or office to which such function is transferred.

(b) SPECIFIC REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Patent and Trademark Office—

(1) to the Commissioner of Patents and Trademarks is deemed to refer to the Director of the United States Patent and Trademark Office;

(2) to the Assistant Commissioner for Patents is deemed to refer to the Commissioner for Patents; or

(3) to the Assistant Commissioner for Trademarks is deemed to refer to the Commissioner for Trademarks.

##### SEC. 142. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

##### SEC. 143. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this title, and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function

of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this title shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this title.

##### SEC. 144. TRANSFER OF ASSETS.

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

##### SEC. 145. DELEGATION AND ASSIGNMENT.

Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (including the head of any office to which functions are transferred under this title) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

##### SEC. 146. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.

(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title. The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

##### SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

For purposes of this title, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

##### SEC. 148. AVAILABILITY OF EXISTING FUNDS.

Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce,

Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1997.

**SEC. 149. DEFINITIONS.**

For purposes of this title—

(1) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(2) the term "office" includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

**TITLE II—EXAMINING PROCEDURE IMPROVEMENTS; PUBLICATION WITH PROVISIONAL ROYALTIES; TERM EXTENSIONS; FURTHER EXAMINATION**

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Examining Procedure Improvements Act".

**SEC. 202. PUBLICATION.**

Section 122 of title 35, United States Code, is amended to read as follows:

**"§122. Confidential status of applications; publication of patent applications**

"(a) CONFIDENTIALITY.—Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning applications for patents shall be given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Director.

"(b) PUBLICATION.—

"(1) IN GENERAL.—(A) Subject to paragraph (2), each application for patent, except applications for design patents filed under chapter 16 of this title and provisional applications filed under section 111(b) of this title, shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.

"(B) No information concerning published patent applications shall be made available to the public except as the Director determines.

"(C) Notwithstanding any other provision of law, a determination by the Director to release or not to release information concerning a published patent application shall be final and nonreviewable.

"(2) EXCEPTIONS.—(A) An application that is no longer pending shall not be published.

"(B) An application that is subject to a secrecy order pursuant to section 181 of this title shall not be published.

"(C)(i) Upon the request of the applicant at the time of filing, the application shall not be published in accordance with paragraph (1) until 3 months after the Director makes a notification to the applicant under section 132 of this title.

"(ii) Applications filed pursuant to section 363 of this title, applications asserting priority under section 119 or 365(a) of this title, and applications asserting the benefit of an earlier application under section 120, 121, or 365(c) of this title shall not be eligible for a request pursuant to this subparagraph.

"(iii) In a request under this subparagraph, the applicant shall certify that the invention disclosed in the application was not and will not be the subject of an application filed in a foreign country.

"(iv) The Director may establish appropriate procedures and fees for making a request under this subparagraph.

"(D)(i) In a case in which an applicant, after making a request under subparagraph (C)(i), determines to file an application in a foreign country, the applicant shall notify the Director promptly. The application shall then be published in accordance with the provisions of paragraph (1).

"(ii) The Director may establish appropriate fees to cover the costs of processing notifications under clause (i), including the costs of any special handling of applications resulting from the initial request under subparagraph (C)(i).

"(c) PRE-ISSUANCE OPPOSITION.—The provisions of this section shall not operate to create any new opportunity for pre-issuance opposition. The Director may establish appropriate procedures to ensure that this section does not create any new opportunity for pre-issuance opposition."

**SEC. 203. TIME FOR CLAIMING BENEFIT OF EARLIER FILING DATE.**

(a) IN A FOREIGN COUNTRY.—Section 119(b) of title 35, United States Code, is amended to read as follows:

"(b)(1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, at such time during the pendency of the application as is required by the Director, that identifies the foreign application by specifying its application number, the country in or for which the application was filed, and the date of its filing.

"(2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim, and may require the payment of a surcharge as a condition of accepting an untimely claim during the pendency of the application.

"(3) The Director may require a certified copy of the original foreign application, specification, and drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the intellectual property authority in the foreign country in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers."

(b) IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended by adding at the end the following: "No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as is required by the Commissioner. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept unavoidably late submissions of amendments under this section."

**SEC. 204. PROVISIONAL RIGHTS.**

Section 154 of title 35, United States Code, is amended—

(1) in the section caption by inserting "provisional rights" after "patent"; and

(2) by adding at the end the following new subsection:

"(d) PROVISIONAL RIGHTS.—

"(1) IN GENERAL.—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to section 122(b) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

"(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

"(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

"(B) had actual notice of the published patent application and, where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.

"(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

"(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

"(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall commence from the date that the Patent and Trademark Office receives a copy of the publication under such treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent and Trademark Office receives a translation of the international application in the English language. The Director may require the applicant to provide a copy of the international publication of the international application and a translation thereof."

**SEC. 205. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.**

Section 102(e) of title 35, United States Code, is amended to read as follows:

"(e) the invention was described in—

"(1) an application for patent, published pursuant to section 122(b) of this title, by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) of this title shall have the effect under this subsection of a national application published under section 122(b) of this title only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language, or

"(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, or"

**SEC. 206. COST RECOVERY FOR PUBLICATION.**

The Director of the United States Patent and Trademark Office shall recover the cost of early publication required by the amendment made by section 202 by adjusting the filing, issue, and maintenance fees under title 35, United States Code, by charging a separate publication fee, or by any combination of these methods.

**SEC. 207. CONFORMING CHANGES.**

The following provisions of title 35, United States Code, are amended:

(1) Section 11 is amended in paragraph 1 of subsection (a) by inserting "and published applications for patents" after "Patents".

(2) Section 12 is amended—

(A) in the section caption by inserting "and applications" after "patents"; and

(B) by inserting "and published applications for patents" after "patents".

(3) Section 13 is amended—

(A) in the section caption by inserting "and applications" after "patents"; and

(B) by inserting "and published applications for patents" after "patents".

(4) The items relating to sections 12 and 13 in the table of sections for chapter 1, as amended

by section 132(a)(4) of this Act, are each amended by inserting "and applications" after "patents".

(5) The item relating to section 122 in the table of sections for chapter 11 is amended by inserting

“; publication of patent applications” after “applications”.

(6) The item relating to section 154 in the table of sections for chapter 14 is amended by inserting

“; provisional rights” after “patent”.

(7) Section 181 is amended—

(A) in the first paragraph—

(i) by inserting “by the publication of an application or” after “disclosure”; and

(ii) by inserting “the publication of the application or” after “withhold”;

(B) in the second paragraph by inserting “by the publication of an application or” after “disclosure of an invention”;

(C) in the third paragraph—

(i) by inserting “by the publication of the application or” after “disclosure of the invention”; and

(ii) by inserting “the publication of the application or” after “withhold”; and

(D) in the fourth paragraph by inserting “the publication of an application or” after “and” in the first sentence.

(8) Section 252 is amended in the first paragraph by inserting “substantially” before “identical” each place it appears.

(9) Section 284 is amended by adding at the end of the second paragraph the following: “Increased damages under this paragraph shall not apply to provisional rights under section 154(d) of this title.”

(10) Section 374 is amended to read as follows:

**“§374. Publication of international application: Effect**

“The publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall confer the same rights and shall have the same effect under this title as an application for patent published under section 122(b), except as provided in sections 102(e) and 154(d) of this title.”

(11) Section 135(b) of title 35, United States Code, is amended—

(A) by inserting “(1)” after “(b)”;

(B) by striking “from the date on which the patent was granted” and inserting “after the date on which the patent is granted and the applicant makes a prima facie showing of prior invention”; and

(C) by adding at the end the following:

“(2) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of a published application may be made in an application filed after the published application is published only if the claim is made prior to one year after the date on which the published application is published and the applicant of the later filed application makes a prima facie showing of prior invention.”

**SEC. 208. PATENT TERM EXTENSION AUTHORITY.**

Section 154(b) of title 35, United States Code, is amended to read as follows:

“(b) TERM EXTENSION.—

“(1) BASIS FOR PATENT TERM EXTENSION.—

“(A) DELAY.—Subject to the limitations set forth in paragraph (2), if the issue of an original patent is delayed due to—

“(i) a proceeding under section 135(a) of this title, including any appeal under section 141, or any civil action under section 146, of this title,

“(ii) the imposition of an order pursuant to section 181 of this title,

“(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability, or

“(iv) an unusual administrative delay by the Patent and Trademark Office in issuing the patent,

the term of the patent shall be extended for the period of delay.

“(B) ADMINISTRATIVE DELAY.—For purposes of subparagraph (A)(iv), an unusual administrative delay by the Patent and Trademark Office is the failure to—

“(i) make a notification of the rejection of any claim for a patent or any objection or argument under section 132 of this title or give or mail a written notice of allowance under section 151 of this title not later than 14 months after the date on which the application was filed;

“(ii) respond to a reply under section 132 of this title or to an appeal taken under section 134 of this title not later than 4 months after the date on which the reply was filed or the appeal was taken;

“(iii) act on an application not later than 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 of this title or a decision by a Federal court under section 141, 145, or 146 of this title in a case in which allowable claims remain in an application;

“(iv) issue a patent not later than 4 months after the date on which the issue fee was paid under section 151 of this title and all outstanding requirements were satisfied; or

“(v) issue a patent within 3 years after the filing date of the application in the United States, if the applicant—

“(I) has not obtained further limited examination of the application under section 209 of the Examining Procedure Improvements Act;

“(II) has responded to all rejections, objections, arguments, or other requests of the Patent and Trademark Office within 3 months after the date on which they are made;

“(III) has not benefitted from an extension of patent term under clause (i), (ii) or (iii) of paragraph (1)(A);

“(IV) has not sought or obtained appellate review by the Board of Patent Appeals and Interferences or by a Federal Court other than in a case in which the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability; and

“(V) has not requested any delay in the processing of the application by the Patent and Trademark Office.

“(2) LIMITATIONS.—(A) The total duration of any extensions granted pursuant to either clause (iii) or (iv) of paragraph (1)(A) or both such clauses shall not exceed 10 years. To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any extension granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

“(B) The period of extension of the term of a patent under this subsection shall be reduced by a period equal to the time in which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application in order to ensure that applicants are appropriately compensated for any delays by the Patent and Trademark Office in excess of the time periods specified in paragraph (1)(B).

“(C) No patent the term of which has been disclaimed beyond a specified date may be extended under this section beyond the expiration date specified in the disclaimer.

“(3) PROCEDURES.—The Director shall prescribe regulations establishing procedures for the notification of patent term extensions under this subsection and procedures for contesting patent term extensions under this subsection.”

**SEC. 209. FURTHER EXAMINATION OF PATENT APPLICATIONS.**

The Director of the United States Patent and Trademark Office shall prescribe regulations to provide for the further limited reexamination of applications for patent. The Director may establish appropriate fees for such further limited re-

examination and shall be authorized to provide a 50 percent reduction on such fees for small entities that qualify for reduced fees under section 41(h)(1) of title 35, United States Code.

**SEC. 210. LAST DAY OF PENDENCY OF PROVISIONAL APPLICATION.**

Section 119(e) of title 35, United States Code, is amended by adding at the end the following: “(3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding business day.”

**SEC. 211. REPORTING REQUIREMENT.**

The Director of the United States Patent and Trademark Office shall report to the Congress not later than April 1, 2001, and not later than April 1 of each year thereafter, regarding the impact of publication on the patent applications filed by an applicant who has been accorded the status of independent inventor under section 41(h) of title 35, United States Code. The report shall include information concerning the frequency and number of initial and continuing patent applications, pendency, interferences, re-examinations, rejection, abandonment rates, fees, other expenses, and other relevant information related to the prosecution of patent applications.

**SEC. 212. EFFECTIVE DATE.**

(a) SECTIONS 202 THROUGH 207.—Sections 202 through 207, and the amendments made by such sections, shall take effect on April 1, 1998, and shall apply to all applications filed under section 111 of title 35, United States Code, on or after that date, and all international applications designating the United States that are filed on or after that date.

(b) SECTIONS 208 THROUGH 210.—The amendments made by sections 208 through 210 shall take effect on the date of the enactment of this Act and, except for a design patent application filed under chapter 16 of title 35, United States Code, shall apply to any application filed on or after June 8, 1995.

**TITLE III—PROTECTION FOR PRIOR DOMESTIC USERS OF PATENTED TECHNOLOGIES**

**SEC. 301. SHORT TITLE.**

This title may be cited as the “Protection for Prior Domestic Commercial and Research Users of Patented Technologies Act”.

**SEC. 302. DEFENSE TO PATENT INFRINGEMENT BASED ON PRIOR DOMESTIC COMMERCIAL OR RESEARCH USE.**

(a) DEFENSE.—Chapter 28 of title 35, United States Code, is amended by adding at the end the following new section:

**“§273. Prior domestic commercial or research use; defense to infringement**

“(a) DEFINITIONS.—For purposes of this section—

“(1) the terms ‘commercially used’, ‘commercial use’, and ‘commercial use’ mean the use in the United States in commerce or the use in the design, testing, or production in the United States of a product or service which is used in commerce, whether or not the subject matter at issue is accessible to or otherwise known to the public;

“(2) in the case of activities performed by a nonprofit research laboratory, or nonprofit entity such as a university, research center, or hospital, a use for which the public is the intended beneficiary shall be considered to be a use described in paragraph (1) if the use is limited to activity that occurred within the laboratory or nonprofit entity or by persons in privity with that laboratory or nonprofit entity before the effective filing date of the application for patent at issue, except that the use—

“(A) may be asserted as a defense under this section only by the laboratory or nonprofit entity; and

“(B) may not be asserted as a defense with respect to any subsequent use by any entity other

than such laboratory, nonprofit entity, or persons in privity;

“(3) the terms ‘used in commerce’, and ‘use in commerce’ mean that there has been an actual sale or other arm’s-length commercial transfer of the subject matter at issue or that there has been an actual sale or other arm’s-length commercial transfer of a product or service resulting from the use of the subject matter at issue; and

“(4) the ‘effective filing date’ of a patent is the earlier of the actual filing date of the application for the patent or the filing date of any earlier United States, foreign, or international application to which the subject matter at issue is entitled under section 119, 120, or 365 of this title.

“(b) DEFENSE TO INFRINGEMENT.—(1) A person shall not be liable as an infringer under section 271 of this title with respect to any subject matter that would otherwise infringe one or more claims in the patent being asserted against such person, if such person had, acting in good faith, commercially used the subject matter before the effective filing date of such patent.

“(2) The sale or other disposition of the subject matter of a patent by a person entitled to assert a defense under this section with respect to that subject matter shall exhaust the patent owner’s rights under the patent to the extent such rights would have been exhausted had such sale or other disposition been made by the patent owner.

“(c) LIMITATIONS AND QUALIFICATIONS OF DEFENSE.—The defense to infringement under this section is subject to the following:

“(1) DERIVATION.—A person may not assert the defense under this section if the subject matter on which the defense is based was derived from the patentee or persons in privity with the patentee.

“(2) NOT A GENERAL LICENSE.—The defense asserted by a person under this section is not a general license under all claims of the patent at issue, but extends only to the subject matter claimed in the patent with respect to which the person can assert a defense under this chapter, except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements in the claimed subject matter that do not infringe additional specifically claimed subject matter of the patent.

“(3) EFFECTIVE AND SERIOUS PREPARATION.—With respect to subject matter that cannot be commercialized without a significant investment of time, money, and effort, a person shall be deemed to have commercially used the subject matter if—

“(A) before the effective filing date of the patent, the person actually reduced the subject matter to practice in the United States, completed a significant portion of the total investment necessary to commercially use the subject matter, and made an arm’s-length commercial transaction in the United States in connection with the preparation to use the subject matter; and

“(B) thereafter the person diligently completed the remainder of the activities and investments necessary to commercially use the subject matter, and promptly began commercial use of the subject matter, even if such activities were conducted after the effective filing date of the patent.

“(4) BURDEN OF PROOF.—A person asserting the defense under this section shall have the burden of establishing the defense.

“(5) ABANDONMENT OF USE.—A person who has abandoned commercial use of subject matter may not rely on activities performed before the date of such abandonment in establishing a defense under subsection (b) with respect to actions taken after the date of such abandonment.

“(6) PERSONAL DEFENSE.—The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense and, except for any transfer to the patent owner, the right to assert the defense

shall not be licensed or assigned or transferred to another person except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.

“(7) ONE-YEAR LIMITATION.—A person may not assert a defense under this section unless the subject matter on which the defense is based had been commercially used or actually reduced to practice more than one year prior to the effective filing date of the patent by the person asserting the defense or someone in privity with that person.

“(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney’s fees under section 285 of this title.

“(e) INVALIDITY.—A patent shall not be deemed to be invalid under section 102 or 103 of this title solely because a defense is established under this section.”.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 28 of title 35, United States Code, is amended by adding at the end the following new item:

“273. Prior domestic commercial or research use; defense to infringement.”.

#### SEC. 303. EFFECTIVE DATE AND APPLICABILITY.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act, but shall not apply to any action for infringement that is pending on such date of enactment or with respect to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before such date of enactment.

#### TITLE IV—ENHANCED PROTECTION OF INVENTORS’ RIGHTS

##### SEC. 401. SHORT TITLE.

This title may be cited as the “Enhanced Protection of Inventors’ Rights Act”.

##### SEC. 402. INVENTION DEVELOPMENT SERVICES.

Part I of title 35, United States Code, is amended by adding after chapter 4 the following new chapter:

#### “CHAPTER 5—INVENTION DEVELOPMENT SERVICES

“Sec.

“51. Definitions.

“52. Contracting requirements.

“53. Standard provisions for cover notice.

“54. Reports to customer required.

“55. Mandatory contract terms.

“56. Remedies.

“57. Records of complaints.

“58. Fraudulent representation by an invention developer.

“59. Rule of construction.

##### “§51. Definitions

“For purposes of this chapter—

“(1) the term ‘contract for invention development services’ means a contract by which an invention developer undertakes invention development services for a customer;

“(2) the term ‘customer’ means any person, firm, partnership, corporation, or other entity who is solicited by, seeks the services of, or enters into a contract with an invention promoter for invention promotion services;

“(3) the term ‘invention promoter’ means any person, firm, partnership, corporation, or other entity who offers to perform or performs for, or on behalf of, a customer any act described under paragraph (4), but does not include—

“(A) any department or agency of the Federal Government or of a State or local government;

“(B) any nonprofit, charitable, scientific, or educational organization, qualified under applicable State law or described under section 170(b)(1)(A) of the Internal Revenue Code of 1986; or

“(C) any person duly registered with, and in good standing before, the United States Patent and Trademark Office acting within the scope of that person’s registration to practice before the Patent and Trademark Office; and

“(4) the term ‘invention development services’ means, with respect to an invention by a customer, any act involved in—

“(A) evaluating the invention to determine its protectability as some form of intellectual property, other than evaluation by a person licensed by a State to practice law who is acting solely within the scope of that person’s professional license;

“(B) evaluating the invention to determine its commercial potential by any person for purposes other than providing venture capital; or

“(C) marketing, brokering, licensing, selling, or promoting the invention or a product or service in which the invention is incorporated or used, except that the display only of an invention at a trade show or exhibit shall not be considered to be invention development services.

##### “§52. Contracting requirements

“(a) IN GENERAL.—(1) Every contract for invention development services shall be in writing and shall be subject to the provisions of this chapter. A copy of the signed written contract shall be given to the customer at the time the customer enters into the contract.

“(2) If a contract is entered into for the benefit of a third party, such party shall be considered a customer for purposes of this chapter.

“(b) REQUIREMENTS OF INVENTION DEVELOPER.—The invention developer shall—

“(1) state in a written document, at the time a customer enters into a contract for invention development services, whether the usual business practice of the invention developer is to—

“(A) seek more than 1 contract in connection with an invention; or

“(B) seek to perform services in connection with an invention in 1 or more phases, with the performance of each phase covered in 1 or more subsequent contracts; and

“(2) supply to the customer a copy of the written document together with a written summary of the usual business practices of the invention developer, including—

“(A) the usual business terms of contracts; and

“(B) the approximate amount of the usual fees or other consideration that may be required from the customer for each of the services provided by the developer.

“(c) RIGHT OF CUSTOMER TO CANCEL CONTRACT.—(1) Notwithstanding any contractual provision to the contrary, a customer shall have the right to terminate a contract for invention development services by sending a written letter to the invention developer stating the customer’s intent to cancel the contract. The letter of termination must be deposited with the United States Postal Service on or before 5 business days after the date upon which the customer or the invention developer executes the contract, whichever is later.

“(2) Delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer, without regard to the date or dates appearing in such instrument, shall be deemed payment received by the invention developer on the date received for purposes of this section.

##### “§53. Standard provisions for cover notice

“(a) CONTENTS.—Every contract for invention development services shall have a conspicuous and legible cover sheet attached with the following notice imprinted in boldface type of not less than 12-point size:

“‘YOU HAVE THE RIGHT TO TERMINATE THIS CONTRACT. TO TERMINATE THIS CONTRACT, YOU MUST SEND A WRITTEN LETTER TO THE COMPANY STATING YOUR INTENT TO CANCEL THIS CONTRACT. THE

LETTER OF TERMINATION MUST BE DEPOSITED WITH THE UNITED STATES POSTAL SERVICE ON OR BEFORE FIVE (5) BUSINESS DAYS AFTER THE DATE ON WHICH YOU OR THE COMPANY EXECUTE THE CONTRACT, WHICHEVER IS LATER.

"THE TOTAL NUMBER OF INVENTIONS EVALUATED BY THE INVENTION DEVELOPER FOR COMMERCIAL POTENTIAL IN THE PAST FIVE (5) YEARS IS \_\_\_\_\_ OF THAT NUMBER, \_\_\_\_\_ RECEIVED POSITIVE EVALUATIONS AND \_\_\_\_\_ RECEIVED NEGATIVE EVALUATIONS.

"IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

"THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS IS \_\_\_\_\_. THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS \_\_\_\_\_.

"THE OFFICERS OF THIS INVENTION DEVELOPER HAVE COLLECTIVELY OR INDIVIDUALLY BEEN AFFILIATED IN THE LAST TEN (10) YEARS WITH THE FOLLOWING INVENTION DEVELOPMENT COMPANIES: (LIST THE NAMES AND ADDRESSES OF ALL PREVIOUS INVENTION DEVELOPMENT COMPANIES WITH WHICH THE PRINCIPAL OFFICERS HAVE BEEN AFFILIATED AS OWNERS, AGENTS, OR EMPLOYEES). YOU ARE ENCOURAGED TO CHECK WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE, THE FEDERAL TRADE COMMISSION, YOUR STATE ATTORNEY GENERAL'S OFFICE, AND THE BETTER BUSINESS BUREAU FOR ANY COMPLAINTS FILED AGAINST ANY OF THESE COMPANIES.

"YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY OF YOUR OWN CHOOSING BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF AN ATTORNEY REGISTERED TO PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION."

"(b) OTHER REQUIREMENTS FOR COVER NOTICE.—The cover notice shall contain the items required under subsection (a) and the name, primary office address, and local office address of the invention developer, and may contain no other matter.

"(c) DISCLOSURE OF CERTAIN CUSTOMERS NOT REQUIRED.—The requirement in the notice set forth in subsection (a) to include the 'TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS' need not include information with respect to customers who have purchased trade show services, research, advertising, or other nonmarketing services from the invention developer, nor with respect to customers who have defaulted in their payments to the invention developer.

#### "§54. Reports to customer required

"With respect to every contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract, at least once every 3 months throughout the term of the contract, a written report that identifies the contract and includes—

"(1) a full, clear, and concise description of the services performed to the date of the report

and of the services yet to be performed and names of all persons who it is known will perform the services; and

"(2) the name and address of each person, firm, corporation, or other entity to whom the subject matter of the contract has been disclosed, the reason for each such disclosure, the nature of the disclosure, and complete and accurate summaries of all responses received as a result of those disclosures.

#### "§55. Mandatory contract terms

"(a) MANDATORY TERMS.—Each contract for invention development services shall include in boldface type of not less than 12-point size—

"(1) the terms and conditions of payment and contract termination rights required under section 52;

"(2) a statement that the customer may avoid entering into the contract by not making a payment to the invention developer;

"(3) a full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer;

"(4) a statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the invention of the customer;

"(5) the full name and principal place of business of the invention developer and the name and principal place of business of any parent, subsidiary, agent, independent contractor, and any affiliated company or person who it is known will perform any of the services or acts that the invention developer undertakes to perform for the customer;

"(6) if any oral or written representation of estimated or projected customer earnings is given by the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer), a statement of that estimation or projection and a description of the data upon which such representation is based;

"(7) the name and address of the custodian of all records and correspondence relating to the contracted for invention development services, and a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for such customer for a period of not less than 2 years after expiration of the term of such contract; and

"(8) a statement setting forth a time schedule for performance of the invention development services, including an estimated date in which such performance is expected to be completed.

"(b) INVENTION DEVELOPER AS FIDUCIARY.—To the extent that the description of the specific acts or services affords discretion to the invention developer with respect to what specific acts or services shall be performed, the invention developer shall be deemed a fiduciary.

"(c) AVAILABILITY OF INFORMATION.—Records and correspondence described under subsection (a)(7) shall be made available after 7 days written notice to the customer or the representative of the customer to review and copy at a reasonable cost on the invention developer's premises during normal business hours.

#### "§56. Remedies

"(a) IN GENERAL.—(1) Any contract for invention development services that does not comply with the applicable provisions of this chapter shall be voidable at the option of the customer.

"(2) Any contract for invention development services entered into in reliance upon any material false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer) shall be voidable at the option of the customer.

"(3) Any waiver by the customer of any provision of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

"(4) Any contract for invention development services which provides for filing for and obtaining utility, design, or plant patent protection shall be voidable at the option of the customer unless the invention developer offers to perform or performs such act through a person duly registered to practice before, and in good standing with, the Patent and Trademark Office.

"(b) CIVIL ACTION.—(1) Any customer who is injured by a violation of this chapter by an invention developer or by any material false or fraudulent statement or representation, or any omission of material fact, by an invention developer (or any agent, employee, director, officer, partner, or independent contractor of such invention developer) or by failure of an invention developer to make all the disclosures required under this chapter, may recover in a civil action against the invention developer (or the officers, directors, or partners of such invention developer) in addition to reasonable costs and attorneys' fees, the greater of—

"(A) \$5,000; or

"(B) the amount of actual damages sustained by the customer.

"(2) Notwithstanding paragraph (1), the court may increase damages to not more than 3 times the amount awarded.

"(c) REBUTTABLE PRESUMPTION OF INJURY.—For purposes of this section, substantial violation of any provision of this chapter by an invention developer or execution by the customer of a contract for invention development services in reliance on any material false or fraudulent statements or representations or omissions of material fact shall establish a rebuttable presumption of injury.

#### "§57. Records of complaints

"(a) RELEASE OF COMPLAINTS.—The Director shall make all complaints received by the United States Patent and Trademark Office involving invention developers publicly available, together with any response of the invention developers.

"(b) REQUEST FOR COMPLAINTS.—The Director may request complaints relating to invention development services from any Federal or State agency and include such complaints in the records maintained under subsection (a), together with any response of the invention developers.

#### "§58. Fraudulent representation by an invention developer

"Whoever, in providing invention development services, knowingly provides any false or misleading statement, representation, or omission of material fact to a customer or fails to make all the disclosures required under this chapter, shall be guilty of a misdemeanor and fined not more than \$10,000 for each offense.

#### "§59. Rule of construction

"Except as expressly provided in this chapter, no provision of this chapter shall be construed to affect any obligation, right, or remedy provided under any other Federal or State law."

#### SEC. 403. TECHNICAL AND CONFORMING AMENDMENT.

The table of chapters for part I of title 35, United States Code, is amended by adding after the item relating to chapter 4 the following:

#### "5. Invention Development Services .... 51".

#### SEC. 404. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 60 days after the date of the enactment of this Act.

#### TITLE V—IMPROVED REEXAMINATION PROCEDURES

#### SEC. 501. SHORT TITLE.

This title may be cited as the "Improved Reexamination Procedures Act".

#### SEC. 502. DEFINITIONS.

Section 100 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(e) The term 'third-party requester' means a person requesting reexamination under section 302 of this title who is not the patent owner."

**SEC. 503. REEXAMINATION PROCEDURES.**

(a) **REQUEST FOR REEXAMINATION.**—Section 302 of title 35, United States Code, is amended to read as follows:

**“§ 302. Request for reexamination**

“Any person at any time may file a request for reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301 of this title or on the basis of the requirements of section 112 of this title other than the requirement to set forth the best mode of carrying out the invention. The request must be in writing, must include the identity of the real party in interest, and must be accompanied by payment of a reexamination fee established by the Director pursuant to the provisions of section 41 of this title. The request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested or the manner in which the patent specification or claims fail to comply with the requirements of section 112 of this title. Unless the requesting person is the owner of the patent, the Director promptly shall send a copy of the request to the owner of record of the patent.”

(b) **DETERMINATION OF ISSUE BY DIRECTOR.**—Section 303 of title 35, United States Code, is amended to read as follows:

**“§ 303. Determination of issue by Director**

“(a) **REEXAMINATION.**—Not later than 3 months after the filing of a request for reexamination under the provisions of section 302 of this title, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On the Director’s initiative, at any time, the Director may determine whether a substantial new question of patentability is raised by any other patent or publication or by the failure of the patent specification or claims of a patent to comply with the requirements of section 112 of this title other than the best mode requirement described in section 302.

“(b) **RECORD.**—A record of the Director’s determination under subsection (a) shall be placed in the official file of the patent, and a copy shall be promptly given or mailed to the owner of record of the patent and to the third-party requester, if any.

“(c) **FINAL DECISION.**—A determination by the Director pursuant to subsection (a) shall be final and nonappealable. Upon a determination that no substantial new question of patentability has been raised, the Director may refund a portion of the reexamination fee required under section 302 of this title.”

(c) **REEXAMINATION ORDER BY DIRECTOR.**—Section 304 of title 35, United States Code, is amended to read as follows:

**“§ 304. Reexamination order by Director**

“If, in a determination made under the provisions of section 303(a) of this title, the Director finds that a substantial new question of patentability affecting a claim of a patent is raised, the determination shall include an order for reexamination of the patent for resolution of the question. The order may be accompanied by the initial action of the Patent and Trademark Office on the merits of the reexamination conducted in accordance with section 305 of this title.”

(d) **CONDUCT OF REEXAMINATION PROCEEDINGS.**—Section 305 of title 35, United States Code, is amended to read as follows:

**“§ 305. Conduct of reexamination proceedings**

“(a) **IN GENERAL.**—Subject to subsection (b), reexamination shall be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner shall be permitted to propose any amendment to the patent and a new claim or claims, except that no

proposed amended or new claim enlarging the scope of the claims of the patent shall be permitted.

“(b) **RESPONSE.**—(1) This subsection shall apply to any reexamination proceeding in which the order for reexamination is based upon a request by a third-party requester.

“(2) With the exception of the reexamination request, any document filed by either the patent owner or the third-party requester shall be served on the other party.

“(3) If the patent owner files a response to any action on the merits by the Patent and Trademark Office, the third-party requester shall have 1 opportunity to file written comments within a reasonable period not less than 1 month after the date of service of the patent owner’s response. Written comments provided under this paragraph shall be limited to issues covered by action of the Patent and Trademark Office or the patent owner’s response.

“(c) **SPECIAL DISPATCH.**—Unless otherwise provided by the Director for good cause, all reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, shall be conducted with special dispatch within the Office.”

(e) **APPEAL.**—Section 306 of title 35, United States Code, is amended to read as follows:

**“§ 306. Appeal**

“(a) **PATENT OWNER.**—The patent owner involved in a reexamination proceeding under this chapter—

“(1) may appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent; and

“(2) may be a party to any appeal taken by a third-party requester pursuant to subsection (b) of this section.

“(b) **THIRD-PARTY REQUESTER.**—A third-party requester in a reexamination proceeding—

“(1) may appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any final decision in the reexamination proceeding that is favorable to the patentability of any original or proposed amended or new claim of the patent; and

“(2) may be a party to any appeal taken by the patent owner with respect to a decision in the reexamination proceeding, subject to subsection (c) of this section.

“(c) **PARTICIPATION AS PARTY.**—(1) A third-party requester who, under the provisions of sections 141 through 144 of this title, files a notice of appeal, or who participates as a party to an appeal by the patent owner, with respect to a reexamination proceeding, is estopped from asserting at a later time, in any forum, the invalidity of any claim determined to be patentable on that appeal on any ground which the third-party requester raised or could have raised during the reexamination proceeding. This subsection does not prevent the assertion of invalidity based on newly discovered prior art unavailable to the third-party requester and the Patent and Trademark Office at the time of the reexamination proceeding.

“(2) For purposes of paragraph (1), a third-party requester is deemed not to have participated as a party to an appeal by the patent owner unless, not later than 20 days after the patent owner has filed a notice of appeal, the third-party requester files notice with the Commissioner electing to participate.”

(f) **REEXAMINATION PROHIBITED.**—(1) Chapter 30 of title 35, United States Code, is amended by adding at the end the following new section:

**“§ 308. Reexamination prohibited**

“(a) **ORDER FOR REEXAMINATION.**—Notwithstanding any provision of this chapter, once an order for reexamination of a patent has been issued under section 304 of this title, neither the patent owner nor the third-party requester, if

any, nor privies of either, may, unless authorized by the Director, file a subsequent request for reexamination of the patent until a certificate relating to that reexamination proceeding is issued and published under section 307 of this title.

“(b) **FINAL DECISION.**—Once a final decision has been entered against a party in a civil action arising in whole or in part under section 1338 of title 28 that the party has not sustained its burden of proving the invalidity of any patent claim in suit, or if a final decision in a reexamination proceeding instituted by a third-party requester is favorable to the patentability or any original or proposed amended or new claim of the patent and such decision is not appealed by the third-party requester under section 306(b), then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action or reexamination proceeding. This subsection does not prevent the assertion of invalidity based on newly discovered prior art unavailable to the party or privies and the Office at the time of the civil action or reexamination proceeding, as the case may be.”

(2) The table of sections for chapter 30 of title 35, United States Code, is amended by adding at the end the following:

“308. Reexamination prohibited.”

(g) **REPORT TO CONGRESS.**—Within 4 years after the effective date of this title, the Director of the United States Patent and Trademark Office shall submit to the Congress a report evaluating whether the reexamination proceedings established under the amendments made by this title are inequitable to any of the parties in interest and, if so, the report shall contain recommendations for changes to the amendments made by this title to remove such inequity.

**SEC. 504. CONFORMING AMENDMENTS.**

(a) **BOARD OF PATENT APPEALS AND INTERFERENCES.**—The first sentence of section 6(b) of title 35, United States Code, as amended by section 117 of this Act, is amended to read as follows: “The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, or a patent owner or a third-party requester in a reexamination proceeding, review adverse decisions of examiners upon applications for patents and decisions of examiners in reexamination proceedings, and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title.”

(b) **PATENT FEES; PATENT AND TRADEMARK SEARCH SYSTEMS.**—Section 41(a)(7) of title 35, United States Code, is amended to read as follows:

“(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in a reexamination proceeding, \$1,250, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110.”

(c) **APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.**—Section 134 of title 35, United States Code, is amended to read as follows:

**“§ 134. Appeal to the Board of Patent Appeals and Interferences**

“(a) **PATENT APPLICANT.**—An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

“(b) **PATENT OWNER.**—A patent owner in a reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and

Interferences, having once paid the fee for such appeal.

(c) **THIRD-PARTY.**—A third-party requester may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal."

(d) **APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.**—Section 141 of title 35, United States Code, is amended by amending the first sentence to read as follows: "An applicant, a patent owner, or a third-party requester, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title, may appeal the decision to the United States Court of Appeals for the Federal Circuit."

(e) **PROCEEDINGS ON APPEAL.**—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: "In ex parte and reexamination cases, the Director shall submit to the court in writing the grounds for the decision of the United States Patent and Trademark Office, addressing all the issues involved in the appeal."

(f) **CIVIL ACTION TO OBTAIN PATENT.**—Section 145 of title 35, United States Code, is amended in the first sentence by inserting "(a)" after "section 134".

#### SEC. 505. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date that is 6 months after the date of the enactment of this Act and shall apply to all reexamination requests filed on or after such date.

### TITLE VI—MISCELLANEOUS IMPROVEMENTS

#### SEC. 601. PROVISIONAL APPLICATIONS.

(a) **ABANDONMENT.**—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:

"(5) **ABANDONMENT.**—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). If no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) applies to any provisional application filed on or after June 8, 1995.

#### SEC. 602. INTERNATIONAL APPLICATIONS.

Section 119 of title 35, United States Code, is amended—

(1) in subsection (a), by inserting "or in a WTO member country," after "or to citizens of the United States,"; and

(2) by adding at the end the following new subsections:

"(f) **APPLICATIONS FOR PLANT BREEDER'S RIGHTS.**—Applications for plant breeder's rights filed in a WTO member country (or in a UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.

"(g) **DEFINITIONS.**—As used in this section—

"(1) the term 'WTO member country' has the same meaning as the term is defined in section 104(b)(2) of this title; and

"(2) the term 'UPOV Contracting Party' means a member of the International Convention for the Protection of New Varieties of Plants."

#### SEC. 603. PLANT PATENTS.

(a) **TUBER PROPAGATED PLANTS.**—Section 161 of title 35, United States Code, is amended by striking "a tuber propagated plant or"

(b) **RIGHTS IN PLANT PATENTS.**—The text of section 163 of title 35, United States Code, is

amended to read as follows: "In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States."

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply on the date of the enactment of this Act. The amendment made by subsection (b) shall apply to any plant patent issued on or after the date of the enactment of this Act.

#### SEC. 604. ELECTRONIC FILING.

Section 22 of title 35, United States Code, is amended by striking "printed or typewritten" and inserting "printed, typewritten, or on an electronic medium".

#### SEC. 605. DIVISIONAL APPLICATIONS.

Section 121 of title 35, United States Code, is amended—

(1) in the first sentence by striking "If" and inserting "(a) If"; and

(2) by adding at the end the following new subsections:

"(b) In a case in which restriction is required on the ground that two or more independent and distinct inventions are claimed in an application, the applicant shall be entitled to submit an examination fee and request examination for each independent and distinct invention in excess of one. The examination fee shall be equal to the filing fee, including excess claims fees, that would have applied had the claims corresponding to the asserted independent and distinct inventions been presented in a separate application for patent. For each of the independent and distinct inventions in excess of one for which the applicant pays an examination fee within two months after the requirement for restriction, the Director shall cause an examination to be made and a notification of rejection or written notice of allowance provided to the applicant within the time period specified in section 154(b)(1)(B)(i) of this title for the original application. Failure to meet this or any other time limit set forth in section 154(b)(1)(B) of this title shall be treated as an unusual administrative delay under section 154(b)(1)(A)(iv) of this title.

"(c) An applicant who requests reconsideration of a requirement for restriction under this section and submits examination fees pursuant to such requirement shall, if the requirement is determined to be improper, be entitled to a refund of any examination fees determined to have been paid pursuant to the requirement."

The CHAIRMAN. During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as read.

The Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment and may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device, without intervening business, provided that the time for voting by electronic device on the first in a series of questions shall not be less than 15 minutes.

Are there any amendments?

AMENDMENT OFFERED BY MR. COBLE

Mr. COBLE. 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. COBLE:

Page 3, insert in the table of contents after the item relating to section 149 the following:

Subtitle D—Under Secretary of Commerce for Intellectual Property Policy  
Sec. 151. Under Secretary of Commerce for Intellectual Property Policy.  
Sec. 152. Relationship with existing authorities.

Page 3, in the item relating to section 402, strike "development" and insert "promotion".

Page 5, line 12, insert "(1)" before "For purposes".

Page 5, insert after line 15 the following: "(2) As used in this title, the term 'Under Secretary' means the Under Secretary of Commerce for Intellectual Property Policy.

Page 5, line 21, strike "under" and insert "subject to".

Page 6, line 1, strike "conduct" and insert ", in support of the Under Secretary, assist with".

Page 6, line 4, strike ", the administration" and all that follows through line 8 and insert a semicolon.

Page 6, line 9, strike "authorize or conduct studies and programs cooperatively" and insert ", in support of the Under Secretary, assist with studies and programs conducted cooperatively".

Page 7, strike line 23 and all that follows through page 8, line 3, and insert the following:

"(5) may establish regulations, not inconsistent with law, which—

"(A) shall govern the conduct of proceedings in the Office;

Page 9, line 1, insert "shall" after "(E)".

Page 9, after line 6, insert the following:

"(F) provide for the development of a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness;

Page 11, strike lines 15 through 17 and redesignate the succeeding paragraphs accordingly.

Page 11, add the following after line 25:

"In exercising the Director's powers under paragraphs (6) and (7)(A), the Director shall consult with the Administrator of General Services when the Director determines that it is practicable, efficient, and cost-effective to do so."

Page 13, strike lines 4 through 18 and redesignate the succeeding subparagraphs accordingly.

Page 14, strike line 18 and all that follows through page 15, line 7, and insert the following:

"(5) **COMPENSATION.**—The Director shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay of the Senior Executive Service established under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of title 5. In addition, the Director may receive a bonus in an amount up to, but not in excess of, 50 percent of such annual rate of basic pay, based upon an evaluation by the Secretary of Commerce of the Director's performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable organization and individual goals in key operational areas as delineated in an annual performance plan agreed to by the Director

and the Secretary. Payment of a bonus under this paragraph may be made to the Director only to the extent that such payment does not cause the Director's total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the President under section 102 of title 3.

Page 16, line 2, strike "policy and".

Page 16, insert the following after line 20: "(3) TRAINING OF EXAMINERS.—The Patent and Trademark Office shall develop an incentive program to retain as employees patent and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent and trademark examiners."

Page 21, line 13, insert "including inventors," after "Office."

Page 21, line 20, insert after "call of the chair" the following: ", not less than every 6 months."

Page 27, line 9, insert after the period close quotation marks and a second period.

Page 27, strike line 10 and all that follows through page 28, line 14.

Page 32, insert the following immediately before line 10 and redesignate the succeeding paragraphs accordingly:

(5) Section 41(h) of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director".

Page 33, line 7, strike "Title" and insert "(A) Except as provided in subparagraph (B), title".

Page 33, insert the following after line 9:

(B) Chapter 17 of title 35, United States Code, is amended by striking "Commissioner" each place it appears and inserting "Commissioner of Patents".

Page 33, insert the following after line 12:

(12) Section 157(d) of title 35, United States Code, is amended by striking "Secretary of Commerce" and inserting "Director".

(13) Section 181 of title 35, United States Code, is amended in the third paragraph by striking "Secretary of Commerce under rules prescribed by him" and inserting "Director under rules prescribed by the Patent and Trademark Office".

(14) Section 188 of title 35, United States Code, is amended by striking "Secretary of Commerce" and inserting "Patent and Trademark Office".

(15) Section 202(a) of title 35, United States Code, is amended by striking "(iv)" and inserting "(iv)".

Page 46, add the following after line 23:

**Subtitle D—Under Secretary of Commerce for Intellectual Property Policy**

**SEC. 151. UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY POLICY.**

(a) APPOINTMENT.—There shall be within the Department of Commerce an Under Secretary of Commerce for Intellectual Property Policy, who shall be appointed by the President, by and with the advice and consent of the Senate. On or after the effective date of this title, the President may appoint an individual to serve as the Under Secretary until the date on which an Under Secretary qualifies under this subsection. The President shall not make more than 1 appointment under the preceding sentence.

(b) DUTIES.—The Under Secretary of Commerce for Intellectual Property Policy, under the direction of the Secretary of Commerce, shall perform the following functions with respect to intellectual property policy:

(1) In coordination with the Under Secretary of Commerce for International Trade, promote exports of goods and services of the United States industries that rely on intellectual property.

(2) Advise the President, through the Secretary of Commerce, on national and international intellectual property policy issues.

(3) Advise Federal departments and agencies on matters of intellectual property protection in other countries.

(4) Provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection.

(5) Conduct programs and studies relating to the effectiveness of intellectual property protection throughout the world.

(6) Advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign patent and trademark offices and international intergovernmental organizations.

(7) In coordination with the Department of State, conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations.

(c) DEPUTY UNDER SECRETARIES.—To assist the Under Secretary of Commerce for Intellectual Property Policy, the Secretary of Commerce shall appoint a Deputy Under Secretary for Patent Policy and a Deputy Under Secretary for Trademark Policy as members of the Senior Executive Service in accordance with the provisions of title 5, United States Code. The Deputy Under Secretaries shall perform such duties and functions as the Under Secretary for Intellectual Property Policy shall prescribe.

(d) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Under Secretary of Commerce for Intellectual Property Policy."

(e) FUNDING.—Funds available to the United States Patent and Trademark Office shall be made available for all expenses of the office of the Under Secretary for Intellectual Property Policy, subject to prior approval in appropriations Acts. Amounts made available under this subsection shall not exceed 2 percent of the projected annual revenues of the Patent and Trademark Office from fees for services and goods of that Office. The Secretary of Commerce shall determine the budget requirements of the office of the Under Secretary for Intellectual Property Policy.

**SEC. 152. RELATIONSHIP WITH EXISTING AUTHORITIES.**

Nothing in section 151 shall derogate from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

Page 48, insert the following after line 18:

"(B) An application that is in the process of being reviewed by the Atomic Energy Commission, the Department of Defense, or a defense agency pursuant to section 181 of this title shall not be published until the Director has been notified by the Atomic Energy Commission, the Secretary of Defense, or the chief officer of the defense agency, as the case may be, that in the opinion of the Atomic Energy Commission, the Secretary of Defense, or such chief officer, as the case may be, publication or disclosure of the invention by the granting of a patent would not be detrimental to the national security of the United States."

Page 48, line 19, strike "(B)" and insert "(C)".

Page 48, strike line 22 and all that follows through page 49, line 2, and insert the following:

"(D)(i) Upon the request at the time of filing by an applicant that is a small business concern or an independent inventor entitled to reduced fees under section 41(h)(1) of this title, the application shall not be published in accordance with paragraph (1) until 3 months after the Director makes a second

notification to such applicant on the merits of the application under section 132 of this title. The Director may require applicants that no longer have the status of a small business concern or an independent inventor to so notify the Director not later than 15 months after the earliest filing date for which a benefit is sought under this title.

Page 49, line 7, strike ". 121."

Page 49, insert after line 8 the following:

"(iii) Applications asserting the benefit of an earlier application under section 121 shall not be eligible for a request pursuant to this subparagraph unless filed within 2 months after the date on which the Director required the earlier application to be restricted to 1 of 2 or more inventions in the earlier application.

Page 49, line 9, strike "(iii)" and insert "(iv)".

Page 49, line 13, strike "(iv)" and insert "(v)".

Page 49, line 14, insert "nominal" before "fees".

Page 49, line 16, strike "(D)" and insert "(E)".

Page 49, line 17, strike "(C)" and insert "(D)".

Page 50, line 2, strike "(C)" and insert "(D)".

Page 50, after line 2, insert the following: "(F) No fee established under this section shall be collected nor shall be available for spending without prior authorization in appropriations Acts."

Page 58, strike lines 1 through 17 and insert the following:

(11) Section 135(b) of title 35, United States Code, is amended to read as follows:

"(b)(1) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may only be made in an application if—

"(A) such a claim is made prior to 1 year after the date on which the patent was granted; and

"(B) the applicant files evidence which demonstrates that the applicant is prima facie entitled to a judgment relative to the patent.

