A motion to reconsider was laid on the table.

□ 1900

IN THE MATTER OF REPRESENTATIVE JAMES A. TRAFICANT, JR.

Mr. HEFLEY. Mr. Speaker, I call up the privileged resolution (H. Res. 495) in the matter of JAMES A. TRAFICANT, Jr., and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 495

Resolved, That, pursuant to Article I, Section 5, Clause 2 of the United States Constitution, Representative James A. Traficant, Jr., be, and he hereby is, expelled from the House of Representatives.

The SPEAKER. The resolution constitutes a question of the privileges of the House and may be called up at any time.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Before our debate begins, the Chair will make a statement about the decorum expected in the Chamber.

The Chair has often reiterated that Members should refrain from references in debate to the conduct of other sitting Members where such conduct is not the question actually pending before the House, either by way of a report from the Committee on Standards of Official Conduct, or by way of another question of the privileges of the House.

This principle is documented on pages 174 and 703 of the House Rules and Manual and reflects the consistent rulings of the Chair.

It is also well established that indecent language either against the proceedings of the House or cast against its Membership is out of order.

Disciplinary matters, by their very nature, involve personalities. The calling up of a resolution reported by the Committee on Standards of Official Conduct or the offering of a resolution as a similar question of the privileges of the House embarks the House on consideration of a proposition that admits references in debate to a sitting Member's conduct.

This exception to the general rule against engaging in personality, admitting references to a Member's conduct when that conduct is the very question under consideration by the House, is closely limited.

This point was well stated by the Chair on July 31, 1979, as follows: while a wide range of discussion is permitted during debate on a disciplinary resolution, clause 1 of rule XVII still prohibits the use of language which is personally abusive.

This was reiterated by the Chair as recently as January 27, 1997. It also extends to language which is profane, vulgar or obscene and to comportment which constitutes a breach of decorum.

On the question about to be pending before the House, the resolution offered by the gentleman from Colorado (Mr. HEFLEY), as chairman of the Committee on Standards of Official Conduct, Members should confine their remarks in debate to the merits of that precise question.

Members should refrain from remarks that constitute personalities with respect to members of the Committee on Standards of Official Conduct, with respect to other sitting Members whose conduct is not the subject of the pending report, or to Members of the other body.

The Chair asks and expects the cooperation of all Members in maintaining a level of decorum that properly dignifies the proceedings of this House.

As always, the galleries must refrain from any manifestation of approval or disapproval of the proceedings.

Pursuant to clause 4 of rule XVII, the Chair intends to take necessary initiatives to ensure proper decorum.

MOTION OFFERED BY MR. LATOURETTE

Mr. LATOURETTE. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. LATOURETTE moves to postpone further consideration of House Resolution 495 until September 4, 2002.

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Ohio (Mr. LATOURETTE) is recognized for 1 hour.

Mr. LATOURETTE. Mr. Speaker, as a first matter of business, I ask unanimous consent to yield 30 minutes of my time to the gentleman from Colorado (Mr. HEFLEY), the distinguished chairman of the Committee on Standards of Official Conduct, and further ask that he be permitted to yield time from that 30 minutes.

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

There was no objection.

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

Mr. Speaker, my motion to postpone would postpone the proceedings until a date certain, as a matter of fact, the day we would return from recess.

Mr. Speaker, this is a historic moment in the House of Representatives. Not since 1861, nearly 120 years ago, has the House expelled one of its Members. As we consider the resolution of expulsion today, it seems to me that we should do so with all the care and due regard for both this institution and the individual involved. This institution makes the Nation's laws; therefore, we have the obligation to be more concerned with the rule of law and the observance of law than any other institution in America.

Mr. Speaker, I wish I could take credit for those words, but I cannot. Those words were spoken by the Honorable Louis Stokes in 1980, the only other time that the House of Representatives has taken upon this course of action since the American Civil War; and on that particular occasion, which was the expulsion vote of Representative Myers of Pennsylvania, Congressman Stokes rose and made the same motion that I am making here this evening.

I would ask Members to pay attention to the similarities between where we find ourselves today and where the Congress found themselves in 1980, the only other time that this happened in this Congress's history, again, since the Civil War. Representative Myers had been convicted by a jury of a felony, of felonies. Representative TRAFICANT has been convicted by a jury of felonies. Representative Myers was pending sentence and had not been sentenced on the date that the resolution was brought to the floor. Congressman TRAFICANT has not been sentenced by the judge in Ohio. The House considered the resolution against Representative Myers on the last day before Congress left town for a 1-month recess in 1980. Tonight, we are 2 days from a 1-month recess in 2002. Representative Myers was caught on videotape accepting $50,000 from an individual who was dressed up as an Arab sheik; he admitted his conduct before the Committee on Standards of Official Conduct. Congressman TRAFICANT, in his case, there is no videotape, there is no audiotape, there are no fingerprints, and he has denied the allegations.

In this matter, although there were numerous witnesses that testified in the proceeding in Cleveland, Ohio, in Federal court, I would submit to Members, in my opinion, it boils down to a case of direct testimony in conflict. There are, and those of my colleagues that have practiced law know that there is something that we prosecutors used to do called ''putting lipstick on the pig,'' and you would have one witness that was seminal to your case, but you would call on other witnesses to say oh, I went to the bank, or I picked up the newspaper that morning, or I did this or I did that, seemingly to corroborate the main witness's testimony.

I would give an example, because since I have traveled the floor since this matter came about, the one count, although all are serious, and I will tell my colleagues right now, so that there is no confusion about where I come from, that if Congressman TRAFICANT committed these acts, I will vote to expel him, because they are reprehensible.

The most serious example that has been given to me as I have talked to other Members on the floor deals with kickbacks, the allegation that a member of his staff was hired and was required to deposit his congressional paycheck and every month take $2,500 in cash and deliver it to the Congressman.

Over the course of time, and this fellow's name was Sinclair. Over the course of time that this was alleged to have occurred, it would have been $2,500 a month for the months of his employment; it adds up to $32,500. During the same period of time, the government also indicated that Congressman TRAFICANT had received $13,000 in cash bribes from another individual.

That is count 3, not only on the indictment, but also the charges before us this evening.

The government introduced witnesses that said that, in fact, Mr. Sinclair went to his bank, deposited his congressional paycheck and took out $2,500 in cash. Mr. Sinclair also came forward and indicated that he brought some burnt envelopes to the FBI, the Federal Bureau of Investigation and said that Mr. TRAFICANT, after suspicion was cast upon him, brought him the cash back in the burnt envelopes; and that was introduced as evidence as well.

The competing evidence, and why it is conflicting and why it is different than Representative Myers where we have a videotape and audiotape and other matters is that 1,000 documents were submitted to the FBI lab, one of the best in the world, if not the best, and no fingerprints are found on any money, any envelopes, any plastic bags, nothing.

Further, I would tell my colleagues that they looked at Congressman TRAFICANT's bank account as well. Over the same time period, over the 2 years, he had deposits of $7,600. If the government's case is to be believed on that point and, again, we are talking about direct evidence; I am not asking anybody to subscribe to my view of the evidence, but about $40,000 is missing. Now, I would note, and I would ask what we used to ask in the law business, Members of Congress to take judicial notice, we know that that $40,000 was not spent at Brooks Brothers.

We have an issue where Mr. Sinclair says, this is what happened. Congressman TRAFICANT says, it did not. And that creates the backdrop for why I decided to file this motion, the same motion that was introduced by Louis Stokes in 1980.

When this matter came before the Committee on Standards of Official Conduct, and I want to give praise at this moment in time to the gentleman from Colorado (Mr. HEFLEY), the chairman of that committee, who has the toughest job in the House of Representatives, for his work. And I also want to commend the gentleman from California (Mr. BERMAN), the ranking member, not only because he has the second toughest job, but I just want to, just as a personal, point of personal privilege for a minute, when I filed this motion, I was originally told that there may be some who would seek to file a motion to table so we could not even have this discussion this evening. The gentleman from California (Mr. BERMAN) worked very hard to make sure that I had the opportunity to speak tonight and those who wanted to agree with me, and I thank him very much.

This sets the backdrop for what I think brings us here this evening, or at least me here this evening, and it is a fellow by the name of Richard Detore. Richard Detore is an individual who was indicted in a superseding indictment to the Congressman. He did not testify at the trial, because he has fifth amendment concerns. He did come against those concerns to testify before the Committee on Standards of Official Conduct in open session.

He testified, and again, we were free to believe or disbelieve, but that is not the point, and we will get there from here, that he was asked by the assistant United States Attorney to tell a story, and the story was that he was in a room here in the Capitol and he overheard a conversation between a fellow by the name of J.J. Cafaro and another individual wherein it was discussed that Congressman TRAFICANT was being bribed in return for favors, and the specific favor had to do with technology, laser technology for landing airplanes, which most of you voted for if you voted for AIR 21.

Mr. Detore testified to us, and again he did not appear at trial, that when he declined, and he said, I will tell you anything that I do know; he was originally given a grant of immunity: I will tell you anything that I do know, but that is not true, that did not happen. First, he was threatened with the Internal Revenue Service. Next, it was indicated to him that he would be charged with bank fraud. I want my colleagues to listen to the description of bank fraud because this is very telling.

When he got the job with U.S. Aerospace Group, he was promised employment of $240,000 a year. His employer, one of the accusers of the Congressman, gave him a letter saying, you are going to be the new CEO of this company and you are going to make $240,000. He took that letter to the bank to get a mortgage, as I think many of us in this room have done. When the accuser in another count of the Congressman told the story, he said, you know, you can get him, because we never signed his employment agreement. So his using the letter saying we are going to pay him in the future, he did not have a signed employment agreement; he has committed bank fraud.

When he did not believe that, and no reasonable human being would, he said they would indict him. He said, you know what? Indict me. And he stands indicted today.

Since his testimony, again, not seen by the jury, a juror in Cleveland, Ohio, has come forward to the newspaper; and, Mr. Speaker, I will introduce an article for the RECORD appearing in the Cleveland Plain Dealer on July 20 written by an excellent journalist by the name of Sabrina Eaton, and the headline is: ''Traficant juror changes his mind; now convinced conviction was wrong,'' and I will include the article in the RECORD at this time.

TRAFICANT JUROR CHANGES HIS MIND; NOW CONVINCED CONVICTION WAS WRONG

(By Sabrina Eaton and John Caniglia)

WASHINGTON.—A juror who helped convict U.S. Rep. James Traficant says his vote to find the Youngstown congressman guilty of 10 felonies in April was a mistake. He says he changed his mind after watching televised testimony before a House ethics panel this week.

''I know it's after the fact, but now I believe that there's no doubt that the government was out to get him, and if they want you, they'll find enough evidence to make you believe that the Earth is flat,'' said Leo Glaser of Independence, who was juror No. 8 at Traficant's nine-week trial in Cleveland.

Glaser, 54, said he was swayed by the testimony of Richard Detore, a Virginia executive accused of bribing Traficant. Detore, who faces trial in October, chose not to testify in Traficant's trial because he could have hurt his own case. But he did give his version to a House ethics panel that later recommended that Traficant be tossed from his job.

Detore told the panel he hadn't tried to bribe Traficant and that the chief prosecutor in the case against Traficant, Assistant U.S. Attorney Craig Morford, urged him to fabricate a story to say he overheard Traficant seeking favors from Youngstown businessman John J. Cafaro in exchange for political influence. He said his refusal to lie about Traficant resulted in his own indictment.

Morford, who was unable to present his side of the story when Detore testified in Washington, yesterday categorically denied ''any improper conduct'' and said Traficant brought up the same allegations last year in legal motions that were rejected by Judge Lesley Wells. He declined to comment on Glaser's statements.

Under federal law, Glaser's change of heart won't change the verdict against Traficant. Although it's unusual for jurors to change their minds after a trial, Case Western University law professor and political scientist Jonathan Entin said Traficant probably won't succeed if he tries to use Glaser's reversal to appeal the verdict, because Detore voluntary refused to testify in Cleveland.

Madison Republican Rep. Steve LaTourette, a member of the ethics panel that recommended Traficant's expulsion on Thursday, said that Glaser contacted his office several weeks ago to discuss the case but that ethics committee lawyers barred him from talking to the juror because of his role in deciding Traficant's fate.

LaTourette said he'll ask Speaker Dennis Hastert to bring Glaser's concerns to the attention of the House of Representatives before it decides whether to eject Traficant next week.

Another ethics committee member, Cleveland Democrat Stephanie Tubbs Jones, said she wasn't sure how Glaser's statements would affect Traficant's case.

''He's certainly not the first juror to reconsider his decision after a trial,'' Tubbs Jones said.

Glaser, who came to public attention when a Cleveland judge dismissed a traffic citation he was issued while trying to feed a homeless man during the 1996 holiday season, said he would have voted to acquit Traficant of all charges if Detore had testified at the bribery and racketeering trial.

''It would have give me reasonable doubt,'' said Glaser, a design technician at the Cleveland Electric Illuminating Co., who has twice run for mayor of Independence.

But other jurors said the evidence, with or without Detore's story, buried Traficant. Traficant's employees said he made them give kickbacks from their salaries and do unpaid work on his farm and boat. Local contractors said they gave Traficant bribes in exchange for assistance. Wells is scheduled to sentence Traficant on July 30.

''There was just so much evidence in the case and so many witnesses that the wealth of information against [Traficant] was overwhelming,'' said Jeri Zimmerman, a juror

from Mentor. ''I kept saying to myself, 'Please, please show me something, anything, that would make me wonder.' but [Traficant] never did. And the witnesses he called hurt him more than helped him.''

Asked about Detore's testimony before the panel, Zimmerman said: ''That's one person. What about the other 50 people that we saw? The government's case was overwhelming.''

Mr. Speaker, that article is based upon his observation of the hearings here in Washington, D.C.

Then, another juror came forward on Monday of this week and, in pertinent part, his affidavit indicates: ''I did not believe the testimony of the key government witnesses, and I did not believe that the government proved that James Traficant committed any offense,'' and I will include this affidavit for the RECORD at this time.

AFFIDAVIT

LORAIN COUNTY, STATE OF OHIO

Affidavit of Scott D. Grodi

Now comes Scott D. Grodi, and being first duly sworn upon oath, deposes and states the following:

1. I was selected as a juror in the case of *United States of America* vs. *James Traficant* in January 2002. I did not know anything about James Traficant at that time.

2. I served on the jury for eleven weeks and was excused by the Judge, without objection from either the government or the defense so that I could take care of family obligations.

