

local public health departments implement emergency response plans, educate health care personnel, and equip the first responders in our emergency rooms and police and fire departments. The bill will do much to make sure our food supply is protected from attempts at contamination by increasing inspection and tightening port security; it also ensures that we have the tools to investigate any suspected contamination of the food supply by the increasing record keeping and requiring registration by the food industry.

While I support the legislation we are considering today, I look forward to future work on bioterrorism legislation that will expand on this bill. We must require country of origin labeling at the retail level so that consumers can know the source of retail food offerings and consider that knowledge when selecting their purchases. We should ensure that we enact common sense requirements to protect our food supply that are responsible, not overly burdensome. We must expand on provisions in this bill to facilitate the development, production, and distribution of vaccinations that could protect our population against either an intentional bioterrorist attack or the devastating spread of an infectious disease. I believe we should create a national vaccine authority, as recommended by the National Academy of Sciences, to coordinate and aid in these efforts. Finally, we must continue to listen to those who will be on the front lines of any bioterrorist attack, including the doctors and nurses in emergency rooms, hospitals, and health centers and the members of fire and other emergency rescue teams, and help their local communities to meet their needs, restricting federal programs to coordination of these crucial local resources.

Again, I support this legislation and thank my colleagues for their work in crafting it.

STOP CANNED HUNTING, THE  
RESPONSIBLE THING TO DO

**HON. SAM FARR**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Mr. FARR of California. Mr. Speaker, Today I am introducing the "Captive Exotic Animal Protection Act of 2001" It is a bill to combat the unfair and inhumane practice of "canned hunting."

At more than 1,000 commercial "canned hunt" operations across the country, trophy hunters pay a fee to shoot captive exotic animals—from African lions to giraffes to blackbuck antelope—in fenced enclosures in which the animals have no reasonable chance of escape. Most of the hunts are guaranteed—in that the ranch owner assures the "client" that he will secure an exotic trophy. It's a "no kill, no pay" arrangement. The animals on hunting ranches—procured from exotic animal dealers—have often lived a life being fed by hand and have little or no fear of humans; that fact, coupled with their confinement in a fenced area, all but assure a successful "hunt."

This bill will complement the efforts undertaken by states to restrict this practice. California and other states already outlaw this practice. In November 2000, voters in Montana approved a ballot initiative to ban the

practice of shooting animals in fenced enclosures. The individuals who spearheaded this campaign were, it is important to note, lifelong hunters. They were members of groups such as the Rocky Mountain Elk Foundation, the Montana Wildlife Federation, and the Montana Bowhunters' Association—all of which avidly support hunting, but oppose canned hunts. This is a strong indicator that "canned hunts" are out of step with common principles governing responsible hunting.

The regulation of the transport and treatment of exotic mammals on shooting preserves, however, falls outside the traditional domains of state agriculture departments and state fish and game agencies. In short, these animals often fall into regulatory limbo at the state level. In order to address this problem, which directly involves an issue of interstate commerce, since exotic mammals are those which typically are sold across state lines or imported because they are not native to the United States, I am introducing the "Captive Exotic Animal Protection Act."

This bill will halt the interstate shipment of exotic mammals for the purpose of being shot in a fenced enclosure for entertainment or a trophy. It is sensible legislation that is backed by responsible hunters, animal protection advocates, wildlife scientists, environmentalists, and zoological professionals. The Senate has the same bill before it for consideration.

This bill will not limit the licensed hunting of any native mammals or any native or exotic birds. The state fish and game agencies regulate and license the hunting of native species. A federal remedy is needed, however, to deal with the purely commercial interstate movement of exotics destined to be killed at "canned hunting" ranches.

This bill supports responsible hunting, while curbing something so out-of-bounds with hunting norms that hunters and animal advocates alike view it as unfair and inhumane.

TRIBUTE TO SHOALS  
ELEMENTARY

**HON. SHELLEY MOORE CAPITO**

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Mrs. CAPITO. Mr. Speaker, I rise today in honor of Shoals Elementary in recognition of their achievement as an "exemplary" school.

Shoals Elementary has been selected as one of the top 50 schools of West Virginia. "Exemplary" status is based on Stanford Achievement Test results, attendance, drop out rates, and writing exam scores.

I commend the leadership and faculty on their dedication to the children that walk through their doors each day. They have set an incredible example for the other 817 schools in West Virginia.

I equally commend the students and parents of Shoals Elementary for their commitment to a quality education and a bright future.

Efforts to bring superior education to all of West Virginia and America are among our top priorities. Mr. Speaker, I urge my colleagues to join me in honoring Shoals Elementary.

ANALYSIS OF SECTION II OF H.R.  
2887

**HON. SHEILA JACKSON-LEE**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Ms. JACKSON-LEE of Texas. Mr. Speaker, on October 11, 2001, the Committee on Energy and Commerce favorably reported H.R. 2887, the "Best Pharmaceuticals for Children Act." I commend the Committee for its great work to reauthorize legislation to promote labeling of prescription drugs for use in children. However, I am concerned that a section of this legislation may violate the Takings Clause of the United States Constitution. As a member of the Committee on the Judiciary, I have vigorously sought to protect private property rights and to pursue just compensation for those whose property rights are violated. My analysis of section 11 of H.R. 2887, brings me to the conclusion that it would violate current exclusive rights of manufacturers and in turn expose the U.S. government to substantial claims for just compensation. Attached are legal memoranda by Professor Laurence Tribe of Harvard University that validate my concerns:

MEMORANDUM TO THE UNITED STATES CONGRESS—CONSTITUTIONAL ANALYSIS OF H.R. 2887'S PROPOSED AMENDMENT TO HATCH-WAXMAN ACT ELIMINATING THREE-YEAR CLINICAL STUDIES EXCLUSIVITY PERIOD

(By Laurence H. Tribe)

I have been asked to address the implications under the Fifth Amendment Just Compensation Clause (sometimes called the Takings Clause) of H.R. 2887, which proposes to eliminate the three-year clinical studies exclusivity period under the Hatch-Waxman Act. Section 11(a) of the reported version of H.R. 2887 provides that a generic drug may be approved under the Federal Food, Drug and Cosmetic Act ("FDCA") even when its labeling omits a pediatric use that is protected by patent or marketing exclusivity under Section 505(j)(5)(D)(iii) and (iv). Section 11(b) of H.R. 2887 implies that Section 11(a) applies to already running three-year exclusivity periods.

The FDCA establishes a quid pro quo that H.R. 2887 would retroactively abrogate. In order to gain regulatory approval from the FDA, a pharmaceutical company must invest enormous time, money, and human resources to develop extensive clinical data regarding its drug. At the end of a three-year period, the protected data is opened to the public and may be used by competitors. In exchange, Section 505(j)(5)(D)(iii) and (iv) provide that the FDA "may not make the approval of [a competitor application]...for three years." H.R. 2887 now proposes to undo the bargain struck by current law.

Under the Supreme Court's decision in *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), and related precedent, the retroactive elimination of the exclusivity period qualifies as a taking of private property for public use and therefore triggers the right to just compensation.

ANALYSIS

1. The Ruckelshaus Decision.

Fifth Amendment analysis must begin with the text of the Clause: "nor shall private property be taken for public use, without just compensation." The meaning of that text as most authoritatively set forth in the Supreme Court's decision in *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), which held