"(2)(A) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of a published application may only be made in an application filed after the date of publication of the published application if, except in a case to which subparagraph (B) applies—

"(i) such a claim is made prior to 1 year after the date of publication of the published application; and

"(ii) the applicant of the application filed after the date of publication of the published application files evidence that demonstrates that the applicant is prima facie entitled to a judgment relative to the published application."

"(B) If the applicant of the application filed after the date of publication of the published application alleges that the invention claimed in the published application was derived from that applicant, such a claim may only be made if that applicant files evidence which demonstrates that the applicant is prima facie entitled to a judgment relative to the published application."

Page 59, line 7, strike "appellate".

Page 61, strike lines 5 through 9 and redesignate subclauses (III) through (V) as subclauses (II) through (IV), respectively.

Page 62, insert the following after line 6:

"(B) The period of extension of the term of a patent under clause (iv) of paragraph (1)(A), which is based on the failure of the Patent and Trademark Office to meet the criteria set forth in clause (v) of paragraph (1)(B), shall be reduced by the cumulative total of any periods of time that an applicant takes to respond in excess of 3 months

after the date on which the Patent and Trademark Office makes any rejection, objection, argument, or other request.

Page 62, line 7, strike "(B)" and insert "(C)".

Page 62, line 19, strike "(C)" and insert "(D)".

Page 63, insert the following after line 4: Section 132 of title 35, United States Code, is amended—

(1) in the first sentence by striking "Whenever" and inserting "(a) Whenever"; and

(2) by adding at the end the following:

Page 63, strike lines 5 through 7 and insert the following:

"(b) The Director shall prescribe regulations to provide for the further limited examination of applications for patent at the request of the applicant.

Page 63, line 9, strike "reexamination" and insert "examination".

Page 63, strike lines 11 and 12 and insert the following:

qualify for reduced fees under section 41(h)(1) of this title."

Page 63, line 21, insert "secular or" after "succeeding".

Page 64, lines 2 and 3, strike "an applicant who has been accorded the status of independent inventor under section 41(h)" and insert "applicants who are independent inventors entitled to reduced fees under section 41(h)(1)".

Page 71, line 8, strike "DEVELOPMENT" and insert "PROMOTION".

Page 71, line 11, strike "DEVELOPMENT" and insert "PROMOTION".

Page 71, in the item relating to section 58 in the matter after line 12, strike "developer" and insert "promoter".

Page 71, line 15, strike "development" and insert "promotion".

Page 71, lines 16 and 17, strike "developer" and insert "promoter".

Page 71, line 17, strike "development" and inserting "promotion".

Page 71, strike line 20 and all that follows through page 72, line 1, and insert the following: "partnership, corporation, or other entity who enters into a financial relationship or a contract".

Page 72, line 22, strike "development" and insert "promotion".

Pages 73 through 84, strike "invention developer" and "INVENTION DEVELOPER" each place it appears and insert "invention promoter" and "INVENTION PROMOTER", respectively.

Pages 73 through 84, strike "invention development" and "INVENTION DEVELOPMENT" each place it appears and insert "invention promotion" and "INVENTION PROMOTION", respectively.

Page 74, line 1, strike "DEVELOPER" and insert "PROMOTER".

Page 74, line 22, strike "developer" and insert "invention promoter".

Page 77, line 1, strike "DEVELOPER'S" and insert "PROMOTER'S".

Page 81, line 7, strike "DEVELOPER" and insert "PROMOTER".

Page 81, line 16, strike "developer's" and insert "promoter's".

Page 83, lines 19 and 21, and page 84, line 2, strike "developers" and insert "promoters".

Page 84, lines 3 and 4, strike "developer" and insert "promoter".

Page 84, in the matter after line 19, strike "Development" and insert "Promotion".

Page 85, line 16, strike "Any" and insert "(a) REQUEST FOR REEXAMINATION.—"

Page 85, line 19, strike "or on the basis of" and all that follows through "invention" on line 21.

Page 86, line 2, strike "or the" and all that follows through line 4 and insert a period.

Page 86, line 7, strike the quotation marks and second period and insert the following:

"If multiple requests for reexamination of a patent are filed, they shall be consolidated by the Office into a single reexamination, if a reexamination is ordered.

"(b) COLLECTION AND AVAILABILITY OF FEES.—No fee for reexamination shall be collected nor shall be available for spending without prior authorization in appropriations Acts."

Page 86, line 21, strike "or by the failure" and all that follows through line 24 and insert a period.

Page 89, line 8, insert before the quotation marks the following: "Special dispatch shall not be construed to limit the patent owner's ability to extend the time for taking action by payment of the fees set forth in section 41(a)(8) of this title."

Page 95, line 13, strike "6 months" and insert "1 year".

Page 95, line 15, insert "effective" after "such".

Page 95, line 25, strike "If" and insert "Subject to section 119(e)(3) of this title, if".

Page 98, line 2, strike "Section" and insert "(a) IN GENERAL.—Section".

Page 99, add the following after line 8:

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is 2 years after the date of the enactment of this Act and shall apply to applications for patent filed on or after such effective date.

#### SEC. 606. PUBLICATIONS.

Section 11 of title 35, United States Code, is amended by adding at the end the following:

"(c) The Patent and Trademark Office shall make available for public inspection during regular business hours all solicitations issued by the Office for contracts for goods or services, and all contracts entered into by the Office for goods or services."

Amend the table of contents accordingly.

Mr. COBLE. Mr. Chairman, generally on this Hill the Committee on the Judiciary is not known as the most bipartisan committee here, but there is an exception which has been struck to that belief on this bill. I would be remiss prior to putting my oars into the water and commencing this voyage if I did not recognize a few of my colleagues. Start naming Members and I will inevitably omit someone who should have been named, but I want to mention the gentleman from Michigan [Mr. CONYERS], the gentleman from Massachusetts [Mr. FRANK], the gentleman from Massachusetts [Mr. DELAHUNT], the gentlewoman from California [Ms. LOFGREN], of course, our chairman, the gentleman from Illinois [Mr. HYDE], the gentleman from Roanoke Valley, VA [Mr. GOODLATTE], the gentleman from Indiana [Mr. PEASE] has been helpful, the gentleman from Utah [Mr. CANNON]; others I am sure, as well. But we have done this in a bipartisan manner, Mr. Chairman. I think we have crafted a bill, perfect; no, there is not much perfect done around this town or in this world, but a good, solid bill that will serve Americans well.

I rise in support of the manager's amendment to H.R. 400, Mr. Chairman. Some of these amendments are technical. Most of them have been created for the benefits of small businesses defined as those who employ under 500 workers, and independent inventors,

who are deserving of some extra protection in our patent system. The manager's amendment took an extremely long time to develop, and it strikes some very crucial compromises by granting additional protection while still preventing abuse.

Inventors have complained that the Patent and Trademark Office has not been able to spend its valuable resources on the most important function of the office, that is, granting patents and registering trademarks with quality review in the shortest time possible. The manager's amendment separates completely policy functions from operational functions. Policy functions are left to the Department of Commerce, giving patent and trademark policy a necessary representative at the President's table, while management and operational functions, day to day, if you will, are vested completely in the PTO. This will allow the PTO to be led by a director who will have only one mission: to process and adjudicate efficiently and fairly the important Government functions of granting and issuing patents and registering trademarks.

As we know, Mr. Chairman, the Committee on the Judiciary has been working with several groups to reach a compromise on special protections for small businesses and independent inventors from publication. We are offering a compromise which will grant protection while still preventing the practice of submarine patenting. While publication has many benefits for both independent inventors and small businesses, the manager's amendment gives these groups a choice over whether or not they wish to be published. It will effectively exempt independent inventors and small businesses from publication by deferring publication until 3 months after the inventor has received at least two determinations on the merits of each invention claimed, on whether or not their patent will issue.

At this stage, the applicant knows whether or not he or she will receive a patent, in which case the patent would be published upon grant anyway under today's law. If it will not be granted, the applicant then may withdraw his application and avoid publication and protect the invention by another means.

Mr. Chairman, this is not a perfect exemption for opponents of this bill, nor is it a perfect exemption for supporters; rather, it is a compromise. If the applicant purposely tries to delay an application between the first and second office action, he or she will, unfortunately, succeed. If the PTO is slow and does not issue a second office action within 18 months, publication will still not occur until 3 months after that second action. The PTO has indicated that after two office actions of those who wish to proceed, 97 percent are granted in short order and, therefore, published. This should move the date of publication to almost exactly the time when publication would occur today.

However, those who want to purposely procrastinate for long periods of time and frustrate the prosecution of their patent applications will be published and, therefore, ultimately unable to submarine.

Another provision concerned the so-called gift provision contained in the bill. While the provisions contained in the bill did not grant the PTO any authority it does not already possess, we have deleted it from the bill. The PTO can accept a gift today.

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

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

Mr. COBLE. Mr. Chairman, the manager's amendment also adopts two measures included in the bill introduced by the gentleman from California [Mr. HUNTER] which provide for an incentive program to better train examiners. While the current bill ensures that the advisory board for the new PTO should be composed of diverse users of the office in order to help Congress conduct more effective oversight, the manager's amendment expressly requires that inventors be included as members.

The Committee on Appropriations has expressed concern over the borrowing authority in the bill, as have some critics, although many misunderstood how the authority works under the control of Congress. Much ado has been made about a procedure which would offer a small possibility for the new PTO to borrow money instead of having to raise fees on inventors to pay for any high-technology future products. Accordingly, our amendment strikes the borrowing authority.

In further guaranteeing diligent inventors at least 17 years of patent term from the time of issuance, the manager's amendment allows inventors adequate time to respond to inquiries from the PTO regarding their applications.

Small businesses and independent inventors have been concerned that the new PTO may not recognize the long-standing reduction in fees applicable to these constituencies. The manager's amendment requires that the agency continue to provide that small businesses and independent inventors pay half price for their patent applications.

Independent inventors have claimed that the scope of the reexamination provisions contained in H.R. 400 is too broad. This has been amended to extend greater due process. As we can tell, Mr. Chairman, the committee has worked hard to accommodate the interests of our small business community, not just in this amendment but in the many amendments adopted throughout the process, while maintaining strong protection for U.S. interests against our foreign competitors. I strongly urge all of my colleagues to vote "yes" on the manager's amendment.

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

Mr. Chairman, I wonder if I could engage my colleague and friend from North Carolina in a colloquy regarding the manager's amendment.

Mr. Chairman, I will state what I believe is true, and I just want to know if I have it correct or not. I believe that, even with the manager's amendment, every filer for a patent in the United States under the gentleman's bill would have to make public that application even if the patent has not yet been granted; is that correct?

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

Mr. CAMPBELL. I yield to the gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, the applicant can, of course, withdraw if it is not to be granted.

Mr. CAMPBELL. Mr. Chairman, every applicant for a patent in the United States who intends to continue in the application process for a patent, even if he has not yet gotten that patent, must eventually disclose under the bill; is that correct?

Mr. COBLE. The purpose for that, Mr. Chairman, if I may say so, is to direct attention to the submariner.

Mr. CAMPBELL. Mr. Chairman, I appreciate the gentleman's understanding. But I believe his answer is yes; am I correct?

Mr. COBLE. Yes, sir.

Mr. CAMPBELL. I thank the gentleman.

Mr. Chairman, we have, I think, very clearly identified what is wrong with H.R. 400 and that it is not solved by the manager's amendment.

Every applicant for a patent who wishes to get that patent, even before they get the patent, is obliged to disclose. Goodbye to the strategy that you say, "Well I am trying for a patent but if I do not get it, I want to keep it secret and try the trade secret route." One of the aspects that American patent law has right now is a tremendous incentive to the inventor because it allows just that opportunity. I will try for the patent, but if I do not get it, if it does not look like I am going to, then I am going to try the trade secret route.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I just wanted to ask a question. Assuming that happened to an inventor and he or she were published and that information were taken by some other interest in another nation, knowing some of the inventors that I know, if they had to sue, many of them do not have deep enough pockets. In fact, 80 percent of the inventors are small inventors and, if they had to take a case, would it not be extremely difficult for many inventors to try to protect their property rights internationally?

Mr. CAMPBELL. Mr. Chairman, my colleague from Ohio is quite right, but

even more right than one might think; because what is the lawsuit about? Under H.R. 400, it is permitted to disclose. It is required to disclose. So if a foreigner takes that and uses that, what are you going to be hiring an attorney for?

Here is a question, Mr. Chairman, if I might instruct my colleagues to allow me to continue.

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Mr. CAMPBELL. Mr. Chairman, why are we messing with the U.S. patent system? Why are we messing with it?

We saw the chart of my colleague from California, Mr. HUNTER. We have Nobel prize winners. We have technology advancement second to none in the world. Why are we messing with it? Do my colleagues not think we should have a good reason before we change such a system as this that has produced such success for our country?

What answers have we heard today? We have heard one, submarine patents. This is what the Congressional Research Service says about the Rohrabacher substitute and House Resolution 400. It says the patent disclosure provisions of the Rohrabacher substitute, House Resolution 811, should substantially curtail the practice of submarine patenting. Both bills seek to curtail submarine patenting and would likely end the practice. That is on pages 12 and 13 of the CRS report.

Let me repeat that. Both bills seek to curtail submarine patenting and would likely end the practice.

If we are messing with the U.S. patent system because of the abuse of the submarine patent, for heaven sakes, let us not go as broad and do the additional damage as House Resolution 400 would do when we can solve it with a much narrower solution, which is in the Rohrabacher substitute.

But let us ask one further question. How large, how deep, how profound is this problem of the submarine patent? Commissioner Lehman, in GATT hearings, was reported in the Washington Times of April 15 of this year to have said that the submarine patent constitutes approximately 1 percent of 1 percent of all patent filings. The numbers that he gave worked out to thirteen one-thousandths of 1 percent of all patent filings.

For that we are going to compel all patent filings, after 18 months, to be made public, whether or not there has been the patent granted? It simply is unnecessary for the small problem and it does a tremendous amount of collateral damage.

Mr. Chairman, I wish to conclude by pointing out that there has been no other case made for changing this present system that has worked so well, no other compelling case. If at the very least we do no harm, we have served our constituents well.

Mr. Chairman, I ask unanimous consent, as my colleague did, for 2 additional minutes.

Mr. GOODLATTE. Mr. Chairman, reserving the right to object, and I will

not object, but I would ask that the gentleman from California, if we are going to conduct this debate under the 5-minute rule, recognize that he can make unanimous-consent requests for additional time.

No one here wants to do it, but if the gentleman is only going to recognize folks who agree with his opinion, he is not entering into a genuine debate, and I think we should have that.

So I will not object, but I would make the point to the gentleman.

The CHAIRMAN. The gentleman withdraws his objection and the gentleman from California is recognized for 2 additional minutes.

Mr. CAMPBELL. Mr. Chairman, since my colleague from North Carolina had 3, I would ask unanimous consent for 3 additional minutes.

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

There was no objection.

Mr. CAMPBELL. Mr. Chairman, I will reserve one of those minutes for a colloquy with my good friend, the gentleman from Virginia [Mr. GOODLATTE].

So we have the submarine patent as rationale for messing with the system, a small problem and one which is equally solved by the Rohrabacher substitute.

We have heard that research institutions are holding off. They are. Is it not troubling to my colleagues that we are going to be changing the U.S. patent system in a way that the major research universities of our country have chosen not to embrace?

Let me be very clear. They do not embrace the Rohrabacher substitute; they do not embrace the bill introduced by the gentleman from North Carolina. It seems they do not want a change. And I cannot blame them for that attitude. If we are going to change such a successful system, does it not cause us concern that the research universities are not here asking us to do it?

Oh, the commercializers are. And I do not put any negative spin on that phrase, a commercializer is important, as well as an inventor, but they are different, and the motive of the commercializer is to get available as quickly as possible the information and to use it for commercial purpose as quickly as possible. The inventor loses under House Resolution 400 in order to achieve that objective.

Last, we have heard the reference to a need to level the playing field. Well, I do not think we need to rush to equalize when we see the comparison in the numbers of inventions and Nobel prizes as a signal measure of the state of our country and others.

I repeat, in closing, reserving the last minute for our colloquy, no one responded to my point about a prior commercial user. Under the Coble bill, House Resolution 400, somebody who did not file, but has made use of this idea, can expand that use, can take what was making \$10 a month and

make it \$1 million a month, totally eviscerating the value of the patent and destroying the incentive to invent in the first place.

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

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

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding, and I wanted to join in the conversation he had with the gentlewoman from Ohio, and point out the concern expressed by the two of them about situations in which foreign businesses might steal patent ideas published after 18 months presumes some important facts:

First, that that inventor did not file for a patent in a number of other foreign countries. If they do not file for the patent when the patent is issued, and the average patent is issued in 19 months in this country, there is nothing to stop that same thing from happening upon issuance of the patent all over the world.

Mr. CAMPBELL. Mr. Chairman, if I can reclaim my time to respond, the gentleman's point is quite right. If we file overseas, we put ourselves into the overseas system. If we file overseas, we put ourselves into the European system. And if we choose not to, because we prefer the American system, and for good reason we prefer it, because it has more incentives for invention and more protections for the inventor, we should be allowed to proceed under the American system.

The CHAIRMAN. The time of the gentleman from California [Mr. CAMPBELL] has expired.

The Chair would advise all Members that we will go back and forth and we will give priority to members of the committee.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word, although I might want to put it back by the time I am through.

I rise in support of the manager's amendment of the bill. I am the ranking minority member of the relevant subcommittee, so I have immersed myself to some extent in this. I have had some of my colleagues say to me that they do not quite understand why there is all this passion about the bill, and I will say to those who are looking to me for enlightenment on this that they will go unenlightened.

I think there is a dynamic of rhetoric that keeps arguments going even when they are not necessarily there anymore. There has been some convergence here. Originally, I was a cosponsor with the gentleman from California [Mr. ROHRBACHER]. I had heard from the biotechnology people that they did not like the alternative. That was several years ago.

In the interim, the bills have become less different. I do not expect the entrenched partisans on either side to acknowledge that, but it does seem to me we may want to look at it. In fact, the manager's amendment that came forward further bridges the difference,

further reduces the problem of publication.

One point that should be made clear, and I say this because not every Member is fully familiar with it, and some Members were puzzled by publication, people should understand that we do not lose any legal right by publication.

There are some people who think it will be published before I have my patent and then I am not protected. No, that is not true. There is absolutely no diminution of legal right. What people are arguing is that the practical situation in which we are put to defend our legal right might be more difficult. But understand that there is no diminution of our legal right.

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

Mr. FRANK of Massachusetts. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the gentleman is correct, and not only that, but because we improve the patent pending protections, then we can come back and get royalties during that patent pending term after we have been published that we cannot get under current law.

And, in addition, we found that the Europeans get that capital financing. One of the problems they have is the gap between the 18-month publication, when the patent is actually issued, saying, I am going to be exposed during that time. But, actually, the capital comes sooner because they know that since we have been published and no one else has been published ahead of us, we are the one that has that idea; and if they want to invest in it, they can do it now rather than wait until the patent is issued.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I think the general rule is sentence-yeild, sentence-yeild. So now it is time for a sentence, and then I will yield again after I get to say a sentence.

The sentence is, and it is actually a couple: We made another change in this. Under prior law, if two people both filed a similar patent, they were on equal terms before the law and had an equal burden in terms of proving who had invented first, not who filed first, which is not relevant.

We added to the bill after the bill was filed and added language that says, if we have published and someone files subsequent to our publication, we are no longer on an equal footing. We are now in a super-legal position. The person who filed subsequent to us has the burden of proof.

We will indeed, in fact, almost assume that the person copied our patent from the publication. And that is a very important difference.

It is true under old law we could file, somebody else could file, we would publish, someone else would file, and we would be at greater risk. We have further strengthened the hand of the person who files and is subject to publication.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I thank the gentleman, because I know he approaches all these issues with complete objectivity and he tries to do what is best for the country.

Mr. FRANK of Massachusetts. On these issues. I get worked up on some others.

Ms. KAPTUR. In this case we disagree. I think that one of my greatest misgivings about the H.R. 400, and the reason I am supporting the substitute is because, having met many inventors, in a State like Ohio, what this bill does is it, and the gentleman says, well, they can defend their rights, and the gentleman from the other side was saying the same thing, but this is a real lawyers' field day because the small inventor, maybe the person who is working on their first patent, will be forced to take money that many of them do not have.

People can defend themselves if they are representatives of a large corporation that has a patent or is filing for a patent. They do not have as much trouble. But the average small inventor under this bill is seriously compromised by the system the gentleman is setting up where we publish after 18 months.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I say to the gentlewoman she has made her point and I want both to affirm it and then respond to it.

That is what I meant before. The legal right is not diminished. The gentlewoman is not contesting that. We have the same legal right whether or not there has been publication. The argument has been that those who want to intrude on our patent will do so, and if we are not a person with a lawyer, then we are at a disadvantage.

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

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

Mr. FRANK of Massachusetts. That is also true once we have gotten a patent, Mr. Chairman.

In other words, if there are people out there who are determined to use their superior resources and their access to lawyers to infringe on and chip away at and take the benefit from our patent, they can do that whether it has been published or not once it is patented.

Yes, anybody in this society, I guess, who might be in difficulty is at more of a disadvantage if they do not have a lawyer handy than if they do. There might be other cases when people might consider it a disadvantage to be too near a lawyer, but in the case of a dispute, it is probably helpful. But that is true whether the patent is issued or not, whether or not there are people out there after us.

The point I would make is that publication, particularly with the safe-

guards we have, does not weaken either our legal position nor the disadvantage we might be at because of a lack of access to attorneys.

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

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, it was for exactly that reason I never made the argument about the burdensome lawyers. My argument was different. I wonder what the gentleman's response might be to that.

I understand our legal rights are not changed by H.R. 400 in this regard, but as a practical matter, publication does destroy the applicant's opportunity to go the trade secret route and existing patent law does not. Would the gentleman agree?

Mr. FRANK of Massachusetts. Well, Mr. Chairman, first of all, let me say I welcome the support of the gentleman from California of my argument against the gentlewoman from Ohio. Because he just said he did not like her argument, and I appreciate that. I know they are friends in general, but I should like to point out that the gentleman from California—

Ms. KAPTUR. They are both attorneys. It is so interesting the way this debate goes.

Mr. FRANK of Massachusetts. Yes, but I have never practiced.

I did want to point out that my friend from California has just joined me in opposing the argument of the gentlewoman from Ohio, and I would say there may be an argument of his that she may not like, and I would be glad to have her join in on that one, too.

The next point is that that is true, that we are not forced, except for this thing. There is an inconsistency in the gentleman's question.

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

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

Mr. FRANK of Massachusetts. Mr. Chairman, my understanding is that the trade secret is what we invoke as an alternative to patent.

The gentleman said if we file and are published, we lose our right to go for trade secrets. But my understanding is if we go the patent route, that is the alternative to trade secrets. So, therefore, yes, if we decide to get a patent, then we have given up our right to go the trade secret route.

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

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, here is the question I was asking, and I did take the gentleman's answer to my previous question to be "yes," for which I am grateful.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, maybe the gentleman misunderstood me, and I will clarify it.

The question was, if we are published, do we give up our ability to use trade secrets. My answer was, if that was the question, the answer is that any time we go for a patent, we give up the right to go trade secrets.

□ 1500

I want to finish the one question which was, is there a conflict between trade secrets and publication? My understanding, as I said, is that applying for a patent is an alternative to trade secret. If that was not the question, rather than claiming I answered "Yes," the gentleman ought to rephrase the question.

Mr. CAMPBELL. It was the question, if the gentleman will yield.

Mr. FRANK of Massachusetts. I tried to respond to the gentleman. He then frankly, it seemed to me, somewhat distorted what I said. I am not going to simply allow that to happen, so I want to restate it.

If the question was, does publication take away your right to do trade secret, I would have to say I am surprised at the question, because any patent takes away your chance to use trade secret. Publication is not the operational problem there, it is the desire to ask for a patent.

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

Mr. FRANK of Massachusetts. I yield again to the gentleman from California.

Mr. CAMPBELL. I thank the gentleman. If somebody under present law wants to try for a patent and wants to keep that going until they are fairly sure they will not get it, they can still go the trade secret route, but under House Resolution 400, come 18 months, they cannot. That is a difference, is it not?

Mr. FRANK of Massachusetts. I would say this to the gentleman. That is a circumstance I had not previously thought about. In other words, what the gentleman is saying is you decide you are not going to get the patent and you withdraw it. I would be prepared to work on an amendment, which I suspect would make no difference to the gentleman overall.

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

Mr. FRANK of Massachusetts. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

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

Mr. CAMPBELL. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard. Mr. FRANK of Massachusetts. Mr. Chairman, I ask unanimous consent to proceed for an additional 30 seconds.

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

Mr. CAMPBELL. Mr. Chairman, reserving the right to object, if the gentleman would split the time with me.

Mr. FRANK of Massachusetts. No. I do not think the gentleman is interested in the conversation.

Mr. CAMPBELL. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. I thank my friend from Virginia for yielding.

Mr. Chairman, the point is this. We are talking about a very, very limited circumstance. I think to some extent what we may be patenting—and maybe you cannot patent this, maybe we would copyright it—examples of horrible and extremist that we can come up with that might possibly under certain circumstances create a problem. The gentleman from California has had one. Here is what I think he is positing.

You apply for a patent. Your patent application is published. You subsequently decide that you are not going to get the patent, so you withdraw it and have you then lost your right to protect it under trade secrets?

I do not think it would do any violence to the bill in that circumstance where no one had previously suggested to say that no, you would not lose that. I would be glad to do that. I would be glad to support an amendment in a subsequent part of the process that said if in fact the only thing that happened was that you were published and you were not going to get a patent, that that would not destroy your limited right of trade secrets. That one does not bother me at all. It is the first I had heard of it in all my conversations with the gentleman.

Mr. GOODLATTE. Reclaiming my time, I would point out to the gentleman that there is a provision in the bill already that preserves the right of anybody to withdraw their patent application prior to the 18-month publication date and preserve their right to go the trade secret route. The problem we have here is there is an inherent difference between trade secrets and patents. Trade secrets are protected by keeping them secret. The formula for Coca-Cola, that is not patented, that is a recipe. They keep it locked up in a safe.

On the other hand, if you want to protect something by use of the patent system, the way we do that is the U.S. Government tells the whole world that that individual is the first person to come forward with that patent and they have that protection and that right, and all publication does is give them that right sooner. It does not in any way harm them or take away that right. If they want to go the trade secret route, they can still do it by withdrawing that application.

I would also point out that the average patent in this country takes 19 months, 1 month longer than the 18-month provision. So the fact of the matter is that we are doing very little

to harm people and in fact publication is a positive thing.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

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

Ms. LOFGREN. Is it not the case that in the bill if you are only filing in the United States and not abroad and are a small inventor or small businessperson, you have the ability to delay publication until after the second Office action, which is an up or down, and then have the ability to withdraw? So, the issue being raised is really not a problem because it has been dealt with in the bill.

Mr. GOODLATTE. The gentleman is correct.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

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

Mr. FRANK of Massachusetts. I would also say I was a little bit surprised to hear my friend from California worried so much about the rights of people under trade secrets because I had previously in my conversations with him and in his amendment understood him to be somewhat critical of the trade secrets doctrine and to be interested in narrowing it substantially.

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

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

Mr. KIM. I thank the gentleman for yielding. Mr. Chairman, I would like to have a colloquy with the gentleman from North Carolina [Mr. COBLE].

I would like to talk about a totally new subject, real estate.

Under section 112 of H.R. 400, the new Government corporation is not subject to the provisions of the Property Act of 1949, nor the Public Buildings Act of 1959. The bill would grant to each new corporation the ability to sign a lease and buy and sell property, construct a facility without regard to this law that I mentioned.

Indeed, the Patent and Trademark Office [PTO] is currently in the midst of having a new headquarters acquired by GSA, the landlord of the Federal Government. The PTO has requested acquisition of 2.3 million square feet of office space that could cost over \$57 million annually, or even \$1 billion over the next 20 years.

In fact, section 112 recognizes this action by stating that the land does not nullify, void, cancel or interrupt any pending request for proposal or acquisition by GSA for the express purpose of relocating or leasing space for the Patent and Trademark Office.

Is that the gentleman's understanding?

Mr. COBLE. If the gentleman will yield, that is my understanding, and I will be happy and any of the rest of us on the committee will be happy to work with the gentleman from California [Mr. KIM] on his committee of jurisdiction with Federal buildings, and I presume that is what prompts his question.

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

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

Mr. CAMPBELL. I thank the gentleman for yielding.

Mr. Chairman, I simply wanted to point out this distinction and then get the benefit of the gentleman's response to it. Many people go into the patent system hoping to get the patent and they are disappointed, but they get indications of that disappointment.

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

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

Mr. GOODLATTE. Mr. Chairman, I continue to yield to the gentleman from California.

Mr. CAMPBELL. So disappointed, they then choose to go the trade secret route. So that the choice is not only at the beginning but along the path when it does not look like you are going to get a patent. In that context the average time of a patent being 19 months means that a substantial number, more than half, will see the present right held by a patent applicant being taken away. That is my point. I would be grateful to hear the gentleman's response.

Mr. GOODLATTE. I would be happy to respond.

The individual who is in the process and is having a lengthier time processing the patent application than the 19-month average would be concerned about that. Under those circumstances, they would withdraw the patent application and if they wanted to try for the patent again, they are not in any way deprived from having the opportunity to resubmit the patent application which will then pick up with a lot of the work already having been done previously and process the patent through. I doubt there will be very much time lost.

Against that, I want to weigh the benefit of publication. No inventor wants to spend years of their life working on something to find out that somebody else had previously already filed, whether they are a deliberate submarine patenter like some who have kept them submerged for 30 years or others.

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has again expired.

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

Mr. GOODLATTE. Therefore, publication has a number of benefits to inventors, including knowing that you are not wasting your time doing something that somebody else is already ahead of you on, and getting capital investment in your invention sooner because they know that you are the first out there because you are the first published and therefore they can invest in you sooner than they can if they have

to wait until they are sure you are going to get the patent because they do not know under our current secret process whether or not somebody else got in there ahead of you. This is a benefit to the small investor, not a harm.

I yield to the gentleman again.

Mr. CAMPBELL. Mr. Chairman, I would just conclude, and I sure do appreciate the gentleman yielding, that overwhelmingly the commercializers are with the gentleman from North Carolina [Mr. COBLE], but overwhelmingly the inventors are with the gentleman from California [Mr. ROHRBACHER].

Mr. GOODLATTE. I have not found that to be the case.

Mr. CAMPBELL. That has been my observation, though I appreciate the gentleman might have a different one. I think that distinction speaks volumes to what the inventor sees as a hurt to his or her entrepreneurial activity.

Mr. GOODLATTE. That has not been the experience in Europe where this process has been used, and I would suggest that this is very much the type of change that we need in this country. This committee has improved the patent system for 200 years. I urge the support of this bill.

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

Mr. Chairman, I rise in support of the manager's amendment offered by the gentleman from North Carolina [Mr. COBLE], the subcommittee chairman.

Mr. Chairman, I would point out that the two major items in this amendment is, one, to completely separate the operational function of the Patent and Trademark Office from the policy responsibilities of the Patent and Trademark Office, thereby making it most efficient.

I presume that most everybody is for that. I do not recall much objection to it.

Mr. COBLE. I would say to the gentleman from Michigan, not unlike many other features about this bill, a lot of it was misunderstood, but I have heard virtually no complaints about that.

Mr. CONYERS. I did not think so.

I thank the gentleman.

The second most important part of the manager's amendment, from my point of view, is the exemption of the small inventor from the necessity of publication if he chooses to do so. And so, here this exemption from publication for the small inventor is that they do not have to publish until 3 months after the second patent and trademark action, which is usually the final decision regarding a patent.

That has great merit because it gives the protection to the small inventor. Ladies and gentlemen, those who are against GATT and NAFTA, listen up. This is precisely why I am supporting the bill and the manager's amendment because we provide additional protec-

tion to the small inventor, we give him the option of publishing 3 months after what is called the second PTO action, which is almost always the final decision regarding the issuance of a patent.

There are a number of technical amendments to the Coble manager's amendment. It is 18 pages long. The provision that I am referring to that exempts small inventors starts at page 10, line 1. Please read it. It is not complicated language.

It is not any more complex than anything we handle every day in the making of laws for the United States of America. It is pretty straightforward. It should not create any problem to anybody that is interested in protecting American inventors who are not corporations to give them the option that they require that they have never had before which does not subvert the patent process, it makes it stronger and is why we are here on the floor with this bill after several years.

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

Mr. Chairman, I just went through the manager's amendment, and it is a little difficult to sort through. I am not a lawyer, and I kind of think this ought to be approached in more of a pragmatic way. And so, in weighing this bill, I went back to those who are concerned with it and I talked to some of the people that deal with patents on a daily basis and in trying to improve themselves and our lives by taking their ideas into the patent system.

And I just want to tell my colleagues about a guy in Wichita, KS. His name is Jay Hajeer. He works for Sol Gate, and he has a very simple idea. This simple idea was to increase the size of a memory for most computer models even beyond the amount of design capacity that the computer already has in it.

Jay was able to keep his simple idea quiet enough as it went through the patent process until he did a little planning as far as production, a little planning as far as a way of marketing his product; and he was able to acquire the patent and go ahead and produce this simple product.

And now that it is out and available on the market, I would like to explain it. It is simply a clip. You take the memory board out of your computer, slip this clip in place and slide your memory board in plus an additional memory board, thereby, in this case, doubling the size of the memory.

You can do it for additional memory boards, also. But it is just a very simple idea, just a little plastic clip with a couple of connectors on it. And so, when he had this idea, he did not have to lay it out in front of other people.

□ 1515

I think that having to publish these ideas before they get a patent on it is kind of like playing cards with a mirror at your back. The opponent on the other side of the table is able to read

your cards, and he can see what is in your hand. And so in that respect it becomes a level playing field for your opponent, and I do not think we want to make a level playing field for our opponents, especially for other countries.

So let me go back to this simple design. Not only did Jay have time to develop the concept, get the drawings done, also develop a manufacturing plan and a marketing plan by the time he got his patent, once that was achieved, he was able to go right into the marketplace. Now if he had to publish this and there was a delay in his plans, it would have made it easier, especially for the companies in Southeast Asia, to capture this idea and go ahead with manufacturing and push them out of the market. He is a small investor, does not have a big company; he just has good ideas. So this open publishing of the idea, I think, would have made him vulnerable to larger manufacturers even in foreign governments.

So I am a little concerned about this level playing field concept, I am a little concerned about forcing someone to lay their cards on the table, letting them play cards with a mirror to their back. I think that we want to protect ideas and provide incentives for individuals.

And I guess the second point I would like to make is I am not very concerned about these alleged submariners, and perhaps I do not quite have a good grasp of the idea, but what we are trying to do is protect people who have ideas. That is why we have so many Nobel laureates, and that is why we have so many people who come up with ideas in America, is we give them incentives to sit around and dream up ideas.

I rode back to Wichita one time with a guy on the airplane who came up with an idea of mixing naphtha and water together, and one can burn it in a gasoline engine; and he has a license with Caterpillar to do just that. It is an idea that he has come up with that we can use water as a portion of the fuel. It cuts down emissions, it is a great idea. But he has to have a way of protecting his ideas so that he cannot lay his cards on the table and allow someone else to run with the ball until he gets the capital or gets the needs that he has.

So I guess I am not as concerned about the submariners as everybody else is because I think it is good to have a bank of ideas, to have them protected so that you can go on to the next idea while somebody develops a manufacturing process.

So those are my concerns on H.R. 400 and also in the manager's amendment, and that is why I will be voting against it, because it levels the playing field when I do not think it should; it levels it for the opponents.

Mr. HYDE. Mr. Chairman, I have a unanimous consent request that I would like to present to the House, but I would like just to say about those

Nobel Prize winners, a lot of them have foreign accents, the ones I have met anyway.

Mr. Chairman, I ask unanimous consent that, when we finish with this manager's amendment, which I pray will be soon, I pray it is imminent, that debate on the Rohrabacher amendment and all amendments there-to be limited to 2 hours equally divided between proponents and opponents, the time to be controlled by the gentleman from California [Mr. ROHRABACHER] and the gentleman from North Carolina [Mr. COBLE] and that they be permitted to yield blocks of time.

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

Mr. ROHRABACHER. Reserving my right to object, Mr. Chairman, is his unanimous consent request saying that there would be 2 hours of debate for my substitute?

Mr. HYDE. Yes, Mr. Chairman.

Mr. ROHRABACHER. Mr. Chairman, but not for my substitute coupled with all the other amendments?

Mr. HYDE. No, Mr. Chairman. No, the other amendments will stand on their own, and we will probably get to them next week. It is simply trying to get the important amendment, if the other offerers will forgive me for downgrading their amendments, and get it out of the way and have an idea when we can secure because people would like to leave.

Mr. ROHRABACHER. 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.

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

Mr. Chairman, in all due respect, I have not had a chance, but 1 minute, to speak at various times here, so I would like to make a couple of points. I know the dialogue has gone on, and I will not try not to indulge the House too much longer.

I think it is very, very important though in this critical debate to understand that, while we have spent a lot of time on the submarine patent idea—you know, the notion that somebody hides this kind of prospective patent and it rears its ugly head to challenge somebody else later in the future, I appreciate that. And I think it has been well established here in this body this afternoon that either the main bill, H.R. 400, or the Rohrabacher substitute does deal with the submarine patent issue.

I think it is important again to stress that of the 2.3 million patents that were issued from 1971 to 1993, 2.3 million patents, 627 of those patents were deemed submarine, and almost half of those were by the U.S. Government. So the problem is not necessarily foreign interests bearing these submarine, these patents. So I think

that is an important point to understand here, but we have dealt with the submarine issue, so I will not prolong that.

I think we get back to the essence here, and the essence of all of this really is again that we have American inventors who have defined this Nation as a place where somebody with a good American idea could come to Washington, DC, with that idea and protect that idea and it would not be made available to the whole world to steal.

I understand the distinction if one files overseas. I am today talking specifically about our American citizens who come up with good ideas and want to protect those ideas on American soil. That is what I am talking about, and I think we need to protect them.

That is why I am asking in a most aggressive manner through my amendment that we do protect the entrepreneur, the people who are working extra jobs to protect this idea that they have been working on, the small business people.

Look, the corporations, the multinational corporations, are well protected. They will be well protected in this legislation, they will have the battery of lawyers they need, but the little guys out there with no resources who have wonderful ideas that have made America great who have made us the superior Nation on the face of the earth because of our ideas and our technology, we are going to compromise that away. We will no longer have Alexander Graham Bells, we will no longer have first generation Americans coming up with a great idea like Thomas Edison, and we will no longer have the Eli Whitneys or all the other people who have come through generations that have made this country the greatest Nation because of our people that go out there, come up with a great idea, send it to Washington and protect it. Now we are saying, "Sorry, individuals; sorry, small business people; you are not going to have the protections because you'll have to share your idea with the whole world after 18 months or some few months after that based on the manager's amendment which says, well, we will make a little alteration there."

If we are really caring about the individual in this country and not the corporate interests, we will make an exception for individuals, small business people, who do not have the resources that this bill will mandate.

Mr. Chairman, my colleague from Ohio was exactly correct. This will be a lawyer's field day because we will turn it over to the courts, and even the presumption that the patent holder is protected will be put in jeopardy under these changes.

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

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

Mr. CONYERS. Mr. Chairman, is the gentleman aware of page 10 of the Coble manager's amendment starting

at line one that exempts the small independent inventor from publication?

Mr. FORBES. Only if that inventor withdraws their patent application. It is not exemption.

Mr. CONYERS. It is optional with the small inventor; and if I might just read the sentence, it might change the gentleman's entire speech, and here is what it says. Just hear this.

The small, the independent, inventor in small businesses have expressed concern, and so the manager's amendment will give them a choice over whether or not they wish to be published. It will effectively exempt independent inventors by deferring until 3 months.

Mr. FORBES. Reclaiming my time, with all due respect I say to the gentleman I read it myself. And what it says is if someone is an individual in this country or a small business, and they do not have the resources, and they do not want their patent protected; I mean published, excuse me; then what they can do is they can opt out of participating in the patent protection system because then they will not get published.

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

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

Mr. CAMPBELL. Mr. Chairman, the gentleman is reading from the summary and not from the actual text. I note that point. But the summary is correct, and so was my colleague from New York. One can always get out of the mandatory publication rule.

The CHAIRMAN. The time of the gentleman from New York [Mr. FORBES] has expired.

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

Mr. FORBES. Mr. Chairman, I yield to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, I appreciate the gentleman yielding continuously.

All that speaks to, Mr. Chairman, the gentleman from Michigan's point, all it speaks to, if one chooses to opt out of the patent system, then they do not have to disclose. But that is always the case. One can opt out of the patent system.

Mr. FORBES. Reclaiming my time, if I might, and in my remaining minute here I think it is just important to stress to my colleagues who have real problems understanding the technicalities of this issue, and I can appreciate it, this is very, very important. I am talking about the little people in this country, the small inventors, the people who do not have vast sums of money who have made this country great and changed the face of the economy of this Nation over the last 200 years. They will be hurt by this change.

Mr. Chairman, this is a harmful piece of legislation. In all due respect to the folks who have drafted it, this is not

good for the little people in America, it is not good for small businesses, and I urge the defeat of H.R. 400.

Ms. LOFGREN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I doubt that I will use the entire 5 minutes. I just think it is important to point out a few things. There is an accuracy deficit here.

Mr. Chairman, in the bill with the exemptions provided for in the manager's amendment, which I support, publication is at 18 months, and the inventor is protected from that time forward. So it is not as if we are asking people to publish their invention without protection.

Mr. Chairman, I would like to complete my sentence. There has been a lot of discussion that the little guy will not be protected because he or she does not have access to the fancy lawyers and the legal system that is necessary to protect themselves. Let me point this out:

If someone obtains a patent—they have an invention, they file for their patent and their patent is issued—that patent is only as good as their ability to enforce it. Enforcing the patent requires them to oftentimes come into contact with the legal profession and to actually expend fees in pursuit of protecting their patent. And I would point out that there are many lawyers, if they have a good case, who will take the case on a contingent fee if the patent holder is being attacked by a foreign corporation in a patent infringement action.

It is important to talk about the issue of submarine patents. I have heard a lot about statistics. I do not hear those same sorts of arguments when we stand here and talk about, for example, product liability law. It is not our problem because it is only a percentage. If it is 500 million, it does not matter because it is only one case.

Let me talk about the case of Jerome Lemelson who filed in America for a bar code and robotic technologies who delayed his patent for 35 years. He collected \$500 million in royalties from manufacturers from the late 1980's until the early 1990's. His patent attorney made \$150 million in 1 year, and then later the Federal district court found that he did not have an enforceable patent.

I do not know Mr. Lemelson, I have nothing against him personally. I would just say that is nothing to advance the economic interests of America or of working people or of countries or of innovation. That is important; do not tell me about percentages. We need to prevent it.

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

Ms. LOFGREN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I ask do we know how many hundreds of millions of dollars the attorney for Mr. Lemelson received in fees thus far for his submarine patenting?

Ms. LOFGREN. I do not know and I certainly never fault an attorney for earning an honest living. I would just point out that this issue is a big deal to those companies that paid those fees and the attorney fees.

I will tell the gentleman something else, and I do not want to quote the entire letter, but some of my colleagues have heard of Charles Trimble, the president and CEO of Trimble Navigation, a brilliant physicist and an individual who owns many patents and who was a leader in global positioning systems. Were it not for Dr. Trimble, we may not have that technology at all. I had the opportunity to talk to Dr. Trimble just a few short weeks ago. He followed our conversation with a letter to me. He is the owner of the patents. He is the one who has designed this system. He is fighting off submarine patents right and left.

□ 1530

It is not the right thing for our country to allow.

Mr. GOODLATTE. Mr. Chairman, if the gentlewoman will continue to yield, I think the point is that this patent reform bill fights against abuse of and gaming of the current system, which is a great playground for some lawyers to make huge fees at the expense of the American consumers and taxpayers, and we are correcting that with this legislation today, quite to the contrary of those who would allege that the new laws will help lawyers, quite to the contrary.

Ms. LOFGREN. Mr. Chairman, reclaiming my time, that is correct. The main point I wanted to make is to have rights that are enforceable one must seek access to courts, which requires lawyers, whether your rights attach at publication, whether the rights attach, as used to be the case, at issuance or the like. Your rights are only as good as what you stand up for.

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

Ms. LOFGREN. I yield to the gentleman from Washington.

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

Mr. DICKS. Mr. Chairman, I rise today to speak in strong support of H.R. 400, a package of patent reforms that will have significant positive impact in several key industries in the State of Washington, namely the information technology, biotech, aerospace, and defense industries. I believe that this legislation will result in tangible improvements in our Nation's patent system, and that it strikes a balance between the need to assure strong patent protection for inventors while allowing for the free flow of information regarding new technologies. In this regard, I believe that H.R. 400 will foster the best of American ingenuity and serve as an important mechanism for spurring U.S. economic growth and competitiveness.

I regret, Mr. Chairman, that opponents of this legislation have sought to portray this patent debate as a David versus Goliath fight

when, in fact, the reforms contained in the bill will benefit large and small companies alike. The committee bill protects the work and intellectual capital of thousands of Americans, whether working in basement laboratories or in teams at major U.S. corporations. By cutting bureaucratic red tape, reducing the operating costs, and promoting self-funded PTO, all patent filers stand to gain from a more predictable, efficient, inexpensive, and equitable patent system. H.R. 400 also contains several safeguards to protect independent inventors, and in this regard I note that nationwide associations representing 30,000 small business members are in support of the legislation we are debating today.

I also rise in strong opposition today to the amendment offered by the gentleman from California [Mr. ROHRBACHER] who seeks to substitute his legislation which, in my judgment, will reverse the positive patent reforms that were achieved through the GATT and would encourage abuse and manipulation of the patent system. The gentleman from California has maintained that the issue of the so-called submarine patents represent only a miniscule problem for our system. But I believe it has been shown that this gaming of the system has cost inventors, U.S. companies, and consumers billions of dollars and it would only continue under the language Mr. ROHRBACHER is asking us to adopt.

As a member of the National Security Appropriations Subcommittee and the House Intelligence Committee, and as a Representative of a State that depends upon the best of human and intellectual creativity, I can assure you I would never endorse a proposal that undermines our national security or undercuts our global competitiveness. In the 2 years prior to the passage of the 1995 GATT law, 300 foreign companies manipulated the patent system to their advantage, at the expense of American inventors and consumers. Despite Mr. ROHRBACHER's disingenuous label of H.R. 400 as the "Steal American Technology Act," I am afraid that the bill he is offering as a substitute would only worsen that draining of intellectual capital from the United States.