3. I listened to the testimony of all government witnesses, all defense witnesses, in addition to hearing closing arguments before being dismissed.

4. When I was dismissed as a juror, I did not believe the testimony of the key government witnesses and I did not believe that the government proved that James Traficant committed any offense.

5. I do not believe today that James Traficant was guilty of the charges brought against him.

Further affiant sayeth naught.

SCOTT D. GRODI.

Sworn and subscribed before me on this the 24th day of July, 2002 by Scott D. Grodi in Lorain County, Ohio.

JOHN P. KILROY.

□ 1915

Next week, Mr. Speaker, the judge in Cleveland will consider justice in the Myers case, whether or not to pronounce sentence and what that sentence should be, but first will have to dispose of some due process procedural motions filed by the respondent, Mr. TRAFICANT, including a motion for a new trial.

And I will say I do not know everybody in this House well, but I have been here for 8 years, and I would trust that those Members who know me know I am not a black helicopter guy, I am not a big conspiracy theorist, but Mr. TRAFICANT's argument was, if we believe him, that the Government was out to get him because of other things. And I would say to my friend, and particularly my friends from Massachusetts, I would ask my colleagues if they could have imagined that Joseph Salvati could have been a subject of rogue FBI agents and kept in prison by our Government unlawfully for 35 years.

If my colleagues watched the Today Show and they saw the preview of Mr. TRAFICANT's hearing here today, the second story was about a man who had spent 17 years in prison for murder and the prosecuting attorney was in possession of a confession from another individual, but suppressed it and the man spent 17 years in prison.

I would just close at this point with another observation from 1980, and this observation says: ''I too am a former assistant U.S. attorney. I think I share the feelings of all the Members that have had a chance to review those videotapes,'' again, those are the Myers videotapes, ''that the conduct of the Member in question certainly was repugnant to all of the standards that I believe the Nation expects from this Congress, but I have to agree with the gentleman,'' Mr. Stokes, ''that we do not have the responsibility to judge each other's character, unfortunately, and I think until this matter is finally resolved in the courts that we should really come back and address ourselves to the issue in a climate that is not as political as the one we find ourselves in today.'' That was the gentleman from New York (Mr. RANGEL).

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

Mr. HEFLEY. Mr. Speaker, first of all, I yield 15 minutes of my 30 minutes to the gentleman from California (Mr. BERMAN), the ranking member of the Committee on Standards of Official Conduct, for his control of that 15 minutes.

The SPEAKER pro tempore (Mr. HANSEN). Without objection, the gentleman from California (Mr. BERMAN) will control 15 minutes.

There was no objection.

Mr. HEFLEY. Mr. Speaker, I yield myself such time as I may consume. I rise to speak in opposition to the motion by the gentleman from Ohio (Mr. LATOURETTE), and I oppose the motion for the following reasons: The bipartisan membership of the Committee on Standards of Official Conduct has worked diligently, and I think fairly, over the course of several months, and this has brought us to the resolution under consideration today to expel Representative TRAFICANT. The committee following regular order has placed this matter in the hands of the leadership to schedule it whenever the leadership deemed appropriate.

In fact, when asked what I wanted in this, I said, ''If you let it lay over until September, that is fine with me. If you schedule it now, that is fine with me. Whatever you think is best for the schedule, that is fine with me.'' They scheduled it for tonight, and so tonight is the night that we need to do this business.

The committee reached its decision to sustain nine counts of misconduct against Representative TRAFICANT based on clear and convincing evidence before it. In an article in the Youngstown, Ohio Vindicator, dated July 23, yesterday, the juror, I think the same juror that Mr. LATOURETTE mentioned: ''Leo Glaser said today that his vote to convict U.S. Representative James A. Traficant, Jr., stands. Glaser, juror number 8 in the Federal District Court trial in Cleveland, said his quotes in a newspaper story over the weekend were somewhat inaccurate.

''He said he found the headline in the Cleveland Plain Dealer story, 'Traficant juror changes his mind; now convinced conviction was wrong,' especially inaccurate.'' So while I have sympathy for what Mr. LATOURETTE is trying to do, I do not know if this juror thinks he made the right decision or he did not make the right decision. I cannot tell from these stories. But, Mr. Speaker, I would urge that Members vote against this motion.

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

Mr. BERMAN. Mr. Speaker, I yield myself up to 7 minutes.

I oppose the motion of the gentleman from Ohio (Mr. LATOURETTE), who is a very diligent and very valuable member of the committee, who joined in the unanimous vote to recommend expulsion.

A word about the testimony before the committee of Richard Detore, for when we hear the gentleman from Ohio's (Mr. LATOURETTE) argument, we realize that only one issue has come up since the time that the committee recommended expulsion that changes the facts before us since the committee completed its deliberations, and that is the comments of jurors. I will address those comments in a few moments, but first I want to talk about the testimony that I think is underlying some of the concern, that of Richard Detore.

Unlike the jurors in Cleveland, the eight members of our adjudicatory subcommittee, including myself, heard Mr. Detore's efforts to exculpate Mr. TRAFICANT.

We nonetheless determined that the allegations against the gentleman had been proven by clear and convincing evidence, including count 3, the only count, the single count on which Mr. Detore arguably had pertinent firsthand information. Despite his limited familiarity with the full range of charges against Mr. TRAFICANT, Mr. Detore nonetheless spoke with assurance about matters of which he could not possibly have had direct knowledge, including events in Youngstown, of which this Washington area resident could not have been aware and private conversations which did not include him.

He testified about conversations between Mr. TRAFICANT and J.J. Cafaro, a business plan for whom Mr. TRAFICANT secured a $1.3 million appropriation and who engaged in a sham transaction involving $13,000 in cash and $26,000 additionally in repairs and boat slip fees in a sham transaction pretending to buy Mr. TRAFICANT's boat. Cafaro and the former USAG chief engineer, Al Lange, Cafaro and Cafaro Company treasurer Dominic Roselli, and Cafaro and his accountant Patricia DiRenzo.

Mr. Detore testified on all of these conversations and there is not a bit of evidence that he was a party to or a participant in any of these conversations.

The adjudicatory subcommittee found Mr. Detore either lacking in credibility or found his testimony outweighed by the overwhelming evidence against Mr. TRAFICANT.

It has been argued that as an indicted co-defendant, which he is, he placed himself in great peril by testifying before our committee and that this bolsters his credibility. I think it can be argued just as well that this was his Hail Mary pass to discredit the Assistant U.S. Attorney before his case goes to trial. Mr. Detore clearly demonstrated that ours is the forum where he intended to try to save his neck.

He has repeatedly failed to show up at pretrial hearings in Cleveland citing ill health, yet he managed to make a surprise appearance before our committee last week, testifying for hours late into the night. For that reason, he is now facing contempt charges in Cleveland, charges that he and the gentleman from Ohio will doubtless argue is further evidence by their persecution by the Assistant U.S. Attorney.

Casting further doubt on the voracity of Mr. Detore's allegations of misconduct by the assistant U.S. attorney, is the fact that he similarly hurled accusations of misconduct against the staff of the Committee on Standards of Official Conduct, staff which we know to a certainty acted appropriately and the allegations are patently false.

Let us look at the recantations by juror Leo Glaser. He has been cited as saying that he heard at trial the testimony he heard of Mr. Detore last week. If he had heard that, he might not have voted to convict. I would point out that the conclusion of the Adjudicatory Subcommittee and the recommendation that the gentleman be expelled were based not to the conviction, but on the evidence presented at trial.

Furthermore, Mr. Glaser has gone on to say to the press that he also did not have the opportunity to hear how the Assistant U.S. Attorney might have cross-examined Mr. Detore so he cannot be sure how he would have weighed the Detore testimony. Nor does he know what his fellow jurors might have argued in their deliberations after Mr. Detore's testimony in cross-examination.

And finally, Mr. Detore could have testified at trial. Mr. TRAFICANT did not call him. We do not know whether he would have taken the fifth amendment at trial. He did not take it in our Committee on Standards of Official Conduct hearing. If anyone denied Mr. Glaser the opportunity to hear Mr. Detore during the trial, it was the gentleman from Ohio. It is intriguing to me that suddenly Mr. Detore is made available to make a statement to us.

With regard to the second juror, he did not even participate in the jury deliberations at all. He left the jury to attend a family funeral, an alternate was selected. He has no idea what the give and take was inside the jury room during the deliberations.

Let me reiterate that unlike the jurors in Cleveland, we did hear from Mr. Detore, yet we were not persuaded. We voted for the count with regard to which he testified, count 3, and for eight other counts, finding that the evidence established by clear and convincing evidence that the rules of the House have been violated.

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

Mr. LATOURETTE. Mr. Speaker, I yield 2 minutes to the gentleman from Alabama (Mr. CALLAHAN).

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

Mr. CALLAHAN. Mr. Speaker, I do not rise tonight in defense of guilt or innocence of our colleague, the gentleman from Ohio (Mr. TRAFICANT). I rise tonight in a sense of what I think is fairness. I have a tremendous respect for this body and an overwhelming respect for the Committee on Standards of Official Conduct and the difficult job that they have. I too compliment the gentleman from Colorado (Mr. HEFLEY) and the gentleman from California (Mr. BERMAN), for their tremendous efforts and integrity that has been so prevailed throughout this trial.

I rise tonight in support of this resolution. I am not blessed with a law degree, I do not apologize for that, I just do not have one. But I do know that in court language, when one is going through a trial process, judges sometimes overrule things because of a clause. They say that a bell cannot be unrung. And, indeed, if we tonight ring this bell of guilt against the gentleman from Ohio (Mr. TRAFICANT) during this appeal process, we are only talking about a 6-week delay, in order to make this ultimate decision, in my opinion, it is unfair to my colleague.

I think we ought to give him the benefit of the doubt. It is not professing that we believe he is innocent by delaying this action until September. It is just saying that we are going to give him a chance. Even if someone is convicted of murder in most every State in the Nation, there is always an escape valve because the governor has the right to overturn if evidence is presented that convinces the governor that the defendant is deserving of a new hearing.

What we do tonight is ring the guilt bell upon the gentleman from Ohio (Mr. TRAFICANT) when it is not necessary at this time. Certainly if he is charged with what he is charged with by the Committee on Standards of Official Conduct, and I have no reason to doubt that he has not been charged correctly, then we should act. Certainly we ought to give one of our own colleagues the benefit of doubt. Delay this action for 6 weeks until we get back in September and then vote our convictions.

Mr. HEFLEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Speaker, I rise to urge my colleagues to reject the motion to postpone H.R. 495.

I know how difficult this proceeding is for the gentleman from Ohio (Mr. LATOURETTE), himself a former prosecutor and for the other Members of the Ohio delegation who have served many years with the gentleman from Ohio (Mr. TRAFICANT) and developed close friendships.

If the subject today were a friend and colleague from the Illinois delegation, I cannot say for certain that I would not try to do the same thing. But the subject today is the gentleman from Ohio (Mr. TRAFICANT) and whether this body is best served by postponing the consideration of this resolution until after August.

It is said that there may be new developments in the gentleman's Federal case, and that a month's time might yield a new outcome.

In fact, there was a new development just today in the gentleman from Ohio's (Mr. TRAFICANT) Federal case when a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit denied the gentleman from Ohio's writ of mandamus on a petition relating to jury selection. We heard a great deal about that petition during our hearing, and there is no doubt in my mind that there will be other appeals and other petitions on the gentleman's behalf. But my point is, regardless of whether these approaches succeed or fail in the Federal courts, they are, by no means, relevant to the status of his case in the U.S. House of Representatives.

Why do I say this? For one, our subcommittee did not rely strictly on the transcript from the Federal case.

□ 1930

We went well beyond it and heard from the gentleman from Ohio's (Mr. TRAFICANT) witnesses, including those who were not allowed to testify on his behalf in Federal court.

Second, our standard of proof is much lower than what a jury faces in a Federal criminal case. In Federal court, it is beyond a reasonable doubt that a crime was committed. In the U.S. House, it is clear and convincing evidence that our code was violated, a very important distinction.

Last, our mission was not to determine whether the gentleman from Ohio (Mr. TRAFICANT) is guilty of a felony count or 10 felony counts. It was to determine whether the gentleman from Ohio (Mr. TRAFICANT) violated the Code of Official Conduct and the Code of Ethics for Government Service, again a very important distinction.

We Members of the House are not a Federal court of appeals nor are we here to second-guess or predict the rulings of juries or judges in the Federal courts of Ohio. We are here to serve our duty under article I, section 5, clause 2 of the Constitution.

As a member of the adjudicatory subcommittee that reviewed the evidence in this case, I would respectfully urge my colleagues to vote against the motion to postpone and for the resolution. Neither justice nor this body will be served by delay.

Mr. BERMAN. Mr. Speaker, I yield myself 1 minute.

I would like to respond to the comments of my very good friend, my colleague from Alabama, because there is a certain quick appeal in the argument that this process is still under way, the sentencing occurs next week, there are appeals, there are writs of habeas corpus following that process.

The motion to postpone is a motion to postpone till September 4. The gentleman from Ohio (Mr. TRAFICANT) has made a motion for a new trial, and that motion has been denied with an extensive opinion by the judge. No one can argue that this appellate process will be even seriously under way, little less completed, by September 4.

The logical conclusion of a process which says we wait until all appeals are exhausted means that the provision of the Constitution which provides that we expel Members for the most egregious behavior is rendered a nullity. I do not think that is what our Founding Fathers intended, and that is not what we should do.

Mr. Speaker, I yield 2½ minutes to the gentlewoman from Ohio (Mrs. JONES), a former judge, a former prosecutor, a great member of our committee.

Mrs. JONES of Ohio. Mr. Speaker, I thank the ranking member, the chairman, and my colleagues who served on the Committee on Standards of Official Conduct. What an experience.

Service on the Committee on Standards of Official Conduct is not a committee assignment for which there is a lot of competition. In fact, it is not even an enviable position. However one is called into service, each Member must accept his or her responsibility and obligation to serve with honor and integrity, consistent with the tradition of this great House of Representatives which we love and revere.

I seriously considered not speaking before the full House, in part because I believe that the misfortunes of one of my colleagues should not be used for political purpose or grandstanding. However, having accepted this responsibility of serving on the Committee on Standards of Official Conduct, I believed it my duty and obligation to speak out in support of the decision that we made and in opposition to delay.

Let me say at the outset that I have known the gentleman from Ohio (Mr. TRAFICANT) for many years. As he stated many times in that hearing, he was a vocal supporter of my candidacy for the Ohio Supreme Court, and for that I will ever be thankful. Some even questioned my ability to serve, and I knew that I could be fair and so did the gentleman from Ohio (Mr. TRAFICANT).