This is a major issue for all high-technology areas of the United States, and particularly for the Pacific Northwest, which has become an intellectual center for software development and biotechnology—two areas in which the United States leads the rest of the world. The foundation of the information technology industry in my region and nationwide is its intellectual capital, and as such, intellectual property protection is critical to the continued growth and success of this industry. In 1975, Microsoft was founded on the ideas and hard work of a handful of people; in just over 20 years, it now has almost 20,000 employees. Hundreds of startup companies have been launched following Microsoft's success, further contributing to the thriving high-technology industry in the area. The software industry as a whole provides high-wage, high-skilled jobs for more than 500,000 American workers and currently enjoys 70 percent of the world market—a share that will rapidly diminish if intellectual property protection is minimized. As R&D spending continues to increase, and while product cycles are condensing into timeframes of 9 to 12 months, predictability and full disclosure of existing patent applications becomes

ever more critical. Due to the complexity of software patents, and a lack of prior art and expertise in the field, the average patent pendency for software is 36 months, double the PTO's average processing time. For this reason, an efficient PTO with highly trained and experienced examiners is becoming increasingly important.

Passage of the Rohrabacher substitute, H.R. 811, and a return to the previous system enabling the practice of submarine patents, also threatens the biotechnology industry which is thriving in the State of Washington. Patents are critical to the research of the biotechnology industry into cures and therapies for deadly and costly diseases like cancer, AIDS, Alzheimer's, cystic fibrosis, multiple sclerosis, heart disease, and 5,000 genetic diseases. Any law which undermines the ability of biotechnology companies to secure patents with a full term undermines funding for research on deadly, disabling and costly diseases. Capital will not be invested in biotechnology companies if they are not able to secure intellectual property protection ensuring that they have a full term for a patent in which to recoup the substantial investments they must make in developing a product for market. Today, the United States remains preeminent in the field of biotechnology but has become a target of other country's industrial policies. Only by maintaining strong intellectual property protection, and preventing the gaming of the patent systems by foreign companies can the U.S. biotech industry continue to remain dominant.

I am convinced Mr. Chairman, that intellectual property is rapidly becoming the critical national resource of the next century's world economies, and I urge my colleagues to move forward with the improvements to our current patent system contained in the H.R. 400, which I have cosponsored, not backward with the substitute offered by Mr. ROHRABACHER. An efficient and predictable patent system encourages both job creation and the research and development activities that have made the United States the global leader in many high-technology sectors. This is precisely what H.R. 400 seeks to do.

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

Mr. Chairman, I want to reiterate what I said at the start of this good, robust debate, and that is that I have great respect for the gentleman from Illinois [Mr. HYDE], the chairman of the full committee and my great friend, and the gentleman from North Carolina [Mr. COBLE], the chairman of the subcommittee, my other great friend. I want to thank both of them for all of the great work that they have done.

I think one thing that we have proved to the world over the last several hours is that this is a fairly complex subject. I think that the area that the gentleman from California [Ms. LOFGREN] just spoke to is a huge area. It is an area of great importance, because we keep getting up on our side and saying that there is publication after 18 months, that all of these inventors have their secrecy ripped away from them, and then people can come in and unscrupulously flood around

them with patents, which the practice of flooding is used in Europe and Japan where that 18-month publication system exists, and then the other side gets up and says, no, we have fixed that, there is an exception for small inventors. They do not have to publish.

Let us walk through that. Right now you do not have to publish until some 20 years after you have applied for your patent, and that gives you a long time, especially if you have a very complex piece of technology, to go out and get the money, get the running room that these Nobel laureates who support the Rohrabacher bill apparently want to keep. They do not like the new bill. But under the new bill, you jerk that veil of privacy away from them after 18 months.

Now, they do have a choice under the committee bill, but the choice for small businesses is not to be published. They do not have that choice. They either have to publish after 18 months or get out. They have to get out of the patent system and give up their attempt to get a patent and give up forever the chance to get that very important protection.

Now, it is true, and I want to hold up this list of people, very bright people who do not want this protection that the committee wants to give them. The gentleman, Nobel laureate, Franco Modigliani who developed management systems; Kary Mullis, Nobel laureate, polymerase chain reactor; Gertrude Elion, Nobel laureate, transplant anti-rejection drugs; the guy who invented the neonatal respirator; the guy who invented the MRI machine. Lots of these very bright people do not want to be published early under the system that exists in Japan.

Now, this chart tells you maybe why they do not want to be published. Why are there so few Nobel laureates in the sciences in Japan? Only five. There are 175 in the United States. The reason is very clear. These people get their privacy ripped away after 18 months. That means they do not have the running room to go out and get capital, to get a start-up company, to go out and line up the support that it takes to get a technology into production.

In the United States we have a ton of Nobel laureates because we give them protection, we give them some running room. So let us get this straight once and for all. The committee bill says that after you have had two office actions in the Patent Office, that at least a third of the patents go way beyond two office actions, but after you have two office actions, you have 3 months to decide whether to publish to the world or get out of the patent system.

Now, let us go to submarine patents for just 1 minute. Submarine patents have been the subject of almost three-quarters of the argument time spent by the proponents of this bill. I am told by the testimony that I read, or the summary of the testimony, by the Patent Commissioner was that over the last 20 years of 2.3 million patents issued, 370

of those patents were submarine patents. That is less than one-tenth of 1 percent.

So a lot of these Nobel laureates would probably say, you know what we would go along with? We are not a bunch of phoney submariners, we have good stuff, we just want to protect it. What we would go along with is a provision from the bill that would say, if you do not use due diligence, then the Patent Office should publish you.

That will take care of that problem. That takes care of those 370 submariners. That is in the Rohrabacher bill. If you do not use due diligence, you get published. So the guy that hides for years and years and years gets brought out into the open and published.

I think one reason these Nobel laureates do not like this is they are saying why do you expose 2.3 million patent holders early, early in the game and let people take advantage of them because of what 370 guys did? It does not make sense.

So once again, I want to thank the chairman of the subcommittee, the gentleman from North Carolina [Mr. COBLE], and the full committee chairman, the gentleman from Illinois [Mr. HYDE], for bringing this very important bill forward, but I go back to the beginning of the debate when the gentleman from Florida [Mr. GOSS] said first do no harm. Folks, we are doing harm with this bill.

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

First of all, I want to acknowledge the leadership that my good friend from California, [Mr. ROHRABACHER], has shown on this issue, and I think that the gentleman has taken up the interests of how we are going to be able to compete in the high-technology environment and in a global economy in a way that I was very supportive of in the last Congress. I commend the gentleman from California [Mr. ROHRABACHER] for the initiative that he has shown on this issue.

My feeling, after having listened to this debate and recognizing that I come from a district that represents universities such as Massachusetts Institute of Technology and Harvard University, I have more universities than any other Member of Congress, over 48 different universities come from the eighth district of Massachusetts. There is more research and development money spent in my congressional district than any other congressional district in the United States of America. I should not tell my colleagues all this because they will cut it all.

So anyway, I have to skip that part of the speech and get into the fact that what we have is an enormous concern over patent law and patent law deficiencies that have occurred during the course of the last few years. We have seen this most particularly with regard to the last few years in direct result of some of the GATT agreement that ended up as a result of a long negotiation providing protections for some of

our inventors and some of our patent applicants here in the United States, but only after a very difficult set of negotiations. As a result of my involvement in that issue, I was happy to support the efforts of the gentleman from California [Mr. ROHRBACHER] in the last Congress.

My understanding, and I would be open to hearing from the gentleman from California [Mr. ROHRBACHER], is that the gentleman from North Carolina [Mr. COBLE] has, in fact, tried to take up some of the concerns.

We just heard the gentleman from California [Mr. HUNTER] talk about the fact that there is an issue pertaining to the small businessman or the small inventor that comes up with a particular idea and the fact that, as I understand it, in the legislation of the gentleman from North Carolina [Mr. COBLE], there would be, in fact, an 18-month protection, that there would be an opt-in for a total trade secret protection.

Now, that might not be fully protective of all of the interests of the small inventor, because at some point someone might go around him and try to steal the patent and then he is into a big lawsuit with a larger company. But it does seem to me that the gentleman from North Carolina [Mr. COBLE] has tried to come up with a reasonable compromise for us to be able to support.

So I would like to entertain just a discussion with the gentleman from California [Mr. ROHRBACHER], who, as I say, I did support in the last Congress. My inclination was to support the gentleman from North Carolina [Mr. COBLE] today. So I would like to hear what the gentleman's concern is.

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

Mr. KENNEDY of Massachusetts. I yield to the gentleman from California.

Mr. ROHRBACHER. Mr. Chairman, no. I would say the efforts of the gentleman from North Carolina [Mr. COBLE] have not in any way met my concerns and, in fact, have raised more concerns the more I look into the legislation.

In fact, if the gentleman will notice from the universities that are in his district, none of them, none of them support H.R. 400. Had the gentleman from North Carolina [Mr. COBLE] actually gone and moved forward, trying to take those concerns that we all had last year into consideration, they would be here. Instead, the central issue, and the central issue which remains, as everyone can see, is whether or not our information that we have developed during a research and development process, so important to our colleges and universities, whether or not that information is going to be forcibly published so that everyone else in the world will be able to steal it.

Mr. KENNEDY of Massachusetts. Mr. Chairman, reclaiming my time briefly, I have been in touch with the universities of my district. While they are not perhaps as actively supportive as

the gentleman from North Carolina [Mr. COBLE] would like, they do not oppose this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Massachusetts. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I would think we could state this very clearly. No, the universities are not supporting the committee bill, they are not supporting the bill of the gentleman from California. He is being unusually reticent. My friend from California is being unusually reticent in leaving his own bill out of this conversation. He is not ordinarily so modest about it.

I have worked with the universities, with Harvard, and MIT and some others. My understanding of their position is that while they were originally opposed to H.R. 400, the changes we have made have brought them to a position of neutrality as between the two bills. I do believe they want to see a bill passed, but the fact is it seems rather odd for the proponents of one bill to be citing the universities' neutrality when the universities are neutral as between the two bills.

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

Mr. KENNEDY of Massachusetts. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, I think the correct point is that the universities have chosen to stay on the sidelines, and my colleague from Massachusetts, and I have both been in contact with them.

I believe this is very significant, because if one asks them, and this is my guess, I am not saying anyone told me precisely, though one actually did, they would prefer neither. They would prefer we do not mess with the system.

So the burden of proof should be on somebody who is proposing a major change in the patent bill. Research universities prefer no change, and that is what I think we should do.

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

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

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Massachusetts. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, that is the oddest invocation of the burden of proof I have heard. The burden of proof is somehow on those who would support one bill, but not on those who would support one equally important.

The gentleman said the burden of proof is on one. As a matter of fact, what is clear to me from working with the universities is this: They had some objections. We have improved the bill from their standpoint to the point where they do not now object to it.

They are not choosing between the two bills. But I would differ. At least with the universities I have talked to, there are elements in this bill, including, for instance, blocking the diversion of patent fees from the Patent Office, which makes them want some bill, and there are others who believe that some action in light of what is going on internationally is important.

The key point is this: People who are the proponents of one position versus another should not come in and simply say, oh, the universities do not like your position, when they have a neutral position. I think some Members got the impression that they have taken sides.

Mr. KENNEDY of Massachusetts. Mr. Chairman, reclaiming my time, let me yield to the gentleman from California. If the Chairman would just let me know when I have about 30 seconds left so I might close.

Mr. CAMPBELL. Mr. Chairman, there were things in the bill, however, that the universities do not like, like the reexamination procedure. They think they have a patent and then suddenly under this bill it can be opened up for reexamination in ways and in processes not under existing law.

I agree with my colleague, the gentleman from Massachusetts [Mr. FRANK]. The burden of proof is on anyone who wants to change the status quo, and that is true of the gentleman from California [Mr. ROHRBACHER] and it is true of the gentleman from North Carolina [Mr. COBLE]. But if you ask the universities, their bottom line is leave it alone, and that is what we should do today.

Mr. KENNEDY of Massachusetts. Mr. Chairman, I would just like to close.

I have come into this debate with an open mind. My sense is that there has been, in fact, significant advancements made on where the Moorhead bill was 2 years ago to where the Coble bill is today.

My inclination, after having talked with the various universities and a lot of the small businesses, as well as other companies within my own district, that I think the gentleman from North Carolina [Mr. COBLE] is making a significant effort forward, and I look forward to supporting his bill.

□ 1545

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

Mr. Chairman, I just wish to follow up the comments of my colleague, the gentleman from Massachusetts [Mr. FRANK], who has been in personal conversation with a number of the universities in the Northeast. Our staff, at the request of the chairman, the gentleman from North Carolina [Mr. COBLE], together with his staff have spent a lot of time in conversation with associations which represent universities of all sizes, both public and private, across the country.

My assessment of those conversations is that the representation of the

gentleman from Massachusetts [Mr. FRANK] is in fact accurate; that while there were concerns about some portions of the initial legislation, those concerns have been addressed, and while no piece of legislation may be perfect, that what we have before us with the manager's amendment does meet the great majority of those concerns from what is a very diverse audience that includes public and private schools, small and large schools, individual professors working alone, and professors working together and in cooperation with major corporations.

I think it would be as difficult to get consensus in higher education on this subject as it would be in this body to get consensus. But my assessment of the view of the associations with which we have worked is that the bill that we will have before us, after the manager's amendment, does address their major concerns.

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

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

Mr. CAMPBELL. I am grateful for the gentleman's yielding.

Mr. Chairman, it is my understanding that there are four universities who have expressed an opinion, and if this is wrong I am asking the gentleman to correct it.

It is my understanding that the State University of New York at Stony Brook supports Rohrabacher; that Louisiana State University supports Rohrabacher; that the University of Delaware supports Coble; that Rice University supports Coble; and that every other university has chosen not to take sides in this debate.

If that is incorrect, I would most welcome the correction. But if it is correct, I would suggest that the burden of my remarks that I made, that the universities would really prefer that we not mess with this system, is more accurate.

Mr. PEASE. Mr. Chairman, I cannot speak for the four universities individually to which the gentleman has made reference because we spoke only with associations, those who represent groups of universities, and not with individual universities. We did have conversations with individual universities, a number of them in the Midwest. In each case they referred us to the associations of which they were members.

Mr. CAMPBELL. If the gentleman will continue to yield, Mr. Chairman, does the gentleman know, since he has been in touch with the university associations, does any association of universities support either of these two bills, to the gentleman's knowledge?

Mr. PEASE. To my knowledge, none of the major associations has taken a position on either bill.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

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

Mr. FRANK of Massachusetts. Mr. Chairman, I think we may be back in

the Subcommittee on the Constitution of the Committee on the Judiciary, apparently. It sounds like some of my friends are about to create a third house of Congress, which is the universities, and only if they vote positively can we pass a bill.

Mr. Chairman, I differ with the implicit imputation of great inarticulateness to the university sector. The gentleman from California says it is true they have said they do not support or oppose either bill. They do not oppose it. But the gentleman says that he infers from the fact that they do not support or oppose either bill the fact that they oppose any bill at all.

In my experience, universities are not reticent. When universities have positions, they tell us. The fact that the universities have not said they were opposed to this would lead me to the conclusion, perhaps it is going out on a limb, but when the universities tell me they are not opposed to a bill, I infer they are not opposed to a bill. Perhaps there are subtleties unbeknownst to me.

I worked with universities when they were opposed, and when they were they have said so. So we have made some changes, and they are not now opposed to this, they are neutral. It does not seem to me we have to absolutely do whatever they say, anyway. But neutrality is not opposition.

Mr. CAMPBELL. Mr. Chairman, if the gentleman will yield further, I believe that the gentleman from Massachusetts and I agree that there is a burden of proof in debate, there is a burden of proof in those who would change the status quo, and the university community is not a third house of Congress, nor have I set it up to be so.

But they are important. And they are not reticent in letting us know things they want, like major assistance with research, particularly in the times of a shrinking budget. That they have not done so is to me a very important point. That they have chosen to be silent regarding this bill is to me quite significant, if we start from the premise that there is a burden of proof on anyone who wants to change the status quo.

What we are left with, and I appreciate the gentleman's yielding, is that there are those who commercialize, like the Coble bill, those who invent, like the Rohrabacher bill, and universities have one foot in each camp, they both commercialize and invent, and it seems to me for that reason they are staying out.

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

(Ms. KAPTUR asked and was given permission to revise and extend her remarks.)

Ms. KAPTUR. Mr. Chairman, I rise in support of the Rohrabacher substitute and against H.R. 400. Mr. Chairman, I wanted to read into the RECORD some of the organizations that are opposing H.R. 400 and supporting the

Rohrabacher substitute, organizations like the Alliance for American Innovation, the American College of Physician Inventors, the American Small Business Association, the National Association for the Self-employed, the National Association of Women Business Owners, the National Congress of Inventor Organizations, the National Patent Association, the National Small Business United. These are not insignificant organizations.

The Patent Office Professional Association, the Ohio State Bar Association, from my home State. This is a very small, partial list. The Small Business Legislative Council, the Small Business Technology Coalition, the Small Entity Patent Owners Association, United Inventors of America. One of the great scholars of our time, Franklin Modigliani at MIT, a Nobel laureate.

These are not insignificant organizations, nor individuals; inventors like Dr. Paul Burstein, the inventor of rocket motor inspection systems, or Gertrude Elion, the inventor of leukemia-fighting and transplant rejection drugs.

There are people here who recognize what is being proposed in the base bill is in fact a significant departure from current practice. They are not satisfied with the so-called changes that are being made actually every moment, from what I can tell from this position here, in order to accommodate the flaws that exist in the base bill.

So I would say to the Members, Mr. Chairman, that it is very important to recognize that we not tamper with a system that is working, that has worked for centuries, and certainly for the last several decades as the United States in this century became the pre-eminent industrial and agricultural leader of the world.

H.R. 400, in contrast to the substitute, is actually taking us back, not forward. Why we would want to subject our inventors to divulge the contents of their patent application before it is granted is beyond me. I do not know why we want to take that secret protection away and involve them in litigation. Why would we want to do that? Why would we want to do that domestically, and certainly why would we want to subject them to cases internationally, which are so expensive that most of the smaller inventors cannot even afford to defend their interests?

The average American knows it is hard for them to go to court and pay the court costs in this country. Can Members imagine what it is going to be like to deal with international infringements on their patent applications if they have to function under this proposed base bill?

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

Ms. KAPTUR. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, this is, after all, the ultimate bipartisan issue that we have been discussing

today, and who supports the little guy. That is what we are trying to do with the Rohrabacher substitute.

Most people know there are a lot of conservative Republicans who have spoken today, and the gentlewoman has been here as well. Are there not many people on the gentlewoman's side of the aisle who are very concerned about this? Perhaps the gentlewoman would like to talk about some of the others who are supporting the Rohrabacher substitute, because I am proud to have many, many, liberal Democrats on our side protecting the little guy.

Ms. KAPTUR. Mr. Chairman, that is right. Actually, the gentlewoman from California, Ms. MAXINE WATERS, WAS DOWN HERE EARLIER AND HAD TO GO BACK TO A MARKUP. SHE IS SUPPORTING THIS LEGISLATION.

The gentleman from Missouri, Mr. DICK GEPHARDT, our minority leader, will be supporting the Rohrabacher substitute.

The gentleman from Michigan, Mr. DAVID BONIOR, on our side of the aisle will be supporting the substitute. So frankly, I think this issue goes down to the point of who has actually read the legislation and who has not, and most Members do not serve on the Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary. Therefore, they have not had an opportunity to follow some of the machinations.

I respect the gentlewoman's work on this measure. I know how hard she has worked on it, I know she has been accommodating to many of the changes we have been trying to make.

Mr. Chairman, the bill is not where we would like it to be yet, and therefore I remain supporting the Rohrabacher substitute, but we have broad bipartisan support on our side of the issue, and I look forward to the vote.

Ms. LOFGREN. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I just wanted to point out that that leaves only right-wing Democrats such as the gentleman from Massachusetts [Mr. FRANK] and myself in support of the manager's amendment.

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

Mr. Chairman, it seems that the debate on submarine patenting has calmed down a bit, seeing the fact that we have stated over and over and over again, and used the Congressional Research Service finding, to prove beyond anyone's reasonable doubt that we have taken care of any potential submarine patenting problem.

I have with me the Congressional Research Service report that says that our alternative, basically the Rohrabacher substitute, will end the practice of submarine patenting. So that is the only substantial argument

that the other side has to say that we should fundamentally change our patent system. They are proposing, in the name of stopping submarine patenting, because it is the only way to stop it is to change the fundamental law that has protected American technology for 225 years.

No, I have an alternative. The alternative was found by an independent reading by the Congressional Research Service to end submarine patenting. So what do we have? We have a proposal here to gut fundamental protections for American inventors, giving our technology away in order to end the submarine patenting problem, which we say we found another way to solve.

No, we do not have to cut our leg off in order to cure a hangnail or an infected toe. We do not have to destroy all freedom of speech because someone wants to publish Hustler magazine. In this particular case, people are moving forward to change the fundamentals, the fundamentals in our system that have served our country well, that have made us the leader in technology and ensured our people the highest standard of living, ensured our country the security we have because we have had the technological edge.

We have had the technological edge because the fundamentals have been right. This bill would change those fundamentals. One fundamental is a guaranteed patent term of 17 years. Their bill would go along with the elimination of that which took place 3 years ago when someone, in an underhanded maneuver, snuck that change into the GATT implementation legislation, although it was not required by GATT; the most underhanded move that I have seen since I have been here in Congress. Our bill would restore that guaranteed 17-year patent term that has served America well for 225 years.

The second element that my substitute restores and guarantees, the confidentiality; the right of our citizens, that when they apply for a patent, that until that patent is issued it is going to be secret. We are not going to give away all the secrets to foreign multinational corporations to steal until the patent is issued.

What do we hear here? We have effectively exempted small business. We can put that argument to rest, too. What does "effectively" mean? We know what that means. That is a weasel word. The public knows what it means, too. It means that someone is trying to project that a change has happened and the change has not happened. That is what effectively means.

No, small business has not been exempt, individuals have not been exempt. As the gentleman from California, Mr. TOM CAMPBELL, brought out with his colloquy, no; they are not. They are still going to be published. The whole world will see every one of our secrets.

Please do not tell us that the Chinese Liberation Army is going to be deterred from using our secrets, going

into manufacturing, making profit from those secrets, using those secrets in their technology against us, and then 5 years later or 10 years later, when the inventor is finally issued the patent, he gets to sue the Peoples Liberation Army?

They have taken care of the problem? That is a joke, and it is a sick joke that opens up all of our people to the worst kind of theft. Yes, the Chinese Army, I can hear them now, or Mitsubishi Corp: "I am using your technology? So, sue me." Yes, great. That is going to really protect our people and protect our country. This is an escalator down for our leadership in American technology.

By the way, something else I have heard today, yes, we have heard today that they have taken the provision out that permits this new corporatized Patent Office, where the Patent Office is part of the Government, making it a corporate entity; but they did manage to take out that part that says this corporate organization can accept gifts.

Why? Because the gentleman from North Carolina [Mr. COBLE] has explained, because they were permitted to accept gifts anyway. But what was not explained was that yes, they are able to accept gifts like anybody else, but this bill waives restrictions, because now it is a corporate entity, and they will not have the same restrictions that other Government agencies have when they accept gifts.

□ 1600

The GSA, the Commerce Department are no longer going to be in control of how those gifts are used. So what we have got is a Patent Office that can accept foreign gifts, and the controls over how those gifts are used are being taken away.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has expired.

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

Mr. ROHRABACHER. Mr. Chairman, the patent examiners who work so hard in this country, these are people who make decisions that are worth billions and billions of dollars and whether our country will enjoy them, who will benefit from them, these patent examiners work hard and they have been totally insulated from outside influences because they have been part of the U.S. Government. They are opposed to H.R. 400. They are pleading with us, do not do this to us, because they have no idea what outside influences will come to play. No one knows.

We change something so fundamentally as making it a corporate structure rather than part of our Government, who knows what pressures will be put on these stalwart Government employees who are trying to do their job.

Finally let me say, my substitute has taken everything that has been done

that is of benefit, that is a good thing for America out of the work of the gentleman from North Carolina [Mr. COBLE] and out of H.R. 400, and we have incorporated it into the substitute.

What we do not have is the publication that will make available to everyone to steal our technology after 18 months. We do not have the corporatization that will open up our patent examiners to outside influences, and what we do is we protect the fundamental system of American patent law that has made America the greatest country in the world. That is why we have so many Nobel laureates and all the Nobel laureates are on our side.

Do not be fooled with the idea that you to have cut your leg off to cure the hangnail of submarine patenting. We need to protect this American system that has done so much wonder for our people and created such a wondrous land. Those people in the small businesses, those Nobel laureates, those inventors, they are on our side. The big corporations are on the other side, and they put a lot of pressure on the universities and a lot of pressure on other people.

But we still have a democracy. The people still rule here. This bill protects the fundamental rights of Americans. That is why we do not want to harmonize with Japan. We do not want to harmonize with Europe. We want to have a better system where the individual rights of our citizens are protected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. COBLE].

The amendment was agreed to.

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
OFFERED BY MR. ROHRBACHER

Mr. ROHRBACHER. Mr. Speaker, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

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

Amendment in the nature of a substitute offered by Mr. ROHRBACHER:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Patent Rights and Sovereignty Act of 1997".

**SEC. 2. FINDINGS.**

The Congress finds that—

(1) the right of an inventor to secure a patent is assured through the authorization powers of the Congress contained in Article I, section 8 of the Constitution, has been consistently upheld by the Congress, and has been the stimulus to the unique technological innovativeness of the United States;

(2) the right must be assured for a guaranteed length of time in the term of the issued patent and be further secured by maintaining absolute confidentiality of all patent application data until the patent is granted if the applicant is timely prosecuting the patent;

(3) the quality of United States patents is also an essential stimulus for preserving the technological lead and economic well-being of the United States in the next century;

(4) the process of examining and issuing patents is an inherently governmental function that must be performed by Federal employees acting in their quasi-judicial roles under regular executive and legislative oversight; and

(5) the quality of United States patents is inextricably linked to the professionalism of patent examiners and the quality of the training of patent examiners as well as to the resources supplied to the Patent and Trademark Office in the way of adequate manpower, appropriately maintained search files, and other needed professional tools.

**SEC. 3. SECURE PATENT EXAMINATION.**

Section 3 of title 35, United States Code, is amended by adding at the end thereof the following:

"(f) All examination and search duties for the grant of United States patents are sovereign functions which shall be performed within the United States by United States citizens who are employees of the United States Government."

**SEC. 4. MAINTENANCE OF EXAMINERS' SEARCH FILES.**

Section 9 of title 35, United States Code, is amended—

(1) by striking "may revise and maintain" and inserting "shall maintain and revise"; and

(2) by adding at the end thereof the following: "United States patents, and all such other patents and printed publications shall be maintained in the examiners' search files under the United States Patent Classification System."

**SEC. 5. PATENT EXAMINER TRAINING.**

(a) IN GENERAL.—Chapter 1 of title 35, United States Code, is amended by adding at the end the following new section:

**"§ 15. Patent examiner training**

"(a) IN GENERAL.—All patent examiners shall spend at least 5 percent of their duty time per annum in training to maintain and develop the legal and technological skills useful for patent examination.

"(b) TRAINERS OF EXAMINERS.—The Patent and Trademark Office shall develop an incentive program to retain as employees patent examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent examiners who have not achieved the grade of primary examiner."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 1 is amended by adding at the end the following:

"15. Patent examiner training."

**SEC. 6. ADMINISTRATIVE MATTERS.**

(a) LIMITATIONS ON PERSONNEL.—Section 3(a) of title 35, United States Code, is amended by adding at the end thereof the following: "The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation."

(b) RETENTION OF FEES.—(1) Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after the item relating to the National Credit Union Administration, credit union share insurance fund, the following new item:

"Patent and Trademark Office".

(2) Section 10101(b)(2)(B) of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended by striking "to the extent provided in appropriation Acts," and inserting "without appropriation".

(3) Section 42(c) of title 35, United States Code, is amended by striking the first sentence and inserting the following: "Revenues from fees shall be available to the Commis-

sioner to carry out the activities of the Patent and Trademark Office, in such allocations as are approved by Act of Congress. Such revenues shall not be made available for any purpose other than that authorized for the Patent and Trademark Office."

(c) USE OF FEES.—Section 42(c) of title 35, United States Code, is amended by adding at the end thereof the following: "All patent application fees collected under paragraphs (1), (3)(A), (3)(B), and (4) through (8) of section 41(a), and all other fees collected under section 41 for services or the extension of services to be provided by patent examiners shall be used only for the pay and training of patent examiners."

(d) PUBLICATIONS.—Section 11 of title 35, United States Code, is amended by adding at the end thereof the following:

"(c) The Patent and Trademark Office shall make available for public inspection during regular business hours all solicitations issued by the Office for contracts for goods or services and all contracts for goods or services entered into by the Office.

"(d) Notice of a proposal to change United States patent law that will be made on behalf of the United States to a foreign country or international body shall be published in the Federal Register before, or at the same time as, the proposal is transmitted."

**SEC. 7. GAO STUDY AND REPORT.**

(a) IN GENERAL.—The Comptroller General shall conduct a study of—

(1) the total number of patents applied for, issued, abandoned, and pending in the period of the study;

(2) the classification of the applicants for patents in terms of the country they are a citizen of and whether they are an individual inventor, small entity, or other;

(3) the pendency time for applications for patents and such other time and tracking data as may indicate the effectiveness of the amendments made by this Act;

(4) the number of applicants for patents who also file for a patent in a foreign country, the number of foreign countries in which such filings occur and which publish data from patent applications in English and make it available to citizens of the United States through governmental or commercial sources;

(5) a summary of the fees collected by the Patent and Trademark Office for services related to patents and a comparison of such fees with the fully allocated costs of providing such services; and

(6) recommendations regarding—

(A) a revision of the organization of the Patent and Trademark Office with respect to its patent functions, and

(B) improved operating procedures in carrying out such functions,

and a cost analysis of the fees for such procedures and the impact of the fees.

(b) ADDITIONAL STUDY MATTER.—The Committees on Appropriations, Judiciary, and Small Business of the House of Representatives and the Senate may, no later than 12 months after the beginning of the study under subsection (a), direct the Comptroller General to include other matters relating to patents and the Patent and Trademark Office in the study conducted under subsection (a).

(c) REPORT.—Upon the expiration of 36 months after the beginning of the study under subsection (a), the Comptroller General shall report the results of the study to the Congress.

**SEC. 8. PATENT TERMS.**

(a) AMENDMENT OF TITLE.—Effective on the date of the enactment of this Act, section 154 of title 35, United States Code, as amended by the Uruguay Round Agreements Act, is amended—

(1) in paragraph (2) of subsection (a), by striking "and ending" and all that follows in that paragraph and inserting "and ending—

"(A) 17 years from the date of the grant of the patent, or

"(B) 20 years from the date on which the application for the patent was filed in the United States, except that if the application contains a specific reference to an earlier filed application or applications under section 120, 121, or 365(c) of this title, 20 years from the date on which the earliest such patent application was filed, whichever is later."

(2) in subsection (c)(1), by striking "shall be the greater of the 20-year term as provided in subsection (a), or 17 years from grant" and inserting "shall be the term provided in subsection (a)".

(b) TECHNICAL AMENDMENT.—Section 534(b) of the Uruguay Round Agreements Act is amended by striking paragraph (3).

**SEC. 9. DEFINITION OF SPECIAL CIRCUMSTANCES TO PROTECT THE CONFIDENTIALITY STATUS OF APPLICATIONS.**

Section 122 of title 35, United States Code, is amended by striking "as may be determined by the Commissioner" and inserting "as in any of the following:

"(1) In the case of an application under section 111(a) for a patent for an invention for which the applicant intends to file or has filed an application for a patent in a foreign country, the Commissioner may publish, at the discretion of the Commissioner and by means determined suitable for the purpose, no more than that data from such application under section 111(a) which will be made or has been made public in such foreign country. Such a publication shall be made only after the date of the publication in such foreign country and shall be made only if the data is not available, or cannot be made readily available, in the English language through commercial services.

"(2)(A) If the Commissioner determines that a patent application which is filed after the date of the enactment of this paragraph—

"(i) has been pending more than 5 years from the effective filing date of the application,

"(ii) has not been previously published by the Patent and Trademark Office,

"(iii) is not under any appellate review by the Board of Patent Appeals and Interferences,

"(iv) is not under interference proceedings in accordance with section 135(a),

"(v) is not under any secrecy order pursuant to section 181,

"(vi) is not being diligently pursued by the applicant in accordance with this title, and

"(vii) is not in abandonment,

the Commissioner shall notify the applicant of such determination.

"(B) An applicant which received notice of a determination described in subparagraph (A) may, within 30 days of receiving such notice, petition the Commissioner to review the determination to verify that subclauses (i) through (vii) are all applicable to the applicant's application. If the applicant makes such a petition, the Commissioner shall not publish the applicant's application before the Commissioner's review of the petition is completed. If the applicant does not submit a petition, the Commissioner may publish the applicant's application no earlier than 90 days after giving such a notice.

"(3) If after the date of the enactment of this paragraph a continuing application has been filed more than 6 months after the date of the initial filing of an application, the Commissioner shall notify the applicant under such application. The Commissioner

shall establish a procedure for an applicant which receives such a notice to demonstrate that the purpose of the continuing application was for reasons other than to achieve a delay in the time of publication of the application. If the Commissioner agrees with such a demonstration by the applicant, the Commissioner shall not publish the applicant's application. If the Commissioner does not agree with such a demonstration by the applicant or if the applicant does not make an attempt at such a demonstration within a reasonable period of time as determined by the Commissioner, the Commissioner shall publish the applicant's application.

The Commissioner shall ensure that publications under paragraph (1), (2), or (3) will not result in third-party pre-issuance oppositions which will delay or interfere with the issuance of the patents whose applications' data will be published."

**SEC. 10. INVENTION DEVELOPMENT SERVICES.**

(a) INVENTION DEVELOPMENT SERVICES.—Part I of title 35, United States Code, is amended by adding after chapter 4 the following new chapter:

**"CHAPTER 5—INVENTION DEVELOPMENT SERVICES**

"Sec.

"51. Definitions.

"52. Contracting requirements.

"53. Standard provisions for cover notice.

"54. Reports to customer required.

"55. Mandatory contract terms.

"56. Remedies.

"57. Records of complaints.

"58. Fraudulent representation by an invention developer.

"59. Rule of construction.

**"§51. Definitions**

"For purposes of this chapter—

"(1) the term 'contract for invention development services' means a contract by which an invention developer undertakes invention development services for a customer;

"(2) the term 'customer' means any person, firm, partnership, corporation, or other entity who is solicited by, seeks the services of, or enters into a contract with an invention promoter for invention promotion services;

"(3) the term 'invention promoter' means any person, firm, partnership, corporation, or other entity who offers to perform or performs for, or on behalf of, a customer any act described under paragraph (4), but does not include—

"(A) any department or agency of the Federal Government or of a State or local government;

"(B) any nonprofit, charitable, scientific, or educational organization, qualified under applicable State law or described under section 170(b)(1)(A) of the Internal Revenue Code of 1986; or

"(C) any person duly registered with, and in good standing before, the United States Patent and Trademark Office acting within the scope of that person's registration to practice before the Patent and Trademark Office; and

"(4) the term 'invention development services' means, with respect to an invention by a customer, any act involved in—

"(A) evaluating the invention to determine its protectability as some form of intellectual property, other than evaluation by a person licensed by a State to practice law who is acting solely within the scope of that person's professional license;

"(B) evaluating the invention to determine its commercial potential by any person for purposes other than providing venture capital; or

"(C) marketing, brokering, licensing, selling, or promoting the invention or a product or service in which the invention is incor-

porated or used, except that the display only of an invention at a trade show or exhibit shall not be considered to be invention development services.

**"§52. Contracting requirements**

"(a) IN GENERAL.—(1) Every contract for invention development services shall be in writing and shall be subject to the provisions of this chapter. A copy of the signed written contract shall be given to the customer at the time the customer enters into the contract.

"(2) If a contract is entered into for the benefit of a third party, such party shall be considered a customer for purposes of this chapter.

"(b) REQUIREMENTS OF INVENTION DEVELOPER.—The invention developer shall—

"(1) state in a written document, at the time a customer enters into a contract for invention development services, whether the usual business practice of the invention developer is to—

"(A) seek more than 1 contract in connection with an invention; or

"(B) seek to perform services in connection with an invention in 1 or more phases, with the performance of each phase covered in 1 or more subsequent contracts; and

"(2) supply to the customer a copy of the written document together with a written summary of the usual business practices of the invention developer, including—

"(A) the usual business terms of contracts; and

"(B) the approximate amount of the usual fees or other consideration that may be required from the customer for each of the services provided by the developer.

"(c) RIGHT OF CUSTOMER TO CANCEL CONTRACT.—(1) Notwithstanding any contractual provision to the contrary, a customer shall have the right to terminate a contract for invention development services by sending a written letter to the invention developer stating the customer's intent to cancel the contract. The letter of termination must be deposited with the United States Postal Service on or before 5 business days after the date upon which the customer or the invention developer executes the contract, whichever is later.

"(2) Delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer, without regard to the date or dates appearing in such instrument, shall be deemed payment received by the invention developer on the date received for purposes of this section.

**"§53. Standard provisions for cover notice**

"(a) CONTENTS.—Every contract for invention development services shall have a conspicuous and legible cover sheet attached with the following notice imprinted in bold-face type of not less than 12-point size:

"YOU HAVE THE RIGHT TO TERMINATE THIS CONTRACT. TO TERMINATE THIS CONTRACT, YOU MUST SEND A WRITTEN LETTER TO THE COMPANY STATING YOUR INTENT TO CANCEL THIS CONTRACT. THE LETTER OF TERMINATION MUST BE DEPOSITED WITH THE UNITED STATES POSTAL SERVICE ON OR BEFORE FIVE (5) BUSINESS DAYS AFTER THE DATE ON WHICH YOU OR THE COMPANY EXECUTE THE CONTRACT, WHICHEVER IS LATER.

"THE TOTAL NUMBER OF INVENTIONS EVALUATED BY THE INVENTION DEVELOPER FOR COMMERCIAL POTENTIAL IN THE PAST FIVE (5) YEARS IS \_\_\_\_\_. OF THAT NUMBER, \_\_\_\_\_ RECEIVED POSITIVE EVALUATIONS AND \_\_\_\_\_ RECEIVED NEGATIVE EVALUATIONS.

"IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

"THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS IS \_\_\_\_\_. THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS \_\_\_\_\_.

"THE OFFICERS OF THIS INVENTION DEVELOPER HAVE COLLECTIVELY OR INDIVIDUALLY BEEN AFFILIATED IN THE LAST TEN (10) YEARS WITH THE FOLLOWING INVENTION DEVELOPMENT COMPANIES: (LIST THE NAMES AND ADDRESSES OF ALL PREVIOUS INVENTION DEVELOPMENT COMPANIES WITH WHICH THE PRINCIPAL OFFICERS HAVE BEEN AFFILIATED AS OWNERS, AGENTS, OR EMPLOYEES). YOU ARE ENCOURAGED TO CHECK WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE, THE FEDERAL TRADE COMMISSION, YOUR STATE ATTORNEY GENERAL'S OFFICE, AND THE BETTER BUSINESS BUREAU FOR ANY COMPLAINTS FILED AGAINST ANY OF THESE COMPANIES.

"YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY OF YOUR OWN CHOOSING BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF AN ATTORNEY REGISTERED TO PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION."

"(b) OTHER REQUIREMENTS FOR COVER NOTICE.—The cover notice shall contain the items required under subsection (a) and the name, primary office address, and local office address of the invention developer, and may contain no other matter.

"(c) DISCLOSURE OF CERTAIN CUSTOMERS NOT REQUIRED.—The requirement in the notice set forth in subsection (a) to include the 'TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS' need not include information with respect to customers who have purchased trade show services, research, advertising, or other nonmarketing services from the invention developer, nor with respect to customers who have defaulted in their payments to the invention developer.

#### "§ 54. Reports to customer required

"With respect to every contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract, at least once every 3 months throughout the term of the contract, a written report that identifies the contract and includes—

"(1) a full, clear, and concise description of the services performed to the date of the report and of the services yet to be performed and names of all persons who it is known will perform the services; and

"(2) the name and address of each person, firm, corporation, or other entity to whom the subject matter of the contract has been disclosed, the reason for each such disclosure, the nature of the disclosure, and complete and accurate summaries of all responses received as a result of those disclosures.

#### "§ 55. Mandatory contract terms

"(a) MANDATORY TERMS.—Each contract for invention development services shall include in boldface type of not less than 12-point size—

"(1) the terms and conditions of payment and contract termination rights required under section 52;

"(2) a statement that the customer may avoid entering into the contract by not making a payment to the invention developer;

"(3) a full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer;

"(4) a statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the invention of the customer;

"(5) the full name and principal place of business of the invention developer and the name and principal place of business of any parent, subsidiary, agent, independent contractor, and any affiliated company or person who it is known will perform any of the services or acts that the invention developer undertakes to perform for the customer;

"(6) if any oral or written representation of estimated or projected customer earnings is given by the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer), a statement of that estimation or projection and a description of the data upon which such representation is based;

"(7) the name and address of the custodian of all records and correspondence relating to the contracted for invention development services, and a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for such customer for a period of not less than 2 years after expiration of the term of such contract; and

"(8) a statement setting forth a time schedule for performance of the invention development services, including an estimated date in which such performance is expected to be completed.

"(b) INVENTION DEVELOPER AS FIDUCIARY.—To the extent that the description of the specific acts or services affords discretion to the invention developer with respect to what specific acts or services shall be performed, the invention developer shall be deemed a fiduciary.

"(c) AVAILABILITY OF INFORMATION.—Records and correspondence described under subsection (a)(7) shall be made available after 7 days written notice to the customer or the representative of the customer to review and copy at a reasonable cost on the invention developer's premises during normal business hours.

#### "§ 56. Remedies

"(a) IN GENERAL.—

"(1) VOIDABLE CONTRACT.—Any contract for invention development services that does not comply with the applicable provisions of this chapter shall be voidable at the option of the customer.

"(2) RELIANCE ON FALSE, FRAUDULENT, OR MISLEADING INFORMATION.—Any contract for invention development services entered into in reliance upon any material false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer) shall be voidable at the option of the customer.

"(3) WAIVER.—Any waiver by the customer of any provision of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

"(4) ACTION BY DEVELOPER.—Any contract for invention development services which provides for filing for and obtaining utility, design, or plant patent protection shall be voidable at the option of the customer unless the invention developer offers to perform or performs such act through a person duly registered to practice before, and in good standing with, the Patent and Trademark Office.

"(b) CIVIL ACTION.—

"(1) IN GENERAL.—Any customer who is injured by a violation of this chapter by an invention developer or by any material false or fraudulent statement or representation, or any omission of material fact, by an invention developer (or any agent, employee, director, officer, partner, or independent contractor of such invention developer) or by failure of an invention developer to make all the disclosures required under this chapter, may recover in a civil action against the invention developer (or the officers, directors, or partners of such invention developer) in addition to reasonable costs and attorneys' fees, the greater of—

"(A) \$5,000; or

"(B) the amount of actual damages sustained by the customer.

"(2) DAMAGE INCREASE.—Notwithstanding paragraph (1), the court may increase damages to not more than 3 times the amount awarded.

"(c) REBUTTABLE PRESUMPTION OF INJURY.—For purposes of this section, substantial violation of any provision of this chapter by an invention developer or execution by the customer of a contract for invention development services in reliance on any material false or fraudulent statements or representations or omissions of material fact shall establish a rebuttable presumption of injury.

#### "§ 57. Records of complaints

"(a) RELEASE OF COMPLAINTS.—The Director shall make all complaints received by the United States Patent and Trademark Office involving invention developers publicly available, together with any response of the invention developers.

"(b) REQUEST FOR COMPLAINTS.—The Director may request complaints relating to invention development services from any Federal or State agency and include such complaints in the records maintained under subsection (a), together with any response of the invention developers.

#### "§ 58. Fraudulent representation by an invention developer

"Whoever, in providing invention development services, knowingly provides any false or misleading statement, representation, or omission of material fact to a customer or fails to make all the disclosures required under this chapter, shall be guilty of a misdemeanor and fined not more than \$10,000 for each offense.

#### "§ 59. Rule of construction

"Except as expressly provided in this chapter, no provision of this chapter shall be construed to affect any obligation, right, or remedy provided under any other Federal or State law."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 35, United States Code, is amended by adding after the item relating to chapter 4 the following:

#### "5. Invention Development Services ... 51". SEC. 11. PROVISIONAL APPLICATIONS, PLANT BREEDER'S RIGHTS, DIVISIONAL APPLICATIONS.

(a) ABANDONMENT.—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:

"(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and

as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). If no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) applies to any provisional application filed on or after June 8, 1995.

(c) **INTERNATIONAL APPLICATIONS.**—Section 119 of title 35, United States Code, is amended—

(1) in subsection (a), by inserting "or in a WTO member country" after "the United States" the first place it appears; and

(2) by adding at the end the following new subsections:

"(f) **APPLICATIONS FOR PLANT BREEDER'S RIGHTS.**—Applications for plant breeder's rights filed in a WTO member country (or in a UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.

"(g) **DEFINITIONS.**—As used in this section—  
 "(1) the term 'WTO member country' has the same meaning as the term is defined in section 104(b)(2) of this title; and

"(2) the term 'UPOV Contracting Party' means a member of the International Convention for the Protection of New Varieties of Plants."

(d) **PLANT PATENTS.**—

(1) **TUBER PROPAGATED PLANTS.**—Section 161 of title 35, United States Code, is amended by striking "a tuber propagated plant or".

(2) **RIGHTS IN PLANT PATENTS.**—The text of section 163 of title 35, United States Code, is amended to read as follows: "In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States."

(3) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply on the date of the enactment of this Act. The amendment made by paragraph (2) shall apply to any plant patent issued on or after the date of the enactment of this Act.

(e) **ELECTRONIC FILING.**—Section 22 of title 35, United States Code, is amended by striking "printed or typewritten" and inserting "printed, typewritten, or on an electronic medium".

(f) **DIVISIONAL APPLICATIONS.**—Section 121 of title 35, United States Code, is amended—

(1) in the first sentence by striking "If" and inserting "(a) If"; and

(2) by adding at the end the following new subsections:

"(b) In a case in which restriction is required on the ground that two or more independent and distinct inventions are claimed in an application, the applicant shall be entitled to submit an examination fee and request examination for each independent and distinct invention in excess of one. The examination fee shall be equal to the filing fee, including excess claims fees, that would have applied had the claims corresponding to the asserted independent and distinct inventions been presented in a separate application for patent. For each of the independent and distinct inventions in excess of one for which the applicant pays an examination fee within two months after the requirement for restriction, the Director shall cause an examination to be made and a notification of rejection or written notice of allowance pro-

vided to the applicant within the time period specified in section 154(b)(1)(B)(i) of this title for the original application. Failure to meet this or any other time limit set forth in section 154(b)(1)(B) of this title shall be treated as an unusual administrative delay under section 154(b)(1)(A)(iv) of this title.

"(c) An applicant who requests reconsideration of a requirement for restriction under this section and submits examination fees pursuant to such requirement shall, if the requirement is determined to be improper, be entitled to a refund of any examination fees determined to have been paid pursuant to the requirement."

**SEC. 12. PROVISIONAL RIGHTS.**

Section 154 of title 35, United States Code, is amended—

(1) in the section caption by inserting "provisional rights" after "patent"; and

(2) by adding at the end the following new subsection:

"(d) **PROVISIONAL RIGHTS.**—

"(1) **IN GENERAL.**—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to the voluntary disclosure provisions of section 122 or the publication provisions of section 122(1) or 122(2) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

"(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

"(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

"(B) had actual notice of the published patent application and, where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.

"(2) **RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.**—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

"(3) **TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.**—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

"(4) **REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.**—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall commence from the date that the Patent and Trademark Office receives a copy of the publication under such treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent and Trademark Office receives a translation of

the international application in the English language. The Director may require the applicant to provide a copy of the international publication of the international application and a translation thereof."

**SEC. 13. EFFECTIVE DATE.**

Except as otherwise provided, this Act and the amendments made by this Act shall take effect 60 days after the date of the enactment of this Act.

The CHAIRMAN. Under the previous unanimous consent agreement, the gentleman from California [Mr. ROHRABACHER] will be recognized for 1 hour, and a Member opposed will also be recognized for 1 hour.

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

The CHAIRMAN. The gentleman from North Carolina [Mr. COBLE] will be recognized for 1 hour.

Mr. ROHRABACHER. Mr. Chairman, I yield 30 minutes to the gentlewoman from Ohio [Ms. KAPTUR], and I ask unanimous consent that she be allowed to control the time.

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

There was no objection.

The CHAIRMAN. The gentlewoman from Ohio [Ms. KAPTUR] will be recognized for 30 minutes.

Mr. COBLE. Mr. Chairman, I yield 30 minutes to the gentlewoman from California [Ms. LOFGREN], and I ask unanimous consent that she be allowed to control the time.

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

There was no objection.

The CHAIRMAN. The gentlewoman from California [Ms. LOFGREN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, what the House is now considering is the Rohrabacher substitute. The Rohrabacher substitute has taken on many shapes and designs over these last few weeks, because we have tried our best to incorporate the very best aspects of H.R. 400 into our substitute. All of the good reforms that have been worked out by the gentleman from North Carolina [Mr. COBLE] and others on the committee have been incorporated into my substitute.

In fact, where we keep the fees of the Patent Office right there at the Patent Office so that people can make that Office more effective, we have done that. And we have made sure that all the hard work of this committee has not gone for naught.

In fact, I would like to compliment Mr. COBLE and I would like to say at this time that I have nothing but respect for the opposition here. Mr. COBLE and the gentleman from Virginia [Mr. GOODLATTE] and the gentleman from Illinois [Mr. HYDE] and others who, right now, we have such a heated debate going on, we have a great deal of mutual respect for one another. I have no doubt that their motives are good. It is just that we have

a really fundamental disagreement on this piece of legislation, and we will likely be the best of allies 1 week from now on another piece of legislation.

So with that said, let me go into the fundamentals of how we differ on this. It comes down to three or four basic points. Unfortunately, those basic points are right at the heart of what America's patent system is all about.

What has differentiated us from other patent systems of the world, why we have had some economic progress here, why has our military been secure and actually one step ahead of our adversaries when we went into conflicts? Because we have a strong patent system that nurtured the creative genius of our people.

The two elements of that patent system that differentiated us from the Japanese and from the Europeans was a guaranteed 17-year patent term, which means no matter how long it takes you to get your patent issued, you are going to have that 17 years of a guaranteed protection time to earn that money back and to make a profit from it. That is why we have so many people willing to invest here in the United States in the creation of new technology. Otherwise, the Government would have to do it because there would be no guaranteed time that we could have a return on our investment.

The second end of it, the second part of our system was that when someone applied for a patent, it was absolutely confidential, the right of confidentiality until that patent was issued. What that did is it prevented the big guys from stealing from the little guys.

In Japan, where they have the system that I am afraid H.R. 400 is trying to impose on us, that system has worked to create a class of economic shoguns that beat down the average person, that over in Japan, where it may be a democracy but it is not a free country like ours in the sense that people have a right to challenge the economic elite, the economic elite in those countries can beat down any inventor who wants to create something.

In Japan that system permits, where you have, after 18 months, you have publication, the reason why the economic powers that be have sufficient leverage, they come immediately into the process when they find out that someone is developing a new technology, something that will create new wealth, and they have what they call patent flooding. They will form a circle around the little inventor and the little guy, the small businessman, and beat him down until he has agreed to give up all of his rights.

That is what will happen right here if we change our law. They can come right over to our system and do exactly the same thing. What makes us think they will not do that? That is what has happened there.

In fact, that is one of probably the worst flaws of H.R. 400, because now we are publishing. What are the consequences of that publishing? Very

wealthy and powerful interests will get involved in the process where they have not done it before to try to thwart the issuance of that person's patent until he would agree to give up certain rights.

This is not the formula for a strong America. This is an escalator clause for America going downhill. Twenty years from now Americans will not know what hit them. It is Pearl Harbor in slow motion.

I will say, I have a copy and I have held it up several times. The reason why we are pushing on this, and you have heard it in the debate, we have to be like those other countries, we should not be like other countries, but yet we signed an agreement, a subterranean agreement 5 years ago to harmonize our law with Japan. Now they are seeking to try to push it through the system like when they tried to sneak that change through in the GATT implementation legislation.

We are going to thwart this power grab. We are going to thwart it, and we are going to make sure in doing so we protect America's future. If we lose our technological edge, if the individual inventor loses his rights and becomes vulnerable to these outside influences, if our patent examiners become vulnerable to all sorts of interferences and outside influences, America will cease to be a great country in decades ahead, and they will never know what hit them. It will be Pearl Harbor in slow motion, and we are going to stop that.

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

(Ms. KAPTUR asked and was given permission to revise and extend her remarks.)

Ms. KAPTUR. Mr. Chairman, the base bill that this substitute would replace essentially, as Mr. ROHRBACHER, who has led such a good fight on this and so many Members who have supported him, calls for a massive change in the way that we protect the secrecy of those who file patents in our country.

Now, to me, to move from a system that basically says when you file a patent your ideas can be protected for up to 17 years, up to the point that that patent is granted, and if the review office takes longer than 2 years, if it takes 4 years or 5 years for whatever reason, that your ideas are protected, why would we want to take away the property rights of our inventors by saying after 18 months, and where did the 18-month magic come from anyway, that after that point their ideas could be made available to whomever might want them?

To go from 17 years to 18 months to me is a massive change in the way the current system functions. I have never had an inventor in my district come up to me and ask for this change, so I wonder who it is that is proposing the change that is in the base bill.

I want to compliment Mr. ROHRBACHER for helping to expose this issue in detail so that we can bet-

ter protect our inventors' technologies in this country.

From the inventors I have talked to, they have some pretty big problems, once they involve themselves in this whole idea of patenting their inventions. Number one is the cost. The fact that a really small person does have to put a lot forward in the first place just to patent their idea.

If you are a big company, that does not affect you as much. You have great wholeness in the system. You have the ability to float. But for the small people that are out there in their garages and their basements where wonderful ideas have come from, it is much more difficult for them to do that even in the existing system.

Once they do, one of the challenges they have as an inventor is that big companies, if they try to commercialize the technology, often try to buy their idea out before it is even applied in the manufacturing sector, because an inventor does not control the manufacturing process. They are not into the commercialization side. Under the current system, it is even difficult for many of these inventors to get someone to buy their idea.

Also we have a situation under the current system where inventors find that their ideas are counterfeited. In fact, we have had dumping of computer terminals that have come over from China and other places.

I wish the committee would have given a little more attention to the real problems that inventors are having out there, trying to work in this current system. But they have never complained to me about the protections they receive in this country for their property rights. They have never complained about the time period.

They are complaining to me now. The Ohio State Bar Association is very aware of what this bill does and has made its views known to us. And many, many other inventors throughout the State of Ohio.

But I say to myself, what could have propelled this committee into proposing this kind of change? I looked down the list of multinational corporations that want this particular right. They already function on the international front. They are the very same firms that try to buy out these small inventors and do not permit them to commercialize their technology, if they do not have deep pockets. They are the very same interests that are able to float in their little boats in international waters when the average inventor is not. They are the very ones that have no problems with existing fees. And it just seems to me that they got the red carpet rolled out for them when they went before the respective institutions of this House.

On the other hand, the small inventors of my community have not been afforded the opportunity to come before the committee. The small inventors of my community have not been allowed to come before the Committee on Small Business.

I heard one of the Members, the gentleman from Maryland [Mr. BARTLETT], say that the hearings would be held next week. My friends, the horse is already out of the barn. Next week? This bill is being heard today. So it seems to me that we have a responsibility to represent the majority of inventors in this country, most of whom do not have deep pockets.

Our job is not just to represent the multinationals who have lots of good ideas and they have a great ability to float their boats, but they are not the only ones out there in the ocean.

I would certainly say to those who would want to bend over backwards to other countries who do not give us market access, we have a \$50 to \$60 billion trade deficit with Japan, a \$40 billion trade deficit with China, and it is growing. The situation we have with Mexico is abominable post-NAFTA. A lot of these other countries are going to be advantaged through this agreement. Why?

□ 1615

Why are we doing this to our inventors when in fact our country has 10 times more intellectual property breakthrough technologies than any other country in the world? We protect these property rights. It is inherent in the Constitution of this Nation. Why would we want to do this to the people of our Nation?

Now, let us take a look at the burden of proof and the fact that people say here, well, they can sue. If people do not like this new bill, H.R. 400, and they fail to vote for the Rohrabacher substitute, well, gosh, we will give them a chance to go to court.

A lot of these inventors out there do not have the money. They worry about paying their maintenance fees under the existing system, under the existing system. So why force them into cases where the burden is on them to prove that what they are doing is OK? Under the current system, it is.

Why place that burden on them? Why force them to go into these reexamination procedures? Why would we want to do that to our own people?

Frankly, for a lot of these nations or companies that function offshore, my own view is unless they give us market access, why give them anything? Why give them any advantage into this Nation's most precious seed corn, which is our patented inventors' property rights?

The whole idea of corporatizing the patent office, it is interesting that the people who work over there do not want this to happen. They are civil servants. They objectively can review, regardless of what type of inventor comes in there with an invention.

None of us really understand the gentleman's proposal of what this quasi-government corporation or new entity, this PTO, what that is going to be. We have not had a chance to fully digest what that means down the road. How objective will these examiners be al-

lowed to be? What will the CEO of that corporation, what rights will that individual have over those individual decisions? How objective and judiciallike will those decisions be able to be?

It seems to me there are a lot of issues in H.R. 400 that no Member here, including the people on the committee, can fully appreciate. Why do we not have an opportunity to clean this bill up? Let us adopt the Rohrabacher substitute, let us keep the system clean, the way it is, and then work through some of the issues that are of deep concern to Members here who want to represent not just those with deep pockets, but small inventors around our country who are really creating the future of us.

It was mentioned earlier there are some people concerned about jobs in our country and our trade policy who have engaged in this debate. Certainly we have, because we understand what it is like to negotiate against a country that uses every kind of barrier to disallow our product into their market.

But the inventions, the ideas, the intellectual property is the heart of our system. To allow them into the door when we have all sorts of other problems out there and we do not fully appreciate the long-term consequences of what is being proposed here, is a very dangerous position in which to place our country for the next century.

There is no question that patents are the primary source of job creation in this country. It goes to the heart of how we develop as an economy. When I see people like Nobel Laureates opposing the changes in H.R. 400, and I see the gentleman from California [Mr. ROHRABACHER] and our own minority leader, the gentleman from Missouri [Mr. GEPHARDT], and the gentleman from Maryland [Mr. HOYER], and others in this body, the gentleman from California [Mr. HUNTER], people on both sides of the aisle who have respect for members of the committee, but feel that we have not had our concerns solved, we have no choice but to wholeheartedly support the Rohrabacher substitute.

So I want to urge the membership, please, that if they have not read the bill, if they have not followed this debate, to support the Rohrabacher substitute. Do not fix a system that is not broken. Let us work hard, as this Congress progresses, in order to fix the current system if there are problems, but do not completely turn it upside down and take away the property rights of our inventors, especially the small inventors whose canoes are very small to row in the oceans of the international marketplace.

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

Mr. COBLE. Mr. Chairman, I yield 7 minutes to the gentleman from Utah, [Mr. CANNON].

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

Mr. CANNON. Mr. Chairman, I take the podium at the far right, the far-

thest right we can go here in the room as a Republican and a conservative.

And may I be the first Republican to welcome my colleague, the gentleman from California, [Ms. LOFGREN], and at her suggestion, also our colleague from Massachusetts, [Mr. FRANK], into the conservative wing of the party of the House.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

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

Ms. LOFGREN. Mr. Chairman, I want to thank the gentleman for the compliment, and acknowledge that it was certainly made in jest. I had to do that for my district, to clarify that.

Mr. CANNON. Mr. Chairman, reclaiming my time, I say to the gentleman she is always welcome over here.

I do want to speak to those conservatives in the House, Mr. Chairman, about why I support H.R. 400. Before I do so, I want to establish my credentials on this issue.

I am a businessman and have invested in numerous companies, some large, mostly small. I have also funded several high-tech new ventures and my district is a high-tech center. We have biomedical companies, software companies, computer hardware companies and a host of innovative start-ups, start-ups based on innovative ideas, some of which have been patented, some which have not. Many of them have been commercial successes and many of those people who have been successful have, in fact, helped out in the commercialization of other technologies. But I do not know, in my district at least, of a distinction between commercializers and inventors.

The heart of my district, Utah County, has been compared to Silicon Valley, with Route 128 in Boston, with North Carolina's Research Triangle. The small town of Provo always shows up on these maps of where the technological centers in America are.

I am also a member of the Subcommittee on Courts and Intellectual Property. As many know, in the last Congress there was vigorous debate on patent reform, and as a new member, my staff and I took time carefully to review the arguments. After that review, I chose to cosponsor H.R. 400, and I want to detail why.

First, we conservatives support the use of a reasoned, thoughtful process of public policy. The development of H.R. 400 easily passes that test. Over the past couple of years the provisions of H.R. 400 have been subject to 8 full hearings over 10 days, involving 80 witnesses. The gentleman from California, [Mr. ROHRABACHER], has testified four times. Every side of every view has had the chance to be heard, not once but many times on this issue.

Second, conservatives, in particular Republican conservatives, hate bureaucracy. H.R. 400 takes the Patent Office out of the Commerce Department and gives it the flexibility to

serve those seeking patent and trademark protection.

Third, conservatives support property rights. H.R. 400 expands the scope of protection afforded patent seekers. H.R. 400 guarantees diligent patent owners at least, let me emphasize at least, 17 years of patent term. But that is not all. In many cases, under H.R. 400, patent owners will receive even more than 17 years of patent term, in many cases about 18½ years of patent protection. This is both more protection than is available currently and more than available under Mr. ROHRBACHER's alternative.

Fourth, conservatives oppose giving individuals, corporations or foreign interests the ability to play games with our legal system. We believe in a system of laws. H.R. 400 is the only bill that drives a stake in the heart of submarine patents, an expensive, manipulative patent-seeking technique. While there is some debate over the number of submarine patents, the evidence is clear that submarine patents hurt both American industry and consumers. Submarine patents deserve to be permanently sunk, and H.R. 400 does the job.

Fifth, conservatives want U.S. companies to have a level playing field with their foreign competitors. That brings me to one of the most controversial provisions of the bill, the concept of publication. Frankly, this is a provision that is little understood and is easily misunderstood.

Let me provide some context by talking about what happens today to U.S. inventors who seek patent protection around the world.

The three primary places most inventors seek protection are Japan, the United States and Europe. A U.S. inventor who files in all three areas is published in 18 months in Japan and in Europe in a variety of European languages and in Japanese. Of course, that makes it easy for U.S. inventors' foreign competitors to read the American inventors' patent application in their own language and in their own country.

The U.S. inventor lacks the same advantage. Because the United States does not publish patent applications, an American inventor must go to Japan or Europe to find out about the activities of his or her foreign competitors. This hurts small American businesses which cannot afford travel or translation. Publication in the United States simply helps our own people keep an eye on their overseas competitors.

Some have argued that publication is great for big U.S. companies, but it might hurt small U.S. inventors. That brings me to my sixth point. Conservatives should argue about real issues. The fact is, the current version of H.R. 400, based upon concerns previously raised by small inventors, effectively exempts small inventors from publication.

My last point is that conservatives should respect fellow conservatives.

The driving forces behind this bill are conservatives, particularly the gentleman from North Carolina, [Mr. COBLE], and the gentleman from Illinois, [Mr. HYDE]. These are men of great integrity, great thoughtfulness and great judgment and should be accorded due deference.

Mr. Chairman, I encourage Members to pause before they vote today. I know patent law seems like a black art, but our decisions today are important. As a conservative, my considered opinion is that H.R. 400 is a balanced, rational package that strengthens our patent system, encourages high-tech innovation, and protects U.S. economic interests, including my favorite sector, the small business sector.

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

Mr. Chairman, a number of the speakers, and especially the last speaker, have addressed important issues for Members examining this whole issue. But I do want to address the matter that has been raised by a number of speakers, and that is the position of employees of the Patent Office regarding the bill, H.R. 400, as well as the Rohrabacher substitute.

I have here in my hand, and I include for the RECORD, dated April 16, a letter from the National Treasury Employees Union.

THE NATIONAL TREASURY  
EMPLOYEES UNION,  
Washington, DC, April 16, 1997.

Hon. ZOE LOFGREN,  
U.S. House of Representatives,  
Washington, DC.

DEAR REPRESENTATIVE LOFGREN: As the full House of Representatives prepares to consider important intellectual property reform legislation later this week, I am writing to bring your attention to an issue of great importance to members of the National Treasury Employees Union.

H.R. 400, the "21st Century Patent System Improvement Act" is scheduled for floor consideration on April 17, 1997. It has come to my attention that Rep. Dana Rohrabacher (R-CA) is expected to offer H.R. 811 and H.R. 812—two patent bills introduced earlier this year—as a substitute to this legislation.

While H.R. 811 deals primarily with patent term and publication issues, H.R. 812 includes a number of provisions that would exclusively benefit the PTO's patent examiners. NTEU supports improving the training and benefits of all of the PTO's employees, and we therefore believe that it would be grossly unfair for such benefits to accrue only to patent examiners and not to their counterparts in the Trademark Office.

For this reason, I urge you to oppose the Rohrabacher substitute if it includes these provisions when intellectual property reform is considered by the full House.

H.R. 400 includes several important elements of H.R. 811 and H.R. 812, including a provision allowing for the above referenced training and benefits for patent examiners and trademark examiners. Although NTEU has remaining concerns about the labor-relations provisions in H.R. 400, and would prefer to see the labor-relations language approved last year by the House Judiciary Committee adopted as this issue goes forward, this bill is a better alternative to the proposed Rohrabacher substitute.

Sincerely,

ROBERT M. TOBIAS,  
National President.

Mr. Chairman, I will not read it all, but I will say, and this is a quote, "I urge you to oppose the Rohrabacher substitute."

And the final paragraph says, and this is again from Mr. Robert Tobias, the national president of the National Treasury Employees Union, "H.R. 400 includes several important elements. Although NTEU does have remaining concerns about the labor relations provisions in H.R. 400, and would prefer to see the labor relations language approved last year by the House Committee on the Judiciary adopted as this issue goes forward, this bill is a better alternative to the proposed Rohrabacher substitute."

I think it is important to note, and perhaps the Chairman and ranking member can address the issue raised as to the remaining labor-management relations issue that the Treasury Employees Union wants addressed, and I, for one, would pledge to work with them on that issue, but it is important to note that even without that issue being resolved, the Treasury Union employees prefer H.R. 400 and they oppose the Rohrabacher substitute. I think that is an important issue for Members to know.

Second, I have heard a lot of discussion in this Chamber today, and people discussing it at large, about a variety of issues that have absolutely nothing to do with the issues before us. We have heard about GATT, we have heard about NAFTA, we have heard about the Red Chinese Army, we have heard about multinational businesses. That is not what this bill is about. It has nothing to do with the patent bill.

What this bill is about is not deferring foreign countries or conforming our law to theirs. What H.R. 400 is about is to advantage Americans who are presently being disadvantaged by our patent law.

I have heard people say, well, why would we want to dumb down our patent law? Why would we expect the rest of the world to change, to conform with us? My response is because they are taking advantage of us right now.

□ 1630

Why should they change when they are taking advantage of us? Why should we expect them to willingly give up the advantage that they currently have? It is up to this Congress to stand up for America by rejecting the Rohrabacher substitute and supporting H.R. 400.

Finally, I would like to thank the gentleman from Utah [Mr. CANNON] for his eloquent comments about why a conservative would support H.R. 400 and oppose the Rohrabacher amendment. I think it is also important to note that the high-technology sector has accounted for 40 percent of the growth in the gross domestic product in the last several years.

These companies are not all multinational corporations. Some of them

are. I am not opposed to that. In fact, I think Intel Corp. is a great citizen. They just made a decision to give stock options to every single employee in their company down to the janitor. They do a great business. They have many patents, they are innovative, they are successful, and they support H.R. 400. I am proud that they do.

But I would like to point out that the Biotechnology Industry Organization also supports H.R. 400, and also opposes the Rohrabacher substitute, and 95 percent of the membership of the Biotechnology Industry Organization is made up of companies with 500 employees or less.

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

Mr. ROHRBACHER. Mr. Chairman, I yield 5 minutes to the gentleman from the Silicon Valley area of California [Mr. CAMPBELL].

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

Mr. CAMPBELL. Mr. Chairman, what is a compelling need to change the patent system of the United States that has served us so well? The case has not been made on the floor today.

I have one additional reason to suggest that H.R. 400 actually does more harm than has previously been brought forward in this debate, but before I do that I do wish to identify and draw some very clear focus on the fact that the only argument that has been made for the need to change is the submarine patent. That issue is taken off the table once we realize that the Rohrabacher bill also deals with the submarine patent. I believe that issue is no longer in debate. For those who are in doubt, those Members perhaps who are watching the debate, do check the Congressional Research Service, page 12 and 13, the quotation that I gave before. Both bills seek to curtail submarine patenting and would likely end the practice.

So what is the compelling need? Does it make sense that there is some benefit to be gained by those large firms who wish to have earlier and more ready access to information that would otherwise be patented? Yes, it is in their interest. But insofar as it enhances their interest, it takes from the inventor. The inventor cannot be substituted for. There can be commercializers, there can be developers. Japan of course is the key commercializer probably in the world of somebody else's ideas. But America is unique as being the key inventor. So in the absence of a compelling need, I would think the logic would be, let us let it be, let us not change this system that has worked so well.

But let me now draw attention to the one additional problem that I believe H.R. 400 introduces that is of great seriousness. Do my colleagues realize that under H.R. 400, but not under the Rohrabacher substitute, anybody who was using the subject matter that eventually gets patented, who is using

that subject matter commercially, before the grant of the patent, is exempted. That such a person can continue commercialization of that idea without ever having to pay a royalty to the person who invented and filed, followed the rules, in other words, of our patent system? And this is not in the existing law.

So what H.R. 400 does is to say, "Inventor, today you know that you have the right to your invention and if anybody else has been using it, they have got to pay you royalties." That is a whole of an incentive to go through the sweat and the hard work to invent. But after H.R. 400, if it becomes law, that right is substantially cut back. Any prior commercial user can continue that use, and not just in the scope of maybe a ma and pa who might have had one or two units made.

Let me read from the bill itself, from title 3:

The defense, the prior commercial user defense, shall also extend to variations in the quantity or volume of use of the claimed subject matter.

This is remarkable. We have spent a lot of time on the floor this afternoon speaking about the requirement of early disclosure, but look what this does. Any prior commercial user can expand the use and utterly undermine the commercial value of the invention that was filed and that was patented. The harm is not even done there. Because if it is in the financial interest of this firm, this commercializer that has used the idea before the inventor patented it, if that commercializer wishes to sell it, well, so long as it is part of the sale of a general company, he or she may do so.

And I quote from the bill:

The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense . . . except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.

So here is the situation. Today a person who does the hard work to get an idea has the protection of 17 years from the grant of that patent. After H.R. 400 it will not be 17 years from the grant of the patent. It will be something that could very well be less because it is 20 years from the date you applied. And if the Patent Office takes 3 years or longer, that is your risk, the time of your protection is less.

No. 2, today you are allowed to keep your idea as you are going toward a patent. After H.R. 400, you cannot, you have to disclose it, after 18 months.

No. 3, today if you are the first person to go into the patent system and to get your patent, no prior user can take that away from you. Under H.R. 400, it can be.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume, just to simply say I do not want to address every single issue raised by the gentleman from California [Mr. CAMPBELL] because Members are getting res-

tive. I just would point out that in H.R. 400, if the patent issuance is delayed through no fault of the applicant, the term is extended and added on to remainder of the 20-year term.

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

Ms. LOFGREN. I yield to the gentleman from California.

Mr. CAMPBELL. I understand that, but the burden is to show by the patent applicant that the fault was the Patent Office's. If that burden has not been met, if things just chug along in their dear sweet time and it takes longer than 3 years, it is the patent applicant who suffers.

Ms. LOFGREN. Mr. Chairman, reclaiming my time, if the applicant does not take action to delay it, the term is extended and added on to the 20-year term.

Mr. CAMPBELL. And if the gentleman will continue to yield, but the burden of proving that is upon the applicant. So in order to get the benefit of the tacked on time, I have to show that it was not my fault.

Ms. LOFGREN. You have to show that you did not continually amend your application.

Mr. CAMPBELL. Then our understanding is the same.

Ms. LOFGREN. Reclaiming my time, not an enormous burden, I might add.

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

#### PARLIAMENTARY INQUIRY

Mr. COBLE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COBLE. Mr. Chairman, am I correct in concluding that we have the right to close?

The CHAIRMAN. The gentleman from North Carolina is correct.

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

We have heard a lot of talk this afternoon about secrecy, how important secrecy is. Mr. Chairman, if I may paraphrase the Constitution, what the Constitution conveyed to all of us Americans and patent applicants in particular is this: You get a limited monopoly with protection in exchange for society being able to see your secret. Illumination, light on the subject. I am told, Mr. Chairman, that mushrooms thrive in dark cellars. Submariners thrive in high weeds and below the water.

We have been told today, the gentleman from Illinois [Mr. HYDE] mentioned as have others, and the answer was, oh, this is not about submarine patenting. Mr. Chairman, to say that is not unlike saying that war is not about killing. I was born in the morning, but not yesterday morning. You all sell that submarine story to somebody else.

Let me review that with my colleagues.

Under the Rohrabacher substitute, applications filed in the United States only may not be published sooner than 5 years after they are filed, and then

not if the application is under appellate review. One of the many ways a submariner delays its own application is to file spurious appeals.

In addition, and most importantly, under the Rohrabacher substitute, the director of the Patent and Trademark Office must find that the application is not being diligently pursued by an applicant before publication can occur.

As my colleagues can imagine, it is virtually impossible to identify maneuvers by patent lawyers to delay the processing of their applications. This is a sham provision that is impossible to enforce.

Can you imagine telling a judge that he or she can only allow the public to see court documents relating to a case when a finding was made as to whether the merits were diligently pursued?

All judges, including patent judges, must give the benefit of the doubt to the filers that they are proceeding in good faith and they are pursuing their claims legitimately or our whole system would collapse.

The Rohrabacher substitute demands a presumption of guilt in order to require publishing. This presumption probably could never be established. The Rohrabacher substitute further provides for publication of any amendment to an application, called a continuing application, which is filed more than 6 months after the application it amends, unless the applicant can demonstrate that the amendment was filed for any reason other than to achieve a delay in the time of publication.

What does this mean? Any lawyer wanting to delay can claim that the amendment is necessary to reflect the full richness of further developments of the invention in the application. While this may be totally spurious, it would be virtually impossible to prove. This is the way it works in real patent law practice.

Here is another way to gain the system under the Rohrabacher substitute: An applicant can file appeals to the Board of Patent Appeals, which, while unlikely to succeed, are not so frivolous as to draw sanctions. There are many ways to delay which simply cannot be uncovered.

Submarine patenting, my colleague, is serious. And the Rohrabacher substitute, in my opinion, goes out of its way to create smoking mirrors around this burgeoning business of litigation.

The real question is: Why does the Rohrabacher substitute go out of its way to protect submariners? I want someone to answer that question for me before the end of this session.

The claim of the gentleman from California [Mr. ROHRBACHER] that his bill puts a stop to the practice of submarining in the real world is false. Just ask one of the lawyers mentioned on the front page of the Wall Street Journal last week who are joining the new, currently legal, cottage industry of suing those who invest in our economy.

I ask my colleagues to vote no on the Rohrabacher substitute and to support

the bipartisan Judiciary Committee bill, H.R. 400.

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

Mr. ROHRBACHER. Mr. Chairman, I yield myself 5 minutes.

We knew we would hear a lot of talk about submarine patenting because there has to be some excuse that people would use in order to justify gutting the American patent system that has been in place for 225 years, there has to be some excuse for these fundamental changes.

What we got is what is called in debate school as the scarecrow argument. We just create a scarecrow there and we fill it full of hay and we claim that that is a real big threat.

Submarine patents, there is some problem. It is a minor problem I believe. The opposition claims it is a major problem.

In fact, however, my colleagues have not used one example of any submarine patent since the late 1970's. And I might add, in the 1970's, there was a system established in the Patent Office called the palm system; and it was established specifically to prevent people from delaying their patent intentionally, in other words, to deal with the submarine patent system issue.

Since that time there has not been any example, and that has been instituted already, there has not been one example of any submarine patent since the palm system was instituted in the Patent Office.

□ 1645

Now we are being told submarine patents are so bad that we have to destroy the current patent system, we have got to corporatize our patent office, taking patent examiners that are basically insulated from outside influences, and we got to corporatize that office, and who knows what type of outside influences are going to be brought to bear in this new system? We do not know. All we have got is the word of our friends. It does not say in our bill that they are going to be able to be any outside influences. Well, thanks. There are a lot of unintended consequences when one makes such radical changes as this. But, of course, the radical change is really necessary. It is the only way to deal with a submarine patent issue.

Well that is just not the case, my colleagues. The only way to deal with a hangnail is not to amputate the leg. The way to deal with magazines, obscene magazines, is not to destroy freedom of speech or freedom to publish and freedom of the press for everybody in the country. There are ways we deal with it legally that can bring the law to bear. My bill did that, and for 2 years I have been begging all of my colleagues and begging every organization that came to see me about patent law, give me the language of how we can stop submarine patenting and I will put it in my bill as long as it does not destroy the guaranteed patent term. And do my colleagues know what? We

put the very strongest language we could.

Now we can read portions of anything and try to make it sound like it does not cover it, but the fact is we put in the strongest language we could. I in fact had the No. 1, one of the No. 1, legal minds in the House of Representatives, the gentleman from California [TOM CAMPBELL] who represents Silicon Valley, to consult with me and say, come up with the language that we can once and for all end submarine patenting but does not destroy the guaranteed patent term. We put that into my substitute, and guess what? It is not a sham. It may be a sham to the opposition who wants to destroy the patent system as we know it today, but it is not a sham to people who have an independent look at what we put in the substitute, the people independently who have no axe to grind who looked at my bill said that my bill and their bill would effectively end submarine patenting, say that Congressional Research Service has basically decided that that day they did their very best job to analyze it. They do not have an axe to grind. We are going to end submarine patenting.

Oh, no. Now we cannot accept that. That is just a sham. It is a sham when somebody who is independent makes that analysis. Why is that a sham? Because that is the only excuse people have for the radical changes that they are proposing for the Patent Office. They are proposing that we make fundamental changes in the technological legal system that protected technological development in the United States of America. In the past that system provided the United States of America with the highest standard of living, with a technological edge that kept us prosperous, kept us free, kept us secure, and of course these multinational corporations which they have lists of many, and many of them have been active out in hither and yon, trying to support proposition—H.R. 400 I should say—that these corporations do have an axe to grind as well. They are going to make a big profit if they can get all the secrets from the little guy after 18 months.

My job was to try to put together a bill that ended submarine patenting because I knew it would come up as an issue. We did our very best. TOM CAMPBELL and I did our very, very best. The Congressional Research Service said we succeeded. So that issue should be out of the way. So what excuse do my colleagues have of having this radical reform? What excuse do my colleagues have?

Mr. Chairman, what other excuse is there for exposing? As my colleagues know, it is very easy for the American people to understand what is happening here. As my colleagues know, the fog that comes off the Potomac may blind some of the Members who come here to vote on the floor of the House of Representatives but it certainly does not blind the people back at home. The

fundamental issue we are deciding today, I put all of the good stuff that is in H.R. 400, all the real reforms into my substitute, we have ended submarine patenting.

The real issue is what? There are two fundamental issues—publication, publication—and that issue is very easy for people to understand. The American people know that before—throughout our country's history, if someone applied for a patent, that Goddard from the Goddard Rocket Center who developed rocket fuel, that was secret, and the Germans then could not get ahold of it, see, because it was secret and our competitors cannot get ahold of things. People who hate America cannot get that information because it has been secret. They want to change that. They want our worst enemies to have all of our secrets and to be able to use them against us.

They say, "Ah, but we have taken care so that if somebody does steal that, we'll show you a way to deal with that. We're going to let you sue them." My colleagues, 10 years later or 5 years later when the patent is issued, they now are given the right by this H.R. 400 to sue the People's Liberation Army in China if they decide to manufacture things and use them against us that violate our patent laws. Mitsubishi Corp., Sony, name it, all these huge corporations overseas, even our own corporations, do my colleagues think that really is going to deter anybody from stealing—any of these gangsters from stealing—our technology and using it against us?

This is an invitation, it is an invitation to steal American technology. I have heard nothing in this debate, nothing in this debate that has changed my mind, nor have I heard nothing in this debate that has convinced me that my rhetoric has been out of line, and I think the American people are listening really hard, and when they see these maneuvers like saying it virtually exempts small business, and then during colloquies understand that, well, no they really are not exempt, people understand that there is a power play going on in Washington, DC. It is a power play that will not work to the benefit of the people of the United States. It changes the fundamental rules and rights and freedoms that we have had for 225 years that have served us well.

The patent owners, the people who have—the inventors, the Nobel laureates, the great creators of our society, are against H.R. 400 and for the Rohrabacher substitute. There is a reason for that. The big corporations, the multinational corporations that use technology and also have all sorts of connections overseas, I might add; yes, they are opposed to the Rohrabacher substitute and support H.R. 400. There is a reason for that too.

So it comes down to corporatization; do we want to change the fundamental system that has been set up that makes these decisions as to who owns

what, making our patent examiners, as my colleagues know, open to who knows what kind of pressures? And do we want to publish all of our secrets in exchange for the right of our citizens to sue some huge multinational corporation years later, years later once they get their patent? No, that is not a good deal. I do not think the American people think it is a good deal, and I do not think the American people are fooled by the argument that we got to cut our leg off in order to cure the submarine patent infected toe. They are not buying that, they are not buying that at all, and I would suggest that we have a system that served us well, we should not rush into these dramatic changes to harmonize our law with Japan.

What is pushing this all along is an agreement that was made with Japan, and I have held it up several times right here, to harmonize American patent law with Japan. We do not want to be like them. We want to have rights that are protected.

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

Mr. Chairman, I just want to make a couple of clarifications statements for those Members who are listening to this debate.

First, I think it is important to emphasize that any matter that is sensitive from a national security point of view that is a secure matter may be held confidentially under the past law before it was changed last year under current law, under H.R. 400 and under the Rohrabacher substitute. So there is no question that none of the alternatives would allow national security matters to be published, and I think that is important.

Second, I want to address the issue of the Congressional Research Service. Now I am a relatively new Member but I have found CRS to be a useful office here, and I from time to time get their publications and read them, and I do not know the author of the report that has been quoted here. I will say, however, that in my experience in reading through Congressional Research Service publications, they are not always the only person with a viewpoint nor are they always the most expert person in the world with a viewpoint. And I think it is worth pointing out that the intellectual property section of the American Bar Association, lawyers of whom represent both patent defenders and those who might attack patents who do not have—they are not for one side or the other. The intellectual property section of the California Bar Association where most of the high-tech industry in the country is located and most of the patents issued in the country I believe emanate from California, as well as the American Intellectual Property Law Association, as well as the Intellectual Property Owners Association, all oppose the Rohrabacher substitute, all support H.R. 400.

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

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

Ms. LOFGREN. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, I am so grateful to the gentlewoman.

I do just wish to clarify that whereas the CRS said that both Chairman COBLE and Congressman ROHRBACHER's bill reflected in fixing the submarine patent, the additional sources the gentlewoman cited did not speak to that issue. They favored Chairman COBLE's bill or she would not have been citing them, but they were not rebutting CRS's conclusion that—is that correct?

Ms. LOFGREN. Actually that is incorrect. In fact, the President of the American Intellectual Property Law Association, and I have spoken as recently as 2 days ago indicating it was his judgment the Rohrabacher substitute does not solve the submarine patent association, and, if I may conclude this, does not resolve the submarine patent issue, whereas H.R. 400 in his judgment would.

Mr. CAMPBELL. If the gentlewoman will yield further on that point, I would be very interested in having that reduced to writing so that I could look at it. I do have the CRS report reduced to writing.

Ms. LOFGREN. Reclaiming my time, I will see if I can get that done.

Mr. CAMPBELL. I have one additional point which I might put to the gentlewoman if she continues to yield.

Ms. LOFGREN. I will.

Mr. CAMPBELL. As to the lawyers' associations which support H.R. 400, could one not interpret that that is a natural response to the fact that the bill will create much more opportunity for their employment?

Ms. LOFGREN. I do not believe that is correct and the gentleman and I are both from California, we both taught law and we are both—I think the gentleman was formerly on the Committee on the Judiciary, and perhaps I am wrong on that. I am currently serving on the Subcommittee on Courts and Intellectual Property. Certainly people can have divergences of opinion. But I do not believe that and I doubt very much that that would be the motivation for the intellectual property section.

Mr. CAMPBELL. Would the gentlewoman find it shocking if a group of lawyers in finding a bill beneficial saw some opportunity for enhanced—call upon their own services. That is all.

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

Ms. LOFGREN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. The lawyers that the gentleman suggests will benefit by this work for the many, many, many American businesses who strongly support this legislation. And would the gentleman suggest, and I am sure the gentlewoman would not suggest, that those businesses are interested in legislation because it will give them the opportunity to pay more in legal fees? Of

course not. They are interested in this legislation because it stops submarine patenting where one lawyer, one lawyer got \$150 million in contingent fees. And do my colleagues know where that money came from? It came from American business. And do my colleagues know what it gets paid for? American business passes their costs on to the consumers and taxpayers in this country, and that is what this legislation is all about. It is not to help lawyers.

Ms. LOFGREN. Reclaiming my time, I would concur with the gentleman's comments, noting that the National Association of Manufacturers, the Pharmaceutical Research and Manufacturers of America, the Semiconductor Industry Association, the Software Publishers Association and the like have rarely been in favor of more litigation.

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

Mr. COBLE. Mr. Chairman, I yield 5 minutes to the gentleman from the Roanoke Valley in Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding this time to me, and I rise in strong opposition to the Rohrabacher substitute which would be a disastrous turn to take in American patent law.

First I want to address some of the comments being made by some of the supporters of this substitute and the opponents of the bill. The gentlewoman from Ohio [Ms. KAPTUR] said that we had not been fair and open in this process; and by the way, I will not yield to the gentlewoman because she refused to yield to me earlier, but I want to make this point.

This bill has been more carefully studied and worked in this Congress in very public open hearings than any other legislation considered in this Congress this year. Hearings have been held in the Committee on Science, hearings have been held in the Committee on Small Business, hearings have been held in the Committee on International Relations, and eight public hearings have been held in the Committee on the Judiciary on this legislation. So there is absolutely no possibility that this legislation is not something that has been very fairly and openly debated throughout the process.

□ 1700

Second, the gentlewoman made the point, which is totally inaccurate, that we were going from a 17-year protection for inventors down to 18 months. Well, that is hardly the case at all.

Under our bill, any inventor gets a minimum of 17 years' protection, provided that they themselves do not cause a delay in the issuance of the patent. So they are going to get an increase.

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

Mr. GOODLATTE. Mr. Chairman, no, I will not yield.

Ms. KAPTUR. Just to clarify, Mr. Chairman.

Mr. GOODLATTE. Mr. Chairman, I would ask for order.

The CHAIRMAN. The House will be in order, and the gentleman from Virginia [Mr. GOODLATTE] may proceed.

Mr. GOODLATTE. I thank the Chairman.

The fact of the matter is the gentlewoman had 30 minutes of time, I have much less, and unfortunately, we have not had the opportunity to have that colloquy.

But the fact of the matter is, under our legislation, they have that same amount of time, they have that time under the new legislation, and they will have, in most cases, more time than they have under current law.

Furthermore, the average patent in this country today is issued after 19 months. This calls for publication after 18 months. So most patents are not going to experience any significant difference in how quickly they are published. But here is the important fact about this, and this is what is wrong about this entire debate by the opponents.

We are not talking about trade secrets here, we are talking about publication of patents. Patents have always been protected in this country by publication. That is how we say to the world that an American inventor has put forward an idea that is entitled to be protected under our laws.

We do not tell them to hide it under a rock. We do not tell them to lock it up in a safe. We tell them that the U.S. Government will publish their patent and say they were the first with that idea and they are entitled to 17-years-plus protection.

That is what they get under this bill as well, only they get it better, because now they are going to be published sooner. When they are published sooner the world knows sooner that they were the first with that idea, and the capitalists who wanted to invest in that small inventor's opportunity to bring that unique idea that is so uniquely American, as the opponents have pointed out, that we lead the world in developing ideas, but we do not lead the world in getting those ideas to market, and one of the reasons why is because we do not get the capital to the inventor quickly enough.

If we change the law so that we have the opportunity to publish after 18 months, and not yours published after 18 months, but anybody who might be competing with you, that is important, because if you do not know that somebody else is in the patent system with something hidden, something called a submarine patent, ready to surface up and take your claim and try to get royalties from you, what you wind up with is a system where the capitalist does not know when to put the money in until you get the patent.

Under this change in the law, which has worked so well in Europe and other places, the money gets to the inventor from the entrepreneurial investor sooner because they know sooner that that

person has the idea, and that is the one that is going to have the protection for 17 years.

Now, the gentleman from California claims that submarine patents are eliminated by his substitute. Nothing could be further from the truth. While I have great respect for the CRS, they say both bills seek to curtail submarine patenting. But there is often "many a slip twixt the wrist and the lip," and that is exactly what is true of the gentleman's substitute. It may seek to eliminate submarine patenting, but it certainly does not succeed, because it eliminates one form of delaying the patent process, and that is amending the application.

But there are hundreds of ways that a good patent lawyer, who under the current laws makes a very good living with abusing our current system, there are hundreds of ways that one can delay the processing of a patent application that will not be covered by the gentleman's substitute.

As a result, what we have is a situation where the only way to cure this very serious problem that costs American consumers and taxpayers hundreds of millions of dollars a year is to have publication, which, as I indicated earlier, is not bad, it is not detrimental to the small inventor, it is good for the small inventor, because publication is what tells the world that that small inventor was the first one out of the box.

We also protect them by giving patent pending, a protection that it does not have now. That small inventor who has that idea that he turns into a product and puts on the shelf in the store and says patent pending, under the new law, they can get protection during the time that the patent is pending. If somebody wants to steal it and rip it off, they can get royalties for the entire time. Under the current law, they get no royalties except for the time that the patent is actually issued.

The result of all of this is a vast improvement of our patent system. As we have on numerous occasions over the 200-plus years of our history, this committee and this Congress is what has created the wonderful patent system we have in this country, and no one should ever suggest that it has never been changed in the 200 years since we originally wrote our Constitution recognizing that patent system.

We have to constantly look at it and improve it. When you do not, that is when you fall behind. If you want to look for examples of people who have said in the past that we are the best in the world and we do not have to worry about anybody outside, go talk to the big-three automobile makers and ask them what they thought back in the 1960's and 1970's about their superiority over the Japanese. They learned very quickly that if they did not change the way they do things to keep up with the times, they would fall behind.

If you want to look for a place where there is strong, strong support for these patent reforms to protect American business, American jobs, and

American technology, go to the big-three automakers, because all three of them support H.R. 400 because they want to make sure that our patent system remains the best in the world, and that is what this legislation does.

Oppose Rohrabacher, support H.R. 400.

Mr. ROHRABACHER. Mr. Chairman, I yield myself 1 minute.

So my friend from Virginia, Mr. GOODLATTE, will understand, if I could quote from the report here, the Congressional Research Service, it says, yes, it does, as he stated, both bills seek, and it did, said seek to curtail, but you did not finish the sentence, and would likely end the practice.

So I mean this is very similar to what we have heard in other parts of the debate where something will effectively permit small business and the little guy to be exempted, but "effectively" is not really an accurate description.

The Congressional Research Service, which is an independent body, and people who do not have an ax to grind, have determined, and I have gone out of my way, and my colleague, the gentleman from California [Mr. CAMPBELL] has gone out of his way, to put the strongest language we could in, and an independent body is agreeing with us, that we would likely end the practice. We have done our very best. This fig leaf could not be used to justify radical changes in our system.

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

The CHAIRMAN. The Chair would advise all Members that the gentleman from California [Mr. ROHRABACHER] has 10 minutes remaining; the gentleman from North Carolina [Mr. COBLE] has 12½ minutes remaining; the gentleman from Ohio [Ms. KAPTUR] has 20 minutes remaining; and the gentleman from California [Ms. LOFGREN] has 19 minutes remaining.

The Chair recognizes the gentleman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume. I will yield time to the gentleman from Maryland [Mr. HOYER] in just a second, but I wanted to answer the gentleman from Virginia [Mr. GOODLATTE], since he referenced me at least three times in his remarks.

Mr. Chairman, I see a big difference between 18 months, 17 years, and 20 years. Under the bill the gentleman supports, the gentleman requires that there be publishing of all patent applications 18 months after they have been filed, whether or not the patent has been issued. Eighteen months is less than 2 years.

The GAO says it takes at least 4 years, the Patent Office says it takes 2 years, average application time, but whatever the time is, some patents take 10 years, 12 years. The gentleman is saying 18 months. That information is made available under the gentleman's radical proposal. It is a radical departure from the current system

which says that once a patent is issued, an inventor has protection for 17 years, almost 2 decades.

The gentleman said, oh, but I give you 20 years, 20 years is better than 17 years. No, your 20 years does not begin when the patent is issued, it begins when the patent is filed. I was courteous to the gentleman when he was talking to me. I would certainly appreciate a little eye contact here while I am talking to him.

So there is a big difference, numerical difference to the protection of the inventors of this country. I feel bad the gentleman from Virginia [Mr. GOODLATTE] did not yield to me, but I wanted to clarify for the RECORD, there is a whole lot at stake. Every single day of a patenter's life of his invention is important. They have a lot on the line. Some of them have their whole future on the line. For America, we have America's future on the line.

So the difference between 17 years of guaranteed covered and 18 months when you have to divulge the secrecy of your information is a pretty big difference.

Mr. Chairman, I yield 8 minutes to the distinguished gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Chairman, I thank the gentlewoman for yielding me this time, and I thank my friend from California for letting me proceed.

I want to say that those of us who are not expert in the field of patents, and I dare say that is probably 100 percent of us, some of us know more than others, that is for sure, but I would presume, unless there is a patent lawyer among us, obviously Mr. CAMPBELL, a law professor, a distinguished law professor, has done a lot of work on this. I am a lawyer, but I want to have a disclaimer at the front that I do not know a lot about this issue from a technical standpoint.