Let me go for a moment to this question about where the money was if the gentleman from Ohio (Mr. TRAFICANT) got the money. If my colleagues got the money, would they put it in the bank?

Let us talk a little bit about these jurors. I have tried many cases, both as a judge and as a prosecutor, and there were many times where jurors, once they rendered that decision, wanted to back up and say, I do not know if that was the right decision; judge, can tell us whether he was guilty or not or whatever it was. Jurors make decisions based on all the facts and evidence that is before them at that particular time, and this is what those jurors did.

The burden was beyond a reasonable doubt, the highest burden of proof in our Nation. Our committee has a job and our committee is, and we are not governed by the same rules that my great colleague, Mr. Stokes, whom I have a lot of respect for, was when he made the motion back on Mr. Myers. Our rules of ethics are different. They are not the same as they were back when Mr. Myers was presented before this House.

The rules say that this body can make a decision to expel a Member prior to sentencing and prior to conviction, and that is what this committee recommended to my colleagues.

We are not a jury. We are not a criminal court. We are in the court of the House of Representatives and the court of public opinion which expects us to do our job, unlike the gentleman from Ohio (Mr. TRAFICANT), but my job is to make a decision right here on the House of Representatives. Vote against the motion.

Mr. LATOURETTE. Mr. Speaker, I yield myself 30 seconds to make the following observation.

Both the distinguished chairman and the distinguished ranking member, I think, said what I have been trying to say. They repeatedly said that we do not know, we do not know this, we do not that. That is the point of laying this over.

Secondly, to my good friend from Illinois, with all due respect, I could be fair if this respondent was from Idaho, Iowa or Timbuktu.

To the gentlewoman from Ohio (Mrs. JONES), my good friend and former colleague who was a prosecutor in Ohio, the rules have changed but justice has not since 1980, I hope.

Mr. Speaker, I yield 4 minutes to the gentleman from Indiana (Mr. BURTON).

Mr. BURTON of Indiana. Mr. Speaker, the prosecutor allegedly threatened a witness and said if he did not say what he wanted him to say he would be indicted. He did not say what he wanted him to say and he was indicted. That could be prosecutorial misconduct. I do not know. If the court upholds the decision that they have made and they sentence the gentleman from Ohio (Mr. TRAFICANT) to prison, I certainly will vote for expulsion, but I do not know whether there was prosecutorial misconduct.

I do know that two jurors, after watching the ethics hearing, said if we had known and seen what we saw before the Committee on Standards of Official Conduct, we would have voted otherwise. That creates a little bit of doubt in my mind, and I do not know and I do not think any of my colleagues know tonight if the judge might say, hey, because of the jurors' reevaluation of this, maybe we should order a new trial. I do not know if he will do that or not. He may not, but that is his decision.

I do know that he is going to be making that decision next week and he is also going to be making a decision on whether or not to send the gentleman from Ohio (Mr. TRAFICANT) to prison for how long, and for the life of me, and I say this to both my Democrat and Republican colleagues, I cannot understand why we cannot wait until we come back from break to vote on this issue.

That is why I support the motion of my colleague who serves on the Committee on Government Reform with me, and I am sure that he would have the same attitude whether the gentleman from Ohio (Mr. TRAFICANT) was from California, New York or whatever, because that is the kind of man that the gentleman from Ohio (Mr. LATOURETTE) is.

Another reason why I feel very strongly about this is we have had hearings, numerous hearings about what went on in Boston about 30 years ago where they put an innocent man in jail for over 30 years for a crime he did not commit, and I believe all the way up to J. Edgar Hoover, they knew he was innocent, but they were protecting Mafia informants.

So many times there are miscarriages of justice. I am not saying that is the Traficant case, but it happens, and for that reason alone I think we ought to say let us take a deep breath, go on break, come back in 4 or 5 weeks and then vote on this issue. If he is sentenced, if he goes to prison, he should be expelled, and I will vote for expelling, but what in the world is wrong with waiting for 4 or 5 weeks? I simply do not understand that.

Mr. HEFLEY. Mr. Speaker, I yield myself 1 minute, and then I am going to yield to the gentleman from Missouri.

There is a lot that we do not know, as the gentleman from Ohio (Mr. LATOURETTE) said, about the argument that the gentleman from Ohio (Mr. TRAFICANT) made about judicial misconduct or prosecutorial misconduct. There is a lot we do not know about that.

What we do feel we know, however, is that there was clear and convincing evidence on the charges that he was charged with before the Committee on Standards of Official Conduct, and in summary, that is four counts of bribery over a long period of time; that is obstruction of justice; that is defrauding the government through the use of

congressional staff for personal service; and there was false statements on income tax returns. We think we know that by clear and convincing evidence.

Clear and convincing, those of my colleagues who are attorneys know better than I do, equals highly probable. Clear and convincing evidence means it is highly probable that he is guilty of these offenses. It does not equal absolute certainty, and it does not even equal the reasonable doubt standard that the judge mentioned over here. It means it is highly probable. That is what the committee's conclusion was.

Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. HULSHOF).

Mr. HULSHOF. Mr. Speaker, let me say at the outset that I hold the gentleman from Ohio (Mr. LATOURETTE) in highest esteem. Over the course of the past 10 days, during this very long and arduous process, we have agreed and we have disagreed. We have passionately advocated different points of view, and I respectfully disagree with this motion and urge my colleagues to vote down that motion to continue.

What I would like to do is really just address just the folks who may be harboring these thoughts or fears of an acquittal or some different outcome during this appellate process, which I absolutely agree with the gentleman from California (Mr. BERMAN) will not be concluded within 6 weeks.

Our task today, Mr. Speaker, is as different from that criminal jury verdict as the legislative branch is different from the judiciary. Our task tonight is as dissimilar as article I is different and separate and apart from article III.

Unlike the matter that was debated on this House floor on October 2, 1980, in Mr. Myers' case, the Committee on Standards of Official Conduct relied entirely upon the guilty verdicts. Mr. Myers had not been given a full-blown hearing before the Committee on Standards of Official Conduct.

As my colleagues know and has been discussed, we had that hearing. In fact, the gentleman from Ohio (Mr. TRAFICANT) was given great latitude. He was treated generously by a committee of his colleagues who respected the gravity of the occasion which brought us face to face. Would that the gentleman from Ohio (Mr. TRAFICANT) had acted in a reciprocal manner, but even the antics of last week are irrelevant to the decision that was reached by our committee.

We reached our decision on 9 of 10 violations of House rules independent and apart from the jury verdict in Cleveland. So on the process and procedural grounds the gentleman from Ohio's (Mr. LATOURETTE) motion must fail, but on substance, it fails as well.

This witness, Mr. Detore, the committee considered his testimony and rejected it. As the gentleman from California (Mr. BERMAN) pointed out, and let me reiterate, Mr. Detore exonerated himself for the criminal charge with which he was indicted, and yet he offered no defense to the gentleman from Ohio's (Mr. TRAFICANT) kickback scheme of accepting $30,000. Mr. Detore offered no defense on the $30,000 kickback scheme between the gentleman from Ohio (Mr. TRAFICANT) and a congressional staffer. Mr. Detore provided no testimony on the illegal gratuities supplied by constituents to the gentleman from Ohio (Mr. TRAFICANT) at the gentleman from Ohio's (Mr. TRAFICANT) behest.

Mr. Detore offered nothing on the charge of obstructing justice by encouraging others to give false testimony to the authorities.

Mr. Speaker, there has been a lot of reference and comparison between what we are doing today and tonight compared to that same debate that was within these hallowed halls some 22 years ago. Perhaps one other comparison, I hope, is appropriate. The House of Representatives in the Myers case voted down Mr. Stokes' motion 332 to 75. For procedural and substantive grounds, the motion from the gentleman from Ohio (Mr. LATOURETTE) must fail.

Mr. BERMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN), a distinguished member of the committee.

□ 1945

Mr. GREEN of Texas. Mr. Speaker, I thank my colleague for yielding me this time.

Mr. Speaker, I am the newest member of the Committee on Standards of Official Conduct, and like all of my colleagues, I did not want it. In fact, I had to be asked three times by the leadership on our side before I would say yes. But I rise tonight to oppose the motion to postpone until September 4.

This House is more important than any of us individually. We will come and go. Our voters will make that decision. What my concern is what this looks like for our House of Representatives for the future. Sentencing for the gentleman from Ohio (Mr. TRAFICANT) is set for next Tuesday, July 30. We will be in recess until September 4. We could actually have our colleague serving with us and also serving in Federal prison for a month.

I would hope we would not think about us as individuals but think about us as a House and ask ourselves if we want that for our House of Representatives, and not really ours, as Members, but the people of this United States. I do not think it is right, and I do not think it does this House honor.

I will not repeat what my colleagues have said who heard the testimony. I listened to Mr. Detore, and I found that he must be a very nice fellow, but I did not find him to be a credible witness on even the issues he was trying to talk about. I felt like he was out of the loop even on those issues, much less that we need to remember that the jury in Cleveland convicted our colleague of nine other felony counts. The committee found eight other counts and unanimously voted for expulsion.

Mr. LATOURETTE. Mr. Speaker, it is my pleasure to yield 3 minutes to the gentleman from Texas (Mr. PAUL).

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

Mr. PAUL. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in support of the motion by the gentleman from Ohio.

It is not easy to do this, obviously, and it is difficult for all of us to be here because it seems like, on the surface, there was unethical, probably illegal, and certainly bizarre behavior, and we feel offended by this and we feel compelled to do something to prove that we are keeping our House in order.

I am not an expert on the legal part of this case. I would not pretend to be, and the Committee on Standards of Official Conduct deserves the credit for the effort they went through to dig out the information. But the process disturbs me, and that is why I wanted to take a minute or two to talk about that.

The point was made earlier that the House's conditions are a lot different than the legal conditions for guilt and, therefore, they are not as stringent. But we would not be here if Mr. TRAFICANT had not been convicted, and so that is key. That is the important issue.

And that trial bothers me. I do not accept it as a good, fair, legitimate trial. I do not think all the witnesses were heard that should have been heard, and I think some of the witnesses may well have been ''bribed'' into doing and saying certain things.

But there is more that bothers me. I would like to see the appeals process completed. I was here in 1984, on my first tour of duty here in the House, and the George Hansen case came up and we voted then to convict. I think he had FEC violations and we voted to censure him. He lost his election, he lost his job, he lost his money, he went to jail and served time, and then he was exonerated on everything. He won all his appeals. I do not see the need to rush to judgment, certainly tonight.

I am not happy that when the gentleman finally gets an opportunity to come and defend himself, he gets a total of 30 minutes. Really? And have my colleagues looked at the record of the case in Ohio? It contains a stack a foot high. Thirty minutes to defend himself? I do not think that is really fair.

But there is another thing that bothers me, and that is the change of venue. I believe that the change of venue has been used historically in this country to make sure that the most horrible criminal gets a fair trial and gets his case moved from a area unduly influenced by media coverage. Have any of my colleagues ever heard of a trial being moved for the benefit of the State and to the disadvantage of the defendant? It may have happened, but I

do not know about it, and I think that in itself is a reason to step back, take a look at this, and vote for the motion by the gentleman from Ohio.

Mr. Speaker, many of Congressman TRAFICANT's actions are impossible to defend. Mr. TRAFICANT has most likely engaged in unethical behavior. I would hope all my colleagues would join me in condemning any member who would abuse his office by requiring his staff to pay kick-backs to him and/or do personal work as a condition of employment. I also condemn in the strongest terms possible using one's office to obtain personal favors for constituents, the people we are sent here to represent. Such behavior should never be tolerated.

However, before expelling a member we must consider more than eccentric behavior and even ethical standards. Questions of whether the process of his court conviction and expulsion from Congress respected Mr. TRAFICANT's constitutional right to a fair trail and the right to be represented of those who elected him to office, are every bit as important.

Many Americans believe that Congress daily engages in ethically questionable and unconstitutional actions which are far more injurious to the liberty and prosperity of the American people than the actions of Mr. TRAFICANT. Some question the ability of Congress to judge the moral behavior of one individual when, to take just one example, we manage to give ourselves a pay raise without taking a direct vote on the issue.

Mr. Speaker, after carefully listening to last week's ethics hearing, I have serious concerns over whether Mr. TRAFICANT received a fair trial. In particular, I am concerned over whether the change of venue denied Mr. TRAFICANT a meaningful opportunity to present his care to a jury of his peers. Usually change of venue is instituted in cases where the defendant is incapable of receiving a fair trial. I am unaware of any case where the venue is changed for the benefit of the state.

However, the most disturbing accusations concern the possibility that Mr. TRAFICANT was denied basic due process by not being allowed to present all of his witnesses at the trial. This failure raises serious questions as to whether Mr. TRAFICANT had the opportunity to present an adequate defense. These questions are especially serious since one of the jurors from Mr. TRAFICANT's criminal trial has told the Cleveland Plain Dealer, that had he heard the testimony of Richard Detore at Mr. TRAFICANT's trial, he would have voted ''not guilty.''

Mr. Speaker, I also question the timing of this resolution and the process by which this resolution is being brought to the floor. Mr. TRAFICANT's conviction is currently on appeal. Many Americans would reasonably wonder whether the case, and the question of Mr. TRAFICANT's guilt, can be considered settled, until the appeals process is completed. I fail to see the harm that could be done to this body if we waited until Mr. TRAFICANT has exhausted his right to appeal.

Prior to voting to expel Mr. TRAFICANT before he has completed his appeals, my colleagues should consider the case of former Representative George Hansen. Like Mr. TRAFICANT, Mr. Hansen was convicted in Federal court, censured by the Congress, and actually served time in Federal prison. However, Mr. Hansen was acquitted on appeal—after his life, career and reputation were destroyed.

If my colleagues feel it is important to condemn Mr. TRAFICANT before the August recess, perhaps we should consider censure. Over the past 20 years, this body has censured, instead of expelled, members who have committed various ethical and even criminal activities, ranging from being convicted of bribery to engaging in sexual activity with underage subordinates.

I am also troubled that Mr. TRAFICANT is only being granted a half-hour to plead his case before the house. Spending only an hour to debate this resolution, as if expelling a member of Congress is of no more importance than honoring Paul Ecke's contributions to the Poinsettia industry, does no service to this Congress.

In conclusion Mr. Speaker, because of my concerns over the fairness of Mr. TRAFICANT's trial I believe it is inappropriate to consider this matter until Mr. TRAFICANT has exhausted his right to appeal.