So like most Members, I come from the standpoint of what is best for the people I represent? What is best for the country? What is best for competitiveness, both domestically and internationally, and what best protects the people that I represent?

Now, very frankly, I have heard from numerous people, individuals who are very concerned about this bill. I have read in The New York Times, for instance, articles of inventors, small business, associations who are very concerned at the exposure that this bill brings. The gentlewoman from Ohio [Ms. KAPTUR] referred to the time of 18 months or 17 years or 20 years or whatever the time frame might be.

I have heard the debate back and forth. I would say to my friends that, at the outset, I do accept the premise of the CRS report, that both bills not only seek, as has been pointed out, but do, in fact, accomplish the objective of getting at the problem, to the extent it exists, of the submarine patents.

The gentleman from California [Mr. HUNTER] who spoke earlier pointed out that there were some 300 submarine

patents that could be described out of the millions of patents. So the percentage of submarine patents, if they exist, and obviously they do, is as the gentleman from California [Mr. HUNTER] pointed out, incredibly small.

In pursuit of that objective, we are placing at risk the 99.9 percent of inventors, innovators, entrepreneurs who have an idea that they want to protect so that they can justifiably profit in a free enterprise system from the integrity and protection of that idea.

It is for that reason, my friends, that I rise, convinced not of the technical merits one way or the other, because as I said at the outset, I am not an expert, but that there is so much concern in the small business community.

I believe this bill would harm small business and independent inventors. We must remember that small business, as all of us know, represents the fastest growing sector of the economy and are truly America's greatest source of job creation and technology development.

I am not opposed to everything in H.R. 400, as I am sure most are not. In fact, I know my friend [Mr. ROHRABACHER], the principal sponsor of the alternative, which I support, is not an opponent of all. I support the inventor protection electronic filing sections of the bill. However, despite the rhetoric surrounding the manager's amendment, the publication time still poses a threat to America's small business.

Too many small business organizations have voiced their concerns and opposition to H.R. 400. I am not going to go through the list, but my colleagues have seen, I think most of our colleagues have seen, the list of 2 or 3 pages, small-type, of small inventors, small investors, small businessmen and entrepreneurs who are concerned and have said, do not move on this bill.

□ 1715

In fact, the Chamber of Commerce itself has held itself aloof from this bill. The Chamber of Commerce itself has held itself aloof from this bill because they believe there is a risk.

Mr. Chairman, it is a strange alliance that we see on this floor on this bill, on both sides, perhaps because some come from a more involved process with this bill and some a less involved, and are, frankly, looking not so much at the technical aspects of this bill but at the risks that it will pose to the people from whom we are hearing.

Mr. Chairman, the U.S. Chamber of Commerce, as I said, has been conspicuously silent on this bill, and the National Association for the Self-Employed, an organization of 325,000 members, is not only silent, they are strongly opposed to H.R. 400, because they believe it places their small business people at risk. This is a very important issue. We must not rush to judgment. In fact, we are not rushing to judgment, as the gentleman from Alabama is pointing out to me.

The proponents of H.R. 400 claim that there are remedies and processes set up

to protect small business. If that is the case, why have the Chamber and the NFIB and small business and small inventors not come forward and said that they have achieved protection? They have not. In fact, they have done the opposite, as I said. Three hundred twenty-five thousand strong have said, we are strongly opposed to this bill.

We all know that small businesses have neither the attorneys nor the resources. The gentleman from California [Mr. CAMPBELL] has spoken to this, the gentleman from California [Mr. ROHRABACHER], the gentlewoman from Ohio [Ms. KAPTUR] have all spoken to it. It is fine to say, yes, if they learn your information very early on you get protection, because you were published. That is great.

That is great, and if you have \$1 million or \$5 million, like some of the egregious people, I understand, and let us not hoist on the petard of one or two or three multimillionaires who are gaming the system, thousands of folks who are not only not gaming the system but it is the only protection that they have.

Mr. Chairman, in closing, because my time is coming to a close, let me say that I am also concerned, as someone who is deeply involved in governmental organization issues, deeply involved in Federal employee issues, I understand that my friends in the NTU believe that H.R. 400, my good friend, the gentlewoman from California [Ms. LOFGREN] who has fought so fervently for this bill, she and I disagree on the substance, but she is an able advocate of this bill, and they have talked about the NTU.

Let me say, as so many have said on this floor, I am concerned about this critically important process, which must be insulated from outside influence, being altered in the way that H.R. 400 alters it; that it is not a Federal employee, insulated from outside pressure and influence and involvement, who will make decisions critical to the economic welfare not only of small business and inventors and innovators, but also of this country.

So I would ask my colleagues to vote for the amendment offered by the gentleman from California [Mr. ROHRABACHER], incorporating the amendment of the gentleman from California [Mr. HUNTER] as well, and to vote against H.R. 400.

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

Mr. Chairman, I would say there has been much discussion of the Congressional Research Service. I would like to note that the commissioner of patents and trademarks, who actually is an expert in this whole subject area, has noted that the Rohrabacher amendment, in his words, would allow the patent system to continue to be misused by those who are not interested in obtaining patent protection early, and goes on to further detail the submarine patent provisions that would remain.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. DOOLEY].

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, like the gentleman from Maryland [Mr. HOYER], I do not come to the well of the House as an expert on patent law either. But unlike the gentleman from Maryland, I come to complete disagreement in terms of what is the proper policy that we should institute in order to create a fiscal and financial environment that is going to ensure that our economy and in fact small businesses will prosper.

When we look at what has happened in just the last decade when we have seen 40 percent of the growth in our economy has occurred primarily in the high-technology industry, we have to ask ourselves, how did that happen? It happened in a large way because we had a lot of small businesses that were able to attract capital, that were able to make the appropriate investments. That created jobs, it created products, it allowed us to become the leader in the information services and computer services and software services and the biotechnology industry throughout the world today.

The changes we are considering making in our patent laws I am convinced are even going to do more to enhance that regulatory environment to ensure that a lot of our inventors that are out seeking capital will have greater access to it, because we will be able to find the investment community, and they will be much more willing to take a risk, to make a gamble on investing on the person who has an idea or an invention, if they have greater assurances that there is not somebody that is holding back a secret patent that could create financial jeopardy down the road.

I guess that is where it comes to the fundamental disagreement in the discussion that we have had on the floor today, was whether or not the Rohrabacher amendment provides a level of protection on the submarine patents as does H.R. 400 offered by the gentleman from North Carolina [Mr. COBLE]. I have come to the conclusion that it does not.

Part of that is based just strictly on the language, in that you can have an extension of the publication of a patent, if the office of director of patents and trademarks does not make a determination that there was not an effort being engaged by the individual that could demonstrate that they were diligently pursuing the publication of their patent.

They furthermore go on to say that if you can have an amendment, and again, you have to have a determination made by the regulatory body that this amendment was not done so simply to prevent the publication of the patent. These are determinations that have to be made that are going to be very difficult.

I am concerned that with those provisions in, we will not deal with the fundamental issue of dealing with the submarine patents, and that is what is impeding, I think, the flow of capital which is so important to U.S. inventors, people that have a good idea that can build products in this country, that can create jobs and be such a benefit to our economy.

Mr. Chairman, I urge people to vote no on the Rohrabacher substitute, and support the bill offered by the gentleman from North Carolina [Mr. COBLE].

Mr. ROHRABACHER. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland, Mr. ROSCOE BARTLETT, one of the only inventors in the U.S. Congress, who is also a professor, a technologist, who shares the Committee on Science with me.

Mr. BARTLETT of Maryland. Mr. Chairman, I would just like to speak to the Members for a few moments from the heart. I am not an expert in patents, but maybe I have some credibility. I hold 20 patents. I was in the academic world for 24 years, and during a part of that I was an inventor. I was a small business man with an R&D company, and my intellectual creations were the basis of that small business.

Mr. Chairman, there is just no reason, no defensible justification for publishing these patents 18 months after they are filed. The only possible reason could be to prevent submarine patents, but CRS has said, and we can see it here by me, both bills seek to curtail submarine patenting and would likely end the practice.

If the Rohrabacher bill is not perfect, let us make it perfect. But let us not undermine the protection that countless thousands of small inventors like myself have with the present system. We do not need to change this system.

I have had a lot of mail on this. I have not had a single telephone call, a single fax, or a single letter that said "Support H.R. 400;" not a one of them, and not all of these small people out there can be wrong. I had the notion when I came to Congress that maybe the great wisdom of the country was not inside the Beltway. The longer I am here, the surer I am that that is true. These people from outside the Beltway have called me and faxed me and written letters to me, and every one of them who have done it, and there have been a large number, have said, please do not vote for H.R. 400, vote for the Rohrabacher bill.

We do not need to bring down our patent system to the level of the Japanese, to harmonize under our GATT agreement. Let them come up to our level of excellence. If we pass H.R. 400, it will cost us jobs. It will cost us jobs because of the lack of protection that our entrepreneurs now have. We are the greatest economic force this world has seen. It is largely because of the protection of our entrepreneur system.

It is true that to at least some degree, America's future is on the line in

this vote. Please do the right thing for the little guy that I represented so many years out there. Do not vote to give away our secrets to every copycat around the world. Protect our entrepreneurs. Vote for the Rohrabacher amendment.

Ms. KAPTUR. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I do not want to leave anyone behind on this issue. I, too, though a member of the Committee on the Judiciary, am not going to pretend to be a longstanding expert on this issue.

But I want to raise two points. I hope that maybe we will be able to respond to the concerns. First, this substitute addresses the question that I have heard throughout my district, and that is on small businesses, and how they are protected. I do not think we can go forward without acknowledging and responding to those concerns. We have the time.

Second, I would like to speak to the issue that now I am told is not outsourcing the patent staff, but corporatizing. I would simply say that the concern is that if you have had an independent civil body, then that civil body needs to be and remain independent. The substitute addresses that question.

I would imagine that even in spite of having just met with members of the European Commission who have asked that we have a patent system which they can relate to, even with trying to relate on the international system, there does not seem a reason why we cannot protect small businesses and why we cannot protect the civil servants who are part of the Patent Office who have for years been able to provide good service to our inventors, our scientists, those who have knowledge, and bring knowledge to this country.

This substitute responds to those concerns. If there is reason to repair the substitute and the larger bill, then I would offer to say that we should stand in support of small businesses and, of course, those longstanding civil servants who have done the job in the Patent Office for years and years and years.

Ms. LOFGREN. Mr. Chairman, I yield 2½ minutes to the distinguished gentlewoman from California [Mrs. TAUSCHER].

□ 1730

Mrs. TAUSCHER. Mr. Chairman, I rise today in strong support of H.R. 400, because I am the granddaughter of one of the little guys.

My mother, who I talked to on the phone just a few minutes ago, has been confused about the debate she has watched today. But I strongly support H.R. 400 because I also strongly support our Nation's businesses and the small and independent inventors. I believe

this important and needed legislation will improve our competitiveness, reduce the loss of wasted and precious R&D dollars and eliminate the real and dangerous scourge of submarine patents.

Many have valid concerns about the publication of patent information 18 months after filing. But H.R. 400 contains an exemption for all small businesses and independent inventors, allowing them to withhold publication until 3 months after the second meritorious PTO action. Furthermore, upon publication, inventors receive the constitutional monopoly over their invention.

Others mention that the patent term will now be cut below the traditional 17-year term. Nothing could be further from the truth. The fact is that H.R. 400 allows a diligent patent applicant to receive extensions of term for many reasons, including appellate review, administrative delays caused by PTO actions or inactions, the imposition of a secrecy order, or in the case of interference from a competing claim or infringement. Many of these extensions are unlimited to ensure that inventors will not lose any patent term.

Mr. Chairman, nearly 45 percent of all patent applications filed with the PTO are from foreign companies and inventors who have manipulated our patent system to their advantage while U.S. inventors filing abroad are subjected to open examination. H.R. 400 levels the playing field in favor of U.S. businesses while providing additional protection for American inventors. I urge my colleagues to oppose the Rohrabacher amendment and support H.R. 400.

Mr. ROHRBACHER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, these are my concluding remarks. I would like first of all to thank the gentleman from North Carolina [Mr. COBLE], the gentleman from Illinois [Mr. HYDE] and the other Members who have put up with me for the last months in my opposition, and I happen to have very strong beliefs about this. I appreciate the gentleman from Michigan [Mr. CONYERS] for putting up with me.

The bottom line is, when you have strong disagreements in this democratic body, sometimes people get mad at one another, but the fact is we are all friends. We will be working on other issues and working together, and we are all people of integrity.

Mr. Chairman, I also wanted to thank the gentlewoman from Ohio [Ms. KAPTUR] and the gentleman from Maryland [Mr. HOYER] and the gentleman from California [Mr. CAMPBELL], the gentleman from Maryland [Mr. BARTLETT], and of course, the gentleman from New York [Mr. FORBES], who has been so articulate as well.

A lot of Members have put a lot of time and effort into this because this is a really important issue. It is something that will make the difference in the future of our country. We all be-

lieve that. Twenty years from now America will be a different kind of place because of the decision we are making today.

We are trying today to make a decision as to whether or not we will fundamentally veer from the system that has protected the technological development of the United States of America for 225 years, a system that has assured the American people of the highest standard of living, the greatest degree of freedom and security for our country of any system in the world.

We do not want to be like the Japanese. We do not want to harmonize our law to a Japanese model. We do not want the European model. People came here because this is where people's individual rights were protected. Again, what has been our rights, our rights have been we can invent and it will be kept confidential, our patent application, until that patent is issued and we own that technology. It has protected us. That has been such an important part of the development of technology in our country. Now it is just being cast away saying, we will exchange it for a system where you can sue somebody if they steal it from you. That somebody may be a huge corporation in Japan or China, but then that will replace it with that system. That is no protection at all.

I ask my colleagues to support my substitute. We have included the good stuff and left out the bad stuff.

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

I wanted to make just a few remarks before the gentleman from Illinois [Mr. HYDE] concludes, I believe, the debate for today. As a relatively new Member, I have found this entire process to be a fascinating one, unfortunately, I think sometimes a confused one.

We have heard and I have heard debates, late-hour radio talk show discussions about patents for the first time in my life. We have heard about patents on talk shows, people thinking it had something to do with foreign governments or trade agreements or the Red Army. In fact, as Mr. HYDE knows, and the gentleman from Michigan, Mr. CONYERS, knows, it does not. And then people becoming concerned and alarmed and afraid and communicating to their Members of Congress, including myself, that they do not want the wrong thing for their country. Of course not. None of us do. None of us do.

Then we get here today with, unfortunately and not unusually, most people in the country, I would venture and it has been said here today, most Members of the House not being experts in patent law, not having had a chance to take the courses in patent law or to practice patent law and to really familiarize themselves with it and then doubt and concern.

Mr. Chairman, it is my hope that Members have found this debated useful so that they can sort through the conflicting and occasionally extravagant claims to do what is right for our

country because this is not a freebie vote. This is an enormously important vote for America. When I think about the companies and the inventors and the innovators in Silicon Valley and the role that they now play and will play in making sure our country advances technologically and has a wonderful quality of life, that we have high employment, that we have a bright future, that is dependent on this body going beyond its confusion and doing the right thing by defeating the Rohrabacher substitute and supporting H.R. 400. The bill that was crafted by Chairman HYDE and Ranking Member CONYERS, that was supported and nurtured by the gentleman from North Carolina, Mr. COBLE, the chairman, and the gentleman from Massachusetts, Mr. FRANK, the ranking member, these are unlikely allies who have come together in the best interest of the Nation on a bipartisan basis.

I will close simply by saying this. The White House conference on small business technology chairs have analyzed the debate, analyzed the talk show allegations and have found that the misinformation, they say misinformation, is part of an intense campaign of fear and xenophobia. They say the information being promulgated is simply wrong. They point out that legislation based on bad data is bad legislation. They urge defeat of the Rohrabacher amendment and they urge support of H.R. 400.

Mr. COBLE. Mr. Chairman, I want to express appreciation to all who participated in today's debate and to thank the Chair as well.

Mr. Chairman, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], chairman of the House Committee on the Judiciary.

Mr. HYDE. Mr. Chairman, I thank the gentleman for yielding me the time. I will not spend time congratulating everybody, but I do in a blanket way because everybody connected with this issue and this debate on both sides, even the gentleman from California [Mr. CAMPBELL], Professor CAMPBELL, I congratulate.

If my colleagues do not think submarine patenting is a serious problem, and it has been diminishing by some on the other side, let me quote from a witness before the subcommittee of the gentleman from California [Mr. ROHRBACHER], a gentleman named Bill Budinger, an independent single inventor who had his own little company, Rodel Company, and here is what he said to Mr. ROHRBACHER's committee:

"I have heard people say there is no such thing as submarine patents, and to borrow a phrase from earlier, I think the folks that say that are either naive or disingenuous. Here is a list of 300 patents that were issued in the 2-year period before the law changed," that is 1994. "Each of these patents will monopolize a segment of American technology for a period of 25 years or more. They are going to provide a minimum of 25-year monopolies and some of the

monopolies here are 40 years. Every one of these patents is issued to and owned by a foreign corporation. So these folks learned how to game the system."

Now, submarine patents are not the only reason we are here with this bill. Do you not understand that we need access to foreign inventors' ideas? They come over and register and file their applications in our Patent Office, and we do not get to read them. We do not get to see them in English. Whereas our patents, our applications are filed in Japan, filed in France, filed in Germany, and after 18 months, they are published there. So we ought to have parity with foreign inventors; 45 percent of the applications for patents are filed by foreigners in this country.

We saw a rather embarrassing list of Nobel Prize winners but they may not have the technologists. They have the inventors, 45 percent of them. Small business is protected. Small business can opt out. Small business cannot be published until after two office actions. That means you are going to get your patent. Then you have 3 more months when you are not published. That is a different treatment from a so-called big business.

Let us dispel the notion that publication is a betrayal of our secrets. Publication is protection.

There is an animal called provisional rights that arises as soon as your publication occurs. It is the same as though you had a patent and, once your idea has been published, it is yours. It is notice to the world, I thought of it. I thought of it first, do not tread on me. And not only that, but if anybody tries it, they are liable in damages for infringement. So there are provisional rights. Do not tread on me, and it also is an advertisement to investors who might say, hey, this guy has got an idea. I might want to invest in this.

Every patent commissioner except one who is working for the other side has come out for H.R. 400. The Nixon, Ford, Reagan, Bush have all signed a letter saying we like 400. The Clinton administration says, we like 400. And so if it is good enough for them, it ought to give us pause if we do not think we want to support it.

The gentleman from California, [Mr. ROHRBACHER], God love him, says his bill, and he has a CRS report. If I were the teacher, I would give that about a D minus because it misses the mark horribly, horribly. The gentleman from California, Mr. TOM CAMPBELL, a fine lawyer, I just want to ask if he really thinks this eliminates the submarine patent. Under the Rohrabacher amendment, you cannot publish for 5 years. Let me put the question this way: Have you ever spent 5 years in a submarine?

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

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

Mr. CAMPBELL. Mr. Chairman, under the Rohrabacher amendment, you must publish, there is no 5-year

delay if you are a gamester, if you are a submariner as determined and applied for a continuation. No 5-year delay.

Mr. HYDE. Mr. Chairman, the gentleman is asking that the patent examiner have an astrological gift to be able to tell whether or not what one is doing is gaming the system.

There is much more to say, I sense an impatience in the Chamber. And not wishing to dull my antennae any more than they are, I hope my colleagues will support 400. I hope my colleagues will tell the gentleman from California, [Mr. ROHRBACHER], he is a swell guy but has a lousy bill.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from California [Mr. ROHRBACHER].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 227, not voting 28, as follows:

[Roll No. 85]

AYES—178

Abercrombie	Goodling	Miller (FL)
Bachus	Goss	Mink
Baldacci	Graham	Molinari
Ballenger	Hansen	Moran (KS)
Barcia	Hastings (WA)	Murtha
Barr	Hayworth	Myrick
Barrett (WI)	Hefley	Neumann
Bartlett	Hergert	Ney
Bereuter	Hill	Norwood
Bilirakis	Hilleary	Oberstar
Bonilla	Hostettler	Obey
Bonior	Hoyer	Olver
Bono	Hulshof	Ortiz
Brown (OH)	Hunter	Pallone
Burton	Hutchinson	Pappas
Calvert	Istook	Parker
Campbell	Jackson (IL)	Pascrell
Cardin	Jackson-Lee	Paul
Chambliss	(TX)	Payne
Chenoweth	Jones	Petri
Christensen	Kaptur	Pickering
Clayton	Kildee	Pombo
Coburn	Kim	Poshard
Collins	King (NY)	Radanovich
Combest	Kingston	Regula
Condit	Kleczka	Riggs
Cook	Klink	Riley
Cooksey	Kucinich	Rivers
Cox	LaHood	Rohrabacher
Coyne	Largent	Ros-Lehtinen
Cramer	LaTourette	Royce
Crapo	Lazio	Ryun
Cubin	Leach	Salmon
Cunningham	Lewis (CA)	Sanders
Danner	Lewis (KY)	Sanford
Deal	Lipinski	Saxton
DeFazio	Livingston	Scarborough
Dellums	LoBiondo	Schaffer, Bob
Diaz-Balart	Lucas	Sessions
Dixon	Maloney (CT)	Shadegg
Doolittle	Manzullo	Sherman
Doyle	Martinez	Smith (MI)
Duncan	Mascara	Smith (NJ)
Emerson	McCarthy (NY)	Smith, Linda
English	McDade	Snowbarger
Ensign	McHugh	Snyder
Everett	McInnis	Solomon
Filner	McIntosh	Souder
Foley	McIntyre	Spence
Forbes	McKeon	Stearns
Fowler	McKinney	Strickland
Galleghy	McNulty	Stump
Gephardt	Menendez	Sununu
Gibbons	Metcalf	Talent
Gillmor	Mica	Taylor (NC)
Goode	Miller (CA)	Thomas

Thornberry  
Thune  
Tiahrt  
Traficant

Walsh  
Wamp  
Waters  
Watts (OK)

Weygand  
Whitfield  
Young (AK)

NOES—227

Ackerman  
Aderholt  
Allen  
Archer  
Armey  
Baesler  
Bass  
Bateman  
Becerra  
Bentsen  
Berman  
Berry  
Bilbray  
Bishop  
Blagojevich  
Bliley  
Blunt  
Boehlert  
Boehner  
Boswell  
Boucher  
Boyd  
Brady  
Brown (CA)  
Brown (FL)  
Bryant  
Burr  
Buyer  
Camp  
Canady  
Cannon  
Capps  
Carson  
Castle  
Chabot  
Clement  
Clyburn  
Coble  
Conyers  
Cummings  
Davis (FL)  
Davis (IL)  
Davis (VA)  
Delahunt  
DeLauro  
DeLay  
Deutsch  
Dickey  
Dingell  
Doggett  
Dooley  
Edwards  
Ehlers  
Ehrlich  
Engel  
Eshoo  
Evans  
Ewing  
Farr  
Fattah  
Fawell  
Fazio  
Ford  
Fox  
Frank (MA)  
Franks (NJ)  
Frelinghuysen  
Frost  
Furse  
Ganske  
Gejdenson  
Gekas  
Gilchrist  
Gilman  
Gonzalez  
Goodlatte

Gordon  
Granger  
Green  
Greenwood  
Gutierrez  
Gutknecht  
Hall (OH)  
Hall (TX)  
Hamilton  
Hastert  
Hastings (FL)  
Hefner  
Hilliard  
Hinojosa  
Hobson  
Hoekstra  
Holden  
Hoolley  
Horn  
Houghton  
Hyde  
Inglis  
Jefferson  
Jenkins  
John  
Johnson (CT)  
Johnson (WI)  
Johnson, E. B.  
Kanjorski  
Kasich  
Kelly  
Kennedy (MA)  
Kennedy (RI)  
Kennelly  
Kilpatrick  
Kind (WI)  
Knollenberg  
Kolbe  
LaFalce  
Lampson  
Lantos  
Latham  
Levin  
Lewis (GA)  
Linder  
Lofgren  
Lowey  
Luther  
Maloney (NY)  
Manton  
Markey  
Matsui  
McCarthy (MO)  
McCollum  
McDermott  
McGovern  
McHale  
Meehan  
Meek  
Minge  
Moakley  
Mollohan  
Moran (VA)  
Morella  
Nadler  
Neal  
Nethercutt  
Northup  
Nussle  
Owens  
Oxley  
Packard  
Pastor  
Paxon  
Pease  
Pelosi

Peterson (MN)  
Peterson (PA)  
Pickett  
Pitts  
Pomeroy  
Porter  
Portman  
Price (NC)  
Pryce (OH)  
Quinn  
Rahall  
Ramstad  
Rangel  
Reyes  
Rodriguez  
Roemer  
Rogan  
Rogers  
Rothman  
Roukema  
Roybal-Allard  
Rush  
Sabo  
Sanchez  
Sandlin  
Sawyer  
Schumer  
Scott  
Serrano  
Shaw  
Shays  
Shimkus  
Shuster  
Sisisky  
Skaggs  
Skeen  
Skelton  
Slaughter  
Smith (OR)  
Smith (TX)  
Smith, Adam  
Spratt  
Stabenow  
Stark  
Stenholm  
Stokes  
Stupak  
Tanner  
Tauscher  
Tauzin  
Taylor (MS)  
Thompson  
Thurman  
Tierney  
Torres  
Turner  
Upton  
Velazquez  
Vento  
Visclosky  
Watkins  
Watt (NC)  
Waxman  
Weldon (FL)  
Weldon (PA)  
Weller  
Wexler  
White  
Wicker  
Wise  
Wolf  
Woolsey  
Wynn  
Yates  
Young (FL)

NOT VOTING—28

Andrews  
Baker  
Barrett (NE)  
Barton  
Blumenauer  
Borski  
Bunning  
Callahan  
Clay  
Costello

Crane  
DeGette  
Dicks  
Dreier  
Dunn  
Etheridge  
Flake  
Foglietta  
Harman  
Hinchey

Johnson, Sam  
Klug  
McCrery  
Millender-  
Donald  
Schaefer, Dan  
Schiff  
Sensenbrenner  
Towns

□ 1804

The Clerk announced the following pair:

On this vote:  
Mr. Dan Schaefer of Colorado, for with Ms. Dunn against.

Ms. EDDIE BERNICE JOHNSON of Texas and Messrs. DAVIS of Illinois, FAWELL, SERRANO, EDWARDS, and GUTIERREZ changed their vote from "aye" to "no."  
Mr. PAYNE changed his vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.  
The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. BARRETT of Nebraska. Mr. Chairman, I was unable to be present for the vote on the Rohrabacher substitute amendment to H.R. 400. Had I been present, I would have voted "no."

Mr. COBLE. 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. UPTON) having assumed the chair, Mr. LAHOOD, 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. 400) to amend title 35, United States Code, with respect to patents, and for other purposes, had come to no resolution thereon.

RESIGNATION AS MEMBER OF COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Government Reform and Oversight:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
April 17, 1997.

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

DEAR MR. SPEAKER: I hereby resign from the Committee on Government Reform and Oversight effective April 17, 1997.

Thank you very much for your consideration.

Sincerely,

TIM HOLDEN,  
*Member of Congress.*

The SPEAKER pro tempore. Without objection, the resignation is accepted.  
There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON RESOURCES

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Resources:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, April 17, 1997.

Hon. NEWT GINGRICH,  
*Speaker, U.S. House of Representatives, Capitol, Washington, DC.*

DEAR MR. SPEAKER: I hereby resign from the Committee on Resources, effective April 17, 1997.

Sincerely,

NICK LAMPSON,  
*Member of Congress.*

The SPEAKER pro tempore. Without objection, the resignation is accepted.  
There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Science:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
April 17, 1997.

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

DEAR MR. SPEAKER, I hereby resign from the Committee on Science.

Sincerely,

LLOYD DOGGETT.

The SPEAKER pro tempore. Without objection, the resignation is accepted.  
There was no objection.

CONCERNING PROMOTION OF PEACE, STABILITY, AND DEMOCRACY IN ZAIRE

Mr. ROYCE. Mr. Speaker, I ask unanimous consent that the Committee on International Relations be discharged from further consideration of the resolution (H. Res. 115) concerning the promotion of peace, stability, and democracy in Zaire, and ask for its immediate consideration.

The Clerk read the title of the resolution.

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

Mr. MENENDEZ. Mr. Speaker, reserving the right to object, and it is not my intention to object, I yield to the gentleman from California [Mr. ROYCE] the chairman of the Subcommittee on Africa to explain his unanimous-consent request.

Mr. ROYCE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this resolution has been cleared on both sides of the aisle and no recorded votes are anticipated.

Mr. Speaker, we have seen the headlines. Zaire is in crisis. Its government has collapsed, having lost much of its territory to rebel forces. There is humanitarian suffering throughout the country. This is a complex crisis.

Mr. Speaker, one of these forces has been a constant throughout this, and that has been the corrupt and despotic rule of President Mobutu. For more than 30 years, Mr. Mobutu has ruled Zaire with disdain for its people. Zaire is now politically collapsed. It is also economically collapsed. What should be a prosperous country is now one of the world's poorest.

Meanwhile, Mr. Mobutu is one of the world's wealthiest men. Simply put, Mobutu has bled Zaire. Repairing this economic damage will not be easy. Repairing the political damage of Mobutu will be a bigger challenge. The immediate task is to stop the fighting, develop a transitional government, and start on the path toward democracy.

Let us be clear: Mr. Mobutu has no role to play in this process. He should immediately resign from the office of the Presidency, leave Zaire, and withdraw from all political activity. That is what the resolution states. Mr. Mobutu should leave Zaire now.

This is a strong statement for the U.S. House of Representatives to send. It is an important statement. America has a big stake in Zaire, and what the United States Congress says about Zaire is taken seriously in Zaire.

This resolution is directed against Mobutu, but it is really about bringing democracy to Zaire. It calls on the administration to support democratic, multiparty elections. Getting to that goal is a tall order. Multiparty democracy is difficult under the best of circumstances. But single-party democracy long ago proved to be a mirage.

Zaire does not need another leader emerging from the chaos to become a tyrant. That is what Mobutu did. Zaire can do better.

This is a bipartisan resolution. It is the work of the members of the Subcommittee on Africa, who have been very interested in Zaire's political and humanitarian crisis, interested in making things better for the people of Zaire.

I want to thank the gentleman from New Jersey [Mr. MENENDEZ], the ranking member on the subcommittee, who has spoken forcefully on Zaire's crisis; and I want to thank the gentleman from New Jersey [Mr. PAYNE], who has long been engaged in Zaire; and I also want to thank the gentleman from New York, Chairman GILMAN, and the gentleman from Indiana [Mr. HAMILTON] of the Committee on International Relations for supporting this resolution.

As I say, this is a good resolution for Zaire and for the United States.

Mr. MENENDEZ. Mr. Chairman, reclaiming my time and continuing my reservation of objection, I am very pleased that we have been able to work together.

The gentleman from California [Mr. ROYCE] is the committee chair, and I want to commend my colleague for his work in this regard and the rapidity with which we have dealt with this issue because we think it is timely and it makes a difference now if we pursue it.

Also, I want to commend my colleague, the gentleman from New Jersey [Mr. PAYNE], who has for quite some time pursued the course of justice and democracy in Zaire and I understand is a cosponsor with the chairman on this resolution; and the gentleman from California [Mr. CAMPBELL], as well as the committee, for their hard work negotiating, compromising to make this happen.

What we do and what is being offered in this resolution is to send a strong message to our colleagues in Congress and the State Department but most importantly to the Mobutu regime by passing this collaborative resolution.

The Congress can play a unique role different than the role of the State De-

partment in foreign policy by reflecting the beliefs and opinions of the American people.

In this resolution, I think we have done just that. The resolution is carefully drafted to address Zaire's real problem, and that is Mobutu.

□ 1815

The resolution states that Mobutu should resign from the office of president, leave Zaire and withdraw from all political activity. We are on the brink of a new era in Zaire. Rebel leader Kabila has launched a process long overdue, the transition from Mobutu to democracy. And while it is Kabila who has ushered in this process, we have got to be cautious not to anoint him or anyone else for that fact before they have proven their commitment to democracy, a free market economy, a commitment to holding elections in a reasonable time frame. And I know at the State Department is working very hard to communicate our expectations to Mr. Kabila, and they are also working behind the scenes to thwart an escalation of violence which could become potentially uncontrollable and destabilized, not just Zaire, but the fragile peace process in Angola.

It is important that the United States send a message to all parties in Zaire and to other countries in the region that the continued flow of arms into Zaire and the escalation of violence will undermine, not support the Nation's transition process. Years of pillaging Zaire's natural resources and its inattention to the development of its infrastructure, economy and support systems like education and health have left Zaire years behind where it might have been under qualified and well-intentioned leadership. But the Zairian people are resilient, it as a country has enormous tremendous potential, it has natural resources and its people to become politically and economically a strategic power within Africa and the world.

So, Mr. Speaker, as we send this message we think that it is extremely important for our colleagues to join with us sending a unified strong message and creating the opportunity for the United States to play a very significant role in creating a broad-based transitional government pledged to democracy ultimately holding democratic elections.

Mr. Speaker, under my reservation of objection I yield to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN of Virginia. Mr. Speaker, I rise in support of this resolution. It is long passed due, and it is entirely appropriate that this body pass such a resolution because Mobutu was able to stay in power. We established his power base, we sustained him in power for years, long past any time when he could allege to be a legitimate leader of his country. We did that because we assumed he was anticommunist. And so through our misguided ideological objectives, we established in power a

leader whose sole objective was his own self-serving interest.

And so over the last quarter century what he has done is to extract the natural resources of his country, he has exploited its people, he has acquired immense wealth, he has used that wealth to spend most of his time in his European villas while the people of his country suffer.

Mr. Speaker, it is long past time when this country should have cut bait on this guy. I am extremely pleased that the people of Zaire have risen and are about to depose him. It is now time for the United States to play a constructive role in that transition. This resolution outlines that constructive role, and I strongly support it.

Mr. MENENDEZ. Mr. Speaker, under my continuing reservation of objection I yield to the distinguished gentleman from New Jersey [Mr. PAYNE], who has worked with the chairman in helping to draft this resolution that is being proposed.

Mr. PAYNE. Mr. Speaker, let me thank the chairman and ranking member of the Africa Subcommittee for their diligence and work on H.R. 115. This is by far the most important piece of legislation on Africa we have before us today.

This bill calls for Mobutu Sese Seko, the President of Zaire, to step down from his office immediately. The bill is symbolic in that it means this is the first step of getting rid of the colonial dictators like the Abachas and the Mobutus that prevent true democracy. They have been an extension of the colonial rule in the past, and they must leave.

Before I came to Congress and for many years after that, I have been an outspoken critic of the corrupt military regime of Mobutu, so I believe it is timely that we do this in this session.

I introduced in the 102d Congress a resolution calling for the administration to draw on its power to have Mobutu resign and leave Zaire. Although it passed overwhelmingly, it did not move him out.

Mr. Speaker, we all know Mobutu imprisoned Patrice Lumumba in which, those years, he was captured and killed under the aid of our CIA surveillance. And 2 years later, the United States actively supported African allies during the cold war in which the CIA virtually helped bring Mobutu to power in 1965.

At this time, Kabila and Lumumba were fighting for the same cause. It was at the height of the cold war, and things today are very different. And so we should take a different look at what is going on.

I know it was U.S.'s policy of supporting UNITA and Jonas Savimba in Angola, the RENAMO forces in Mozambique, Ian Smith in Rhodesia, our policy of constructive engagement in South Africa, and Sergeant Doe following the brutal coup in Liberia in the 1980's.

Along with that, 75 years of colonial rule by Belgium, France's influence on

a continent and one of the wealthiest countries in Africa will perhaps for the first time be able to have self-governance. Mobutu's army is notorious for depending on foreign troops and mercenaries to combat there and fight their fights. As my colleagues know, Serbian troops were there recently. Troops from UNITA have also been in the country.

Today 1.1 million refugees have returned to Rwanda, which has increased the stability in Uganda and Burundi. In the last 6 months the Alliance for Democratic Forces for the Liberation of the Congo-Zaire, the ADFL, have gained control over Kisangani, Zaire's third largest city, Mbuji, one of the other large cities, and Lumbumashi, the second largest city. We hope that Kinshasha will not have to be fought over and destroyed.

I am not pro-Kabila or anti-Kabila, but I think that the time is right, that we should see new leadership in that country.

And so I stand here with my colleagues saying that we should ask the United States to be engaged in the negotiations, to be engaged with our diplomats trying to help the Europeans move along, a removal of Mobutu and then move towards a transitional government so that elections could be held and so that we can move this country for the first time to have free, transparent and democratic society.

Once again I thank my colleagues for allowing me this time.

Mr. MENENDEZ. Mr. Speaker, under my continuing reservation of objection I yield to the gentleman from Ohio [Mr. CHABOT].

Mr. CHABOT. Mr. Speaker, I want to commend both the gentleman from New York [Mr. GILMAN] and the gentleman from California [Mr. ROYCE] as well as the Africa Subcommittee staff for the excellent job they have done in bringing this important and timely resolution to the floor. I also want to express a special appreciation to my colleague from New Jersey [Mr. PAYNE] and also the gentleman from New Jersey [Mr. MENENDEZ], both of whom have shown great leadership on this very important issue for years now.

The message we are sending to Zaire is straightforward. President Mobutu must resign from office immediately and leave the country. The transition from dictatorship to democracy can only begin after the dictator himself has gone. The continuing political chaos in Zaire can only exacerbate a very bad situation and could, sadly, lead to chaos in all of central Africa.

Witnesses testifying before our subcommittee maintain that, and I quote, a disintegration of Zaire could create a dangerous situation in that region that could take decades to fix. Mobutu's exit from Zaire will help to prevent that disintegration from taking place.

Mr. Speaker, the beleaguered people of Zaire have suffered for far too long under the autocratic and thoroughly corrupt rule of President Mobutu. They

deserve a better life than they have under him at this time. They deserve freedom. This resolution expresses the sense of this House that the United States supports the creation in Zaire of the enabling environment necessary to conduct democratic multiparty elections as soon as humanly possible. It is a good resolution, and it sends a strong message to President Mobutu.

I urge adoption of the resolution.

Mr. MENENDEZ. Mr. Speaker, further reserving the right to object, as the ranking member I appreciate the work and the courtesies extended by the chair and other colleagues.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 115

Whereas Zairian President Mobutu Sese Seko's 31-year rule has turned his potentially prosperous country into one of the world's poorest, where human suffering long has been widespread;

Whereas the Mobutu Government has systematically violated the human rights and undermined the security of Zaire's 46,000,000 people;

Whereas the Mobutu Government has proven itself unwilling to allow a genuine transition to multi-party democracy and continues to cling to power against the best interests of Zaire's people;

Whereas the Mobutu Government permitted the circulation of extremist propaganda in the refugee camps that undermined voluntary repatriation efforts of the United Nations High Commission on Refugees;

Whereas the international community is concerned about the humanitarian needs of the hundreds of thousands of refugees and displaced Zairians;

Whereas there are continuing reports of human rights violations by all parties that stem from the continued fighting in Zaire;

Whereas representatives of the Zairian Government and the Alliance of Democratic Forces for the Liberation of Congo-Zaire (ADFL) negotiated in South Africa, under the supervision of the United Nations and the Organization of African Unity, with no cease-fire agreement; and

Whereas the objectives of the United States Government, achieving the cessation of hostilities and achieving political reforms in Zaire, continue to be stymied: Now, therefore, be it

*Resolved, That—*

(1) it is the sense of the House of Representatives that—

(A) President Mobutu Sese Seko of Zaire should immediately resign from the office of the Presidency of Zaire, leave Zaire, and withdraw from all political activity;

(B) the United States Government should unequivocally call on Mobutu Sese Seko to immediately leave Zaire and withdraw from all political activity;

(C) the United States should continue to distance itself and its foreign policy from President Mobutu and his government in order to hasten his departure from Zaire's government and political life;

(D) the United States should work with all interested African and European nations to oppose the presence in Zaire of foreign government and mercenary forces, halt the flow of arms into the country, and encourage the

warring parties to negotiate a cease-fire leading to a lasting peace; and

(E) the United States Government should play a leading role in the international effort in supporting the creation of a broad-based transitional government of national unity composed of all democratic forces in Zaire; and

(2) the House of Representatives supports the creation in Zaire of the enabling environment necessary to conduct democratic, multi-party elections at the earliest feasible time, as well as the necessary conditions to establish the rule of law, respect for human rights, and the effective provision of humanitarian assistance.

AMENDMENT OFFERED BY MR. ROYCE

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

The Clerk read as follows:

Amendment offered by Mr. ROYCE:

Page 3, line 14, strike "and".

Page 3, after line 19, insert the following:

(F) the United States should actively pursue an immediate agreement among the various parties to permit the immediate and unhindered provision of humanitarian relief and the presence of international humanitarian workers to aid refugees and displaced persons in the Zaire; and

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from California [Mr. ROYCE].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

AMENDMENT TO THE PREAMBLE OFFERED BY MR. ROYCE

Mr. ROYCE. Mr. Speaker, I offer an amendment to the preamble.

The Clerk read as follows:

Amendment to the preamble offered by Mr. ROYCE:

After the fifth clause of the preamble, insert the following:

Whereas many thousands of Rwandans seeking to return home are now too ill to walk and scores succumb each day to cholera, malnutrition, malaria, dehydration, and other diseases while awaiting final agreements among parties to the conflict, the Government of Rwanda, and international humanitarian organizations, to permit the organization and implementation of a speedy air evacuation and the regular supply of urgently needed relief supplies and medical care;

Whereas in Zaire there have been numerous attempts to obstruct humanitarian relief to these populations at risk and to hinder relocation of civilians and the repatriation of refugees wishing to return home;

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

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

There was no objection.

The SPEAKER pro tempore. The question is on the amendment to the preamble offered by the gentleman from California [Mr. ROYCE].

The amendment to the preamble was agreed to.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. ROYCE. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks on the matter just considered.

The SPEAKER pro tempore. Is their objection to the request of the gentleman from California?

There was no objection.

## ELECTION AS MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. PALLONE. Mr. Speaker, I offer a resolution (H. Res. 120) and I ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

## HOUSE RESOLUTION 120

*Resolved*, That the following named Members be, and that they are hereby, elected to the following standing committees of the House of Representatives:

To the Committee on Transportation and Infrastructure: Tim Holden of Pennsylvania; Nick Lampson of Texas.

To the Committee on Science: Ellen Tauscher of California.

To the Committee on International Relations: James Davis of Florida.

To the Committee on National Security: Ciro Rodriguez of Texas.

To the Committee on Resources: Lloyd Doggett of Texas.

To the Committee on Government Reform and Oversight: Harold Ford of Tennessee.

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

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## EXTENDING ORDER OF THE HOUSE OF FEBRUARY 12, 1997 THROUGH APRIL 23, 1997

Mr. GOSS. Mr. Speaker, I ask unanimous consent that the order of the House of February 12, 1997, be extended through April 23, 1997.

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

There was no objection.

## ADJOURNMENT TO MONDAY, APRIL 21, 1997

Mr. GOSS. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 3 p.m. on Monday next.

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

There was no objection.

## ADJOURNMENT FROM MONDAY, APRIL 21, 1997, TO WEDNESDAY, APRIL 23, 1997

Mr. GOSS. Mr. Speaker, I ask unanimous consent that when the House ad-

journs on Monday, April 21, 1997, it adjourn to meet at 2 p.m. on Wednesday, April 23.

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

There was no objection.

## DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. GOSS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

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

There was no objection.

□ 1830

## SPECIAL ORDERS

The SPEAKER pro tempore (Mr. PEASE). Under the Speaker's announced policy of January 7, 1997, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

## TREMENDOUS STRIDES AT HUGHES DANBURY OPTICAL SYSTEMS, INC.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. MALONEY] is recognized for 5 minutes.

Mr. MALONEY of Connecticut. Mr. Speaker, I rise today with great admiration and gratitude for the tremendous strides that have been made in the last 4 decades by the people of Hughes Danbury Optical Systems, Inc. Hughes Optical is not only a long-time employer in Connecticut's Fifth District, they have made enormous contributions toward our Nation's pioneering efforts in space. Their technological leadership has resulted in advanced instruments that have enabled scientists around the world to probe the universe and gain a better understanding of our cosmological origins.

Most recently, Hughes developed and manufactured both the optical telescope assembly and the fine guidance sensors for NASA's Hubble space telescope. They have been a critical team member in the successful daily operations of this space observatory and the on-orbit servicing missions that will keep Hubble healthy and productive for years to come. In fact, one instrument, the first of Hubble's to be recycled, has been returned to Danbury this month for its 1-billion-mile maintenance work.

In operation for nearly 7 years and having orbited our globe over 37,000 times, this fine guidance sensor will be refurbished and upgraded by the skilled engineers and technicians at Hughes Danbury Optical. It will then be returned to Hubble in 1999 to carry out the final leg of the space telescope's planned 15-year mission.

In addition, we can confidently look forward to further achievements in science when NASA's advanced X-ray astrophysics facility, a companion observatory to the Hubble, is launched later this decade, also carrying optics manufactured by this dedicated group at Hughes Danbury Optical Systems.

I salute all of Hughes' talented and dedicated people for giving us the ability to confidently enter the new high-tech millennium ahead. Their cutting edge contributions have played an irreplaceable role in making our Nation the leader in both the discovery of our universe and in the development of our technological achievements.

## GOVERNMENT SHUTDOWN SHOULD NEVER HAPPEN AGAIN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. GEKAS] is recognized for 5 minutes.

Mr. GEKAS. Mr. Speaker, the budget negotiations, by some accounts, are not getting very close to agreement. This brings up again, and I say again advisedly, the prospect of a shutdown of Government. It is not too early to start thinking about that, even though we have not finished the month of April. But because of the nature of the budget process, it is something that can be in our futures, unfortunately.

Everybody knows by now that since 1989, for four or five Congresses since then, or whatever that number is, I have been proposing legislation that would prevent a Government shutdown, and it works on a simple formula: At the end of the budget period of September 30, for instance, if no new budget has been negotiated between the President and the Congress, then automatically, by way of instant replay, as I am fond to say, the next day, the dawn of the new fiscal year, would bring about last year's numbers for a period of time under a continuing resolution until a budget can be met. This means, upon passage of this type of legislation, we will never face a shutdown again. That was a horrible aspect of the last Congress when we had to explain to the American people how it was that the Government shut down.

I myself believe that the President failed in his responsibilities there, because if he had signed the appropriations in the first place, the shutdown would not have occurred. Others blame the Republican Congress for proposing measures that the President found necessary to veto. So, who is to blame? That blame game can be played all year long, and we would never get the business of the Congress accomplished. My legislation would ensure that no shutdown would occur.

Now, where are we? Here in 1997, we are approaching the period of time when we will be dealing with the supplemental appropriations. We have good information to the effect that on the Senate side, Senators MCCAIN and LOTT, HUTCHINSON, STEVENS, and others

are pursuing the proposals that I have made over these years. In fact, I have conferred with them several times and have had press conferences with them. They are ready to insert into the supplemental appropriations a measure that is similar to mine.

This is good news, because it means eventually that the House will have to act on it. Meanwhile, our own appropriations process for the supplementals is on its way to fruition. We are going to see what we can do to add it to this side's complement of the budget process for supplemental appropriations.

In the meantime, we have received endorsement from several important citizen organizations. The most recent one was from the Concord Coalition which, in response to our proposal, sent us a letter saying, quote:

Enactment now of this fall-back funding would remove the possibility that Government agencies would shut down later this year due to the inability of the Congress and the President to agree on spending. Your amendment tilts the process in favor of making these tough decisions and away from counterproductive and deficit-increasing political games.

That is an important endorsement that we received from the Concord Coalition.

The U.S. Chamber of Commerce commented in a letter to us:

Your legislation's provision of temporary funding until Congress and the President come to an agreement means that the threat of closing portions of the Government could no longer be used by either side in an attempt to pass a budget. Negotiations over spending bills would then remain more focused on the legislation's merits, yielding a more rational and sound process.

So says the President of the U.S. Chamber of Commerce in a letter directly sent to us to endorse our legislation.

We have many, many different kinds of endorsements from citizens' groups, contractors' groups, Federal employees' groups, and others. The time has come to allow this process to become a part of our law. It is a shame to permit our Government to shut down at any time, not for 5 minutes.

I cite the most blatant example of why it should never happen. On the Columbus Day weekend of 1990, while we had amassed 500,000 of our young people in Saudi Arabia waiting for Desert Storm, our Government shut down. We should never let anything like that happen again.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. RUSH] is recognized for 5 minutes.

[Mr. RUSH 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 Wisconsin [Mr. NEUMANN] is recognized for 5 minutes.

[Mr. NEUMANN 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 Texas [Mr. HINOJOSA] is recognized for 5 minutes.

[Mr. HINOJOSA 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 Michigan [Mr. UPTON] is recognized for 5 minutes.

[Mr. UPTON 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 North Carolina [Mr. JONES] is recognized for 5 minutes.

[Mr. JONES of North Carolina 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 New York [Mrs. KELLY] is recognized for 5 minutes.

[Mrs. KELLY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

#### TAX CODE SHOULD NOT PUNISH MARRIED COUPLES AND FAMILIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. MCINTOSH] is recognized for 5 minutes.

Mr. MCINTOSH. Mr. Speaker, today, on this Thursday of tax week, I would like to talk with my colleagues and the American people about one of the worst features in our Tax Code. It is the way in which the Government punishes families and punishes husbands and wives for deciding to be married.

Just a couple of weeks ago I received a letter from one of my constituents in Straughn, IN, Sharon Mallory and Darryl Pierce. Here is a portrait of them that they sent along with their letter.

Sharon writes to me, My boyfriend, Darryl Pierce, and I would very much like to get married, but we figured, if we get married, not only would I forfeit my \$900 tax refund check, we would be writing a check to the IRS for \$2,800. This amount was figured for us by an accountant at the local H&R Block in New Castle.

"Now," Sharon goes on to write, "this system is old and outdated, antiquated. I do not understand how the Government can ask such questions as single, married, dependents. Employers, bankers, realtors and creditors are forbidden by law to ask these questions. The same should apply to the Government."

The marriage penalty is clearly punishing Sharon and Darryl. They want to get married, and yet their accountant tells them the U.S. Government is

going to tax them more when they do get married.

Oftentimes, we find that the Tax Code penalizes families with children as well.

One of the worst aspects of the marriage penalty is that it discriminates against women. If a woman has been married, started to raise a family and the children start to be old enough so that she can go back to work, she faces a marginal tax rate of over 50 percent. That means for every dollar she earns, 50 cents goes to the Government in taxes.

This is wrong, and we should not be punishing women who make that choice to go back to work.

Now, married couples are punished by the Tax Code with the marriage penalty, but when couples decide to get married and then have children, they are punished once again. According to the Center for Policy Analysis, the marriage penalty for a couple earning \$20,000, that is not a lot of money, maybe about minimum wage for both people, they will be punished approximately \$1,200, and they have two children.

Right now, the marriage penalty is about \$180 for a couple. When they have children, it skyrockets to \$1,265. Or, for example, the Center points out that a married couple earning \$50,000 each is punished \$1,300 for being married, but when they start to have children, that skyrockets to \$1,500 per child. People ask me, does this really discourage families, does it discourage marriage?

Well, my wife, Ruthie and I met a couple the other week in Indianapolis. Both of them are doctors, and their accountant told them, you could save \$6,000 if you file for a divorce and file your taxes separately.

This is wrong and we must end the marriage penalty in our Tax Code. It is wrong for Government to punish married couples in this country. It is wrong for them to punish families who have children.

Why should young people, when they decide to get married and start a family, face the prospect of the Government telling them, you are going to pay more in taxes because you are married? Just think what families could do with that money. Many families need it to pay the electric bill or buy food for their children. \$1,500 per children per year means that they could save about \$30,000 when their children go to college.

We need to let these working families keep more of their money so that they can pay the bills, they can buy food for their children, and they can save for college.

Let me quote from Sharon and Darryl's letter. They closed it by saying, "Darryl and I would very much like to be married, and I must say, it broke our hearts when we found out we can't because the Government punishes us. We hope some day the Government will allow us to get married and not penalize us for it."

Sharon and Darryl are right. It is wrong for the Government to punish people who decide to get married. We must end the marriage penalty; we must pass a bill and send it to President Clinton that would eliminate that penalty, and when we do that, we will show that the Government is on the side of families, not working against them.

We will show that Government is not going to discriminate against women who go back into the work force, and we will show that Government is going to allow working families to keep more of their hard-earned income and decide how they want to spend it in raising their children, paying the bills, saving for the future, maybe giving them a chance to go to college.

I urge my colleagues to join me in passing the bill to repeal the marriage penalty in our Tax Code, not only for ourselves and all Americans, but especially for Sharon and Darryl, who fondly want to get married, to let them have their dream of having a family together.

STRAUGHN, IN,  
February 17, 1997.

Hon. DAVID MCINTOSH,  
Muncie, IN.

DEAR REPRESENTATIVE MCINTOSH: My boyfriend, Darryl Pierce, and I have been living together for quite some time. We would very much like to get married.

We both work at Ford Electronics in Connersville Indiana. We both make less than \$10.00 an hour; however, we do work overtime whenever it is available. Also Darryl does some farming on the side.

I can't tell you how disgusted we both are over this tax issue. If we get married not only would I forfeit my \$900.00 refund check, we would be writing a check to the IRS for \$2,800.00. This amount was figured for us by an accountant at the local H&R Block office in New Castle.

Now there is nothing right about this. After we continually hear the government preach to us about "family values."

Nothing new about the hypocrites in Washington. Why don't we do away with the current tax system? It is old and outdated. Antiquated. The flat tax is the most sensible method to use and no one is being penalized. Everyone would be treated the same.

I don't understand how the government can ask such questions as: single? married? dependents? Employers, bankers, realtors, and creditors are forbidden by law to ask these questions. The same should apply to the government.

Darryl and I would very much like to be married and I must say it broke our hearts when we found out we can't afford it.

We hope someday the government will allow us to get married by not penalizing us.

Yours Very Truly,

SHARON MALLORY,  
DARRYL PIERCE.

□ 1845

#### IT IS CALLED ACCOUNTABILITY

The SPEAKER pro tempore (Mr. PEASE). Under a previous order of the House, the gentleman from Florida [Mr. GOSS] is recognized for 5 minutes.

Mr. GOSS. Mr. Speaker, in the early morning of April 9, a large group of United States-trained Haitian National

Police forcefully entered and illegally searched the family home of a long-time employee of the International Republican Institute, which is an adjunct of the National Endowment for Democracy, which is of great interest to this institution.

The contents of the home, which were owned by the employee's aunt, who happens to be an American citizen, were destroyed and photographs of the employee and his family were confiscated. We have received confirmation from the United States Embassy officials that the Haitian National Police have taken responsibility for the action, and they have claimed that they were thinking that there was a gang operating out of the home. It is worth noting that they failed, regardless of the merit or lack in the claim about the gang. It is worth noting that they never gained proper authorization to take such an action or stage such a raid.

More troubling still is that this raid comes after an already-harrowing series of specific threats against this employee's family in the lead-up to the latest round of elections some 10 days ago, threats that many believe can be directly linked to the employee's work for the IRI. And those of us who have followed Haiti very closely will recall that this pattern mirrors that which preceded the forced departure of Haitian Chamber of Deputy member Dooley Brutus.

We must ask the administration if in fact the Clinton administration has lost control of the program in Haiti to the degree that we are now supporting blatant human rights violations with United States taxpayers' dollars. In fact, tensions in Haiti have been running so high in recent weeks for IRI that it has had to close its office and move its operations to a new, safe site where security can be provided more effectively. This does not sound like a democracy to me.

Mr. Speaker, an attack of this sort is inexcusable in a democracy, even a fledgling democracy. We cannot tolerate this. Not only is the victimization of an American citizen inappropriate, to put it mildly, but the attack on an individual working to further the development of democracy in Haiti is deeply troubling. The fact that the same type of raid was carried out on the same night, in the same neighborhood, in the home of a prominent business family suggests that these types of raids are not all that uncommon. Sadly, that seems to be so.

Rest assured that we will be looking to the United States Embassy, the Haitian Government, and Colin Granderson's civilian mission for a thorough report on this incident.

We also expect the administration to place a priority on ensuring that this assault against an American citizen and property is thoroughly investigated by the Government of Haiti. We know from our experience with the Gonzalez and Bertin cases that the in-

vestigation stage is generally where the Haitian judicial system breaks down totally.

The involvement of United States-trained Haitian National Police also means that there are questions to be answered about the apparent lack of progress on the rule of law in Haiti after so great a commitment of United States personnel and tax dollars. One certainly must ask if the wanton destruction of property was included as part of the training we provided with U.S. tax dollars. I hope that is not so.

How many American or Haitian citizens have to be traumatized in this way before the Clinton administration will be willing to take off the rose-colored glasses and give us an honest assessment of the situation in Haiti? It appears that it is quite a sad saga.

If we have a serious problem in Haiti, a problem directly linked to United States tax dollars, let us acknowledge it and get on with the process of fixing it. That is called accountability and the American people expect nothing less, even though we have been getting less for some time from the Clinton administration when we seek candor on the subject of Haiti.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska [Mr. CHRISTENSEN] is recognized for 5 minutes.

[Mr. CHRISTENSEN 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. HUNTER] is recognized for 5 minutes.

[Mr. HUNTER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

#### EARTH DAY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from New Jersey [Mr. PALLONE] is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, I would like to address the House tonight on the subject of Earth Day. Since the House is going out of session this evening and will not be returning because of the Passover holidays until Wednesday for any legislative action, this is the only opportunity before Earth Day, which is next Tuesday, April 22, to talk about the significance of that occasion, not only to Congress but to the American people.

Next Tuesday, April 22, is in fact Earth Day. I believe it is the 26th Earth Day. Earth Day has always been a day to celebrate the environment and our natural heritage. It has also served to raise people's awareness about the quality of their environment and the

importance of environmental protection and responsible living.

In more recent years, however, Earth Day has become a time for people to grandstand on the environment, particularly politicians, and although it is very popular, it is not always easy to be green. We cannot simply feign interest, particularly politicians, in environmental quality, we actually have to do something about it here in the Congress.

Even though the quality of the environment has substantially improved over the last 20 years, the environment is still high on people's lists. If you do poll or talk to your constituents, they always tell you they are very concerned about the environment. That is because, in my opinion, they understand the connection between the environment and public health.

People want their representatives in Washington to be working to protect their families from environmental health hazards, and people want us to help them protect themselves by providing them with the information that they need to formulate their own decisions about the environment.

Finally, people also want to know that their children and their grandchildren will be able to enjoy the same outdoor experiences that they had the opportunity to experience. This also happens to be the Week of the Young Child, and I do not think it is any surprise, if you will, that Earth Day follows on that, because I think in many ways one of the major reasons why adults are concerned about the environment is because they worry about their children and their grandchildren and their future here on this planet.

Mr. Speaker, I have to say, though, that in the last Congress, the Republican majority really launched a relentless attack on the basic environmental protections that ensure the safety of the water that our children drink and the air that they breathe.

In fact, the Earth Day founder, Gaylord Nelson, declared that the 104th Congress had the worst environmental record in history. I think that is very fair to say. Republicans basically showed their antienvironmental hand in the last Congress, but I think that what they found out is that as the election in November 1996 approached, that bashing the environment really was not a very good thing to do politically, and so all of a sudden we saw less bashing of the environment, and I think this year we are not seeing it much at all.

I think there is fear, really, on the part of the majority of further reprisals from the voters if they try to weaken environmental legislation, and so essentially the Republican leadership is trying to avoid openly bashing the environment this year. But as the Los Angeles Times observed on April 7, and I quote, "Their language masks a reality. Behind these gentler words, the Republican majority is still working hard to relax or abolish many environmental regulations."

Just to give the Members an idea in terms of the antienvironmental battle this year, the House Republican whip, the gentleman from Texas [Mr. DELAY], who last year said he did not believe that acid rain or global warming existed, this year told the House committee that drinking mouthwash or milk is more likely to give you cancer than air pollution is to be damaging to a person's health.

Mr. Speaker, fortunately we see the gentleman from Texas [Mr. DELAY] making these comments because he is at least openly expressing some of his antienvironmental views, but we do not see as much of it on the floor, and I think what we are seeing is that the effort to weaken environmental laws in many ways is now taking place in the back rooms, or as part of some action that may come later in committee.

Democrats, however, still feel it is very important to move ahead with a proenvironmental agenda, and Democrats will continue to put forward environmental initiatives this year, and will press the Republican majority for action on these bills. I think that we can often get Republican Members to join us, even if the leadership does not necessarily support us with this proenvironmental agenda.

Today, in anticipation of Earth Day next Tuesday, leading House Democrats announced a 5-point environmental challenge to the Republican majority. We issued a special report detailing that challenge. Democrats are basically challenging the Republicans to enact legislation to protect the health and safety of American children and put the Republicans essentially on notice that Democrats will oppose any attempts to roll back environmental protections.

I just wanted to describe, if I could, for a brief time during this hour these five legislative challenges that the Democrats put forward today. The first, and I think a very important one, is the challenge to enact the Defense of the Environment Act by July 4. The Defense of the Environment Act basically allows for a separate debate and vote on any legislative provision that would weaken environmental protection.

Some may say, why do you need something like that? Well, there are a lot of reasons for that. Congress needs to act, I think, as a steward of the Nation's environment and natural resources. We owe that to our children and grandchildren. A critical step we can take for them is to ensure that there is full and open debate on any provisions that would weaken the protection of the environment.

The Defense of the Environment Act will put a spotlight on backroom attempts to weaken our environmental laws. This was a bill that was introduced by the gentleman from California [Mr. MILLER], the gentleman from California [Mr. WAXMAN] and the gentleman from Missouri [Mr. GEPHARDT].

Basically what it does is allows for a separate debate and vote on these leg-

islative provisions. Mr. Speaker, again, we might say why is that necessary? Well, to be honest, it is necessary because of what we saw happen in the last Congress with the Republicans in the majority.

In early 1995, Congress adopted procedural steps that ensured that unfunded mandates and tax increases cannot be enacted unless specifically considered and approved by the House. The Defense of the Environment Act simply extends this protection to provisions that weaken environmental protection.

The need is clear. When Republicans took control in 1995, they compiled the worst environmental record in history. What we essentially saw was an effort to do this weakening of environmental legislation either in committee or on the floor, but articulating a position that was totally to the contrary.

So what we are saying with the Defense of the Environment Act is that we do not want to let the industry lobbyists rewrite legislation; we do not want, with regard, for example, to toxic waste, to let Republicans turn polluter pays into pay the polluter. We want to be able to bring these provisions, these weakening provisions, to the floor for a separate vote whenever possible, when legislation comes up that might impact the environment.

The second challenge that the Democrats, again, are making to our Republican colleagues is that the Republicans drop the attack on the basic protections of the Clean Air Act. Specifically, Republicans need to abandon their version of regulatory reform that would undermine the fundamental principles of the Clean Air Act, including health-based standards.

I have to say that I believe that the Clean Air Act has been a tremendous success. Nothing, really, has been more important in protecting the health of American children than both the clean air act that was initially enacted in 1970 and the Clean Air Amendments of 1990. If we look at these two and we look at the statistics, they show that the air our children breathe is dramatically cleaner as a result of these two measures.

The EPA recently put out a report entitled "The Benefits and Costs of the Clean Air Act, 1970 to 1990." That just documents some figures that I think are really important; first, that in that 20-year period airborne lead emissions were reduced by 99 percent, carbon monoxide emissions were reduced by 50 percent, and sulfur dioxide emissions were reduced by 40 percent.

If we look specifically at the Clean Air Act amendments of 1990, just to give some of the results of that, over 50 percent of the cities that did not meet the air quality standard for urban smog in 1990 now meet that standard. Over 75 percent of the cities that did not meet the air quality standard for carbon monoxide in 1990 now meet the standard.

So clearly we have had success. But the Republican regulatory reform bills

would roll back basic clean air protections. During the last Congress, House Republicans used these regulatory reform bills to make backdoor attacks on America's most important environmental laws, but most important, the Clean Air Act.

One such GOP proposal was their risk assessment bill, H.R. 1022, a key part of the Republican Contract With America. This passed on February 28, 1995. The risk assessment bill had a supermandate that supplemented all the public health standards of existing environmental laws, requiring, in effect, that the EPA design all standards to minimize the compliance costs for polluters first.

The bill would have undercut the Clean Air Act standards that are now set solely in the best interests of protecting public health. The EPA would have been compelled to select the cheapest pollution reduction option, rather than the most effective option for protecting America's children at a time when childhood asthma rates are rising very sharply.

The GOP bill would also have added additional roadblocks by dramatically expanding the cost-benefit analyses needed to justify new public health standards and giving polluters broad new rights to sue the EPA to block improvements in clean air rules.

This Republican risk assessment bill would also have allowed parties with a financial interest in weakening clean air requirements to sit on mandatory peer review groups that would assess EPA's proposed air standards.

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Fortunately, the House and the Senate GOP regulatory reform bills did not get to conference and therefore died at the end of the Congress, but we expect that they will come up again in some form and we are saying today, do not do it. We are tired of these, the use of these regulatory reform bills as a method of trying to weaken the Clean Air Act and other environmental legislation.

Our third challenge in our report, our third challenge to the Republicans, is to pass the brownfields initiative by July 4. This is linked to the cleanup of hazardous waste material primarily in urban areas but also in suburban areas, old industrial sites, hence the term "brownfield."

Again, it is linked to children and children's health needs. Kids need cleaner cities. They need a strong economy. Democrats have been offering to work with Republicans to promptly move the brownfields legislation, but so far Republicans have refused. They have been saying and insisting on a broader Superfund bill or Superfund reauthorization that would transfer cleanup costs from polluters to taxpayers. And each day of delay, again, on the brownfields measure basically denies funding for another cleanup.

Currently there are about, there are actually several million children who

live within 5 miles of these polluted sites, the so-called brownfields. If you clean up the sites, they can be replaced with different kind of businesses or commercial activities that actually would create jobs in the cities.

Just a little discussion, if I could, about what the brownfields initiative does. It basically provides for the establishment of a new partnership of the Federal Government with States and local governments and the private sector to undertake cleanups.

Two broad purposes: One is to significantly increase the pace of cleanup at the sites by promoting and encouraging the creation, development, and enhancement of State voluntary cleanup programs; and second, to benefit the public health, welfare, and the environment by cleaning up and returning these sites to economically productive or other beneficiary uses.

Essentially, what we are doing is trying to recognize the key role that States have played in cleanup and will continue to play in identifying, assessing and cleaning up brownfields. A lot of people think that the Superfund Program, which is the Federal program for the cleanup of hazardous waste sites, covers all the sites.

Actually, it only covers, I think, certainly less than 50 percent. In my home State of New Jersey, we have about 6,000 hazardous waste sites but we only have less than 150 Superfund sites. So you can see it is only a very small portion of the number of hazardous waste sites.

So to the extent that the Federal Government can expand the Superfund program to provide for more cleanup of sites that are not on the national priority or Superfund list, it actually would help significantly in the State efforts, in the overall effort to clean up a lot of these toxic waste sites.

Under the Democrats brownfields bill, the EPA would give flexibility to the States so that they can get the job done. The bill calls for specific funding for State grants, \$15 million per year for 5 years to develop and enhance State clean-up programs.

It also contains \$45 million per year for 3 years to local governments to inventory and cleanup brownfields where local officials, developers and purchasers and citizens believe that these redeveloped sites have the most chance of creating new jobs and new opportunities.

A lot of my colleagues on the Republican side have expressed support for the brownfields initiative. It has broad bipartisan support. However, what is happening is that the Republican leadership is insisting that the brownfields initiative be tied to much more controversial legislation; that is, the GOP version of Superfund reform.

And, of course, we cannot support that because essentially it is like the Superfund bill that the Republicans tried to push through in the last Congress that would weaken the Superfund law, that would allow cleanup to be

temporary rather than permanent, that would cap the number of sites that can be put on the Superfund list, that would essentially rather than requiring those who caused the pollution, the toxic waste, to bear most of the cost of the cleanup, would in fact put most of the cost of the cleanup on the Federal Government and essentially let a lot of polluters get off.

So what we are really calling upon the GOP leadership is to say, look, pass the brownfields initiative that can expand the Superfund Program in a very effective way by giving money back to States, which is something that many Republicans say is part of their ideology, but at the same time let us get that bill passed. That would be a very proenvironment bill that would help a lot with toxic waste cleanup. Do not link it to this overall effort to weaken the Superfund Program, because all that means is that nothing is going to pass and nothing progressive to move on an environmental agenda will occur here in the Congress.

The fourth challenge that Democrats are making again to the Republicans for Earth Day this year is to increase funding for national parks and to reform unjustified natural resource subsidies. Right now we know that, I should say that we know that beginning with President Teddy Roosevelt, who was a Republican, preserving our natural resources has been a bipartisan enterprise. But unfortunately that was not the case in the last Congress.

We need a bipartisan effort in this 105th Congress in the tradition of someone like Teddy Roosevelt. With regard to the need for funding for national parks, the inadequate funding for national parks is highlighted by a statistic, if I could just quote, that says in constant dollars the total National Park Service's appropriation has declined by more than \$200 million between fiscal year 1983 and fiscal year 1997.

In the 104th Congress, the last Congress, the Republicans constantly voted to cut the funding for the National Park Service many times. I do not want to get into all the details but there were actually park shutdowns, the Republicans actually shut down and closed every park for the first time since the National Park Service was created in 1916. At that time, when the Government was shut down because of certain actions that were taken here, we actually had about 725,000 visitors that were turned away at the park gates.

There are also a number of tax subsidies, if you will, unjustified subsidies to natural resource companies that also need to be addressed in this Congress. Part of our challenge with regard to natural resources also affects these subsidies. The most egregious example of the need for reform is with regard to an 1872 mining law. Many people are familiar with this but not everyone. It is an anachronism, basically, from the 19th century that allows the

mining of gold, silver, and other valuable minerals on public lands without payments of royalties to the Treasury.

The 1997 annual report of the Council of Economic Advisors points out that between May 1994 and September 1996, the Interior Department was forced, by this 1872 mining law, to give away over \$15.3 billion worth of minerals in return for which the taxpayers received only \$19,190. This is probably the most egregious example of a government subsidy. Imagine, \$15.3 billion in revenue lost, and we received only \$19,190.

I could go on with some of the other subsidies, but there are a number of natural resources subsidies that are just totally unjustified and need to be reformed and should be addressed as part of this environmental challenge.

The last Democratic challenge to our Republican colleagues is, some may say that is not very significant, but I think it is, because one of the things that is so important is that Congress set an example and apply the laws that it passes to itself.

We actually have a rule or provision that was passed in the last Congress that says that you have to do that. But it is, nonetheless not always followed in practice, even if it is theoretically the law.

So our fifth challenge refers to the House of Representatives recycling program. We are calling upon the Republicans to repair the House of Representatives recycling program. We know millions of kids carefully recycle their glass bottles and paper but not the Congress. If you talk to your children or your grandchildren, you know that most of them are very concerned about recycling. It is the way for an individual to interact and get involved in environmental protection. So all the kids around the country or certainly a good portion of them are out there recycling their glass bottles and paper but not the Congress. SAM GEJDENSON, a Democratic Congressman from Connecticut, has introduced a resolution that will ensure that Congress plays by the same rules that our kids do with regard to recycling.

Specifically, he has introduced a resolution that provides for a mandatory recycling program in the House of Representatives. And we challenge the Republican Congress to adopt this resolution over the next few months and get the House back on the right track on recycling.

Just to give you some example of how recycling has declined under the Gingrich Congress, I think it is very important that we set an example. Under the leadership of the Speaker, it has declined.

I just want to give you some statistics, because I really think it is interesting. Since the Republicans took over, the percentage of House offices participating in recycling programs has declined, dropped from 90 percent in the 103d Congress to about 50 to 60 percent in the 105th Congress.

With regard to bottles, since the Republicans took over, the tonnage of

bottles that are recycled has fallen by 83 percent. Specifically, the tonnage of recycled bottles has fallen from 109.76 tons in 1994 to 18.15 tons in 1996.

Let me give you some statistics with regard to recycled cans. Since the Republicans took over, the tonnage of recycled cans has fallen by 74 percent. Specifically, the tonnage of recycled cans has fallen from 10.76 tons in 1994, to 2.83 tons in 1996.

Now, specifically, what Congressman GEJDENSON's resolution does is mandatory implementation. It provides in the resolution that each Member and each employing authority of the House of Representatives shall participate in the office waste recycling program. The Architect of the Capitol has to ensure that all employees of the House of Representatives whose responsibilities include custodial duties are adequately trained in the implementation of the office waste recycling program. The Architect of the Capitol shall require any contractor under a contract with the House of Representatives for carrying out the office waste recycling program has to ensure that all personnel are adequately trained in the implementation of the program. And finally the architect has to submit semiannually to the Committee on House Oversight a progress report on compliance with the office waste recycling program.

Again, I think this is important. Democrats are calling upon the Republicans to adopt this resolution and work with us to turn the House into a model for recycling for the country, rather than an embarrassment, which I think in many cases we have become with regard to this recycling program.

Again, before I conclude, I just want to say that I think that we need to all join together on this anniversary of Earth Day. And I am pleased with the fact that at least on the floor so far this session, we have not seen any overt efforts to turn back the clock on environmental protection, but I believe very strongly that there is certainly momentum out there on the Republican side with the Republican leadership to start moving towards some of the same measures last year with regard to the Clean Water Act, with regard to the Superfund program, with regard to the Endangered Species Act that would seek to bring up legislation that would weaken some of these very important environmental provisions. And rather than even have the status quo, I think we need to move forward on progressive legislation such as some of the things that I mentioned as part of this Democratic 5 point challenge.

The bottom line is that although the environment has been significantly cleaned up, there is still a lot that needs to be done. The health and safety of our children and our grandchildren depend upon our taking action in a positive way towards cleaning up the environment and setting an example, if you will, for the House of Representatives in that regard.

I wanted to talk a little bit more, if I could, about the brownfields program, because I think that that is something that right now we could move on a bipartisan basis and that there is essentially a consensus to get it accomplished.

Just to give you a little more information about the brownfields program, essentially what it consists of, it is called the Community Revitalization and Brownfield Cleanup Act of 1997. And I think I mentioned before the specific amounts of money that are dedicated, both for inventory, doing an inventory of sites that would be potential cleanup sites for this program and also the amount of money that the Federal Government would provide.

But it also allows a State to request the EPA to make a determination that the State's program is a qualified program, if it provides, one, for response actions that are protective of human health and the environment; two, opportunities for technical assistance; three, meaningful opportunities for public participation. And let me stress that. One of the best aspects of the Superfund program now has been community involvement.

I know that in my own district in New Jersey, the sixth district of New Jersey that I represent, many of the local community organizations, citizens action organizations, if you will, have become directly involved in proposing cleanup and the way to go about cleaning up a Superfund site.

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So we are asking that the same thing be done with the Brownfields Program, that basically the community be involved in the decisions about how to go about the cleanup.

That is really a very important part of any environmental initiative. Anything that we pass in Congress should contain a community involvement program, a citizen action program, because that basically gets the initiative from the grassroots and at the same time teaches local citizens, if you will, about how they can become involved in environmental protection.

I think that is a very important aspect of Earth Day, and part of the lesson of Earth Day is getting people involved on an individual basis as well as on a community basis. But ultimately we in Congress have to make the decisions, we have to move forward on a positive environmental agenda and hopefully this Earth Day next Tuesday will be our opportunity to launch that and to get our Republican colleagues involved as well in a bipartisan way.

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

#### CHILD LABOR AND THE CRUSADE OF IQBAL MASIH

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Virginia [Mr. MORAN] is recognized for the

balance of the time as the designee of the minority leader.

## EARTH DAY

Mr. MORAN of Virginia. Mr. Speaker, I thank the gentleman from New Jersey for raising these very important issues to recognize the importance of Earth Day.

It behooves the Congress to look back at history before there was an environmental sensitivity. We had a lake in Ohio that actually caught on fire. We had air that was not fit to breathe. We have created greenhouse gas emissions that have led to a global warming that one day will inundate several very populous islands. The Seychelles, for example, inevitably will go below sea level because of the greenhouse gas emissions that have resulted in the warming of our entire planet.

The ozone layer has been depleted because of chlorofluorocarbons carbons. We have an area the size of North America in the Antarctic, and while it may not concern people that penguins are not able to reproduce like they were, the fact is that it is a warning to all of us the effects of ignoring our environment.

In this country, we find that children's cancer is the second leading cause of death among children, and we know that 80 percent of the cause is environmentally related, 90 percent worldwide. It is because of pesticides in foods that children eat. It is because of the toxic chemicals that we put in our ground and on our grass that children play on and touch and get into their skin. It is because of the particles that they breathe. It is because of some of the water that they drink.

And so, as a result, we have despoiled this planet in many ways. And it certainly behooves us not to look back at what we have accomplished, but to look even more forward.

There are a lot of things that need to be done. For one thing, we ought to be measuring the toxicity level of environmental risks as they would effect children, not fully grown adults.

And so we have a lot to do, and I know that the gentleman from New Jersey will be in the lead in accomplishing those objectives. Hopefully, it will be sooner rather than later. Hopefully, not too late.

But Mr. Speaker, I would like to raise another equally compelling issue. It is an international issue, but it is one that has immediate effects upon our own population and our responsible role in the world. And so I would like to go down to the podium and address the House from there.

Mr. Speaker, what I would like to speak about is child labor, the exploitation of children for profit. This week is the 2-year anniversary of the death of a real leader in the crusade against child labor. He was murdered because of that crusade. His name is Iqbal Masih.

Let me begin by telling you a little bit about the life of Iqbal Masih and how he became a crusader against child

labor. Iqbal grew up Muritke, Pakistan. Iqbal's family lived in poverty, as do millions of other families in Pakistan.

Clearly it was very difficult for Iqbal's parents to scrape together enough to feed their children. By the time Iqbal was 4, his older brother was ready to marry. It should have been a time of great celebration.

Perhaps if by accident of birth Iqbal were born into a different family, one in the United States or a country as prosperous as ours, with the kind of employment opportunities that we afford, perhaps your family or mine, then Iqbal would have taken part in the ceremony and celebrated the marriage of his brother.

But Iqbal was not born into such a family. Iqbal did not get to take part in his brother's wedding. His family could not afford the wedding. They needed \$12 to properly wed their son, and they did not have it.

So how did Iqbal's family pay for the wedding? Did Iqbal's father look for more work? Did they try to find a cheaper way to finance the wedding? No. Instead they took out a loan for the \$12. But they did not have a house to put a second mortgage on. They did not have a pension plan to borrow against.

So they used their son Iqbal. They traded Iqbal to the moneylender as collateral on a \$12 loan. The moneylender was not a banker merely looking for insurance on his loan. In fact, Iqbal's parents were never expected to pay the loan. Iqbal was expected to pay off the loan.

But how does a 4-year-old pay off his parents' debts? Well, he is forced to work. Iqbal had become a bonded laborer. Bonded labor is one step removed from child slavery.

The moneylender, now Iqbal's master, could trade or sell Iqbal to others. He exercised complete control over Iqbal. Because Iqbal's small fingers were nimble, he was forced to tie knots in handmade carpets.

Carpet manufacturers prefer to get children when they are young. As one manufacturer said, their hands are nimbler and their eyes are better, too. They are faster when they are small. They are also easier to control.

Because the carpet manufacturer controls what or even if these children eat, he can easily control them. Some manufacturers are not so subtle. Many of them chain the children to their looms. They must eat, work, and sleep tied to their loom.

At 4 years old, all these children know of the world is their village. They probably do not even know the name of their village. They are often taken hundreds of miles away. Even if they were lucky enough to escape, they would not know where to go. And even if they knew where to go, corrupt government officials merely return them to their masters.

So how do you escape from bonded labor? Iqbal was told he could escape if

he raised enough money to pay off his parents' \$12 loan. The carpet manufacturer said he would deduct Iqbal's salary from the amount Iqbal's parents owed.

The carpet manufacturer also added any of Iqbal's expenses to the amount his parents owed. These expenses included room and board. Iqbal had to pay for the privilege of sleeping chained to a loom and fines for any mistakes that 4-year-old boy made. The carpet manufacturer also charged interest on the loan.

Within a few years, Iqbal's \$12 debt had increased 2,100 percent. Iqbal tied tiny knots for as much as 20 hours a day. He usually worked 6 days a week, and frequently all 7 days of the week he would work. He was beaten when he made any mistakes.

Iqbal worked for 6 years as a bonded laborer until he was freed with the help of the Bonded Labor Liberation Front, a human rights group. Iqbal was only 10 when he escaped. He then traveled around the world speaking out about the horrors that he and millions of other children experienced. His efforts focused international attention on the problem of child labor.

Because of his efforts on behalf of other child laborers, Iqbal won the Reebok Human Rights Award in 1994. Although a hero to other children, Iqbal made many enemies. Carpet manufacturers had to pay bigger bribes to continue business as usual. They were losing money.

Iqbal returned to his home village of Muritke, Pakistan in April 1995. On Easter Sunday, 2 years ago yesterday, Iqbal was riding his bicycle with two friends when he was shot and killed. Iqbal was 12 years old, 12 years old.

Mr. Speaker, the International Labor Organization estimates that worldwide there is as many as 200 million children working in Africa, one quarter of all the children are working; in Asia, 18 percent; Latin America, 7 percent. Child labor takes many forms. The worst is bonded labor and indentured servitude like Iqbal Masih endured.

Children also work in more traditional manufacturing centers, such as factories. Some children are minors. Some work on fishing rigs in the ocean. Some work on the streets shining shoes or selling their bodies. They work as glassblowers and as carpenters. They sort hazardous recyclables, like broken batteries soaked in acid and used hospital syringes dirty with blood.

Children have little resistance to adults that seek to exploit them. Unfortunately, almost invariably, children wind up at the bottom of all national agendas for political and social action.

I want people to focus on this picture. It is of a little girl at a shoe shine stand in Ecuador. She is less than 4 years old. She represents the millions of children who work on the streets of the world cities.

The cycle begins when a farm family moves to the city in search of work.

They soon find that the city is not what they expected. They lack the skills necessary for a good job and find city life far more expensive than they had planned on.

The family's mother may find work as a maid, but typically the father turns to alcohol or leaves the family. If children are surrounded by models of chronic inactivity and frustration at home, they may even be attracted to the excitement of the street.

Children are sent onto streets to work or beg. While seeking work, they are easy prey. They are given a job like this girl shining shoes. They must turn over all the money they receive to an older child who then gives them a small portion as salary.

The older child is equivalent to a pimp raking in profits by exploiting a small army of children. Frequently, though, the older child is in a similar relationship with even older children who may control large groups of these child pimps. Those that are beggars may be maimed to make them look more miserable and helpless than other beggars.

As the children grow older, they may realize they can make more money by theft or by exploiting children younger than themselves.

Street life cannot be easy for anyone, especially a 4-year-old girl. Tragically, when these children need to be thrown a life preserver, they often turn to drugs. The common drug for them today is glue. When they are hungry or very cold, they sniff glue to kill the pain. After sniffing glue the children stagger. They slur their speech, and their eyes swell and turn red. Soon they have irreversible brain damage.

While these tragic lives may sound parallel to life on our own city streets, there is an important distinction: The role of corrupt government officials.

In Brazil, one counselor said if a boy does not have enough money to give a cop, he may beat him. With the proper payoff a kid can keep out of the reform inventory or he can keep his place on the park bench for another night.

I would like to show the next picture, which is of a boy in Aligarth, India. It is a town in the Providence of Uttar Pradesh on the border of Nepal. This picture was presented to the Committee on International Relations last year by a constituent of mine Ms. Françoise Remington, director of a nonprofit group called Forgotten Children.

Uttar Pradesh is known for its production of brass and other metal products. This boy is making tiny padlocks. The average pay for children in the metal industry is \$6 a month. The children work 60-hour work weeks. The children are recruited by middle men called dalals, who are paid by the thekedar, or contractor, who prefers children because they are so easy to control.

Although most metal factories claim to be family businesses to skirt India's scant child labor regulations, there are

virtually no incidences of actual family metal shops in this part of India.

These children remove molten metal from molds near furnaces. These children work with furnaces at temperatures of 2,000 degrees. Burns are a constant danger. Children also work at electroplating, polishing, and applying chemicals to metal. This child is polishing padlocks on a small grindstone. Fumes and metal dust are constantly inhaled by these children, causing tuberculosis and respiratory illnesses.

Child labor in India is still the norm rather than the exception. There are about 250 million children in India. Estimates of the amount of children working in India ranges from 44 to 100 million. The Indian Government admits to at least 17 million.

□ 1930

The next picture is of Silgi. She is sewing soccer balls.

Nearby Pakistan, nearby to India, has similar problems with child labor.

Mr. Speaker, you may remember this picture from Life magazine last June. This is a picture of 3-year-old Silgi. She sits on a mud floor, in a filthy dress, stitching soccer balls bound for Los Angeles—Los Angeles, this country for which we pay large sums of money of which she gets a pittance. With needles longer than her fingers her stitching is adequate, but her hands are so small that she cannot handle scissors. She must get assistance from a fellow employee, her sister. Silgi lives in Sialkot, a city of 300,000 that produces 35 million soccer balls per year, 80 percent of the world's supply.

Mr. Speaker, children like Silgi can sew up to 80 hours each week, 80 hours a week in silence and near total darkness. Their foreman says darkness discourages photographers who may wish to expose their trade. They are punished if they fall asleep or if they waste materials or miscut patterns. They are also punished if they complain to their parents or speak to any strangers outside the factory. These children may be punished in a small room in the back of the factory. They may be hung upside-down by their knees or they may be contained. Frequently they are starved.

Let me show the last picture. This is of a girl bashing rocks. You could find pictures like any of these, scenes like any of these children that are pictured here today in any of these countries that we refer to.

Sometimes the entire family is working in bondage, perhaps to pay the debt of a diseased relative. Children are required to work alongside their parents to maximize production. They work up to 14 hours a day carrying rocks or breaking them into pieces. This young girl is doing just that. She lives in an area where gravel is scarce. In order to make cement, rocks must be broken down to small stones, and many rural areas' traditional class or caste systems perpetuate bonded labor.

Pledging one's labor and that of his children may be the only resource a family has and may be all they can pledge as security for a loan. Unfortunately, the same family may be uneducated and illiterate. It is easy prey to the money lender who may charge outrageous interest rates, and in those cases in which the labor of the family is pledged, debts are passed from parent to child often for generations upon generations.

Mr. Speaker, a surprising number of children are minors. The hazards they face are enormous. In the jungles of southeastern Peru, children work mining gold. In 1991, common graves of child workers—these are mass graves of child workers—were uncovered. The corpses reveal that these children died from disease and from work-related injuries.

Mr. Speaker, let me just speak briefly as to what the United States can do about this. First thing we need to know is that it exists, to spread the word so that we can become mobilized. There are many Members of Congress who have introduced legislation to combat these horrors, and just this week the Clinton administration announced a new voluntary code of conduct and labeling program. We need to gather it, this information, because in developing a solution to the problem of child labor we need to know the scope of the problem, the sources of the problem and what it is that we can do in the most cost-effective and efficient manner to change this situation.

Because many governments are in denial over the scope of child exploitation in their country, the international labor organization has made progress working with specific countries in human rights groups in conducting surveys. For example, until recently Pakistan had never conducted a survey to determine the scope of its problem. Pakistan and the International Labor Organization should be commended for undertaking this project. The study indicated that at least 8 percent of Pakistan's 40 million children were actively working and being exploited. More than half of the child laborers were located in the province of Punjab. So while the release of hard data and the scope of the child labor problem may hurt Pakistan in the short term, it now knows where resources are most urgently needed.

The United States compiles two sources of government information on child labor and human rights. The State Department's Annual Country Reports on Human Rights contains an overview of the human rights issues in every country. Unfortunately each report only contains a paragraph or two on child labor issues. Today I introduced legislation to add an additional section to the human rights reports that would detail the scope of child labor in every country. It would include an overview of the country's child labor laws and whether they are effectively enforced. It would include a

discussion of government corruption and bribery and their relation to the effectiveness of child labor laws. It would greatly enhance the information available to us today.

The other major source of government information are the reports published by the Bureau of International Labor Affairs under the direction of Under Secretary Andrew Samet. These reports are dedicated to specific aspects of the child labor problem. The first dealt with manufactured and mined imports, the second with forced and bonded child labor, and the third with goods imported into the United States. They have just undertaken their fourth report which I am sure will be as excellent as the last three.

Unfortunately, Mr. Speaker, we are a contributing factor to the propagation of child labor. Few U.S. investors and even fewer U.S. consumers would knowingly buy products made from the sweat and toil of children. As consumers, we should ensure that when we spend \$30 to \$50 to buy a soccer ball for our children that the money does not go to companies that deny other children their childhoods by working them for pennies a day under inhumane conditions. As investors we should be sure our businesses are doing more than giving lip service to avoiding child labor.

On Monday the Clinton administration took the first step in addressing these concerns. They brought several members of the manufacturing sector together with labor leaders and public interest groups to craft a voluntary labeling program.

The first part of the President's program develops a "Workplace Code of Conduct" for apparel manufacturers. A code of conduct embodies a company's policy on a host of issues typically including ethical conduct which may differ from culture to culture. By firmly stating the company's policy on discrimination, forced labor, wages, benefits and other terms of employment, an American business can put its licensees and subcontractors on notice about the types of conditions it finds acceptable. By incorporating codes of conduct into contracts with licensees and subcontractors, a business can have greater control over how its goods are produced worldwide.

Many American firms have taken upon themselves to adopt strong codes of conduct prohibiting child labor, yet problems persist. One clear example was Nike's recent experience in Pakistan. Nike has a strong code of conduct prohibiting child labor among its subcontractors and anyone they do business with. Yet numerous reports documented children stitching soccer balls for Nike.

So why did they not know there was a problem producing soccer balls? Largely it was because when Nike's subcontractor in Pakistan became overworked, it subcontracted out some of its work, and in doing so did not impose the same code of conduct. This second level of subcontractors were un-

scrupulous profiteers who farmed out the work to whoever they could get to do it cheaply, the most cheaply, primarily children like Silgi.

Multiple levels of subcontracting are common in global manufacturing. Unfortunately they add levels of complexity to enforcing labor codes.

To ensure that the various levels of subcontractors and licensees are adhering to codes of conduct, businesses need to have reputable firms inspect their subcontractors periodically. Many small firms have been doing this successfully for years, and we are finally seeing the major accounting firms break into this market.

To a certain extent, adopting codes of conduct makes economic sense. The more a code of conduct is enforced, the less likely the controlling firm is subject to claims of worker exploitation and perhaps litigation.

President Clinton's recent initiative includes a code of conduct requiring no more than a 60-hour work week, a minimum age for employment of children, and compliance with local minimum wage laws. Even though an undeveloped country may not see enforcing its minimum wage laws as a priority, our codes of conduct will require that goods bound for the United States be made in compliance with these local laws.

Mr. Speaker, may I inquire at this point how much time is remaining?

The SPEAKER pro tempore (Mr. PEASE). The gentleman has 8 minutes remaining.

Mr. MORAN. Mr. Speaker, today, short of spending many, many hours in a library, consumers have no way of knowing if the products they buy are produced by children, and in exchange for complying with the suggested codes of conduct manufacturers will be permitted to use a new "No Sweat" label on their goods. Consumers will find it easy to look for the No Sweat label. Quick and easy access to such information will empower consumers to show the manufacturing industry the importance of staying child-labor free. I would hope that every parent would look for this label and would understand but for the grace of God their child could be in a similar exploited condition.

Labeling programs do have critics. Some fear that labels will be easily forged. Some fear that labeling requirement will be increased over time and used as protectionist measures. These are valid concerns and only serve to underscore the importance of fighting the battle against child labor on many fronts.

One is trade sanctions. We could ban imports made by children. This is the approach taken by Senator HARKIN and Congressman FRANK and their legislation. This approach would keep track of specific products that were routinely made with child labor from certain countries. These products would be banned unless the importer could demonstrate that child labor was not used in the manufacture of the product.

Another approach is through utilization of the generalized system of preferences program. The GSP, which is the acronym for this program, is designed to provide preferential trade treatment to developing countries. If a country qualifies, certain products are given reduced tariff rates.

A condition of receiving these generalized system of preferences benefits for any particular product is that the export country ensure that basic worker rights are protected. If not, the United States can revoke GSP benefits to all products from the country, or the United States can revoke generalized system of preference benefits for specific products. Last year, Commerce Secretary Kantor suspended GSP benefits to Pakistan on surgical equipment, sporting goods and hand-knotted carpets for failing to effectively fight child labor in these industries.

Because the export country usually wants to restore GSP benefits quickly, it has an incentive active to cooperate with the United States. The executive branch has the authority to reinstate GSP benefits if it is satisfied that the export country is making a good faith effort to rectify the problem.

Unfortunately, all of these approaches only help solve the child labor problem to the extent it is connected with U.S. trade. But about 95 percent of all child labor does not involve products bound for the United States. Most involves domestic products or services and cannot be effected by U.S. trade policy.

For this reason I introduced the Working Children's Human Rights Act which would deny non-humanitarian U.S. assistance to countries that have not enacted or refuse to enforce their own child labor laws. U.S. taxpayers should not be forced to support rogue regimes that turn a blind eye to government corruption and inaction that perpetuates the exploitation of children. Withholding foreign aid has a limited effect, though, because only a small handful of countries receive any U.S. assistance today.

The United States does, however, have leverage through lending institutions such as the World Bank. The World Bank provides loans, technical assistance and policy guidelines to help its developing country members reduce poverty and improve living standards through sustainable economic growth. The bank does a tremendous job at financing necessary projects such as infrastructure improvement which is necessary to attract private sector investment. Because of the importance of assistance such as World Bank loans to developing countries, it is appropriate for the United States to condition its vote in favor of loans to a particular country on that country's compliance with major U.S. foreign policy goals.

□ 1945

Today, the United States votes against loans to countries which the President has certified as major illicit

drug-producing countries. The eradication of child exploitation ought to be as important to United States foreign policy as combating narcotics, which is terribly important. That is why my legislation would require the United States to vote against loans to countries who have not adopted or refused to enforce their own child labor laws.

There is a more immediate step the World Bank could take. Last year we heard testimony before the Subcommittee on International Relations and Human Rights, on which I sat, that hundreds of children worked on infrastructure improvements on one particular project in India. Who knows how many thousands of children like them work on such projects?