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

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

Mr. LATOURETTE. Mr. Speaker, it is now my pleasure to yield 3 minutes to the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Speaker, it is not easy for a freshman to get up and talk about a Member that I do not know very well. Although I was born in Ohio, I am not here because of some relationship to Ohio. I am a California representative. I was voted by, in my particular case, over 800,000 people I now represent, until we get reapportioned. All of my colleagues got here because of over 600,000 or more voters. They put us here, this body did not. Our governors did not put us here; a court did not put us here.

We are a unique body. We get here by one and only one reason, and that is 1/435th of the country votes to put us here. I do not know the people of Youngstown all that well, but they put the gentleman from Ohio (Mr. TRAFICANT) here, and I take it as an extremely important and extremely solemn duty to decide to take the extraordinary measure of removing him.

I must tell my colleagues that I am also not a lawyer, but I am going to have to decide, hopefully in the next month rather than the next hour, whether or not to, for the second time in modern history, I guess for the second time in history practically, to remove a Member. I do not have enough information.

I respect the gentleman from California (Mr. BERMAN). I respect the chairman. I believe that they have looked at this long and hard. But I have not had the opportunity. And as lawyers often say, I must look at this sua sponte. I am sorry, de novo. See, I am not an attorney. I have to look at this anew, and I am not prepared to do it now. I would appreciate the opportunity to see what the court in Cleveland does over the break. I would appreciate the opportunity to review the records and have my staff assist me. I will probably, when the times comes, vote as my colleagues do.

Now, if I can just make one statement to this body, because there was a reference from one of my colleagues that in fact we had to worry about the image of this body. We will be gone after tomorrow, more or less, for a month. There will be no votes. There will be no activity. Whether the gentleman from Ohio (Mr. TRAFICANT) is a Congressman or an ex-Congressman, he has a cloud that he is living under that he will have to deal with. It will make no difference to them. This body will survive one month of somebody with a conviction not yet sentenced or sentenced and not yet incarcerated.

I believe that if we give it that time, if all of us go and soul-search, take the time to understand the case, when we come back, whatever the vote is, we will feel better for ourselves and for this body if we have taken the deliberative time, and I ask my colleagues to please support this motion to give enough time for us to do the job right. We do not do it that often.

Mr. HEFLEY. Mr. Speaker, I have no further requests for time, and I yield myself the balance of my time.

I would just sum up with a few statements at this point. This is no rush to judgment. We have been struggling with this for some time. Most of my colleagues have not been as intensely involved with it, nor should you be, because you have other responsibilities and you have given us this responsibility.

The gentleman from Ohio (Mr. TRAFICANT) is not getting 30 minutes to defend himself. He is getting 30 minutes here on the House floor. He had 5 hours before the committee, and it amounted to a great deal more than that because we gave additional time for him. He had the entire hearing process to defend himself.

The gentleman that just spoke said he had not had time to really study it and understand. Well, the trial transcripts have been on the Internet for at least a week. Monday, the exhibits and the transcripts were all delivered to Members' offices. We are busy, and I know it is hard to have time to go through, and it is volumes of material, so I am not criticizing anybody for that, but my colleagues have heard tonight from the members of the Committee on Standards of Official Conduct, members that have been deeply and intensely involved in this over the last few weeks and months, as a matter of fact. And not one member of that committee did I sense was out to get JIM TRAFICANT. I sensed no hint of partisanship in that hearing. And I would suspect that JIM TRAFICANT would agree to that, that there was not a partisanship angle to this in the committee. I think this was a very painful decision for every one of us. JIM TRAFICANT and I have been friends. JIM TRAFICANT has been a friend to most of you in here.

This is not a pleasant time or a pleasant task. If I thought that between now and September 4 the landscape would change substantially, then I might be with the gentleman from Ohio (Mr. LATOURETTE) and say let us put this off until September. But, my colleagues, I must say that the largest single profession represented in the United States Congress is lawyers, so you know, and I am not a lawyer, but my colleagues know that the appeals process can drag on and on and on for months, sometimes for years.

So if we do not do this tonight, I do not know exactly when we are going to do it. I just do not think it is going to change between now and September 4. So I would respectfully ask that Members reject the motion of the gentleman from Ohio (Mr. LATOURETTE).

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

Mr. BERMAN. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN), the ranking member of the subcommittee that investigated and prepared the statement of alleged violations. She has been a member of this committee for 5½ years. She has performed wonderfully far more than her share of the burdens of this committee in this and other matters.

Ms. LOFGREN. Mr. Speaker, as the gentleman from California (Mr. BERMAN) has said, I have been a member of the Committee on Standards of Official Conduct now for 5½ years, and in those 5½ years, in every case, every member of the Committee on Standards of Official Conduct has tried to discharge their duty fairly and to do the right thing. That has always been the goal. There has never been a drop of partisanship in the committee.

As we have worked through this, I think it is important to share what the Committee on Standards of Official Conduct reviewed before coming here today.

We have heard about this Mr. Detore, who was not found to be a credible witness by the adjudicatory subcommittee. But in addition to that testimony offered to the committee, we reviewed 6,000 pages of testimony, more than 50 witnesses for the prosecution, and 29 witnesses called by the gentleman from Ohio (Mr. TRAFICANT).

What we found in the review of the statements of those witnesses that were subject to cross-examination is, regrettably, a pattern of tens of thousands of dollars that were delivered to the gentleman from Ohio (Mr. TRAFICANT) in kickbacks and bribes, the most serious misconduct that we need to address here.

Now, it has been suggested that we delay these proceedings. If we delay to September 4, we will know nothing more than we do this evening. We will not have an appellate decision. We will just know what we know today.

□ 2000

Mr. Speaker, I would note that article I, section 5, says it is for each House to determine with the concurrence of two-thirds whether to expel a Member. It is not for the House to delegate to the judiciary the decision on who is fit to serve in each body.

I would urge that we step up to our unpleasant duty this evening, that we discharge our obligations granted to us under article I, section 5 of the Constitution, and that we act this evening, unhappy as that task may be.

Mr. BERMAN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I want to talk about the quote ''rush to judgment.'' Quite a long time ago, well over a year and a half ago, the Chair and the ranking member of the committee and the staff of the committee were aware of articles talking about indictments, investigations, facts for which there would have been ample evidence for the committee to proceed at that time to investigate totally separate from the criminal justice process.

The committee chairman and the ranking member said no, let us wait; let the criminal justice system work. Let us not rush and push this. We know the complications when there is a dual-track investigation, and we refrained from acting.

There was a trial and there was a conviction, and the only thing this committee did was to make sure they gathered the information and the transcripts from the trial as that trial went on. Now the conviction comes in; and many Members of this body, either proposed or wanted to propose privileged resolutions essentially saying we have a Member of our body, a colleague of ours who has been convicted of 10 felony counts. This is intolerable, we want to expel, and they could have brought a privileged resolution to this floor. We went to those colleagues, and we persuaded them to defer to this process. Let us do it according to the rules, give the subcommittee the adjudicatory committee and the full committee a chance to look at the evidence, gather it, and produce it. We did that.

We come forward in regular order. I ask Members to reject the motion, do not reject the committee's process and the process of restraint and justice that we have shown and vote ''no'' on the motion to postpone.

Mr. LATOURETTE. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, again for those colleagues who have been involved in the criminal justice system, I would tell them, and I do not disagree with things that have been said by other members of the committee, Mr. Detore, whom I found to be credible, and with all due respect to the gentlewoman from California, I would ask Members to ask other members of the adjudicatory subcommittee whether they found Mr. Detore to be credible or not, but the difference is this. The committee was left with a cold hard 6,000-page transcript. We were not able to see the accusers of the gentleman from Ohio (Mr. TRAFICANT), whether they sweat, whether they reacted under cross-examination.

Mr. Detore came in, and I just want to read one portion of what I was able to see him say in response to the questions put to him by the committee, the gentleman from Ohio (Mr. TRAFICANT), and counsel for the committee.

He said, ''I have lost faith in my ability to tell my kids to be honest, to be truthful, to be fair to others, and others will be fair to you. This is not where I was born. I don't know what is going on here. This is like having an out-of-body experience in another planet. The amount of treachery, deceit and lies throughout is unbelievable.

''I got a wife laying home with shingles from stress, she can't even move, paralyzed. I have two children crying, upset, a nervous wreck. I have never had situations where I passed out in my entire life. But 2 years of pure hell, and I defy anybody to walk in my shoes. And I could have simply just taken an easy path and just said, okay, I will say what you want me to say.''

I had the chance to see him, and so did the other members of the committee. We were deprived of the opportunity to see any other witness who accused the gentleman from Ohio (Mr. TRAFICANT) of anything. And so the committee was in a position of substituting our judgment as to whether they were more credible than the Congressman, whether they were more credible than Mr. Detore. We had to accept the judgment of 12 jurors, 350 miles and 6 months away.

I made this example in my conference earlier that, again, being a prosecutor, I am familiar with death penalty cases. In a death penalty case if we receive information that something is not right, I think everybody in this Chamber would pick up the phone and call the Governor and say, Governor, we have to give it a couple of days until we check it out because it is irreversible.

What we are being asked to do tonight is the equivalent. It is the political death penalty. We cannot put the toothpaste back in the tube. If the gentleman gets a new trial next Tuesday, we cannot unexpel him next Wednesday. This is final tonight. All we are asking is for Members to follow what Mr. Stokes and the gentleman from New York (Mr. RANGEL) asked the body to do in 1980.

In closing, I want to thank all of the Members who spoke on behalf of our motion, but I want to highlight the comments of the gentleman from California (Mr. ISSA) in particular. I mentioned that both of these motions are occurring days before a month-long recess; and in that debate in 1980 a Member said, ''I think the conduct engaged in by Mr. Myers is reprehensible and, if we do proceed to a final vote on the issue today, I shall vote to expel him. I deeply believe that this is precisely the wrong time for this House to act. I say that for a very simple reason . . .

This is the last week of the session, and almost every Member is doing what I am doing. We are closeted in meetings with our staffs. We are trying to clear the deck to get out of here. We are paying attention not to the Myers case, but we are paying attention to what we have to put into our briefcases to go home . . . I would submit that this is not the correct atmosphere in which to take the historic action which we will be taking today.''

That Member of Congress was the gentleman from Wisconsin (Mr. OBEY), again on October 2, 1980.

Mr. Speaker, I am not asking Members to do anything tricky, anything that violates their conscience. This is a vote of conscience; and I want to thank everybody in the debate, the chairman, the ranking member and all of the members of the committee, and the staff of the committee was tremendous. I agree with everything that Members said. Not one person on that committee was out to get the gentleman from Ohio (Mr. TRAFICANT). Every Member of that committee listened carefully to the evidence.

But I am telling Members, when we have to compare warm bodies who come in and we can see in their eyes and their souls as to whether or not they are credible, and you put that up against a book of 6,000 pages, the book should not win; and the book should not especially win when all we are asking, we are not asking for the appeals process to go through habeas corpus and all of the hoops that may take place, we are leaving on Friday. The first day we come back, if Members want to kick the gentleman from Ohio (Mr. TRAFICANT) out of Congress, we have not lost anything. We could still do it. The only thing we have done is given, and perhaps we will get questions that the ranking member and the chairman asked, we do not know. Maybe on September 4 we will know. I ask Members to think about it.

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

The SPEAKER pro tempore (Mr. HANSEN). All time for debate on the motion has expired.

Without objection, the previous question is ordered on the motion.

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. LATOURETTE).

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 146, noes 285, not voting 3, as follows:

[Roll No. 345]

AYES—146

Abercrombie
Aderholt
Bachus
Ballenger
Barr
Bartlett
Bilirakis
Boehner
Bonilla
Boswell
Brown (FL)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Cannon
Carson (IN)
Chabot
Chambliss
Clay
Clayton
Clyburn
Coble
Collins
Condit
Cooksey
Costello
Coyne
Crane
Cubin
Cummings
Cunningham
Davis (IL)
Deal
Delahunt
Diaz-Balart
Doolittle
Duncan
Edwards
English
Everett
Foley
Fossella
Gekas
Gibbons
Gillmor
Gilman
Goode
Gordon
Goss
Green (WI)
Grucci
Gutknecht
Hall (TX)
Hart
Hastings (FL)
Hilleary
Hilliard
Hinchey
Hobson
Horn
Hunter
Inslee
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (CT)
Johnson, E. B.
Jones (NC)
Kaptur
Kerns
King (NY)
Kingston
Kucinich
LaFalce
Larson (CT)
LaTourette
Lee
Lewis (CA)
Lewis (KY)
Lipinski
Lucas (OK)
McDermott
McGovern
McInnis
McKeon
McKinney
Miller, Gary
Mink
Neal
Ney
Norwood
Oberstar
Osborne
Ose
Otter
Oxley
Paul
Payne
Peterson (MN)
Peterson (PA)
Petri
Pitts
Pombo
Portman
Pryce (OH)
Regula
Riley
Rohrabacher
Rothman
Rush
Ryun (KS)
Sandlin
Scott
Serrano
Sessions
Sherwood
Shuster
Simpson
Skeen
Smith (MI)
Smith (NJ)
Sweeney
Tancredo
Tauzin
Taylor (NC)
Thompson (MS)
Tiahrt
Tiberi
Towns
Traficant
Wamp
Waters
Watkins (OK)
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Young (AK)
Young (FL)

NOES—285

Ackerman
Akin
Allen
Andrews
Armey
Baca
Baird
Baker
Baldacci
Baldwin
Barcia
Barrett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Bono
Boozman
Borski
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Camp
Cantor
Capito
Capps
Capuano
Cardin
Carson (OK)
Castle
Clement
Combest
Conyers
Cox
Cramer
Crenshaw
Crowley
Culberson
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
DeFazio
DeGette
DeLauro
DeLay
DeMint
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Forbes
Ford
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gephardt
Gilchrest
Gonzalez
Goodlatte
Graham
Granger
Graves
Green (TX)
Greenwood
Gutierrez
Hall (OH)
Hansen
Harman
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Houghton
Hoyer
Hulshof
Hyde
Isakson
Israel
Istook
Jefferson
John
Johnson (IL)
Johnson, Sam
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kirk
Kleczka
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Latham
Leach
Levin
Lewis (GA)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHugh
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, George
Miller, Jeff
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Nethercutt
Northup
Nussle
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Pelosi
Pence
Phelps
Pickering
Platts
Pomeroy
Price (NC)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Rehberg
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Roukema
Roybal-Allard
Royce
Ryan (WI)
Sabo
Sanchez
Sanders
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Sensenbrenner
Shadegg
Shaw
Shays
Sherman
Shimkus
Shows
Simmons
Skelton
Slaughter
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Tanner
Tauscher
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Thurman
Tierney
Toomey
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Watson (CA)
Waxman
Weiner
Wexler
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn

NOT VOTING—3

Bonior
Knollenberg
Stearns

□ 2026

Mr. WYNN, Mrs. EMERSON and Mr. JOHN changed their vote from ''aye'' to ''no.''