The World Bank and other such institutions should take a more active role in eradicating child labor by requiring that no children work on projects for which World Bank funds are used. Surely U.S. taxpayers do not want their contributions to the World Bank used for development projects that exploit children.

Mr. Speaker, I want to share with my colleagues some success stories in our battle to end exploitation of the children. The first is a project in Bangladesh that would not have been possible without the dedication of U.S. Ambassador David Merrill.

Bangladesh's garment sector began thriving in 1977 and currently exports over \$750 million per year into the United States. The industry's main products include shirts, trousers, jackets, T-shirts, shorts, briefs, and sweatsuits.

By 1990, estimates of the number of working 10- to 14-year-old children in Bangladesh were between 5 and 15 million children. The vast majority of these children worked in the garment sector. Typically, garment factories in Bangladesh were dimly lit with poor ventilation. Hours were very long. Workers usually were forced to work without break; the doors are locked during the shift. Only occasionally is a guard with a key near the door. During time of high demand, workers are locked in until their work is finished, often overnight. They work 24 hours a day.

In 1990, the Bangladesh garment manufacturers insisted that children were only in factories to accompany their working mothers who could not afford child care. Not true. Yet the Asian-American Free Labor Institute study showed children walking to factories with their time cards in hand. When that institute probed further, they learned that children really worked at the same factories with their relatives.

In the fall of 1993, Senator TOM HARKIN and Representative George Brown introduced legislation to ban imports made by child labor from entry into the United States. Fearing passage of this bill, the Bangladesh garment manufacturers abruptly fired 50,000 child workers.

Unfortunately, firing the children from the manufacturing centers meant they were forced to look for other work. Many went to work as brick-makers or fish processors, using more dangerous equipment that exposed them to even more risks. Through the hard work of Ambassador Merrill and human rights groups, an historical memorandum of understanding was signed by the Bangladesh garment manufacturers, the International Labor Organization and UNICEF on July 4, 1995.

As a result of this agreement, children are moving from factories to schools while they receive a monthly stipend. The Bangladesh garment manufacturers, UNICEF and the ILO, the International Labor Organization, all contribute to a fund to build schools and educate these children, and that is the solution. That is what we have to be doing. They pay the children one-half of what they would have made in the garment factories.

It is working. We can make progress. We need to be making that kind of progress in other countries. It is wrong to continue exploiting over 100 million children per year.

Mr. Speaker, I appreciate the time. I appreciate my colleague, the gentleman from California [Mr. CUNNINGHAM] having the patience to wait through this. I would urge my colleagues not only to cosponsor the legislation on human rights for children, but to get involved in this issue seeking a long-term solution.

#### CHINESE COMMUNIST COMPANY COSCO IS THREAT TO UNITED STATES NATIONAL SECURITY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from California [Mr. CUNNINGHAM] is recognized for 30 minutes as the designee of the majority leader.

Mr. CUNNINGHAM. Mr. Speaker, my friend from Virginia [Mr. MORAN] just talked about human rights and he makes many, many good points, and I support the gentleman's assessments.

Let me say that I would ask the gentleman to support us, the attorney general from California and all of the police chiefs in the State of California, and I am sure there are other States that are affected. They brought some pretty gruesome pictures of children being imported from Mexico, we are talking 7-year-olds, 8-year-olds, 9-year-olds and teenagers, across the border to serve in methamphetamine labs across the United States.

One out of four of these exploded in fires, and they had grizzly pictures of these children burned. Not over a period of weeks or months or years, but these children are dying within minutes of breathing in the fumes and the chemicals of methamphetamines.

I will work with the gentleman. We do not have to look very far, and I understand that, yes, there are human

rights violations like these, but even within our own borders. I think it is criminal, and we ought to do everything we can to stop it.

Mr. MORAN. Mr. Speaker, if the gentleman would yield, I thank the gentleman for his concern, which I know is very sincere and his commitment to do something about it. I thank the gentleman.

Mr. CUNNINGHAM. Let me just say briefly, Mr. Speaker, that the gentleman that spoke before, the gentleman from Virginia [Mr. MORAN] talked about the Republicans destroying the environment; and I would like to make just about 30 seconds' worth of comments.

The gentleman has a right to his opinion, only he states it as fact, and I would say that the gentleman is factually challenged. He has a right to his view, but those from the left that would take all the power in Washington, DC, and control that power, whether it be environmental, whether it be education, whether it be private property, whether it be religious beliefs, and control it within the walls of this body, I disagree with.

Let me give a classic example. The Superfund, which was created to clean up toxic wastesites, over 70 percent of the dollars that we allocate to clean it up go to trial lawyers in litigation. What we are saying is that over 85 percent of the cleanup of these Superfund sites is done by the State and the people within that State.

Now, it is up to your opinion, Mr. Speaker, whether having the money and having it wasted here in Washington, DC, over 70 percent are getting 90 percent of the dollars down to the State, who actually does the cleanup, and focusing the money on the problem instead of bureaucracy. There are two different views there.

The EPA, the dollars go to over 50 percent of the bureaucracy, and we believe on the Republican side, with many of our colleagues on the other side, that it is more important to get the dollars to clean up clean air, more important to get the dollars out of those that pollute the air, and support this country.

With those comments I would like to move on to the title subject tonight, Mr. Speaker. I want to talk about COSCO. Not Price Club, Mr. Chairman, as we know it, not Costco or Price Club, as many Americans know it, but the China Ocean Shipping Company owned and controlled by only one CEO, chief executive officer, and that chief executive officer is Communist China itself.

There is no board of directors, there are no bosses above COSCO or these other corporations set up by Communist China. They all answer and are directed, and if they do not, one can imagine the consequences.

What I want to speak to tonight is that recently, within the last couple of days, a judge, just the day before yesterday, agreed to examine the validity

of the lease made by the Port of Long Beach to a shipping company owned by the Communist Chinese Government.

This is what the COSCO president, a Communist Chinese, says about its shipping company: Call the charges totally false. A handful of U.S. individuals with ulterior motives have made use of the media to fabricate reports that have gravely injured the reputation of COSCO.

In the same article, the newspaper article, and I quote, COSCO's past problems, however, have given its critics ammunition. Six of these ships were cited for safety violations by our Coast Guard last year and considered unsafe. A COSCO ship, owned by Communist China again, recently plowed into a New Orleans dock in December, injuring 116 people. Customs officials found over 2,000 AK-47's being smuggled into Oakland last year by COSCO. The company that makes the AK-47's, the company that distributes the AK-47's and COSCO are all controlled by the same chief executive officer: Communist China, Mr. Chairman.

They also brought in two ships. I remember in the press this year where we had two shiploads of illegal Chinese trying to enter the United States. Mr. chairman, those were COSCO ships.

Now, supporters in the administration will tell us that one of those ship's registrations had expired and they went and asked Communist China, is that still your ship? Well, that is like if I had a car and drove it into Mexico with a load of cocaine and it did not have registration, but it was my car and the Mexican Government came back and said, hey, DUKE, is that your car? I am not going to say, sure, that is my car.

Well, Mr. Speaker, I think common sense should prevail.

This is the same company, Mr. Speaker, that shipped nuclear weapons components to Pakistan. This is the same company, Mr. Speaker, that is shipping chemical and biological weapons to North Korea, to Iran, to Iraq, to Syria, and yes, to the Mujahedin, Hamas, and Bosnia, which impacts the safety of every American citizen and free world citizen in this world. We disagree with the Communist Chinese taking over and controlling a United States port.

There is currently, Mr. Speaker, an FBI report reported to us by intelligence. It is current, and it states that as of today even, the Communist Chinese, through COSCO, are deploying both industrial spies and national security spies into every port, whether they are a tenant or whether they control it. that, to me, Mr. Speaker, is a national security threat and must be examined.

I would state that Councilman Roberts from Long Beach said, it broke our hearts when the Navy made its decision to leave Long Beach. This has been an incredible struggle for the city.

Mr. Speaker, Long Beach has lost thousands of jobs. Why? The President's extreme defense cuts and the ad-

ditional BRAC process, base closing process, closed Kelly Air Force Base in California. It closed El Toro Base in California, it closed Long Beach Naval Shipyard in California, it took out the training center in San Diego and has devastated over 1 million jobs in the State of California, Mr. Speaker.

We vowed to the people of Long Beach and those other cities that have been devastated by those cuts by the administration that we will do every single thing we can to help, but not at the cost of letting and having a national security threat, a known threat to this country, the Communist Chinese. Even though we are involved in trading negotiations, to think that they are our ally or our friend, in my opinion, is foolhardy.

□ 2000

What is that opinion based on? That opinion is based on my service on Seventh Fleet staff, responsible for all Southeast Asia exercises and defense of those countries, including planning the invasions of those countries in time of war. It also was gained at Naval Fighter Weapons School, and planning the invasions and defense of those countries.

Just today in the newspaper, Mr. Speaker: "Geneva—After an intense lobbying campaign marked both by threats and tantalizing promises, China succeeded once again yesterday in blocking U.N. criticism of its human rights record."

The gentleman from Virginia [Mr. MORAN] spoke of children being in slavery, and used. It is also done in China, not just India and other countries, Mr. Speaker.

If we take a look at the threat, when that U.N. resolution was blocked by Communist China through threats, they followed through with that threat. Here is another article in today's paper: "U.N. consideration of resolution condemning its human rights record." "The Chinese government took diplomatic retaliation against Denmark for sponsoring the measure," just for sponsoring and speaking their feelings.

"Accusing the Danish government of hurting the feelings of the Chinese people, China announced that it will suspend bilateral state visits with Copenhagen. The motion urged China to relax controls on freedom of expression and religion and release political prisoners, and improve its judicial system." yet China retaliated against a country that expressed its opinion on human rights.

We look at the terrorism threat in Bahrain, shipped in by Cosco and the Communist Chinese. We look at the murders that took place in Germany and France and England and the World Trade Center. Many of these materials were shipped by Cosco ships to the terrorist countries that are a direct threat. We look at North Korea, threatening withdrawal from the nuclear agreement with the United

States. Cosco also delivers nuclear weapons materials to North Korea.

I would say, Mr. Speaker, that why would the people of Long Beach, some of them, and many do not, but we are getting calls every day from all over the United States and all over the world in outrage of this country allowing a Communist Chinese-run shipping company to take over the port.

But if we take a look at the devastation that has gone on in these bases and with these people, they are worried about putting bread on the table, about putting their children through school. They are concerned. So are we, Mr. Speaker.

I would say that President Clinton took a personal role in promoting the interests of Cosco, and at the same time he was cutting over 100 warships out of national security for this country. That is a 23 percent cut. The symbolism could not be made more stark. Richard Fisher, a senior policy analyst of the Asian Studies Center, noted the real, very real security concerns of the Long Beach deal in a Washington Times column of April 3rd.

His main point is given: "If it so desires, the Chinese leadership can direct that Cosco's assets be put at the disposal of the Peoples Liberation Army (the PLA), or the main espionage organ, which the FBI has reports that it is currently doing, the Ministry of State Security, the MSS \* \* \*. Do we really want a subsidiary of the Peoples Republic of China to have such a large presence" in the port?

Mr. Speaker, Cosco has had a position at Long Beach for many years. I have no problems with that. They can be a tenant and I will not object, Mr. Speaker. But to give a Communist Chinese-operated shipping company, with its past violations, full access, and they control everything that comes into the port, they control who sees what containers that go out in the middle of the night, they control what goes out of this country. Mr. Speaker, they will ship in illegals, they will ship in illegal arms, they will ship in intelligence officers, as they do around the rest of the world. We must be vigilant, Mr. Speaker, on stopping that.

Russia told the United States, air defense arms are not sold to Iran, but we find out, yes, they are. I think if we have a bright star in the Clinton administration, it is Madeleine Albright, because I would say, Mr. Speaker, that she is tough, and I think that this gentlewoman has the pizzazz, if you want to use that word, to stand up for American workers' rights.

I would say, Mr. Speaker, that under Republican administrations and under Democrat administrations the weakening of our foreign policy has been our State Department. They will not stand up for our workers' rights, and I think Madeleine Albright is the person to do that.

Let me give the Members a quick story. When the world first started trading with China, with sails and

wooden ships, and this is a true story, Mr. Speaker, one of the sailors from a ship threw over a bucket on a line, and it so happened that there was a sanpan down below it, and it impacted a lady, by mistake, on the head, and it killed the lady.

The Chinese, much like in the movie "Sand Pebble," stormed the ship and tried to take the sailor off the ship. The crew stood with arms protecting the sailor, and would not let him go off the ship, because the Chinese wanted to execute the individual right there. They waited three days. The Chinese emissary came back to the ship and threatened the fleet, to withhold all trade to those fleets.

That day the fleet gave over that sailor, Mr. Speaker, and the Chinese executed him, for an accident. So many times when our countries are threatened with economic power of foreign countries, our State Department does not stand up for our rights, does not stand up for our workers, and we need to be more vigilant in that.

I believe in trade. I supported NAFTA. I supported GATT. But all of our fears on both sides of the issue were that we would not make it be fair trade, and more and more we are finding that that in some cases is the case.

I have an article here that says "Marines Lost Bid for Site to China Cosco Firm." The United States Marine Corps wanted the facility at Cosco, and the Clinton administration allowed it to go to a Chinese Communist-controlled company. As Members know, as the Chinese Ocean Shipping Company, Cosco, while it is true that Cosco has been a tenant at Long Beach since 1991, the agreement would turn over 145 acres.

It was a Cosco ship *Empress Phoenix* that shipped in the 2,000 AK-47 automatic rifles into San Francisco base a year ago. Mr. Speaker, these are the same type of weapons that were recently used in Los Angeles in the bank hold-ups which placed in jeopardy the lives of our law enforcement agencies. Yet, the President says, I do not want any assault weapons in this country. These are truly fully automatic weapons of war and assault weapons. There was a shipment of M-2's that we recently stopped at the border in San Diego, fully automatic weapons. We need to stop that, Mr. Speaker. The Chinese regime is not a steady United States ally.

On July 24, 1996, the U.S. Times reported warnings by the former United States Ambassador Charles Freeman quoting a Chinese official that China could intimidate Taiwan because United States leaders would care more about Los Angeles than they do Taiwan.

What was that about? Remember when China fired missiles at Taiwan this last year? When the United States fleet started going through the straits, Communist China responded with a nuclear threat on the city of Los Angeles, and made the statement, "Do you pre-

fer Los Angeles more than you do Taiwan?" And do you think that Taiwan is a possible conflict in the next year? Absolutely, it is.

With American aircraft in the straits, the Chinese official had conveyed an anonymous message to Tony Lake, Anthony Lake, President Clinton's national security adviser, that American interference in Beijing's effort to bring Taipei to heel would result in a devastating attack on the city of Los Angeles. Yet, we are going to allow this same Communist control in Long Beach Naval Shipyard. The San Diego Union Tribune, 3/31/96.

Mr. Speaker, the Panama Canal, one of the most strategic locations in the world for the United States, the Panama Canal, that we paid for with blood and sweat and tears and American citizens digging the canal, was recently turned over to Hutchinson, out of Hong Kong, a controlled Chinese Communist country, both ends of the Panama Canal.

Now, why? The major export to China from the United States is wheat. Why do they not go around the horn? For the same reason sailors have not for 200 years, especially with cargo ships, container ships: The weather. They go through the Panama Canal. Yet the Chinese took over control of both ends of it.

The major export port for wheat going to China is where? Guess where, Mr. Speaker? Long Beach Naval Shipyard. They will control price-fixing of our agriculture interests. They will not only have a national security threat, they will have an economic threat to this country.

In the President's budget, he just gave \$50 million to Communist China. Maybe \$50 million is not very much to a lot of people, but it is to most. In his budget he cut impact education aid, but he gives \$50 million to the Communist Chinese for a coal-burning plant in Beijing.

The President also gave China, after the elections, over \$100 million to build Cosco ships in a non-recourse loan to Communist China, a loan to Communist China which takes away our Title XI money for our own shipbuilders to build American ships. Those same ships are not going to be sailed by U.S. sailors, they are going to be sailed by Chinese sailors. Those exports, under the control of price-fixing, will go out of the United States.

That is what I talk about regarding our State Department, Mr. Speaker. If we do not speak from a position of strength, instead of a position of weakness, then the United States and America loses again, just another reason why we are in opposition to this move.

Johnny Chung, a Chinese American businessman from California, gave \$366,000 to the DNC, the Democratic National Committee, that was later returned on suspicion it illegally came from foreign sources. Guess what? Mr. Chung brought six Chinese officials to the White House last year to hear

President Clinton make his weekly radio address.

Mr. Speaker, guess who two of those guests were: The person that owned Cosco, how Chinese shipping was set up, he was the head of it, controlled by Communist China. And one of the others was the very gun runners that smuggled in 2,000 AK-47's into the United States, and after being caught they were penalized and put in prison. Do you know why they were putting the AK-47's into this country? To disrupt our inner cities in the United States, and to go to our gangs.

The M-2's going to Mexico, during the next 90 days Mexico has critical elections. Do we want a left-wing Communist legislature in Mexico City? No. We want a pro-American, we want a pro-reform Mexican legislature, and not to have some Communist country disrupt the elections of countries next to us, whether it is Mexico or Canada.

□ 2015

On the campaign trail last year and in a White House meeting in 1995, President Clinton endorsed a proposal to transfer Long Beach Naval Shipyard to COSCO. A COSCO adviser was among the Chinese businessmen invited to hear the President in the Oval Office.

Over the past year, a COSCO ship recently plowed, if you remember, Mr. Speaker, it was a COSCO ship that totally destroyed the pier in New Orleans. Not only shipping two shiploads of illegal aliens, they are not only shipping in AK-47's, they have not only been violated six times by our Coast Guard, they took out an entire pier, injuring over 116 people, causing millions of dollars in New Orleans and declared unsafe. This is the company that we want controlling and having access within the United States? Mr. Speaker, in my humble opinion, that is ludicrous.

We want to make it clear, as the Heritage Foundation, Asia analyst, Richard Fisher said, increasing trade with China should not be pursued at the expense of U.S. national security. We believe there is enough evidence of these COSCO transactions presenting a threat to U.S. national security, particularly when the Clinton administration has been intimately involved throughout, that Congress should exercise its responsibility with prudent and robust oversight.

We plan to do so, Mr. Speaker.

Mr. Speaker, I think that if the United States does not get involved in trade, including with China, that economically we are going to die. But as many Members on both sides of the aisle are afraid of, that should be fair trade, not trade with the United States having the largest, largest trade deficit in the world with China.

We want fair trade. We want the Chinese and our State Department, along with the President, must demand, not should demand, must demand that, first, that Christians quit being abused

in Communist China, that weapons to our enemies, our real enemies, terrorists of Iran, Iraq, Syria, and North Korea cease now, that they quit supplying areas like Bosnia that can be used against our troops, that they quit shipping in weapons to nations close to the United States like Mexico, that the human rights violations be moved on, not thwarted in the United Nations with threats to other countries. And that is another reason, Mr. Speaker, that the United Nations should be and must be changed.

The Speaker of the House, NEWT GINGRICH, was correct in his recent trip to Asia and China. He said that perhaps one of the first signs that China can make is how the handling of the turn-over of Hong Kong to the Communist Chinese looks. The next step should be its policy toward Taiwan as a free nation. And yes, I think that our State Department and our President need to focus on the trade deficit, not only with China but other countries as well.

As the gentleman from Virginia [Mr. MORAN] said, its utilization of children, we are not talking teenagers, Mr. Speaker, we are talking about 5- and 6- and 7-year-olds working 14 hours a day just to survive for a handful of rice. And then guess what? Those products come to this country, but our businesses out of business because we cannot meet that labor cost.

We need to take a look at Long Beach and the biodiversity that the interest groups are currently looking at, including the Audubon Society, Mr. Speaker.

I would be happy to sum up by saying that I will not object to Long Beach having COSCO or other nations as a tenant, but, Mr. Speaker, let us not give them control and complete access of a former national security base, not with the record of COSCO, not with the current threat from the Chinese Communists who just increased their defense by 30 percent and bought 250 SU-27's, which are better than our F-14 and F-15 Strike Eagles, our aircraft, and not with the current China shipping arms to our enemies.

Let us be tough. Let us talk softly and carry a big stick, Mr. Speaker. But when the time comes, I would ask the President, the State Department, and this body to be able to speak with a strong voice and be willing to use that stick. And God bless America.

#### PRIDE IN THE SPEAKER

The SPEAKER pro tempore (Mr. METCALF). Under the Speaker's announced policy of January 7, 1997, the gentleman from Florida [Mr. SCARBOROUGH] is recognized for 30 minutes as the designee of the majority leader.

Mr. SCARBOROUGH. Mr. Speaker, I want to speak on an issue that is not only important to me but also I think very important to this Chamber and also very important to the people of America.

I could not help but take note of the statements of our previous speaker, the gentleman from California [Mr. CUNNINGHAM] on the problems that we are having right now with China, with the influence peddling.

Of course, Mr. CUNNINGHAM brought up some very good points but also some very disturbing points about possible influence that Communist Chinese have been seeking in the United States of America.

We, of course, have been reading with horror over the past few weeks some of the concerns about investigations of people looking into scandals on whether this White House actually sold access to the Communist Chinese. That is something that we all have to be paying very close attention to, especially in this body, because of the constitutional role that we play, the oversight that we play. Nothing has been proven yet. I think that is very important to say. But at the same time the gentleman from California brings up some very good points and some points that we have to be concerned about.

I do want to say that one of the things that has disturbed me over the past few months, as we have been talking about some of the scandals that have been arising concerning the dealings with China and concerning other scandals that have just been absolutely horrifying to me as a United States Representative and as an American and as a father, are some of these moral equivalency arguments that have been trotted out there.

At times we have been told that the possibility of selling access to China, the possibility of a lot of these other things that have been going on somehow is morally equivalent to what the Speaker was charged with earlier. I have been outraged for quite some time at that, because history will plainly show, and the Speaker's critics certainly know this even though they make disingenuous arguments, that there is no moral equivalency.

The Speaker submitted 50,000 documents to the Ethics Committee, told the truth in those documents, but the fact is that one of those 50,000 documents contradicted another statement that he had made in the document production to the Ethics Committee. Because of that, he agreed to a fine that today he decided to take care of.

Let me just say that I am here today to praise the Speaker of the House for what he decided to do in bringing, I believe, honor on this House. I can tell you right now, the Speaker and certainly others know that I have always spoken my mind when addressing the Speaker of the House.

Two weeks ago, I did it in a very, very public way, in a very public confrontation. And I even suggested that if things did not change regarding the direction of the House leadership, that we might have to look in new directions. I have been very pleased with what has been going on for the past few weeks, but I also have said that if

things go wrong again in the future, I will speak my mind again.

So tonight I come here not as a mindless cheerleader of the Speaker, not as a political lap dog or a party line parrot, but instead as a U.S. Congressman, as an American citizen, and as a father who is proud of what the Speaker of the House did today.

I believe in his actions today that his character really did shine through, and it is so difficult teaching my two boys about character when there seem to be so few people in public view that seem to be worthy of emulating. But when I teach my 9-year-old boy, Joey, and my 6-year-old boy, Andrew, about accountability and personal responsibility and stepping up to the plate and looking somebody in the eye and being straightforward with them and taking full accountability, I will give the example of what the Speaker of the House did today on April 17, 1997.

I wanted to read a release that talks about what he did. It said, in an example of accountability, NEWT GINGRICH announced that he will reimburse taxpayers in full, using \$300,000 of his own personal funds. In order to fulfill his promise, GINGRICH has secured a loan from Bob Dole to be repaid in full in a timely manner. The Speaker said, my wife and I, Marianne, decided that whatever the consequences, we had to do what was best, what was right, morally and spiritually. We had to put in perspective how our lives had been torn apart by the weight of this decision. We had to take into account the negative feelings that Americans have about Government, Congress, and scandals. We had to take into account the responsibility that the Speaker of the House has to a higher standard, and that is why we came to the conclusion of our own choice, without being forced, that I have the moral obligation to pay the \$300,000 out of personal funds and that any other step would simply be seen as one more politician shirking his duty and one more example of failing to do the right thing.

Now, let me just say that as a practical matter, I do disagree with what the Speaker did today. But let me qualify that. I disagree because of the precedent that it might set. But at the same time I am very proud that he recognized that it might set a bad precedent in the future and, therefore, he wants to bring about a resolution that would take care of that, but, more importantly, for he and his wife and his family's future, this could have some very devastating consequences. But he decided that at this point in history, that it was the best thing to do, not for himself, not for his party, but for the U.S. Congress and for America.

We do live in a very, very cynical age. I am absolutely horrified when I read accounts in the newspaper of how Americans believe that White Houses have always sold access to the Lincoln bedroom. I am absolutely shocked when I hear that Americans believe

that Presidents have always sold access to Air Force One and used it as a reward.

I am horrified when I hear that Americans actually believe that everybody does it, that everybody sells access, that everybody is willing to open themselves up to foreign influence, that everybody is willing to possibly change foreign policy based on money coming in.

That is not the case. No other administration has ever done things to the level that this administration has. And that is an undisputed fact.

□ 2030

I think that had to weigh heavily on the Speaker's mind, because when the Speaker of the House came forward and made his decision, it was not something he had to do.

The Committee on Standards of Official Conduct, in fact, told him he could repay it any way he wanted to under certain guidelines, that it did not have to come out of personal funds.

In fact, if you look back to the history, the 200-year history of the House of Representatives, the fact that he was even fined for this mistake, for this technical error, and that is what it was, is unprecedented, has never occurred before, and the only time that someone is to pay based on a mistake is when that person made a financial gain because of ethical violation.

And not one person has been able to come forward with a straight face and say that the Speaker of the House gained one penny based on his attorney's technical error.

Mr. CUNNINGHAM. Will the gentleman from Florida [Mr. SCARBOROUGH] yield for one moment?

The gentleman I think has mischaracterized the term "fine" with a voluntary payment, and the Speaker has stated that the Committee on Standards of Official Conduct attempted to put a fine, that he would have fought it in court if it was a fine.

Mr. SCARBOROUGH. And I certainly do apologize for that. That is just like last year when we heard the radicals on the left talking about cuts, cuts, cuts, cuts, cuts and actually we were increasing spending on Medicare, increasing funding for school lunch programs, increasing funding on just about every program that you can increase funding on except for military programs. Of course, the leftists, the radicals called those cuts and in fact they were not cuts, and I made a similar mistake here because there was not a fine, the Speaker was simply going to reimburse the American taxpayers for the investigation.

Something else happened today, and it encouraged me, and this was that Senator Bob Dole stepped forward and decided that he wanted to help the Speaker out any way he could and offered to loan him the money with interest because that needed to be done for technical reasons. But Bob Dole, the former Senate majority leader, 1996

Republican Presidential nominee, issued this statement today.

I applaud the decision by the Speaker beginning to pay with personal funds and taking responsibility for his actions and making this difficult decision despite other options for payment. He has yet again shown himself to be a man of integrity. And let me tell you that is coming from a man of incredible integrity himself as a senior leader of the Republican Party. I am pleased that our highest ranking official has chosen to set an example of accountability and ethics for the Nation through his words and action. For that reason and many more NEWT is a friend, and I am pleased that I can be of assistance.

I consider this not only an opportunity to support a friend but a long-term investment for the future of our party that today we bring this story to a close. An ever united Republican Party moves forward with his positive vision for the next millennium, as articulated by one of our most effective leaders NEWT GINGRICH. It certainly was a great statement from a great man.

Today there was another statement from NRCC Chairman JOHN LINDER, who said that the Republican Party of the majority will now move forward. NEWT will lead us to our goals of balancing the budget, improving safety for our schools and communities, saving Medicare and providing tax relief for all Americans. But he ended with an ominous warning.

He said, knowing that the American people side with our ideas and our ideology, the Democrats will have nothing to do but fall back on vicious attacks.

I have got to say, unfortunately, before the ink was dried on that statement the vicious attacks began in this Chamber. I was disheartened to see that they decided since they could not attack the Speaker because the Speaker had not only abided by the law but had gone well beyond what the law required, that instead they would viciously smear the great name of Bob Dole.

They attacked an honorable man who fought in World War II and almost gave his life to free Europe from the Nazis. He left part of himself on the fields of Europe. He went on to fight through years of physical struggle and still, even through his physical struggle, served America for over 40 years.

In fact, this President himself gave Bob Dole the highest honor that the United States of America can give to any citizen. But he was savagely attacked today by desperate, vicious minorities who will do anything to seize power, the minority. The minority party has done it before. They will continue to do it.

It was interesting today, though, that the architect of the attack was none other than the man who a few years back said we will do anything we can do to destroy NEWT GINGRICH because we know that NEWT GINGRICH is

the nerve center of the Republican Party and the conservative movement. He said that himself, and he continues to prove just how desperate the Democratic Party, let me say the radicals in the Democratic Party are.

You see, over the last 2 years they have filed 81 ethics charges against the Speaker. Eighty have been dismissed. This one technical violation based on a mistake by the Speaker's attorney is the only ethics charge that he even had to acknowledge. Eighty out of eighty-one have been dismissed.

I have got to say if one ethics charge was filed against me or other Members of this Chamber, it would be devastating. I just cannot imagine going through week after week after week, 81 charges.

If that is not bad enough, the unions, radicals on the left and other organizations, spent over \$100 million vilifying this man, who they say is the nerve center of the conservative movement.

Mr. Speaker, I just cannot imagine what it would be like to have 81 ethics charges filed against me over 2 years, have \$100 million spent to personally try to destroy me, and how could I continue to fight.

I have got to tell you, everybody in our party has said that if that happened to any of us we probably would not have the stamina to go on. I do not know how anybody does it. He has been vilified in a way that no other American has been vilified in the past quarter century, and yet he continues.

From the first day, the gentleman from California I am sure can illuminate some facts on this, too, the first day the attacks began and they continued unabated. In fact, before he was even sworn in ever as Speaker, Time magazine ran a cover story and they had a cartoon of him dressed up as a Gingrich and the title was "The Gingrich that stole Christmas." Now, this was before he was even elected Speaker of the House, "The Gingrich that stole Christmas."

Do you know what is so frightening, what is so dangerous about what he said he wanted to do, that it would destroy the radical left's grip on power in Washington, DC. This is all about power because what did he say he wanted to do? He wanted to cut taxes for middle class Americans and what did that do? That took money out of Washington, DC, out of the hands of politicians, out of the hands of bureaucrats, out of the hands of Washington power brokers and returned it back to middle class families like mine, like yours, and like others. He wanted to pass a balanced budget amendment.

That was called radical. And yet, we are \$5.6 trillion in debt. That is the debt, my colleagues, that will be passed on to our children and our grandchildren, my boys, and your children.

These were not radical concepts. They were not radical concepts, unless you were a radical who believed that we could continue to tax Americans over 50 percent for every dollar that

they earned and you believed that a \$5.6 trillion debt was a debt that was sufficient enough to pass on to our children.

And you know, the Medicare demagoguery was the worst of all. The President's own task force said that Medicare would be bankrupt in 5 years.

The Speaker, I think, did an incredible job in trying to put together a plan that AARP and others could agree on; and yet, he was vilified, again, by attack ads, by Members on the left.

When you had the Washington Post saying it was a good idea, that the Democrats were engaged in demagoguery, you had the New Republic, which is usually a left wing magazine, saying that the Speaker was right, that he showed courage in trying to save Medicare, and you had Ted Koppel on "Nightline" run an entire show called "Mediscare," talking about how the President had proposed similar reforms a few years ago before the Speaker did.

And yet, the President turned around with the help of the unions and those on the left and savagely attacked the Speaker for trying to save Medicare for my father, who just had a double bypass operation, for my mother, for my grandparents, and for my other elderly friends and constituents.

I hope that this will end. I hope that we can move forward as a country, and I certainly hope that this horrible chapter is over in the life of the Speaker because he conducted himself very honorably today. And I can say today that I am very honored that we did elect him again as Speaker of the House.

I yield to the gentleman from California [Mr. CUNNINGHAM] who I know has some comments on his dealings with the Speaker.

Mr. CUNNINGHAM. We have all worked for people that we respect and believe that have vision on both sides of the aisle. And I would like to state that we had our Republican Caucus just before the decision was made about the Speaker and before the Speaker made the decision to come forward to the body.

The Speaker's own legal advisors, the special prosecutor that looked into the allegations, came before the caucus and told the Speaker that if he wanted to fight every one of the allegations in that one ethics violation that he would win 100 percent, he could fight them and he would win because they had no basis.

And yet, the left leadership of the Democrat Party wanted its pound of flesh and, for them to give us a bipartisan agreement, had to have the extra pound of flesh and the Speaker had to agree to pay the \$300,000.

Knowing that he could win, why would not the Speaker do it? Because on both sides of the counsel, they told him, Mr. Speaker, you will win, but at what cost; and what the gentleman just covered, we would have been in the year of disruption, with the Democrats demagoguing, with the Democrats at-

tacking and partisan rhetoric, because they want the power here in Washington, DC.

And the Speaker's vision is what the gentleman from California was talking about and swore to destroy the Speaker because he was the leader of the Republican Party, the gentleman from Florida that did the same thing. And the leadership has sworn to destroy politically the Speaker, because he is so effective.

I would say to the gentleman, that is wrong; and I think the American people think it is wrong, too. But in the face of that, when you look at leadership, in the face of attending to the people's business of saving Medicare, of providing Medicaid, and balancing a budget and tax reform and revising Superfund, where 70 percent does not go to trial lawyers, and attending to this House and its functions, the Speaker elected not to disrupt the House, not to have this House disabled because of partisan attacks, and went through personal sacrifice.

As the gentleman from Florida [Mr. SCARBOROUGH] said, how many of us could go through a \$300,000 voluntary settlement? That is a mansion in a lot of areas. It takes a long time. I could not pay cash for it, and it would be devastating.

So when we talk about leadership, I think it is important to see the Speaker's vision that even at the expense of his own personal family and Marianne, his beautiful wife, making those decisions right with the Speaker, and which he blessed today, I think it is important for the American people to see that.

I would also like to remind the Speaker here tonight that the gentleman from Missouri, the minority leader of the Democrat Party, had ethics violations that filed improper IRS returns that benefited him personally and was found to have ethics violations.

□ 2045

How did he pay his fine, quote? Out of his campaign funds. But yet the speaker choose not today do to that because the Speaker of the House should be held high, and he takes full responsibility. That to me, Mr. Speaker, is leadership. That is vision, and that is wisdom.

Today the gentleman had talked about the gentleman from California attacking the Speaker, the same gentleman that had vowed to destroy the Speaker only last year, and he said that he will do anything he can to remove the political strength of the Speaker.

Is that what the American people want on this body? I do not think so.

The same gentleman from California attacked then Bob Dole, as the gentleman mentioned. Is it not a shame that the gentleman from California will never ever reach the heights of the accomplishments or the values and the respect of the gentleman from Kansas,

Bob Dole, and neither will he ever lead this body or have the vision of the Speaker of the House today, NEWT GINGRICH.

And I think it is important to just let me go through real quickly, unless you have something you would like to talk about, I would like to go through just a few quick points and just mention them.

This is what the liberal left stands for in this body, the abolition of private property and land and application of all rents and lands to public purposes to be controlled by the Government. A good example: San Diego County, the Government owns over 54 percent. Many States have over 80 percent of it owned. A heavily progressive or graduated income tax. Abolishment of all rights of inheritance, i.e. the death tax. Confiscation of the property of all immigrants and rebels to centralize the credit in the hands of the government by means of national bank with State capital and exclusive monopoly; i.e., Medicare. The centralization of the means of communication and transport in the hands to the State. The extension of factories, an instrument and production owned by the State bringing into cultivation waste lands and soil into government control. Equal obligation of all to work and the establishment of industrial armies, the unions. The abolition of the distinction between town and country, only the government. Free education for all, but yet controlled by the government. Class distinctions and class warfare to achieve it. Political power, property, properly so-called is merely the organized power of one class for oppressing the other.

I would State, Mr. Speaker, and to the gentleman that yielded his time, I am reading from the Communist Manifesto by Karl Marx and Friedrich Engels.

Mr. SCARBOROUGH. Reclaiming my time, I thank the gentleman for his remarks on the Speaker, and certainly those final words do give us a moment to pause and consider that this is not a personality war, this is a war of ideas, war of ideas on who is going to control this country in the 21st century. It is going to be the Federal Government getting larger and larger, or are we going to finally go back to the ideals of Jefferson and Madison who said that the government that governs least governs best, or the ideals of Madison who said we have staked the entire future of the American civilization not upon the power of government but on the capacity of the individual to govern himself, control himself and to sustain himself according to the Ten Commandments of God.

It is a war of ideas, a war that is being waged the way Americans wage wars, at the ballot box and in the halls of congress, and that is the genius of democracy that was passed to us from the Greeks and through the Romans, through the British empire up to the United States of America.

And today as I stood here, which is the epicenter of freedom, a center that will ring throughout the ages, and I saw the Speaker of the House today step forward and give a splendid example of personal responsibility, I was proud not only to be an American but to be a Member of this Chamber.

And I certainly was hoping that my children were watching on TV. It was a splendid speech. And the minority leader of the Senate, a Democrat, TOM DASCHLE, also applauded the speaker and said that he thought that the Speaker had done what he needed to do. And I also looked across the Chamber at my Democratic friends, and I saw several good Democrats who applauded the Speaker, who even gave him a standing ovation because they knew that, like I, that this was a moment that transcended mere politics, mere party labels, mere ideology, and instead, we were not looking at the leader of a political party but a man who was going to be a leader of a movement that will take us well into the next century.

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. HARMAN (at the request of Mr. GEPHARDT), for today after 3 p.m., on account of official business in the district.

Mr. COSTELLO (at the request of Mr. GEPHARDT), for today, on account of an illness in the family.

Mr. CRANE (at the request of Mr. ARMEY), for today, on account of illness.

#### 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. GOSS) to revise and extend their remarks and include extraneous material:)

Mrs. KELLY, for 5 minutes, today.

Mr. MCINTOSH, for 5 minutes, today.

Mr. GOSS, for 5 minutes, today.

Mr. CHRISTENSEN, for 5 minutes, today.

Mr. HUNTER, for 5 minutes, today.

Mrs. MORELLA, for 5 minutes, today.

Mr. JONES, for 5 minutes, on April 23.

(The following Members (at the request of Mr. PALLONE) to revise and extend their remarks and include extraneous material:)

Mr. MALONEY of Connecticut, for 5 minutes, today.

Mr. RUSH, for 5 minutes, today.

Mr. HINOJOSA, for 5 minutes, today.

#### EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. PALLONE) and to include extraneous matter:)

Mr. LEVIN.  
 Ms. NORTON.  
 Ms. EDDIE BERNICE JOHNSON of Texas.  
 Mr. LANTOS.  
 Mr. LIPINSKI.  
 Mr. HAMILTON.  
 Mr. STOKES.  
 Mr. DOYLE.  
 Mr. NEAL of Massachusetts.  
 Mr. FOGLIETTA.  
 Mr. BARCIA.  
 Mr. SKELTON.  
 Mr. MENENDEZ.  
 Mr. EVANS.  
 Mr. HOYER.  
 Mr. BORSKI.  
 Mr. DELLUMS.  
 Mr. KILDEE.  
 Ms. ESHOO.  
 Mrs. MALONEY of New York.  
 Mr. HILLIARD.  
 Mr. MARKEY.  
 Mr. CLAY.  
 Mr. WEYGAND.  
 Mr. CAPPS.  
 Mr. ACKERMAN.

(The following Members (at the request of Mr. GOSS) to revise and extend their remarks and include extraneous material:)

Mr. GILMAN in three instances.  
 Mr. FAWELL.  
 Mr. ENSIGN.  
 Mr. WALSH.  
 Mr. MCKEON in two instances.  
 Mr. PAPPAS.  
 Mr. SMITH of New Jersey.  
 Mr. PACKARD.  
 Mr. COLLINS.  
 Mr. GOODLING.  
 Mr. FORBES.  
 Mr. YOUNG of Florida.  
 Mr. BAKER.  
 Mr. SOLOMON in two instances.  
 Mr. HANSEN.  
 Mr. RADANOVICH.  
 Mr. EVERETT.  
 Mr. HORN.

(The following Members (at the request of Mr. SCARBOROUGH) and to include extraneous matter:)

Mr. HILLEARY in two instances.  
 Mrs. MORELLA.  
 Mr. SKAGGS.  
 Mr. SMITH of New Jersey.  
 Ms. FURSE.  
 Mr. THOMPSON.  
 Mr. KLINK.  
 Mr. LAZIO of New York.

#### ENROLLED BILL SIGNED

Mr. THOMAS, from the Committee on House Oversight, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 1003. An act to clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide.

#### ADJOURNMENT

Mr. SCARBOROUGH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 52 minutes

p.m.), under its previous order, the House adjourned until Monday, April 21, 1997, at 3 p.m.

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2851. A letter from the Director, Defense Finance and Accounting Service, Department of Defense, transmitting notification that the Defense Finance and Accounting Service [DFAS] is initiating a cost comparison of all Department of Defense [DOD] transportation accounting functions, pursuant to 10 U.S.C. 2304 note; to the Committee on National Security.

2852. A letter from the Secretary of the Army, transmitting notification that certain major defense acquisition programs have breached the unit cost by more than 25 percent, pursuant to 10 U.S.C. 2431(b)(3)(A); to the Committee on National Security.

2853. A letter from the General Counsel, Department of Defense, transmitting a draft of proposed legislation entitled "Revisions to the Appointment of Members to the National Ocean Research Leadership Council"; to the Committee on National Security.

2854. A letter from the General Counsel, Department of Defense, transmitting a draft of proposed legislation to authorize a food cost based basic allowance for subsistence for enlisted military personnel; to the Committee on National Security.

2855. A letter from the General Counsel, Department of the Treasury, transmitting a draft of proposed legislation to authorize the U.S. participation in and appropriations for the U.S. contribution to the 11th replenishment of the resources of the International Development Association, pursuant to 31 U.S.C. 1110; to the Committee on Banking and Financial Services.

2856. A letter from the General Counsel, Department of the Treasury, transmitting a draft of proposed legislation to authorize consent to and authorize appropriations for a U.S. contribution to the interest subsidy account of the successor to the enhanced structural adjustment facility of the International Monetary Fund, pursuant to 31 U.S.C. 1110; to the Committee on Banking and Financial Services.

2857. A letter from the General Counsel, Department of the Treasury, transmitting a draft of proposed legislation to authorize appropriations to pay for the U.S. capital subscription as part of the eight general capital increase of the Inter-American Development Bank, pursuant to 31 U.S.C. 1110; to the Committee on Banking and Financial Services.

2858. A letter from the General Counsel, Department of the Treasury, transmitting a draft of proposed legislation to authorize U.S. participation in and appropriations for the U.S. contribution to the sixth replenishment of the resources of the Asian Development Fund, pursuant to 31 U.S.C. 1110; to the Committee on Banking and Financial Services.

2859. A letter from the Acting General Counsel, Department of Energy, transmitting a draft of proposed legislation entitled the "Powerplant and Industrial Fuel Use Repeal Act"; to the Committee on Commerce.

2860. A letter from the Managing Director, Federal Communications Commission, transmitting the Commission's "Major" final rule—Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Establish Rules and Policies for Local

Multipoint Distribution Service and for Fixed Satellite Services [CC Docket No. 92-297] received April 16, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2861. A letter from the Chair, Federal Energy Regulatory Commission, transmitting the Commission's final rule—Statement of Compliance with Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 [Docket No. RM97-2-000; Order No. 594] received April 7, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2862. A letter from the Chairman, Nuclear Regulatory Commission, transmitting a draft of proposed legislation to authorize appropriations for the Nuclear Regulatory Commission for fiscal year 1998, pursuant to 31 U.S.C. 1110; to the Committee on Commerce.

2863. A letter from the Secretary of Health and Human Services, transmitting the 11th, 12th and 13th annual reports to Congress of the Orphan Products Board [OPB]; pursuant to 42 U.S.C. 236(e); to the Committee on Commerce.

2864. A letter from the Secretary of Health and Human Services, transmitting the Department's "Major" final rule—Individual Market Health Insurance Reform: Portability from Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules [BPD-882-IFC] (RIN: 0938-AH75) received April 9, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2865. A letter from the Director of Congressional Relations, U.S. Consumer Product Safety Commission, transmitting the Commission's annual report for fiscal year 1996, pursuant to 15 U.S.C. 2076(j); to the Committee on Commerce.

2866. A letter from the Secretary of Commerce, transmitting a report regarding highly migratory species, pursuant to 16 U.S.C. 971; to the Committee on Resources.

2867. A letter from the Secretary of Health and Human Services, transmitting the 29th in a series of reports on refugee resettlement in the United States covering the period October 1, 1994, through September 30, 1995, pursuant to 8 U.S.C. 1523(a); to the Committee on the Judiciary.

2868. A letter from the Assistant Attorney General, Department of Justice, transmitting the Department's report on settlements for calendar year 1996 for damages caused by the FBI, the Drug Enforcement Administration, the U.S. Marshals Service, and the Immigration and Naturalization Service, pursuant to 31 U.S.C. 3724(b); to the Committee on the Judiciary, April 17, 1997.

2869. A letter from the Secretary, Judicial Conference of the United States, transmitting recommendations for the uniform percentage adjustment of each dollar amount specified in title 11 regarding bankruptcy administration and in 28 U.S.C. 1930 with respect to bankruptcy fees, pursuant to 11 U.S.C. 104 note; to the Committee on the Judiciary.

2870. A letter from the Secretary, Judicial Conference of the United States, transmitting a draft of proposed legislation to authorize the appointment of additional bankruptcy judges and for other purposes, pursuant to 28 U.S.C. 152(b)(2); to the Committee on the Judiciary.

2871. A letter from the Secretary, Judicial Conference of the United States, transmitting the report of the Judicial Conference of the United States on the Confidentiality of Communications Between Sexual Assault Victims and Their Counselors, pursuant to 42 U.S.C. 13942 (c); to the Committee on the Judiciary.

2872. A letter from the Assistant Secretary of the Army (Civil Works), Department of Army, transmitting the Department's final rule—Danger Zones and Restricted Areas (U.S. Army Corps of Engineers) [33 CFR Part 334] received April 14, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2873. A letter from the Acting Administrator, General Services Administration, transmitting an informational copy of the construction prospectus for the U.S. Secret Service classroom building in Beltsville, MD, pursuant to 40 U.S.C. 606(a); to the Committee on Transportation and Infrastructure.

2874. A letter from the Secretary of Veterans Affairs, transmitting a report covering the disposition of cases granted relief from administrative error, overpayment and forfeiture by the Administrator in 1996, pursuant to 38 U.S.C. 210(c)(3)(B); to the Committee on Veterans' Affairs.

2875. A letter from the Assistant Attorney General, Department of Justice, transmitting a draft of proposed legislation to allow the Director of the Federal Bureau of Investigation to permit Federal Bureau of Investigation employees to participate in leave sharing programs with employees of other Department of Justice components and other Federal agencies; jointly, to the Committees on Government Reform and Oversight and the Judiciary.

2876. A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to reauthorize and make reforms to programs authorized by the Public Works and Economic Development Act of 1965; jointly, to the Committees on Transportation and Infrastructure and Banking and Financial Services.