Mr. NEAL of Massachusetts changed his vote from ''no'' to ''aye.''

So the motion to postpone consideration was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Colorado (Mr. HEFLEY) is recognized for 1 hour.

Mr. HEFLEY. Mr. Speaker, first of all I would like to yield half of that time, 30 minutes, to the gentleman from Ohio (Mr. TRAFICANT). That leaves me with 30 minutes. And I would like to yield for control of the time, half of that time, 15 minutes, to the gentleman from California (Mr. BERMAN) who is the ranking member of the Committee on Standards of Official Conduct.

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

There was no objection.

The SPEAKER pro tempore. In both cases, the gentleman yields for purposes of debate only.

Mr. HEFLEY. For debate only.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Colorado (Mr. HEFLEY).

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

Again I renew my call for the privileged resolution, I think it has been read, so I rise in support of that House Resolution 495 which calls for the expulsion of Representative JAMES A. TRAFICANT, Jr., from the House of Representatives.

On July 17, 2002, the Adjudicatory Subcommittee of the Committee on Standards of Official Conduct held pursuant to the vote requirements of committee rule X that nine of the 10 counts contained in the statement of alleged violations adopted by the Investigative Subcommittee in the matter of JAMES A. TRAFICANT, Jr., had been proved by clear and convincing evidence. These counts involved findings that Mr. TRAFICANT engaged in the following acts that did not reflect credibly on the House of Representatives:

Bribery by trading official acts and influence for things of value; demanding and accepting salary kickbacks from his congressional employees; influencing a congressional employee to destroy evidence and to provide false testimony to a Federal grand jury; receiving personal labor and the services from his congressional employees while they were being paid by the taxpayers to perform public service; and filing false income tax returns.

On July 18, 2002, the full Committee on Standards of Official Conduct held a public sanction hearing to determine what sanction, if any, the committee should recommend to the House of Representatives with respect to the nine counts of the statement of alleged violations proven by clear and convincing evidence in this matter.

With respect to any proved counts against Mr. TRAFICANT, the committee may recommend to the House one or more of the following sanctions: We could recommend a fine, we could recommend a reprimand, we could recommend censure or we could recommend expulsion from the House of Representatives, and two other possible recommendations would be denial or limitation of any right, power, privilege or immunity of Mr. TRAFICANT if permitted under the U.S. Constitution, or any other sanction determined by the committee to be appropriate.

With respect to the sanctions that the committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion is appropriate for the most serious violations.

□ 2030

Due to the most serious nature of the conduct in which Representative TRAFICANT engaged, including repeated and serious breaches of the public trust, the committee reported this resolution to the House on July 19, 2002, with its unanimous recommendation that Representative TRAFICANT be expelled from the House of Representatives.

In its 213-year history, the House has expelled only four of its Members. Three of those expulsions occurred during the Civil War and were based on charges of treason. The fourth expulsion was that of Representative Michael J. Myers in 1980 and was based on Representative Myers' conviction on Federal bribery and conspiracy charges arising from the ABSCAM investigation.

It is important to note, however, that the number of actual expulsions from the House should be considered with regard in light of the fact that a number of Members who committed violations of the most serious nature resigned their seats or lost elections before formal action could be taken.

Mr. Speaker, when each of us was sworn in as a Member of the House of Representatives, we took an oath to support and defend the Constitution of the United States. Article I, section 5 of the Constitution states that each House of Congress may punish its Members for disorderly behavior and expel a Member with the concurrence of two-thirds of its Members. One of the last lines of our oath of office states that each of us will ''well and faithfully discharge the duties of the office on which I am about to enter.'' To my thinking, it is this section of the oath that is the focal point of the proceedings tonight.

None of us ever wants to sit in judgment of our peers. There are some unique occasions, however, when the behavior of an elected official violates the public trust to such an extent that we are called upon to uphold this provision of the Constitution that we swore to support and defend.

It is for this reason, and I have to tell you, friends, with a genuine sense of sadness, that I bring this resolution to the floor of the Chamber tonight.

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

The SPEAKER pro tempore (Mr. HANSEN). The Chair recognizes the gentleman from California (Mr. BERMAN).

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

Mr. Speaker, like the chairman, I rise in sadness, but in strong support of the motion to expel. The gravity of the offenses of the gentleman from Ohio against the rules of the House compel us to impose the most severe of sanctions, and thereby uphold the honor and integrity of the people's House.

I say this, and I can say this with certainty, because of the rigor and the evenhandedness of the process undertaken by the committee, consistent with House and committee rules, and with the resolve of a chairman who, in every instance he could, bent over backwards to ensure fairness and afford the gentleman from Ohio a full and fair opportunity to present his defense.

We gave the assertions of the gentleman every consideration. We entertained every motion, admitting into evidence virtually every document he offered, and, despite having the trial transcript before us, nonetheless heard from a number of additional witnesses, including some who had testified for him at trial.

And what was the gentleman's defense? That he paid for the labor and materials provided to him on his farm; that, in the alternative, the farm wasn't his; that he paid for the cars provided to him; that the kickbacks he demanded from the staff were in fact loans voluntarily tendered to him and repaid by him.

But take a closer look. The gentleman had a very busy winter of 1999–2000. The Federal investigation of him had started, and suddenly he was constructing his defense. In December 1999, he transfers the title to his farm to his wife and daughter. He pays J.J. Cafaro $7,000 for three cars that had been given to him from 1997 to 1999, and he pays, this is count two, David Sugar's company $1,100 for work done on the farm 6 months earlier. Not until April of 2000 does Sugar instruct his secretary to create false invoices for the work.

In January 2000, after learning of the investigation, he gives his Congressional employee, Alan Sinclair, $18,500 in cash, indicating that the cash came from Cafaro, telling Sinclair to keep the cash at home to justify the withdrawals he had made from his paycheck. He gives Sinclair a note, again after he knows the investigation is going on, saying, ''They may ask you if you ever gave me money, and you did. You lent me cash on several occasions and I did pay you back in cash.''

The next month he gives Sinclair another $6,000 and gives Cafaro $3,000 more for the three cars. These transparent fabrications did not impress the committee.

Mr. TRAFICANT protests that he is the victim of selective prosecution, indeed of government misconduct, but in order to believe his assertions you would have to accept the gentleman's notion of a vast, unparalleled conspiracy involving not only the self-interested and disreputable characters from Youngstown, but also involving the Office of the U.S. Attorney, the IRS, the FBI, a respected U.S. District Judge, the counsel for the Committee on Standards of Official Conduct, a conspiracy designed by Janet Reno and implemented by John Ashcroft.

You would have to believe that thousands of pages of testimony by prosecution witnesses, including many low-ranking employees accused of no wrongdoing who testified of being ordered to do work for the gentleman, and the hard documentary evidence against him, are all a tissue of lies, the result of evil intent, manipulation, coercion and intimidation by a treacherous cabal, for which there is simply no evidence and which is preposterous on its face.

In the end, the committee found that the evidence was overwhelming, establishing by clear and convincing evidence that the rules of the House had been violated, flagrantly, I would add.

Mr. Speaker, we are much preoccupied these days, both as elected officials and as private citizens, by breaches of public trust. We may enact legislation before we recess to protect the public from unethical conduct in the corporate arena. But to state what should be obvious, each of us in this very body has weighty responsibilities in this vein as well; not to abuse those who seek government assistance through our offices and not to abuse those who work for us.

To fail to expel the gentleman from Ohio in the face of the vast evidence spread out in the record is to say that a Member can behave as he has and retain membership in this institution. That cannot be our message today.

I urge my colleagues to take the difficult action, thankfully rare, but abundantly warranted in this case, of voting for the motion to expel.

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

Mr. TRAFICANT. Mr. Speaker, in lieu of the gravity of this matter, the number of counts, I respectfully request unanimous consent of this body that an additional 15 minutes be awarded to me.

The SPEAKER pro tempore. Does the gentleman from Colorado yield for that request?

The gentleman from Colorado has yielded for debate purposes only and must yield to permit another Member to make a unanimous consent request to change the procedure.

Mr. HEFLEY. Mr. Speaker, I will yield for that request. That is not passing judgment on the motion.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. TRAFICANT) is recognized for an additional 15 minutes.

Mr. TRAFICANT. Ladies and gentlemen, you heard on the news, the first national news story that I was involved in, a murder scheme by contract. It made national headline news. The woman was a friend of mine. She was so distraught, she called me every name in the book by phone. I didn't know what she was talking about.

She later called and recanted, after they put her in protective custody for 8 weeks, paid $800 to keep her dogs in Kentucky, and then brought her to the grand jury twice. And when she said that JIM TRAFICANT committed no crimes, then they demeaned her. But through the process they told her, to ensure her safety, to go public.

Now, if you are a juror and you have heard about a JIM TRAFICANT, if that isn't poisoning a voir dire, what is?

But then the next one that was in the national news was the $150,000 barn addition. Now, I am an old sheriff. Finally a man with a conscience, Henry Nimitz, sees me at a restaurant and comes up and says, ''JIM, I want to apologize. They were going to indict me, take away my business, ruin my life. My attorney said, why do you have to spend a half a million dollars? Tell them what they want to hear. I did, and I feel like a coward.''

But what he failed to recognize, I had a friend with me by the name of John Innella. I immediately went back to my office and did an affidavit with John Innella. Then the next day, as an old sheriff, I called Mr. Nimitz' girlfriend, who admitted that Mr. Nimitz called and admitted what he said to JIM TRAFICANT. So now the $150,000 barn was not brought.

Now, I am going to get right to the point. I want you to imagine there is a small army of patriots, and they are facing a gigantic army armed to the teeth. And the captain, trying to show strength, calls his assistant and says, ''Go to the tent and get my bright red vest.''

He goes and gets the red vest. He puts the red vest on, and he says, ''To show the power and courage of our people, without a sidearm I am going to carry this sword and I am going to attack the enemy, and, as they slay me, the blood will not be seen because of my bright red vest and you will be encouraged to fight for our homeland.'' He gave a banshee cry. He ran out into battle and was destroyed.

His assistant come up and he called his attendant. He said, ''Go to the tent and get me those dark brown pants.''

Think about it.

Tonight I have dark pants on. Am I scared to death? No. I will go to jail before I will resign and admit to something I didn't do.

Now, I want to go case by case. Forget all these witnesses. The judge's husband is a senior partner in the law firm that represented one of the key witnesses in my case, and that is part of now legal action relative to 28 U.S.C. 455. In addition, that person, Cafaro, I am not going to mention names, admitted giving hundreds of thousands of dollars to politicians, I might add, mostly Democrats.

He said he gave me a $13,000 bribe. Because we were at a public meeting, he said he waited until everybody left, and then we walked out together, we got in his car, and he gave me the money.

One of the attorneys handling my appeal is a bright young black attorney by the name of Attorney Percy Squire, Chief Clerk to the Chief Judge of the Northern District of Ohio, and I called him as a character witness. And he said, ''JIM, what do you want me as a character witness for? I came late to that event where you were trying to put a quarter percent sales tax together, so you could leverage funds, and I walked you out and saw you get in the green truck,'' that another witness said he picked me up in a green truck, because his had a cap on, and we had built prefab siding for a hunting hut. We went and got my truck and went and put the hut up.

And they accepted Cafaro's testimony even though he admitted to lying in a previous RICO trial. That is one count.

Richard Detore is a patriot. I didn't subpoena Detore because his attorney said, ''Don't subpoena Richard, subpoena me.'' To tell you the truth, I was a gentleman, and I did it. I felt sorry for him.

Before I was indicted, before Detore was indicted, I have a tape where he says everything on that tape that he told the Committee on Standards of Official Conduct. He said, ''JIM, I think I am living in Red China. If I didn't have two kids, I would blow my brains out.''

Now, let's look at a few affidavits. Dealing with David Sugar, just yesterday caught up with him. They said it was a half mile, Jack, across the State line, and they might now pull me into jail for being out of my district.

With one of my staffers close by to listen, Sugar admitted that he told Harry Manganaro that after the second FBI visit, because he had backdated some invoices, if he did not lie against JIM TRAFICANT he would not only be indicted, his daughter, his wife and his son would be indicted. I have a tape of Harry Manganaro. He wasn't allowed to testify, nor was the tape admitted at trial.

Now, in addition to that, a man by the name of Joe Sable told another one of my constituents three days ago, ''I feel so bad for JIM.'' David Sugar told me the same thing. And David Sugar said to me, ''JIM, I would love to help you.'' Now he is saying in the paper, ''I never said that to TRAFICANT.''

By the way, Nimitz' attorney, who I taped his girlfriend, his attorney said he admits to meeting TRAFICANT, but did nothing illegal.

Now, let's talk about Tony Bucci. His fourth plea agreement, his brother in Cuba, fled the country on a fugitive warrant, they sentenced him to 6 weeks arrest, and here is what he said. He did $12,000 worth of work at the Traficant farm, and he owned me. Now, not all of you know me personally, but if you think someone owned me, you would throw me the hell out of here.

Witnesses testified that I asked him for jackhammers because we had an old bank barn. I never owned the farm. But this old bank barn didn't have enough height for horses, Ralph. I asked him to let me use their jackhammers. He said, ''It is an insurance problem. I will send some people out.'' I said, ''I don't want you to do that. You will get too close to that old bank barn and you will drop it in.''

And that is what happened, folks. And the whole corner of that barn, Cynthia, fell down. Harry Manganaro came out and helped me prop it up. It cost my dad $15,000.

Now, guess what? Harry Manganaro came to my office yesterday and said his building happened to be firebombed last weekend and all his records are missing, including the bill, $15,000, not counting materials, to my dad who owned it.

Sinclair. Now, look. You are prosecutors. Mr. CALLAHAN made a hell of a

point. Mr. LATOURETTE, thank you. But now I want a prosecutor to think, you really want JIM TRAFICANT. They didn't allow a witness to testify, they wouldn't allow a vendetta defense. She voir dired nine of my witnesses outside the presence of the jury, didn't allow them to testify. Allowed none of my tapes. All of my tapes are exculpatory. Even on those who took the 5th Amendment, she didn't allow them.

Bucci lied through his teeth. His sister-in-law told me that there were three brothers and a brother that lived across the street from the farm and he was my friend. And she said he was sick, they took him to Florida, where he had his leg amputated; brought him back, stole the money from the family, and her children did not even attend the funeral. She submitted an affidavit and testified.

God almighty here.

Now, they said the prosecutor said, ''TRAFICANT is touchy-feely. TRAFICANT is too intelligent to be taped.'' Why did they have Sinclair tape an attorney, Madovich? Why didn't they fake body injury? I have a device, Mr. HEFLEY, that I could tape you right now, your conversation in the midst of all of this, and you wouldn't know you are being taped.

Now not one wiretap, with the number one target in the United States of the Department of Justice prosecutors. My phone wasn't tapped. They didn't want to get an admission. They didn't want to get TRAFICANT saying listen, go to it, that grand jury, do this.

J.C., everybody that testified against me would have gone to jail and lost their law license and ruined their life.

Now, a brother-in-law testifies. He said his brother-in-law told him that he was taped by someone that he had bribed a county engineer, hundreds of millions of dollars. He told his brother-in-law that he would go to jail for 10 years and lose $15 million, but all they wanted was TRAFICANT. So he told his brother he added up all the campaign contributions, which was $2,300 or $2,400 and said he bribed TRAFICANT.

You know what is amazing about this one? She didn't even allow the brother-in-law, who was subject to jeopardy, being sentenced in another case, to testify.

And guess what I did? I used the government's own picture because he said I did this, Ellen, in a barn. So I held up the picture and said, ''What barn was it?'' Couldn't identify the barn.

I said, ''What was I doing in a barn?''

He said, ''You were cleaning a horse's hoof.''

''Which one?''

He said, ''The back one.''

I said, ''Was he tied, or was he being held?''

He said, ''Someone was holding him.''

''Anybody else in the barn?''

''Oh, all kinds of people.''

''What was the floor like?''

''Can't remember. Too much manure.''

The jury even threw that one out.

I have an affidavit or a tape on every one of these counts.

Now, Sandy Ferrante testified that she personally saw me repay over a period of years money to staffers that I borrowed from them. When the IRS nailed me, they took me to civil court, and I made $2,400 a month. And that just run out, and now they are going to put me in jail for 12 years, take everything that my wife and I owned, and I never owned that farm.

I will go to jail, but I will be damned if I will be pressured by a government that pressured these witnesses to death to get a conviction on a target, the number one target in the country.

Jim Kirsham, who was an FBI-paid special agent, she would not let him testify, said, ''If you get us anything on TRAFICANT, we will build a monument to you.''

I got an affidavit from a guy just sent to me from Canada that I helped in a case where 11 Chinese were arrested, and he said, ''I want to thank JIM TRAFICANT publicly,'' and they said, ''Stay away from TRAFICANT. Don't mention his name. We are going to get him.''

I had an FBI agent that compromised one of my constituents under mental instability, desperately trying to save custody of her child, compromised her into sex. She said, ''Jim, he didn't throw me to the ground. I don't want my 87-year-old mother to know about it.''

FBI agent Anthony Speranza. I will be damned if someone is going to rape one of my constituents.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE.

The SPEAKER pro tempore. The gentleman will suspend.

The gentleman will avoid profanity or indecent language.

Mr. TRAFICANT. How much time do I have left?

The SPEAKER pro tempore. The gentleman has 30½ minutes remaining.

Mr. TRAFICANT. I read an affidavit of a Scott Grodi. He sat through the whole trial. I would like your attention. I got this affidavit today, about an hour before I came here. He was released two days before the trial, his aunt died. He said he wanted to finish. I thought we had it resolved for the U.S. Marshals to take him so he would be a pallbearer. When he came back, he was dismissed.

He didn't put in his affidavit, Cynthia, but you can write and talk to him, John Grodi, Scott Grodi. He said he knew the prosecutor wanted him out. He said, ''I knew JIM TRAFICANT was innocent.'' He said, ''I could see how he impeached their witnesses and how they were lying.''

Now, Mr. BERMAN said that there was a recant by Mr. Glaser. This is today's newspaper just faxed to me. Mr. Glaser said he did not recant, and, on the evidence, he couldn't see himself convicting JIM TRAFICANT now.

Mr. Grodi said the woman next to him also felt I was innocent. I tried to get an affidavit from her. Her attorney informed us that she was afraid to get involved. Now, folks, if she had something good to say about the government, would she be afraid?

Look here, that Cafaro Company and that Laser, I saved them with a $4 million appropriation. Thank you, Bill Young. But most air flights miss on their airports, and that technology is already used on our submarines and our naval aircraft carriers. And the only deal I have with Cafaro is bring those jobs, Ellen, and bring those headquarters from Manassas, and screw Frank Wolf.

I have helped everybody in my district and every one of these people, yeah. I did not even like some of them. But when they had 150 employees and got a contract for a highway that hired another 200, I had a 22 percent unemployment rate. Did I go to bat for them? Yes. Did I write letters to the Secretary of State? Yes. Did I write letters to the Secretary of Commerce? Yes. Secretary of Labor? Yes. Department of Transportation? Yes.

But here is where I am at tonight. I have been pressured for 20 years. Now, in 1996, read this. ''Dear Sheriff, after watching your deal in Washington and listening to the courageous admission of Mr. Detore concerning Morford pressuring him, I decided to come forward. Mr. Morford pressured me to lie about you in front of a grand jury in 1996. I would not lie. I am proud now that I did not lie after hearing Mr. Detore. Enclosed is my truthful affidavit. You can see it any way you wish.''

Here is what they wanted Mr. Detore to say, he was outside the door and heard me and Cafaro make a bribery deal. What Mr. BERMAN didn't mention is I paid $10,000 for cars that didn't run, and Mr. Cafaro sold these cars made in Youngstown, the whole company, for $1. They are considered worthless. He owed me money, never gave me the titles. Flying Members of Congress around, getting Senators' girlfriends' gifts.

But you get out of jail free by getting the man right here.

Here is the problem in America, and you must take America back. And I am running as an independent, and don't be surprised if I don't win behind bars.

The American people are afraid of their government. Why are we afraid of our government? Now, I want you to listen to this. Bob, they didn't bring one FBI or IRS investigator who investigated me to the stand so I could cross-examine them. They brought a 30-year veteran from Philadelphia, Mr. CALLAHAN, he had seven trips, spent 40 days, a quarter of a million dollars, and all he did was add up the numbers the prosecutor gave him. And said he did no investigation. When he left, he was so confused he walked into the edge of the jury edge, right in the sore spot.

The other one was an FBI rookie. Now, listen carefully. When it come to fingerprints, the judge smiled like a fox. She dismissed the jury. The prosecutor says, ''Your Honor, we have no

fingerprints of the defendant.'' One thousand documents. And listen to this. He said the one time I gave him an envelope of four, five, whatever thousand, and he took it immediately to the FBI guy who sent it to the lab.

Now, I am an old sheriff. I want to get TRAFICANT? I steam that thing open, I fix a few bills, say, ''Look, you tell TRAFICANT you don't want to go any further. You are not going to hurt him. When you come out of that restaurant, just have that damn money on him.''

What I am trying to tell you, there is no physical evidence. And when they talk about this Sinclair, $2,500, they fail to mention that he had five accounts. And every time he took 2,500 out of one, 2,500 went into another one. And after he left my employment for 22 months, $2,500 didn't go into the other account. And while he was in my employ, he said he earned $50,000 from me and $50,000 from the government.

□ 2100

He bought a $300,000 house, a brand new Buick van, rented a new car for $300 month and spent $60,000 on advertising. They went back 15 years on a horse transaction I had in Uhrichsville, Ohio, George Hooker. They could not find one citizen to say JIM TRAFICANT bought a pencil for cash. Now look, if you drink five gallons of Gatorade, you are going to expend five gallons of Gatorade somewhere in one of these restrooms. You know what you have before you? We are getting to the point where a RICO case is going to be brought against a group of housewives for conspiring to buy Kellogg's cereal.

I am prepared to lose everything. I am prepared to go to jail. You go ahead and expel me, but I am going to tell you what, Mr. LATOURETTE was right about Salvati, but do you know what was mentioned of Mr. Detore? Do you know what JIM TRAFICANT said about Janet Reno? The administration wants him out. Now, I said this on radio and I am on the House floor. I am going to say it to you right now. I called Janet Reno a traitor and I believe in my heart she is.

I believe Monica and Henry Cisneros were not that important, but I think that Red Army Chinese general giving money to the Democrat National Committee was an affront to our intelligence, and now I am going to tell it like it is. The Republicans want a permanent trade status with China. You let it slide. Democrats did not want Clinton and the party hurt. You let it slide. And what you let slide was the freedom of the United States of America. And I called her a traitor.

And Janet Reno, if I do not go to jail, I will be in Orlando August 15 and you are not going to be elected to any damn thing. Nobody should fear our Government.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HANSEN). The Chair would caution the gentleman to please avoid the use of profanity or indecent language, and the gentleman should address the Chair and not other Members by their first names. The gentleman may proceed.

Mr. TRAFICANT. I apologize. As a fashion leader, it is tough for me at times to comport with some rules.

It was brought up and said, JIM, why don't you go to Speaker HASTERT? HASTERT owes you. I didn't go to the Speaker. I didn't vote for the Speaker to get something from the Speaker. Now, you go ahead and expel me, but you ran this place for 50 years, Democrats, and you made the IRS and the FBI and the Justice Department so strong, our people are afraid to death of them.

I want to thank Bill Archer and the Republican Party, and that is why I voted for you, Speaker. For 12 years I tried to change the burden of proof in the civil tax case and protect the American people's homes from being seized, and now, I want to give those statistics because they are relevant to my case and the IRS hates me for it.

The law was passed in 1998, the Traficant language wasn't in, Clinton threatened to veto it. Ninety-five percent of the American public wanted the Traficant bill. The Republican Chairman, Bill Archer, called me and said he talked to the Speaker and leaders and said, JIM, we are going to put your burden of proof in and we are going to put your language on seizure in the conference, and wrote me a letter giving me the credit.

Now, let me give you the statistics that I am proud of and I want to share, because this may be the last time on the floor, and I expect it. The year before compared to the year after the law, wage attachments dropped from $3.1 million to $540,000. Thank you, Mr. Archer. Thank you, ROB PORTMAN. Property liens dropped from $688,000 to $161,000, but now let us think of our communities. Seizures of individual family-owned homes dropped from 10,067 to 57 in 50 States when they had to prove it, and you guys did it. Congratulations.

I want to fight these people. I want to fight them like a junkyard dog. They tied my hands behind my back and that first vote was 7–5. I am not going to get into some of the personal dynamics, but there were some people that Mr. Grodi told me that were predisposed to vote against me before that case started, and that upset him. By the way, one of the jurors said, it is unfortunate he got caught, but most of those Members of Congress are crooks anyway. I don't think you are crooks. I never ripped off Mr. SKELTON.

I have a lot of Hispanics mad at me, and I think Ms. SANCHEZ is a great member, but yes, I voted for Mr. Dornan because I thought we set an illegal precedent by allowing possible illegal immigrants to vote in a Federal election, and I voted with Mr. Dornan. And I am sorry, but that's the way it is. Now, since then I think you have an been an excellent Member. If you have been offended by this, I am sorry.

I also want to say this. I urge you to put our troops on our border. I think anybody who jumps the fence shouldn't be made a citizen, they should be thrown out. And you are going to be dealing with homeland security, and I am saddened in my heart I can't vote on it.

Now, I don't know how much time I have left, but show me one piece of physical evidence.

Mr. Detore, by the way, spent $600,000 and is now without an attorney. His last attorney he paid $239,000 who went to the judge without him knowing and asked to be withdrawn from the case, because Richard Detore would not give him $100,000. He had already given him $239,000, and all he did was submit 3 motions for him. And one thing rang true: Every one of the witnesses that testified; significant, they had some witnesses scared to death. The key witnesses all would have gone to jail, lost their license, wives should have been indicted, and you know what? Back to my valley. I don't blame any one of you.

I think if they had something on Mr. Detore, who knows what to God he would do, but I am going to say this. Someone who impugns the character of Mr. Detore is, in my opinion, violating the sanctity of this House. Because he said, I checkered my wife and I will not lie. And if they indict me, go ahead and indict me.

They talked about a Corvette that cost $1,000. It was supposed to be $1,000, but ended up being $6,000 that I paid for it. They said, why did you pay so much for the Corvette? I rented a Corvette because I wanted to get a car to drive to visit Mr. COOKSEY to go hunting and to speak at one of his events. But he got tied up 3 weeks later, and I had the car for 3 weeks, and when I drove back, the license plate expired in 30 days, got picked up on 395.

I ended up paying $6,000 for a car. I paid for it and got the records. Everything I paid was by check or a credit card. No cash in 20 years. My God, if you don't give me a right to appeal a judge whose husband was taking his law firm fees from the Cafaro company, who is the predicate act of the RICO, then who is our last bastion of appeal if it is not the people's House?

Mr. Speaker, I voted for you; I thought you were better for the country, period. I thought the Republicans' program was better. Mr. GEPHARDT, if you're here, I apologize for my comments; it was in the heat of battle. If you had been there, I probably would have hit you too. But I apologize for those words.

With that, with that, I retain the balance of my time, or however you word it. How much time do I have?

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Ohio (Mr. TRAFICANT) has 14½ minutes remaining.

PARLIAMENTARY INQUIRY

Mr. TRAFICANT. Do I go last, Mr. Chairman? Parliamentary inquiry.

The SPEAKER pro tempore. Would the gentleman state his inquiry?

Mr. TRAFICANT. Mr. Speaker, do I go last, since I am the subject of the demise?

The SPEAKER pro tempore. The gentleman from Colorado (Mr. HEFLEY) has the right to close.

Mr. TRAFICANT. Mr. Speaker, I ask the gentleman from Colorado (Mr. HEFLEY) as a gentleman to relinquish his right to close, surrender to me and give me his time.

Mr. HEFLEY. Mr. Speaker, I will hold that decision in abeyance until we get down to that time. I will take it into consideration.

Mr. TRAFICANT. Mr. Speaker, if the gentleman has any time left.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Colorado (Mr. HEFLEY).

Mr. HEFLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. HASTINGS), who is the chairman of the Investigative Subcommittee in this matter.