2877. A letter from the Director, U.S. Arms Control and Disarmament Agency, transmitting a draft of proposed legislation to implement the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as "the Chemical Weapons Convention" and opened for signature and signed by the United States on January 13, 1993; jointly, to the Committees on International Relations, the Judiciary, and 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. BLILEY: Committee on Commerce. H.R. 688. A bill to amend the Solid Waste Disposal Act to require at least 85 percent of funds appropriated to the Environmental Protection Agency from the leaking underground storage tank trust fund to be distributed to States for cooperative agreements for undertaking corrective action and for enforcement of subtitle I of such act (Rept. 105-58 Pt. 1).

#### DISCHARGE OF COMMITTEE

Pursuant to clause 5 of rule X the Committee on Ways and Means discharged from further consideration. H.R. 688 referred to the Committee of the Whole House on the State of the Union.

#### TIME LIMITATION OF REFERRED BILL

Pursuant to clause 5 of rule X the following action was taken by the Speaker:

H.R. 688. Referral to the Committee on Ways and Means extended for a period ending not later than April 17, 1997.

#### 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. BUYER (for himself, Mr. HAMILTON, Mr. MCINTOSH, Ms. CARSON, Mr. PEASE, Mr. BURTON of Indiana, Mr. ROEMER, Mr. HOSTETTLER, Mr. SOUDER, and Mr. VISLOSKEY):

H.R. 1358. A bill to amend the Solid Waste Disposal Act to permit a Governor to limit the disposal of out-of-State solid waste in the Governor's State, and for other purposes; to the Committee on Commerce.

By Mr. DEFAZIO (for himself, Ms. FURSE, Ms. HOOLEY of Oregon, Ms. CHRISTIAN-GREEN, Mrs. MALONEY of New York, Mr. GUTIERREZ, Mr. HINCHEY, and Mr. LEWIS of Georgia):

H.R. 1359. A bill to amend the Public Utility Regulatory Policies Act of 1978 to establish a means to support programs for electric energy conservation and energy efficiency, renewable energy, and universal and affordable service for electric consumers; to the Committee on Commerce.

By Mr. DIAZ-BALART (for himself, Ms. ROS-LEHTINEN, Mrs. JOHNSON of Connecticut, Mr. BONILLA, Mr. KENNEDY of Rhode Island, Mrs. MEEK of Florida, Mr. MANTON, Mr. MEEHAN, and Ms. CHRISTIAN-GREEN):

H.R. 1360. A bill to amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide for an exception to limited eligibility for SSI and food stamps for certain permanent resident aliens who are unable because of physical or developmental disability or mental impairment to naturalize; to the Committee on Ways and Means, and in addition to the Committee on Agriculture, 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. ANDREWS (for himself and Mr. PORTER):

H.R. 1361. A bill to prohibit economic support fund assistance under the Foreign Assistance Act of 1961 for the Government of Turkey for fiscal year 1998 unless that Government makes certain improvement relating to human rights; to the Committee on International Relations.

By Mr. STUMP (for himself, Mr. EVANS, Mr. STEARNS, Mr. GUTIERREZ, Mr. SMITH of New Jersey, Mr. KENNEDY of Massachusetts, Mr. EVERETT, Mr. FILNER, Mr. QUINN, Mr. CLYBURN, Mr. DAN SCHAEFER of Colorado, Ms. BROWN of Florida, Mr. MORAN of Kansas, Mr. DOYLE, Mr. COOKSEY, Mr. MASCARA, Mr. HUTCHINSON, Mr. PETERSON of Minnesota, Mrs. CHENOWETH, Ms. CARSON, Mr. LAHOOD, Mr. REYES, Mr. HAYWORTH, Mr. SNYDER, and Mr. BARRETT of Nebraska):

H.R. 1362. A bill to establish a demonstration project to provide for Medicare reimbursement for health care services provided to certain Medicare-eligible veterans in selected facilities of Department of Veterans Affairs; to the Committee on Ways and Means, and in addition to the Committees on Commerce, 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 Mrs. JOHNSON of Connecticut (for herself, Mr. MATSUI, Mr. RIGGS, Mr. STARK, Mrs. MORELLA, Mr. SHAYS):

H.R. 1363. A bill to provide grants to States to provide uninsured children with access to health care insurance coverage; to the Committee on Commerce, and in addition to the Committee on Education and the Workforce, 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 Mrs. JOHNSON of Connecticut (for herself, Mr. MATSUI, Mr. RIGGS, Mr. STARK, Mrs. MORELLA, Mrs. ROUKEMA, and Mr. MCGOVERN):

H.R. 1364. A bill to provide grants to States to provide uninsured children with access to health care insurance coverage and to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products for the purpose of funding such grants and reducing the deficit; to the Committee on Commerce, and in addition to the Committees on Ways and Means, and Education and the Workforce, 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. ARCHER:

H.R. 1365. A bill to amend section 355 of the Internal Revenue Code of 1986 to prevent the avoidance of corporate tax on prearranged sales of corporate stock, and for other purposes; to the Committee on Ways and Means.

By Mr. BAESLER (for himself, Mr. TURNER, Ms. HARMAN, Mr. BERRY, Mr. BOYD, Mr. CONDIT, Mr. CRAMER, Mr. GOODE, Mr. HOLDEN, Mr. JOHN, Mr. LIPINSKI, Mr. MCINTYRE, Mr. MINGE, Mr. PETERSON of Minnesota, Mr. SISISKY, Mr. STENHOLM, Mr. TANNER, and Mr. BLUMENAUER):

H.R. 1366. A bill to amend the Federal Election Campaign Act of 1971 to reform the financing of campaigns for election for Federal office, and for other purposes; to the Committee on House Oversight.

By Mr. BARRETT of Wisconsin (for himself, Mrs. KELLY, Mr. FRANK of Massachusetts, and Mr. KLECZKA):

H.R. 1367. A bill to prohibit Federal agencies from making available through the Internet certain confidential records with respect to individuals, and to provide for remedies in cases in which such records are made available through the Internet; to the Committee on Government Reform and Oversight.

By Mr. BRYANT (for himself, Mr. CLEMENT, and Mr. TANNER):

H.R. 1368. A bill to provide that Kentucky may not tax compensation paid to a resident of Tennessee for services at Fort Campbell, KY; to the Committee on the Judiciary.

By Mr. BUNNING of Kentucky:

H.R. 1369. A bill to amend the Internal Revenue Code of 1986 to modify the tax treatment of qualified State tuition programs; to the Committee on Ways and Means.

By Mr. CASTLE (for himself (by request), Mr. FLAKE, Mr. LEACH, Mr. GONZALEZ, Mr. BEREUTER, Mr. LAFALCE, Mr. MANZULLO, Mr. BENTSEN, Mr. GEJDENSON, Mrs. MALONEY of New York, Mr. METCALF, and Mr. GILMAN):

H.R. 1370. A bill to reauthorize the Export-Import Bank of the United States; to the Committee on Banking and Financial Services.

By Mrs. CHENOWETH (for herself and Mr. POMEROY):

H.R. 1371. A bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the

country of origin; to the Committee on Agriculture.

By Mr. COX of California (for himself, Mr. BACHUS, Mr. BAKER, Mr. BALLENGER, Mr. BARR of Georgia, Mr. BARRETT of Nebraska, Mr. BARTLETT of Maryland, Mr. BARTON of Texas,

Mr. BASS, Mr. BATEMAN, Mr. BEREUTER, Mr. BERRY, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BLUNT, Mr. BOEHLERT, Mr. BONILLA, Mr. BONO, Mr. BRYANT, Mr. BUNNING of Kentucky, Mr. BURR of North Carolina, Mr. BURTON of Indiana, Mr. BUYER, Mr. CALLAHAN, Mr. CALVERT, Mr. CAMP, Mr. CAMPBELL, Mr. CANADY of Florida, Mr. CASTLE, Mr. CHABOT, Mr. CHAMBLISS, Mrs. CHENOWETH, Mr. CHRISTENSEN, Mr. COBLE, Mr. COBURN, Mr. COLLINS, Mr. COMBEST, Mr. CONDIT, Mr. COOK, Mr. COOKSEY, Mr. CRANE, Mr. CRAPO, Mrs. CUBIN, Mr. CUNNINGHAM, Mr. DEAL of Georgia, Mr. DELAY, Mr. DIAZ-BALART, Mr. DICKEY, Mr. DOOLITTLE, Mr. DREIER, Mr. DUNCAN, Ms. DUNN of Washington, Mr. EHLERS, Mr. EHRlich, Mr. ENGLISH of Pennsylvania, Mr. ENSIGN, Mr. EWING, Mr. FOLEY, Mr. FOX of Pennsylvania, Mr. FORBES, Mr. FRANKS of New Jersey, Mr. GALLEGLY, Mr. GANSKE, Mr. GEKAS, Mr. GIBBONS, Mr. GILCHREST, Mr. GILLMOR, Mr. GILMAN, Mr. GOODLATTE, Mr. GOODLING, Mr. GOSS, Mr. GRAHAM, Mr. GREENWOOD, Mr. GUTKNECHT, Mr. HALL of Texas, Mr. HANSEN, Ms. HARMAN, Mr. HASTERT, Mr. HASTINGS of Washington, Mr. HAYWORTH, Mr. HEFLEY, Mr. HERGER, Mr. HILL, Mr. HILLEARY, Mr. HOEKSTRA, Mr. HORN, Mr. HOSTETTLER, Mr. HOUGHTON, Mr. HUNTER, Mr. HUTCHINSON, Mr. HYDE, Mr. INGLIS of South Carolina, Mr. ISTOOK, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON, Mr. JONES, Mrs. KELLY, Mr. KIM, Mr. KING of New York, Mr. KINGSTON, Mr. KLUG, Mr. KNOLLENBERG, Mr. KOLBE, Mr. LAHOOD, Mr. LARGENT, Mr. LATHAM, Mr. LATOURETTE, Mr. LAZIO of New York, Mr. LEACH, Mr. LEWIS of California, Mr. LEWIS of Kentucky, Mr. LINDER, Mr. LUCAS of Oklahoma, Mr. MCCOLLUM, Mr. MCCRERY, Mr. MCDADE, Mr. MCHUGH, Mr. MCINNIS, Mr. MCINTOSH, Mr. MCINTYRE, Mr. MCKEON, Mr. MANZULLO, Mr. MICA, Mr. MILLER of Florida, Ms. MOLINARI, Mr. MORAN of Kansas, Mrs. MYRICK, Mr. NETHERCUTT, Mr. NEUMANN, Mr. NEY, Mrs. NORTHUP, Mr. NORWOOD, Mr. OXLEY, Mr. PACKARD, Mr. PAPPAS, Mr. PARKER, Mr. PAXON, Mr. PETERSON of Minnesota, Mr. PETERSON of Pennsylvania, Mr. PETRI, Mr. PICKERING, Mr. PITTS, Mr. POMBO, Mr. PORTMAN, Mr. POSHARD, Ms. PRYCE of Ohio, Mr. QUINN, Mr. RADANOVICH, Mr. RAMSTAD, Mr. RIGGS, Mr. ROGAN, Mr. ROHRBACHER, Ms. ROSLEHTINEN, Mrs. ROUKEMA, Mr. ROYCE, Mr. RYUN, Mr. SALMON, Mr. SANFORD, Mr. SAXTON, Mr. SCARBOROUGH, Mr. DAN SCHAEFER of Colorado, Mr. BOB SCHAEFFER, Mr. SCHIFF, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SHADEGG, Mr. SHAW, Mr. SHAYS, Mr. SHUSTER, Mr. SKEEN, Mr. SMITH of Oregon, Mr. SMITH of New Jersey, Mr. SMITH of Texas, Mr. SMITH of Michigan, Mr. SNOWBARGER, Mr. SOLOMON, Mr. SOUDER, Mr. SPENCE, Mr. STEARNS, Mr. STENHOLM, Mr. STUMP, Mr. SUNUNU, Mr. TALENT, Mr. TAUZIN, Mr. THOMAS, Mr. THORNBERRY, Mr. THUNE, Mr. TIAHRT, Mr. UPTON, Mr. WALSH, Mr. WAMP, Mr. WATKINS, Mr.

WATTS of Oklahoma, Mr. WELDON of Pennsylvania, Mr. WELDON of Florida, Mr. WELLER, Mr. WHITE, Mr. WICKER, Mr. WHITFIELD, and Mr. WOLF):

H.R. 1372. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to reform the budget process, and for other purposes; to the Committee on the Budget, and in addition to the Committees on Rules, and Appropriations, 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 Ms. DELAURO (for herself, Mr. HOYER, and Mr. MCGOVERN):

H.R. 1373. A bill to establish a grant program to improve the quality and expand the availability of child care services, and of family support services, for families with children less than 3 years of age; to amend the Internal Revenue Code of 1986 to modify the taxation of income of controlled foreign corporations attributable to imported property; to amend the Family and Medical Leave Act of 1993 to cover employers that have more than 20 employees; to amend the Head Start Act to authorize appropriations for fiscal years 1999 through 2002 and to increase the funds reserved for services for families with children less than 3 years of age; and for other purposes; to the Committee on Education and the Workforce, 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. DELLUMS:

H.R. 1374. A bill to establish a U.S. health service to provide high quality comprehensive health care for all Americans and to overcome the deficiencies in the present system of health care delivery; to the Committee on Commerce, and in addition to the Committees on Ways and Means, the Judiciary, and the Budget, 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. ENSIGN (for himself, Mr. SERRANO, Mrs. JOHNSON of Connecticut, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BAESLER, Mr. BERMAN, Mr. BLAGOJEVICH, Mr. BOEHLERT, Mr. BONIOR, Mr. BORSKI, Mr. BOUCHER, Mr. BROWN of Ohio, Mr. CALVERT, Ms. CHRISTIAN-GREEN, Mrs. CLAYTON, Mr. CLYBURN, Mr. COSTELLO, Mr. COYNE, Mr. DAVIS of Illinois, Mr. DEFAZIO, Ms. DEGETTE, Mr. ENGEL, Mr. ENGLISH of Pennsylvania, Ms. ESHOO, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FLAKE, Mr. FOGLIETTA, Mr. FORD, Mr. FOX of Pennsylvania, Mr. FRANK of Massachusetts, Mr. FROST, Ms. FURSE, Mr. GEJDENSON, Mr. GIBBONS, Mr. GILMAN, Mr. GONZALEZ, Mr. GORDON, Mr. GUTIERREZ, Mr. HALL of Ohio, Mr. HASTINGS of Florida, Mr. HINCHEY, Ms. KAPTUR, Mrs. KELLY, Mr. KENNEDY of Massachusetts, Mr. KILDEE, Mr. KING of New York, Mr. KLUG, Mr. KUCINICH, Mr. LAHOOD, Mr. LAZIO of New York, Mr. LEWIS of Georgia, Mr. MCCRERY, Mr. MCGOVERN, Mrs. MALONEY of New York, Mrs. MINK of Hawaii, Mr. MOAKLEY, Mr. NEAL of Massachusetts, Mr. NADLER, Mr. OLVER, Mr. ORTIZ, Ms. PELOSI, Mr. PETERSON of Minnesota, Ms. PRYCE of Ohio, Mr. RAHALL, Mr. REYES, Ms. RIVERS, Mr. RUSH, Mr. SABO, Mr. SANDERS, Mr. SAWYER, Mr. SCHUMER, Mr. SHAYS, Ms. SLAUGHTER, Mr. ADAM SMITH of Washington, Mr.

SNYDER, Mr. SOLOMON, Ms. STABENOW, Mr. TANNER, Mrs. THURMAN, Mr. TIERNEY, Mr. TORRES, Mr. TOWNS, Mr. TRAFICANT, Mr. VENTO, Mr. VISCLOSKY, Mr. WALSH, Mr. WAXMAN, Mr. WELDON of Florida, Mr. WEYGAND, Mr. WISE, Mr. YATES, Mr. YOUNG of Alaska, Mr. LEACH, Ms. LOFGREN, Mr. DELAHUNT, Mr. NETHERCUTT, Ms. DELAURO, Mr. MALONEY of Connecticut, Mr. PALLONE, and Mrs. MEEK of Florida);

H.R. 1375. A bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the Medicare Program of medical nutrition therapy services furnished by registered dietitians and nutrition professionals; to the Committee on Commerce, 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 Ms. ESHOO (for herself, Mrs. MALONEY of New York, Mr. ACKERMAN, Mr. ANDREWS, Mr. BROWN of California, Mr. BONIOR, Mr. BERMAN, Mr. CAPPS, Mr. CARDIN, Mr. CLAY, Mr. CONYERS, Ms. CHRISTIAN-GREEN, Mr. DAVIS of Illinois, Ms. DELAURO, Mr. DELLUMS, Mr. DELAHUNT, Mr. EVANS, Mr. FARR of California, Mr. FLAKE, Mr. FRANK of Massachusetts, Mr. FROST, Mr. FILNER, Mr. GONZALEZ, Mr. GUTIERREZ, Mr. HINCHEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KENNEDY of Massachusetts, Ms. KILPATRICK, Mr. KUCINICH, Mr. LANTOS, Mr. LEWIS of Georgia, Ms. LOFGREN, Mrs. LOWEY, Ms. MCKINNEY, Mr. MCGOVERN, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MORAN of Virginia, Mr. NADLER, Ms. NORTON, Mr. PAYNE, Ms. RIVERS, Ms. ROYBAL-ALLARD, Mr. SANDERS, Mr. SCHUMER, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Mr. STARK, Mr. THOMPSON, Mr. TIERNEY, Ms. VELÁZQUEZ, Ms. WATERS, Mr. WAXMAN, Ms. WOOLSEY, and Mr. YATES):

H.R. 1376. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal lands, and to designate certain Federal lands as Northwest Ancient Forests, roadless areas, and Special Areas where logging and other intrusive activities are prohibited; to the Committee on Agriculture, and in addition to the Committees on Resources, and National Security, 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. FAWELL (for himself, Mr. PAYNE, Mr. GOODLING, Mr. POMEROY, Mr. KNOLLENBERG, Mr. PETRI, Mr. FROST, Mr. CASTLE, Mr. TALENT, Mrs. ROUKEMA, Mr. BALLENGER, Mr. MARTINEZ, Mr. SAXTON, Mr. FATTAH, Mr. HINOJOSA, Mrs. MCCARTHY of New York, Mr. MCKEON, Mr. UPTON, Mrs. KELLY, Mr. TOWNS, Mr. HILLIARD, Ms. NORTON, Mr. MCCOLLUM, Mr. CALVERT, Mr. WELLER, and Ms. WATERS):

H.R. 1377. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to encourage retirement income savings; to the Committee on Education and the Workforce.

By Mr. HAYWORTH (for himself, Mr. ARMEY, Mr. DELAY, Mr. BOEHNER, Mr. PAXON, Mr. LINDER, Mr. HEFLEY, Mr. BONILLA, Mr. PITTS, Mr. NETHERCUTT, Mr. TIAHRT, Mr. HUTCHINSON, Mr. STUMP, Mr. KOLBE, Mrs. CUBIN, Mr. EHRLICH, Mr. SHADEGG, Mrs.

CHENOWETH, Mr. HOEKSTRA, Mr. COBURN, Mr. WICKER, Mr. SALMON, Mr. CUNNINGHAM, Mr. COOKSEY, Mr. HILLEARY, Mr. GANSKE, Mr. SCARBOROUGH, Mrs. MYRICK, Mr. WATTS of Oklahoma, Mr. JONES, Mr. PARKER, Mr. ISTOOK, Mr. TALENT, Mr. LEWIS of Kentucky, Mr. BOB SCHAFER, Mr. COBLE, and Mr. CHRISTENSEN):

H.R. 1378. A bill to prohibit discrimination in contracting on federally funded projects on the basis of certain labor policies of potential contractors; to the Committee on Education and the Workforce.

By Mr. HILL:

H.R. 1379. A bill to amend the Internal Revenue Code of 1986 to lower the maximum capital gains rate to 15 percent with respect to assets held for more than 3 years, to replace the estate and gift tax rate schedules, and for other purposes; to the Committee on Ways and Means.

By Mr. HOYER:

H.R. 1380. A bill to amend the Internal Revenue Code of 1986 to reduce estate taxes on family-owned farm businesses and to exclude gain from the sale or exchange of a farming business to the extent of the medical expenses paid by the taxpayer; to the Committee on Ways and Means.

By Mr. KOLBE (for himself and Mr. PASTOR):

H.R. 1381. A bill to amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to establish the U.S. Institute for Environmental Conflict Resolution to conduct environmental conflict resolution and training, and for other purposes; to the Committee on Education and the Workforce.

By Mr. LEVIN (for himself and Mr. ENGLISH of Pennsylvania):

H.R. 1382. A bill to amend the Internal Revenue Code of 1986 to provide that certain educational benefits provided by an employer to children of employees shall be excludable from gross income as a scholarship; to the Committee on Ways and Means.

By Mr. LEWIS of Georgia (for himself, Mr. HOUGHTON, Mr. QUINN, Mr. ACKERMAN, Mr. BORSKI, Ms. CHRISTIAN-GREEN, Mr. CUMMINGS, Mr. DELAHUNT, Mr. EDWARDS, Mr. ENGEL, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEPHARDT, Mr. HINCHEY, Mrs. LOWEY, Mrs. MALONEY of New York, Mr. MANTON, Mr. MCGOVERN, Mr. McNULTY, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MOAKLEY, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. RAHALL, Mr. SABO, Mr. SCHUMER, Ms. SLAUGHTER, Mr. TIERNEY, Mr. TOWNS, Mr. TRAFICANT, and Ms. VELÁZQUEZ):

H.R. 1383. A bill to designate the Federal building located at 10th Street and Constitution Avenue, NW, in Washington, DC, as the "Robert F. Kennedy Department of Justice Building"; to the Committee on Transportation and Infrastructure.

By Mr. MCHUGH:

H.R. 1384. A bill to amend the Immigration and Nationality Act to establish a telephone reporting system to permit certain individuals traveling by boat to enter the United States from Canada without applying for admission at a port of entry; to the Committee on the Judiciary.

By Mr. MCKEON (for himself, Mr. GOODLING, and Mr. KILDEE):

H.R. 1385. A bill to consolidate, coordinate, and improve employment, training, literacy, and vocational rehabilitation programs in the United States, and for other purposes; to the Committee on Education and the Workforce.

By Mr. METCALF:

H.R. 1386. A bill to require uniform appraisals of certain leaseholds of restricted Indian lands, and for other purposes; to the Committee on Resources.

By Mr. MILLER of Florida (for himself,

Mr. SCHUMER, Mr. CHABOT, Mr. QUINN, Mr. FRELINGHUYSEN, Mr. CAMPBELL, Mr. SHAW, Mr. HORN, Mr. KLUG, Mr. BARRETT of Wisconsin, Mr. MCINTOSH, Mr. MCGOVERN, Mr. LOBIONDO, Mr. PORTER, Mr. SENSENBRENNER, Mr. ROHRBACHER, Mr. CASTLE, Mr. ROYCE, Mr. SHAYS, Mr. RAMSTAD, Mrs. ROUKEMA, Mr. KENNEDY of Rhode Island, Mr. FRANKS of New Jersey, Mr. MEEHAN, Mr. CARDIN, Mr. MCHALE, Mr. NEUMANN, Mr. SOUDER, Mr. SANFORD, Mr. ENGLISH of Pennsylvania, Mr. PORTMAN, Mr. FAWELL, Mr. FOGLIETTA, Mr. OLVER, Mr. FRANK of Massachusetts, Mr. HINCHEY, Mr. MARKEY, Mr. NADLER, Mr. NEY, Mrs. LOWEY, Mrs. MCCARTHY of New York, Mr. MOAKLEY, Mrs. MALONEY of New York, Mr. DAVIS of Virginia, Mr. WOLF, Mr. GOSS, Mr. ENSIGN, Mr. LIPINSKI, Mr. OWENS, Mr. YATES, Mr. STARK, Mr. GEKAS, Mrs. MORELLA, Mr. PETRI, Mr. KASICH, Mr. VISCLOSKY, Mr. FORBES, Mr. WAMP, Mr. BASS, Mr. SMITH of New Jersey, and Mr. KOLBE):

H.R. 1387. A bill to amend the Agricultural Market Transition Act to convert the price support program for sugarcane and sugar beets into a system of solely recourse loans and to provide for the gradual elimination of the program; to the Committee on Agriculture.

By Ms. NORTON:

H.R. 1388. A bill to provide authority for leave transfer for Federal employees who are adversely affected by disasters or emergencies, and for other purposes; to the Committee on Government Reform and Oversight.

By Mr. PACKARD:

H.R. 1389. A bill to amend the Internal Revenue Code of 1986 to provide that the amount of the aviation excise taxes for any fiscal year shall equal the expenditures from the airport and airway trust fund for the prior fiscal year, and for other purposes; to the Committee on Ways and Means.

By Mr. PALLONE (for himself and Mr. MCCOLLUM):

H.R. 1390. A bill to authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia; to the Committee on Resources.

By Mr. PORTMAN (for himself, Mr. CARDIN, Mr. ACKERMAN, and Mrs. KELLY):

H.R. 1391. A bill to amend the Internal Revenue Code of 1986 to provide an exemption from tax for gain on sale of a principal residence; to the Committee on Ways and Means.

By Mr. REGULA (for himself and Mr. MURTHA):

H.R. 1392. A bill to require the administrator of the Environmental Protection Agency to establish a program under which States may be certified to carry out voluntary environmental cleanup programs and to amend CERCLA regarding the liability of landowners and prospective purchasers; to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, 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 Ms. RIVERS:

H.R. 1393. A bill to amend the Toxic Substances Control Act to establish certain requirements regarding the approval of facilities for the disposal of polychlorinated

biphenyls, and for other purposes; to the Committee on Commerce.

By Ms. ROS-LEHTINEN (for herself and Mr. KENNEDY of Massachusetts):

H.R. 1394. A bill to amend the Internal Revenue Code of 1986 to modify the tax treatment of qualified State tuition programs; to the Committee on Ways and Means.

By Mr. ROTHMAN (for himself, Mr. OLVER, Mr. HINCHEY, and Mr. PAS-TOR):

H.R. 1395. A bill to assist the States and local governments in assessing and remediating brownfield sites and encouraging environmental cleanup programs, and for other purposes; to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration for such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SAXTON (for himself, Mr. SMITH of Michigan, Mr. KOLBE, Mr. PETERSON of Pennsylvania, and Mr. GRAHAM):

H.R. 1396. A bill to require the Board of Governors of the Federal Reserve System to focus on price stability in establishing monetary policy to ensure the stable, long-term purchasing power of the currency, to repeal the Full Employment and Balanced Growth Act of 1978, and for other purposes; to the Committee on Banking and Financial Services, and in addition to the Committees on Education and the Workforce, and the Budget, 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. SKAGGS (for himself, Mr. EVANS, and Mr. SANDERS):

H.R. 1397. A bill to provide health insurance benefits to certain former employees at defense nuclear facilities of the Department of Energy for injuries caused by exposure to ionizing radiation; to the Committee on Commerce.

By Mr. SMITH of New Jersey (for himself, Mr. SAXTON, Mr. HAYWORTH, Mr. CUNNINGHAM, Mr. STEARNS, Mr. RAHALL, Mr. WELDON of Pennsylvania, Mr. WALSH, Mr. KING of New York, Mr. LAFALCE, Mr. BUNNING of Kentucky, Mr. BOB SCHAFFER, and Mr. NORWOOD):

H.R. 1398. A bill to amend the Public Health Service Act to provide for the establishment of a program for research and training with respect to Parkinson's disease; to the Committee on Commerce.

By Mr. SMITH of New Jersey:

H.R. 1399. A bill to amend title 38, United States Code, to provide a presumption of service connection for injuries classified as cold weather injuries which occur in veterans who while engaged in military operations had sustained exposure to cold weather; to the Committee on Veterans' Affairs.

By Mr. SMITH of Oregon (for himself, Mr. DEFazio, Ms. FURSE, Ms. HOOLEY of Oregon, and Mr. BLUMENAUER):

H.R. 1400. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to participate in a water conservation project with the Tumalo Irrigation District in the State of Oregon; to the Committee on Resources.

By Mr. THOMAS (for himself, Mr. MATSUL, Mr. NUSSLE, Mr. EHLERS, Ms. DUNN of Washington, Mr. FAZIO of California, Mr. McDERMOTT, and Mr. MINGE):

H.R. 1401. A bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind; to the Committee on Ways and Means.

By Mr. TRAFICANT:

H.R. 1402. A bill to establish the Commission on Probabilistic Methods; to the Committee on Transportation and Infrastructure.

By Mr. UNDERWOOD (for himself, Ms. CHRISTIAN-GREEN, Mr. RANGEL, Mr. JEFFERSON, and Mrs. MINK of Hawaii):

H.R. 1403. A bill to extend the supplemental security income benefits program to Guam and the U.S. Virgin Islands; to the Committee on Ways and Means.

By Mr. WAXMAN (for himself, Mr. GEPHARDT, Mr. MILLER of California, Mr. BROWN of California, Mrs. MALONEY of New York, Mr. FLAKE, Mr. FRANK of Massachusetts, Mr. SERRANO, Mr. TIERNEY, Mr. KENNEDY of Rhode Island, Mr. LEWIS of Georgia, Mr. BONIOR, Mr. PALLONE, Ms. PELOSI, and Mr. MCGOVERN):

H.R. 1404. A bill to provide for the defense of the environment, and for other purposes; to the Committee on Rules, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LAZIO of New York (for himself, Mr. SPENCE, and Mr. STUMP):

H. Con. Res. 64. Concurrent resolution commending the members of the Armed Forces and civilian personnel of the Government who served the United States faithfully during the cold war; to the Committee on Government Reform and Oversight.

By Mr. PALLONE:

H. Res. 120. Resolution designating minority membership on certain standing committees of the House; considered and agreed to.

By Mr. HORN (for himself, Mr. GILMAN, and Mr. BEREUTER):

H. Res. 121. Resolution expressing the sense of the House of Representatives regarding the March 30, 1997, terrorist grenade attack in Cambodia; to the Committee on International Relations.

By Mr. BAKER (for himself, Mr. MAS-CARA, Mr. BENTSEN, Mr. LAZIO of New York, Mr. KING of New York, Ms. RIVERS, Mr. KANJORSKI, Mr. LAHOOD, Mr. FRANK of Massachusetts, Mr. FROST, Mr. MURTHA, Mr. SCHUMER, Mr. SMITH of New Jersey, Mrs. MALONEY of New York, Mr. STARK, and Mr. RILEY):

H. Res. 122. Resolution expressing the sense of the House of Representatives regarding tactile currency for the blind and visually impaired; to the Committee on Banking and Financial Services.

By Mrs. MORELLA (for herself and Mr. DAVIS of Virginia):

H. Res. 123. Resolution amending the Rules of the House of Representatives to postpone final House action on legislative branch appropriations for any fiscal year until all other regular appropriations for that fiscal year are enacted into law; to the Committee on Rules.

## MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

44. By the SPEAKER. Memorial of the Legislature of the Commonwealth of Virginia, relating to Senate Joint Resolution No. 377 urging Congress to amend the Fair Labor Standards Act to better address the unique characteristics of emergency medical service employees, and to provide and overtime ex-

emption for such employees similar to that provided for fire, police, and corrections employees; to the Committee on Education and the Workforce.

45. Also, memorial of the Legislature of the State of West Virginia, relative to House Concurrent Resolution No. 7 urging Congress to enact legislation that requires the Administrator of the U.S. Environmental Protection Agency to maintain the current national ambient air quality standards for ozone and fine particulate matter until there is a thorough review by the scientific community; to the Committee on Commerce.

46. Also, memorial of the House of Representatives of the State of Georgia, relative to House Resolution 379 urging the U.S. Environmental Protection Agency to reaffirm the existing air quality standards for ozone and particulate matter; to the Committee on Commerce.

47. Also, memorial of the Senate of the State of Oregon, relative to Senate Resolution 3 urging Congress to ensure that Federal agencies operate or direct operation of Klamath project in accordance with Oregon's system for allocation of water rights; to the Committee on Resources.

48. Also, memorial of the Legislature of the Commonwealth of Virginia, relative to Senate Joint Resolution No. 343 urging Congress to proceed immediately with an extension of waivers to the Program for All Inclusive Care for the Elderly [PACE] Program or to pass S. 999, extending provider status to the PACE Program; jointly, to the Committees on Ways and Means and Commerce.

## ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 4: Mr. ANDREWS, Mr. COBURN, Mr. DELAHUNT, Mr. ROTHMAN, Mr. JENKINS, Mr. FRANK of Massachusetts, Mr. ACKERMAN, Mr. BLAGOJEVICH, Mr. CAPPs, Mr. SCHUMER, Mr. BROWN of California, Mr. BLUMENAUER, Mr. SMITH of New Jersey, Mr. CAMPBELL, Mr. GIBBONS, Mr. COLLINS, Mr. SCARBOROUGH, Mr. JONES, Mr. MORAN of Kansas, Mr. SOLOMON, Mr. TIERNEY, Mr. MCINTYRE, and Mr. LUCAS of Oklahoma.

H.R. 12: Mr. MEEHAN and Mr. PASCRELL.  
H.R. 14: Mr. WHITFIELD, Mr. EWING, Mr. BARR of Georgia, Mr. KINGSTON, Mr. RILEY, Mr. CAPPs, Mr. SOUDER, and Mr. COOK.

H.R. 15: Mr. LAMPSON, Mr. KIND of Wisconsin, Mr. BUYER, Mr. NUSSLE, Ms. PELOSI, Mr. DUNCAN, Mr. LINDER, Mr. PALLONE, Mr. DAN SCHAEFER of Colorado, Mr. BAESLER, Mr. MANZULLO, Mr. KLINK, Mr. WHITFIELD, Mrs. EMERSON, Mr. SANDERS, and Mr. SOLOMON.

H.R. 66: Mr. TAYLOR of Mississippi, Mr. CALVERT, Mr. THORNBERRY, Mr. COBLE, and Mr. STUMP.

H.R. 80: Mr. FRANKS of New Jersey, Ms. ESHOO, Mr. LARGENT, Mr. DEFazio, Mr. CALLAHAN, Mr. TAYLOR of Mississippi, Mr. COX of California, Mr. PARKER, Mr. BENTSEN, Mr. MARTINEZ, and Mrs. THURMAN.

H.R. 85: Mr. LIPINSKI, Mr. KUCINICH, and Ms. FURSE.

H.R. 86: Mr. WATKINS.

H.R. 96: Mr. SKELTON, Mr. GOODE, Mr. HILLIARD, and Mr. SNOWBARGER.

H.R. 122: Mr. CHABOT, Mr. TALENT, and Mr. HAYWORTH.

H.R. 123: Mr. TAYLOR of Mississippi.

H.R. 192: Mr. GILLMOR, Mr. DEUTSCH, Mrs. CUBIN, Mr. KIND of Wisconsin, Ms. BROWN of Florida, Mr. ETHERIDGE, Mr. PALLONE, and Mr. BALDACC.

H.R. 200: Ms. GRANGER, Mr. DEAL of Georgia, and Mr. MCGOVERN.

H.R. 218: Mr. BARR of Georgia, Mr. MCINTYRE, and Mr. HULSHOF.

- H.R. 242: Mr. MATSUI.  
 H.R. 277: Mr. KENNEDY of Massachusetts.  
 H.R. 279: Mr. GALLEGLY, Ms. ROYBAL-ALLARD, Ms. MOLINARI, Mr. BALLENGER, Mr. GORDON, Mr. BRADY, Mr. MARTINEZ, Mr. SABO, Mrs. EMERSON, Mr. HILLIARD, Ms. CARSON, Mr. STUPAK, Mrs. KENNELLY of Connecticut, Ms. ROS-LEHTINEN, Mr. DIAZ-BALART, Mr. ALLEN, Mr. OXLEY, Mr. LARGENT, Mr. BARCIA of Michigan, Mr. CRANE, Mr. NETHERCUTT, Mr. EVANS, Mr. SHIMKUS, Mr. ADERHOLT, Mr. MALONEY of Connecticut, Mr. RODRIGUEZ, Mr. KINGSTON, Mr. WISE, Mr. BOUCHER, Mr. CRAMER, Mr. DOOLEY of California, Mr. HAMILTON, Mr. BORSKI, Ms. DANNER, Mr. PASCRELL, Mr. POMEROY, Mr. DAVIS of Florida, Mr. FAWELL, Mr. GILCHREST, Mr. PICKETT, Mr. SANDERS, Mrs. FOWLER, Ms. KAPTUR, Mr. BLILEY, Ms. MCCARTHY of Missouri, Mr. WEXLER, Mrs. TAUSCHER, Mr. SKELTON, Mr. STENHOLM, Mr. SESSIONS, Mr. POSHARD, Mr. BATEMAN, Mr. BLUNT, Mr. DEAL of Georgia, Mr. JOHNSON of Wisconsin, Mr. COBLE, and Mr. BARTLETT of Maryland.  
 H.R. 292: Mr. HILLEARY.  
 H.R. 304: Mr. LEWIS of Georgia.  
 H.R. 305: Ms. FURSE, Mr. GUTIERREZ, and Mr. JEFFERSON.  
 H.R. 306: Mr. FILNER and Mr. MCHUGH.  
 H.R. 335: Mr. GOODE.  
 H.R. 367: Mr. ADERHOLT, Mr. PAXON, and Mr. LINDER.  
 H.R. 414: Mr. DEUTSCH, Ms. BROWN of Florida, Mrs. MEEK of Florida, Mr. PALLONE, and Mr. BALDACCI.  
 H.R. 415: Mr. WELDON of Florida and Mr. DICKY.  
 H.R. 426: Mr. KNOLLENBERG and Mr. CAPPs.  
 H.R. 437: Mr. CAPPs, Mr. GILLMOR, Mr. CASTLE, Mr. ORTIZ, Mr. CALVERT, Mr. KILDEE, and Mr. SABO.  
 H.R. 443: Mr. KUCINICH and Mr. GUTIERREZ.  
 H.R. 475: Mr. SMITH of Michigan.  
 H.R. 492: Ms. BROWN of Florida and Mr. MEEHAN.  
 H.R. 519: Mr. BLAGOJEVICH.  
 H.R. 558: Ms. WOOLSEY.  
 H.R. 561: Mrs. CARSON.  
 H.R. 586: Mr. COOK, Mrs. MCCARTHY of New York, Mr. MCINTYRE, and Mr. McNULTY.  
 H.R. 603: Mr. RAMSTAD and Mr. SMITH of New Jersey.  
 H.R. 623: Mr. WYNN.  
 H.R. 695: Mr. PAXON and Mr. WELDON of Florida.  
 H.R. 716: Mr. SNOWBARGER and Mr. BRYANT.  
 H.R. 753: Ms. ROYBAL-ALLARD, Mr. BARRETT of Wisconsin, Mr. OWENS, Mr. STRICKLAND, and Mr. DELAHUNT.  
 H.R. 754: Mr. JEFFERSON and Mr. ACKERMAN.  
 H.R. 775: Mr. DEFAZIO, Mr. GUTIERREZ, Mr. THOMPSON, Ms. WATERS, Mr. TORRES, and Mr. MCGOVERN.  
 H.R. 820: Mr. DAVIS of Illinois, Mr. STARK, Mr. MATSUI, and Mr. RUSH.  
 H.R. 857: Mr. MANZULLO and Mr. CRAPO.  
 H.R. 864: Mrs. MORELLA, Mr. HILLIARD, Mrs. MALONEY of New York, Ms. WATERS, Mr. KILDEE, Mr. RUSH, Mr. FORD, Mr. TOWNS, Mr. DIXON, Ms. LOFGREN, Mr. DEFAZIO, Mr. LATOURETTE, Mr. PAYNE, Mr. LIPINSKI, Mr. TRAFICANT, and Mr. MARTINEZ.  
 H.R. 865: Mr. CLEMENT.  
 H.R. 866: Mr. ENGLISH of Pennsylvania, Mr. COBLE, and Mr. WATTS of Oklahoma.  
 H.R. 867: Mr. HOUGHTON.  
 H.R. 871: Mr. ADAM SMITH of Washington.  
 H.R. 872: Mr. BUNNING, Mr. CONDIT, Mrs. CUBIN, Mr. FOX of Pennsylvania, Mr. GILLMOR, Mr. HEFNER, Mr. MCHUGH, Mr. MORAN of Virginia, Mr. PACKARD, Mrs. ROUKEMA, Mr. DAN SCHAEFER of Colorado, Mr. SESSIONS, Mr. STENHOLM, and Mr. TOWNS.  
 H.R. 875: Mr. SNYDER.  
 H.R. 895: Mr. DAVIS of Illinois.  
 H.R. 901: Mr. BURR of North Carolina, Mr. HOBSON, Mr. ROGERS, Mr. ROHRBACHER, Mr. MCCREERY, Mr. MCINTYRE, Mr. SMITH of Texas, and Mr. DEAL of Georgia.  
 H.R. 911: Mr. BILIRAKIS and Mr. BARR of Georgia.  
 H.R. 920: Ms. WOOLSEY.  
 H.R. 928: Mr. LARGENT, Mr. STUMP, Mr. GRAHAM, Mr. SESSIONS, Mr. PAUL, Mr. SOUDER, Ms. DUNN of Washington, and Mrs. CHENOWETH.  
 H.R. 947: Mr. CARDIN.  
 H.R. 955: Mr. GIBBONS, Mrs. CHENOWETH, Mr. HEFNER, Mr. SNOWBARGER, and Mr. EHRlich.  
 H.R. 965: Mr. LINDER, Mr. NETHERCUTT, Mr. LIVINGSTON, Mr. PAXON, Mr. HASTERT, Mr. KING of New York, Mr. CAMP, and Mr. COOK.  
 H.R. 977: Mr. FAZIO of California, Mr. ABERCROMBIE, Mr. RADANOVICH, and Mr. TRAFICANT.  
 H.R. 990: Mr. SHAYS.  
 H.R. 1002: Mr. LEWIS of Georgia, Mr. WEXLER, Mr. WISE, and Mr. FILNER.  
 H.R. 1009: Mr. BUNNING of Kentucky.  
 H.R. 1022: Mr. YATES.  
 H.R. 1047: Mr. DELLUMS, Mr. FORD, and Mr. MEEHAN.  
 H.R. 1074: Mrs. CARSON, Mr. DELLUMS, Mr. DIXON, Ms. ESHOO, Mrs. MALONEY of New York, Mr. KIND of Wisconsin, Mr. FOGLIETTA, Mr. CONYERS, Mr. JACKSON, Ms. NORTON, Mrs. MEEK of Florida, Mrs. CLAYTON, and Ms. JACKSON-LEE.  
 H.R. 1104: Mr. KENNEDY of Rhode Island, Mr. BOUCHER, Mr. POSHARD, and Mr. WEYGAND.  
 H.R. 1118: Mrs. MALONEY of New York and Mr. OWENS.  
 H.R. 1120: Mr. PALLONE and Mr. KENNEDY of Rhode Island.  
 H.R. 1130: Mr. BONIOR, Mr. MILLER of California, Mr. STARK, Mr. McDERMOTT, Mr. NEAL of Massachusetts, Mr. WYNN, Ms. VELAZQUEZ, Mr. STUPAK, Ms. HARMAN, Ms. KAPTUR, Mr. FATTAH, Ms. WOOLSEY, Mr. GREEN, Mr. SCHUMER, Mr. WAXMAN, Mr. MOAKLEY, Mr. FRANK of Massachusetts, Mr. HOYER, Mr. KENNEDY of Rhode Island, Mr. THOMPSON, Mr. BERMAN, Mr. HEFNER, Mr. ENGEL, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. ROYBAL-ALLARD, Ms. DANNER, Mr. DOOLEY of California, Mr. BROWN of Ohio, Mr. FORD, Mr. LAMPSON, Mr. CRAMER, Mr. BISHOP, Mr. HOLDEN, Mr. WATT of North Carolina, and Mr. MALONEY of Connecticut.  
 H.R. 1134: Mr. JOHN.  
 H.R. 1146: Mr. STUMP.  
 H.R. 1153: Mr. UNDERWOOD and Mr. PICKERING.  
 H.R. 1161: Mr. CONDIT.  
 H.R. 1169: Mr. LEWIS of Georgia, Mr. CONDIT, Mr. CARDIN, Mr. GEJDENSON, Mr. FLAKE, Mr. BROWN of Ohio, Mr. FILNER, Mr. LARGENT, Mrs. KELLY, and Mr. KLECZKA.  
 H.R. 1170: Mr. PACKARD, Mr. ROGAN, Mr. INGLIS of South Carolina, Mr. FOLEY, Mr. LARGENT, and Mr. HUTCHINSON.  
 H.R. 1178: Mr. MARTINEZ.  
 H.R. 1188: Mr. LEWIS of Georgia and Mr. DAVIS of Illinois.  
 H.R. 1189: Mr. STUPAK, Mr. KLUG, Mr. SKELTON, and Mr. MCHUGH.  
 H.R. 1201: Mr. BORSKI, Mr. DELLUMS, Mr. FLAKE, and Mr. DAVIS of Illinois.  
 H.R. 1216: Mr. DAVIS of Illinois and Mr. STARK.  
 H.R. 1219: Mr. COYNE, Mr. DAVIS of Virginia, Ms. LOFGREN, Mrs. MCCARTHY of New York, Ms. PRYCE of Ohio, Mr. RUSH, and Mr. WEXLER.  
 H.R. 1232: Mr. COBURN.  
 H.R. 1259: Mr. FURSE, Ms. ESHOO, and Mr. WEXLER.  
 H.R. 1264: Mr. MEEHAN.  
 H.R. 1291: Mr. FLAKE.  
 H.R. 1315: Mr. LATOURETTE, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. JEFFERSON, Mr. TOWNS, and Mr. PARKER.  
 H.R. 1323: Mr. STARK and Mr. SANDERS.  
 H.R. 1327: Mr. WATTS of Oklahoma, Mr. METCALF, Mr. DEAL of Georgia, and Mr. WALSH.  
 H.R. 1340: Mr. SANFORD and Mr. BARRETT of Wisconsin.  
 H.R. 1353: Mr. POSHARD.  
 H.J. Res. 26: Mrs. NORTHUP.  
 H.J. Res. 67: Mr. CRAPO, Mr. PAUL, Mr. CUNNINGHAM, Mr. ENGLISH of Pennsylvania, Mr. CHRISTENSEN, Mr. JENKINS, Mr. TALENT, Mr. BOYD, and Mr. SOUDER.  
 H. Con. Res. 8: Mr. CAPPs and Mr. SHAW.  
 H. Con. Res. 10: Mr. COX of California, Mr. HOLDEN, Mr. FAWELL, Mr. McNULTY, and Mr. HOBSON.  
 H. Con. Res. 13: Mr. WEYGAND, Mr. MENEDEZ, and Ms. ROYBAL-ALLARD.  
 H. Con. Res. 52: Mr. HOLDEN, Mr. GILLMOR, Mr. TRAFICANT, Mr. MINGE, Mr. WELLER, Mr. BROWN of Ohio, and Mr. BORSKI.  
 H. Res. 96: Mrs. LOWEY, Mr. STARK, and Ms. CHRISTIAN-GREEN.  
 H. Res. 110: Mr. TRAFICANT, Mr. PETERSON of Minnesota, Mr. COX of California, Mr. PORTER, and Mr. CAMPBELL.

#### 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. 963: Mr. WYNN.