Mr. HASTINGS of Washington. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this is a day that each of us hoped would never come, and we pray that it will not come again. Simply put, there is absolutely no satisfaction in judging one of our own. But the Constitution makes clear that we are the only ones who can judge a fellow Member of Congress in cases such as Mr. TRAFICANT.

It is certainly difficult for me, as I am sure it is difficult for my fellow members of the Committee on Standards of Official Conduct, to recommend the expulsion of a colleague. Our recommendation in this matter is based solely on the facts as we know and understand them. This recommendation is one that I know the entire committee took very seriously.

My only responsibilities in this matter were twofold. First, I served as chairman of the Investigative Subcommittee. Along with 3 of my colleagues, our responsibility was to examine the evidence from Mr. TRAFICANT's trial in Cleveland, Ohio, and to determine whether there was ''substantial reason to believe'' that violations of the House rules occurred. At this point, Mr. Speaker, I would like to thank each of my colleagues on the subcommittee for their service and their support during this long and painstaking investigation.

My cochair, the gentlewoman from California (Ms. LOFGREN), the gentleman from Mississippi (Mr. WICKER), and the gentleman from Georgia (Mr. LEWIS) should all be commended for the fair and even-handed way that they carried out this difficult assignment that none of them sought.

Mr. Speaker, on the Investigative Subcommittee, our role was similar to that of a grand jury in that our threshold of substantial reason to believe is lower than the clear and convincing evidence threshold used by Chairman HEFLEY's Adjudicatory Subcommittee.

We were charged to review the evidence presented at trial and then make our determination regarding any possibility of violation of the Rules of the House. I should emphasize that we were not simply to accept the verdict of Mr. TRAFICANT's trial at face value, nor were we to base our recommendations on that verdict.

By a unanimous, bipartisan decision, the vote on the subcommittee concluded that in fact, it had ''substantial reason to believe'' that the Rules of the House were violated, and this the next phase, the adjudicatory phase, should move forward.

Now, my second responsibility was not as the whole committee had or the adjudicatory committee; my second responsibility was to determine the appropriate sanction in the event that the adjudicatory phase was so warranted. This part, I must say, was very, very difficult, difficult because measuring Mr. TRAFICANT's transgressions against past transgressions by other Members, then determining the appropriate sanction is, by far, far from a black and white exercise. But, the Constitution assigns us this responsibility, and to us alone, and so we proceed.

After considering all of the evidence, I concluded that Mr. TRAFICANT's offenses were so serious and so purposeful that expulsion from the House is the only appropriate sanction.

□ 2115

So with a heavy heart that is how I will vote at the conclusion of this debate, but not only for the sake of this great institution, but out of respect for the rule of law.

Mr. Speaker, if any greater good is to come from these proceedings, let us hope that by facing our responsibilities squarely we have begun to rebuild public confidence in the integrity of the people's House. Whether we like it or not, in recent years too many Americans have come to believe that holding high office means a person gets to play by different rules than everyone else. That perception has helped fuel growing public cynicism about the honesty and integrity of Congress itself. Nothing could be more dangerous to our democracy, and we simply cannot allow that perception to grow unchecked.

Here in the House of Representatives, we all know there are rules governing Members and the conduct of their official duties, and we also know that those rules must be enforced fairly, without fear or favor.

Mr. Speaker, this is a day each of us hoped would never come. Mr. Speaker, this is a very difficult time for all of us, and I know it is difficult for all of my colleagues sitting here tonight, but I think that we must vote aye on this resolution.

Sadly, when the Rules of the House are violated so willfully and flagrantly, we have little choice but to punish those who break them. For, by their actions, Members who violate the rules undermine not only our own internal order here in this great institution, but the very foundation of public trust and confidence on which the people's House must always rest.

Today, it's up to us to repair that foundation.

Mr. BERMAN. Mr. Speaker, I yield 2¼ minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I was the ranking member on the investigative subcommittee serving with the gentleman from Washington (Mr. HASTINGS), examining the testimony and evidence presented during the trial.

The subcommittee unanimously concluded that the evidence showed that the gentleman from Ohio (Mr. TRAFICANT) engaged in official misconduct of the most serious nature. He traded his official office and powers repeatedly for money, free labor, equipment at his farm and other things. He did so repeatedly and with several different people and companies.

He demanded and received tens of thousands of dollars, with salary kickbacks from his congressional employees. He filed two false income tax returns that failed to report more than $75,000 in income from gratuities. As I mentioned earlier, the trial lasted more than 30 days with over 6,000 pages of transcript, more than 50 witnesses called for the prosecution and 29 by the gentleman from Ohio (Mr. TRAFICANT).

We took this testimony and reviewed it, but we made an independent review of the sworn testimony and other evidence during the trial, and we unanimously decided that the gentleman from Ohio (Mr. TRAFICANT) should be charged with violation of House rules based on the evidence, not criminal charges.

There was testimony, evidence by the businessman who gave the gentleman from Ohio (Mr. TRAFICANT) gratuities, and that was supported by testimony of public servants who were pressured by the gentleman from Ohio (Mr. TRAFICANT). Eight witnesses testified relative to the kickbacks the gentleman from Ohio (Mr. TRAFICANT) received, and that testimony was also substantiated. Five employees of the gentleman from Ohio (Mr. TRAFICANT) testified as to the work they were directed by the gentleman from Ohio (Mr. TRAFICANT) to perform on his farm or boat. One employee testified that he had been there between 100 and 300 different times.

The gentleman from Ohio (Mr. TRAFICANT) repeatedly asserts there is no physical evidence of his crimes, but, in fact, there is abundant evidence, including check, bank records, memos, faxes, letters and other documents.

I would finally just say that when the gentleman from Washington (Mr. HASTINGS) and I rejoined the remainder of the committee for the penalty phase, we joined eight others with the unanimous recommendation, with great sadness, that the expulsion remedy is one that we must do. I feel very sad this evening to listen to this testimony, but I know what our duty calls us to do, and I hope that the House is up to it.

Mr. TRAFICANT. Mr. Speaker, how much time remains with all parties?

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Ohio (Mr. TRAFICANT) has 14½ minutes remaining. The gentleman from Colorado (Mr. HEFLEY) has 6 minutes remaining. The gentleman from California (Mr. BERMAN) has 7¼ minutes remaining.

We would close in this order unless someone elects different: The gentleman from California (Mr. BERMAN), the gentleman from Ohio (Mr. TRAFICANT), the gentleman from Colorado (Mr. HEFLEY), in that order.

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

Number one, the businessman my colleague is talking about that corroborated Mr. Cafaro's testimony was Al Lang, and I did not find out until after the trial that there was a demand note from Mr. Cafaro to Al Lang to repay the money for the boat he was to buy.

Number two, that also Mr. Cafaro paid for Mr. Lang's attorney. So it was really Mr. Lang and attorney or Mr. Lang was represented by Mr. Cafaro's attorney? My God.

Second of all, the Committee on Standards of Official Conduct allowed me to subpoena one witness. I asked for 11 subpoenaed and 20 that did not need subpoenas. They finally come back and retracted. The one witness testified she personally made the loans when I could not make it to the farm. One fellow saw me make loans to the other fellow.

My colleagues had a hearsay transcript. Now I want to ask the committee, and I wish the committee would hear me. I want to know what witness the committee called to refute my witnesses or the hearsay in that transcript. Why was I willing to bring 31? Why did the judge tie my hands behind my back?

The point I am making to my colleagues is I am not unique. I know why I was targeted. I do not need American history to beat them, and I was an embarrassment, and then I brought home John Demjanjuk, the infamous Ivan the Terrible. I was labeled an anti-Semite. No one would look into his case. The headlines in my paper said Nazi sympathizer. What they did not say when the family came in, they came to me last because no one would listen to him because they said ''the case was too sensitive.''

I said come on in and what they also did not print, I said, if your dad has been convicted and I will go over and pull the switch, but whether he was Ukrainian or Jew made no difference to me. I literally, through my investigation, discovered the evidence that proved that Ivan the Terrible was 9 years older, taller, black hair, long scar on neck and his name was Ivan Marchenko and then presented a picture to Israeli Supreme Court, and for all of the people calling me anti-Semite, let me tell my colleagues something. I never voted for a foreign aid bill until we had a surplus, and then I voted for aid, and I support Israel, a democratic State, surrounded by a cluster of monarchs and dictators who have held us hostage for oil, but he was not Ivan, and the Israeli Supreme Court taught me something that I think Congress should know. They literally delivered him to me on an El Al flight to take home. Congress would not even hold a hearing in light of my compelling evidence that the Israeli Supreme Court freed him, because it was too sensitive.

What has happened to us, Congress? Am I different? Yeah. Have I changed my pants? No. Deep down my colleagues know they want to wear wider bottoms; they are just not secure enough to do it. I do wear skinny ties. Yeah, wide ties make me look heavier than I am and I am heavy enough. Do I do my hair with a weed whacker? I admit.

Take into consideration what my colleagues are doing. The Democrats, and I agree with the gentleman from Wisconsin (Mr. OBEY), and I have had my run-ins with him, probably no one brighter in this whole place.

Mike Myers, an FBI undercover agent posing as an Arab sheik gave him $250,000, captured by videotape, and my colleagues let him go till after the break. The two Members who violated a 17-year-old page boy and a 17-year-old page girl, which is rape in every State, were not expelled.

If my colleagues know law enforcement and they have got a target, they want a confession, and when they cannot get that confession, they want an admission, and I am telling my colleagues this right now. They have more tapes on me than NBC. I did nothing wrong. That is why go ahead and expel me, and I believe this judge is so afraid of what is resonating throughout America, who believes that they should not have to fear their government and that Congress is the last hope to take it back, and I am saying to the Speaker, take it back.

No American should fear their government and this guy does not. I am ready to go. Expel me. It will make it easier for them to really jack me good.

But do my colleagues know what they will have done? They will have taken the standards of a RICO case down to less than a DUI where a person needs a .10 to get a conviction.

Let me tell my colleagues what happened to me early Saturday morning. I was up in Portage County, a new part of the district of the gentleman from Ohio (Mr. STRICKLAND), and I did not run against the gentleman because I thought I would beat him easily, and I wanted to give him a break.

I left my car, and at 2:30 in the morning I pulled out, and I got pulled over by a township police car and a county sheriff. The window does not work on the car, so I opened up the door. They could not see me but said, ''Mr. TRAFICANT, can we see your registration and license.'' It had dealer tags on it. I did. He asked me to get out of the car.

They asked me to walk around the back of the car. They asked me to do my ABCs. They asked me to do this with all four fingers on both hands, and they asked me to stand and put my foot in front of my right, take nine steps, stop, turn and return. Then they asked me to lift my right knee, with my left foot on the ground and count to 30. Try that. Then they said reverse, put your right foot on the ground, pick your left knee up, count to 30, and I did that, and they said would you mind a breathalyzer. I said knock yourself out. I was .001.

Here is what I asked them: Did the FBI tell you that was my car and ask you to see if you can get a DUI on me? They looked at each other real funny, and I cannot tell my colleagues exactly what I told them because of House decorum, but I told them if I find out it is an FBI agent that did it, I will tear his throat out, and if they lied to me, I would come back to them and tear their throats out.

They are not going to frighten me. I am ready to go to jail. I will go the jail before I admit to a crime I did not commit, and there was never any intent to commit a crime, and when they start bringing letters that my colleagues send to Cabinet members trying to help their people, there is a dangerous precedent set in U.S. v. Traficant.

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

Mr. HEFLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT), a member of the committee.

(Mrs. BIGGERT asked and was given permission to revise and extend her remarks.)

Mrs. BIGGERT. Mr. Speaker, it is with sadness and regret that I rise today to express my support for H. Res. 495 in the matter of JAMES A. TRAFICANT, JR. Let me make this very clear. No Member of Congress ever wishes to sit in judgment of a colleague, least of all a colleague as colorful and as indomitable as the gentleman from Ohio (Mr. TRAFICANT).

Yet at the same time no Member ever wishes to see the rules of this institution broken or the standards of its Members brought low. Many Americans who have read or heard of the gentleman from Ohio's (Mr. TRAFICANT) conviction in Federal court wonder why we in the House have bothered with our own investigation and hearings.

□ 2130

They ask, ''Why go through all of that? A jury found him guilty on 10 felony counts.'' They find it hard to find to understand why expulsion from the House would not be automatic once a jury finds a Member guilty of felony offenses in a court of law. The answer, quite simply, is found in the Constitution. Our Founding Fathers left it not to the Judiciary nor to the executive branch to determine when, how, or if expulsion of a Member is warranted.

They left it to us, the Members of this body.

It falls to us today to look at three things: One, the statement of violations of our own code of official conduct, drawn by our own investigative subcommittee; two, the evidence presented at our own adjudicatory hearing by our own subcommittee counsel and the gentleman from Ohio (Mr. TRAFICANT); and, three, the findings and sanctions recommended by our own full Committee on Standards of Official Conduct.

If my colleagues will look at these three things, they will conclude that there is clear and convincing evidence that the violations occurred and that the resolution should be approved by this body today.

Mr. Speaker, I would like to thank our chairman, the gentleman from Colorado (Mr. HEFLEY), and our ranking member, the gentleman from California (Mr. BERMAN) for their outstanding work on this resolution. Throughout the long weeks and days leading up to and including the hearings, they showed the greatest integrity, patience, and fairness, often going out of their way to give the gentleman from Ohio (Mr. TRAFICANT) every opportunity to counter the clear and convincing evidence presented against him.

I salute my colleague, the gentleman from Ohio (Mr. LATOURETTE), for his outstanding work.

Mr. BERMAN. Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Speaker, I rise today in support of the motion to expel our colleague, the gentleman from Ohio (Mr. TRAFICANT). I know, too, that many of my colleagues are questioning the propriety of expelling the gentleman from Ohio, something that has not happened in this House in some 40 years. And Members are questioning it notwithstanding the fact that a jury was convinced beyond a reasonable doubt of his guilt, the highest burden of proof required in our legal system, and notwithstanding the fact that the Committee on Standards of Official Conduct, who was vested and duty bound by this body to review the conduct of our colleagues, has reviewed the facts and determined that his conduct was of such nature that it violated the House rules of conduct, and that it was of such character and so serious that it merited the highest sanction from the House of Representatives.

Let me assure my colleagues that when we try cases in criminal justice courtrooms, we often talk about a subject called a red herring. Now, today, we have had an opportunity to hear from our colleague, the gentleman from Ohio. In fact, the wonderful thing about our justice system and the hearings that we have had here in the House are that they were public. We had an opportunity to hear the presentation or the defense presented by the defendant.

I will not go through all the red herrings, but we talked about: ''I paid for the car, I never owned the farm; everybody would have gone to jail or lost his license; I repaid the money to my staffers; do not be surprised if I win, I will win behind bars; 1,000 items; no fingerprints; hearsay transcripts; when the play is cast in hell, none of the witnesses in the trial will be angels; you cannot believe that the credibility of some of these witnesses could be better if they were someone else.

Forget the witnesses for a moment. Forget that the judge's husband was a member of the firm, and forget that his clerk was the chief clerk for a chief justice of the Supreme Court or other trial court. We have a duty. We have an obligation. The public is watching us, and they are saying, ''House of Representatives, you have a duty. You have an obligation as elected Members of Congress to take into consideration what has been presented to you by this Committee on Standards of Official Conduct.''

It is not easy. When I was a judge, I was required to sentence somebody to death. And people used to say, oh, he should get the death penalty. But it was not that easy to stand up there and say I sentence him to death. And it is not easy today, my colleagues, but it is our job. It is our duty. Uphold the integrity of this House of Representatives and vote to expel the gentleman from Ohio (Mr. TRAFICANT).

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

Number one, to the gentlewoman from Illinois (Mrs. BIGGERT), I say that I am sadder than you are.

To my colleague from Ohio, after the public hearings, 80 to 90 percent of the viewing public supports my position. Number three, all the witnesses that testified against me at trial were either felons or would-be felons, with no physical evidence.

The gentlewoman is a very astute legal criminal mind. I just want her to think before she votes.

In the case of staff, they said one afternoon I invited them down to the boat, they did some sanding, it was a bonding thing, and they drank beer. The ones that came to the farm, came for the weekend, voluntarily; wanted to use it as a health spa.

One guy that said he was there 300 times, I had it before the trial, but I heard he took $2,500 to bribe a judge in a DUI case. I thought they had no evidence, and I did not even question him on it. I have a tape from one of his fellow trustees that I will submit to the committee. His name is Jim Price, Weathersville Township, relative to the testimony of that staffer that I will not mention.

Look, show me the beef. Come up with a transcript. They could not even bring an FBI or IRS investigator to the stand, they are so afraid of me. And I am going to tell my colleagues something, and they are not going to believe it. My hands tied behind my back, I believe in my heart I won that trial, and that trial was manipulated. I would not rush in haste.

Now, if my colleagues do not expel me tonight, I am convinced this judge is going to put me in jail. She cannot stand my guts. And she is deathly afraid of me getting on national TV, because it is beginning to resonate around the country about how people do fear our government. And why do we?

I expect my colleagues to expel me. It is going to hurt me when some of you do.

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

The SPEAKER pro tempore (Mr. HANSEN). Does the gentleman from Colorado have any other speakers?

Mr. HEFLEY. Just this gentleman, and then myself to close.

The SPEAKER pro tempore. Does the gentleman from California have additional speakers?

Mr. BERMAN. One additional member of the committee and myself.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. HEFLEY) may proceed.

Mr. HEFLEY. Mr. Speaker, I yield 2 minutes and 45 seconds to the gentleman from Missouri (Mr. HULSHOF), who is a member of the committee.

Mr. HULSHOF. My colleagues, let me first thank you all for your attention and presence here. The gentleman from Minnesota (Mr. OBEY) pointed out to me during the vote that back in 1980, as this matter was being discussed, only a handful of Members were here for that debate over the expulsion of Mr. Myers. And so your continued presence here is a testament to this institution.

The gentleman from Ohio has referenced the lack of evidence and the quality of evidence. Is there anybody in this Chamber who believes that the gentleman from Ohio (Mr. TRAFICANT) could be captured incriminating himself on tape? Should we, in this case or any other case, reward a wrongdoer because he has the wherewithal to avoid being captured in the act? Shall a clever criminal who has enriched himself at taxpayer expense be further enriched because he almost avoided detection?

I paraphrased comments made by a member of the Committee on Standards of Official Conduct back in 1980 in that matter. The gentleman from Ohio (Mr. TRAFICANT) has violated the House rules not only as an individual who happened to be a public servant, but as a public servant who traded upon that very elected office.

There is no one who disputes that the gentleman has fought aggressively for his constituents in the 17th Congressional District of Ohio. I daresay that 435 Members who come here every week do the same for constituents back home across this land, and yet we come here in the public good, not to enrich ourselves for private profit.

To my colleagues who were sworn in in this Chamber on January 7, 1997, in the 105th Congress, what an interesting tenure we have had. Our first vote for Speaker of the House, who had an ethics cloud hanging over his head; our last vote as freshmen members on the impeachment matter of a sitting president; and here we are again tonight with the lens of history trained upon us.

There are some who have been fretting about this vote and that we are debating it in prime time, of all things. Well, my colleagues, I believe that tonight is going to be one of this institution's finest hours.

To the gentleman from California (Mr. ISSA), I absolutely agree with his statements on the previous motion. It should take extraordinary wrongdoing to override the wishes of a voter in a Congressional district. I believe that. And I believe this is one such case.

Sometimes when we walk in darkness, we are overcome with the brilliant light of truth. A little over 300 days ago, we assembled as a body on the darkest day of our Nation's history, and we sent a glimmer of light to the people we represent that you can extinguish thousands of American lives, but you will not extinguish the American spirit. And yet when you destroy that fragile bond of trust between the elected and the electorate, expulsion is the only appropriate remedy, regrettably, and I ask for that vote.

Mr. HEFLEY. Mr. Speaker, I do have some additional comments I will give at the appropriate time, but I would like the gentleman from Ohio (Mr. TRAFICANT) to know at this time that I am going to waive my right to close in this serious matter and give him the right to close.

The SPEAKER pro tempore. The gentleman is allowing the gentleman from Ohio (Mr. TRAFICANT) the right to close?

Mr. HEFLEY. Yes, Mr. Speaker. So that when the gentleman from California (Mr. BERMAN) is through, I will make a few comments.

Mr. TRAFICANT. Mr. Speaker, would the gentleman from Colorado yield me the balance of the time he does not use?

Mr. HEFLEY. I will be happy to yield the balance, if I do have some left, but I do not believe I will.

Mr. BERMAN. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from California has 4¾ minutes remaining.

Mr. BERMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I have never spoken to my colleagues from this mike, that I can remember.

Mr. Speaker, we do not enjoy what we are doing today, but I am proud to follow my colleague, the gentleman from Missouri (Mr. HULSHOF). When we have to discipline ourselves, it is a task we try to avoid. We avoid it to give due process to the accused, but in all reality, we really do not want to air our dirty linen in public. We really do not. Nobody does. Because we are a family, and families do not do that.

With that said, I could not be more proud in my four of five terms here. I did not want the Committee on Standards of Official Conduct, but I am proud to serve on it with the gentleman from Colorado (Mr. HEFLEY) as the Chair and the gentleman from California (Mr. BERMAN) as our ranking member. This is not something that any of us wanted. In fact, we would resign tomorrow, except it is our duty.

This is the people's House and we have to do our job. If we cannot remove a Member of Congress who has been convicted of 10 felonies, including using his office for personal gain, we risk losing the faith and trust of the American people that we have.

As a duly elected Member from the 17th district of Ohio, I do not fault the gentleman from Ohio (Mr. TRAFICANT) for doing everything he can to bring economic assistance to his constituents. As my colleague from Missouri said, we do that every day; 434 of us try to do that, and we work hard for our constituents, for jobs and economic development. The line of legality is crossed when we help ourselves for our benefit instead of helping our constituents for their benefit.

The gentleman from Ohio crossed that line when he worked for a company to get road contracts for his district, and then that company did improvements on his own private property. That is not lawful. And when he helped a family move an imprisoned loved one closer to home and then provided a list of improvements to be made to his properties, that was illegal. When he created a system of kickbacks by his congressional employees, that was outrageous and unlawful. When he helped a company receive Federal tax dollars that we vote for for worthwhile projects, and then they accept benefits to use personally, that was illegal.

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Mr. Speaker, I know I am out of time, but we need to do our job, and we need to make sure that we remember we are only here temporarily, and this is the people's House.

These examples of violations of House Rules and U.S. Statutes by Congressman TRAFICANT clearly demonstrates a continuing abuse of his congressional office. That is why the Committee on Standards of Official Conduct voted unanimously to expel him. Congressman TRAFICANT is our colleague, and I do not like having to list his past mistakes, but I value the honor of this body above all else. Our colleague has brought disrespect on his House by his violations of law and for that reason, he must be expelled.

Mr. Speaker, Congressman TRAFICANT has been judged guilty by a jury of his peers in Ohio and a Committee of his peers in the House of Representatives. I urge my colleagues to show the American people that this body believes in the "rule of law" and vote to expel Congressman JAMES TRAFICANT.

We should all be appalled by this activity—we should not continue the image that elected officials are crooks who get special treatment. We need to act on this immediately—well after conviction but before sentencing next week.

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from California (Mr. BERMAN) has 2¾ minutes remaining.

Mr. BERMAN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the gentleman from Ohio (Mr. TRAFICANT) is our colleague. We are involved in what is in a certain way a profoundly anti-democratic decision, one contemplated by our Founding Fathers, but anti-democratic because we are talking about expelling a Member who was elected for a term of office before that term is completed.

He is a friend to many. He has an irrepressible nature that all of us coming from a lot of different backgrounds have known about for a long time. In many ways he has been an effective colleague for the causes and issues that the gentleman believes in. But this body in its wisdom created a committee. The leadership of both sides appointed Members who have spent an incredibly large amount of time sifting through the evidence relating to four counts of conspiracy to commit bribery, each of them involving totally separate transactions with totally different witnesses; illegal gratuities under our bribery statute, filing false tax information, two separate counts; obstruction of justice.

Our committee, involving an equal number of Democrats and Republicans, covering an incredible range of philosophies and ideologies, going from people who barely new the respondent to a gentleman who has termed himself publicly as his closest friend in this House, have applied our rules to the facts as we see them and unanimously recommended expulsion. No one did it easily. For some, it was an incredibly difficult conclusion to reach.

Mr. Speaker, I think in the context of this process and our obligation to the American people, we are compelled to vote "aye" on the resolution to expel.

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

The SPEAKER pro tempore. The gentleman from Colorado (Mr. HEFLEY) has 1¼ minutes remaining.

Mr. HEFLEY. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the gentleman from Ohio (Mr. TRAFICANT) is a Member with whom many of us have served for years and years. Many of us are very fond of the gentleman from Ohio (Mr. TRAFICANT); but at times like these we are required to set aside those personal feelings, those feelings of friendship, and fulfill this weighty responsibility.

As chairman of the Committee on Standards of Official Conduct, it is my duty to ask the House of Representatives to expel the gentleman from Ohio (Mr. TRAFICANT).

I want to thank the members of the committee that I have served with through this. They serve us well. I want to thank our outstanding staff. They serve us well. And I particularly want to thank Members for being here for almost 3 hours. It is seldom that I have seen almost every Member of the House of Representatives on the floor for 3 hours. What that tells me is that Members take this as seriously as I do and as the rest of the committee does, and thank you for that. It is important that we do not take something like this lightly. We do not take it lightly.

Mr. Speaker, if I have any time remaining, I yield it to the gentleman from Ohio (Mr. TRAFICANT).

The SPEAKER pro tempore. The gentleman's time has expired.

The gentleman from Colorado (Mr. HEFLEY) has relinquished to the gentleman from Ohio (Mr. TRAFICANT) the right to close. The gentleman from Ohio has 3 minutes remaining.

Mr. TRAFICANT. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, 20 years and not one tape. Mr. Prosecutor from Missouri, am I that good? Come on.

$1.3 billion in that budget that I brought back, much of it from the help of the Republicans, the gentleman from Pennsylvania (Mr. MURTHA), the gentleman from Florida (Mr. YOUNG), thanks. Twenty-two percent unemployment, been under 7, and we are still hurting. I am proud of that.

He said that I took money from companies that did me favors. Look at the testimony of Susan Bucci. She said that they owed me money. I bushhogged 40 acres of their fields every year because her husband, Dan, was sick; and baled 25 acres of his hay every year for 5 years using my equipment and never charged him. She came to me when the brothers ripped her off.

You know, there is something unusual here. You did not elect me. Yes, you have the right to throw me out. My people do not want me out. There is something that was not allowed to be brought, and I give the gentleman from Colorado (Mr. HEFLEY) and the committee great respect; but ladies and gentlemen, you passed a 1967 Jury Service and Selection Plan in the Northern District of Ohio before TRAFICANT was indicted, passed a jury selection plan that was not ratified until after my indictment. They excluded people from my area that knew me and these witnesses from the jury pool.

This is not going to help me with the judge, but I think we have an aristocratic judiciary that looks at Congress like an advisory board. I think you better take that back.

Not one person who knew me or these witnesses was on the jury, and you did not subpoena one witness to validate that hearsay transcript.

Here is what I am saying to you. It is not a matter of liking me. A lot of Members do not like me because to get that $1.3 billion, I raided a lot of appropriations bills. But I want your vote. I want 145 votes and I want to be able to go up and I want to fight the Department of Justice and the IRS.

If they put me in jail, you have a very easy vote, and I predict you will. I think as a Member of Congress, I want you to think of this. There may come a time when you might get targeted.

You know what I was told? Watch what you say. You are too outspoken. Watch what you say. Shut up about the Reno case.

I am not going to shut up. I want your vote because I think my vote is your vote, and my people elected me and I do not think you should take their representative away. With that, thank you for giving me additional time, at least listening to me, and vote your conscience, nothing personal; and I hope I am back and get another $1.3 billion.

Mr. UDALL of New Mexico. Mr. Speaker, I had the honor to serve New Mexico as Attorney General. As Attorney General, I had the unfortunate task to prosecute elected officials for their violation of the law and the public's trust. Although, I accepted this duty, this was not an easy task to perform but one that had to be done. The Committee on Standards of Official Conduct has been asked to take on a difficult charge to examine whether Representative TRAFICANT violated the Code of Official Conduct while serving as a Member of Congress. And if so, whether those violations warrant his expulsion from the U.S. House of Representatives. I thank them for their service on this difficult matter.

This great body has expelled only four Members (three Members and one Member-elect) in its history—Three of whom were expelled during the Civil War period in 1861 for disloyalty to the Union and the fourth occurred in 1980 following a bribery conviction. There have been other Members who were subject to expulsion for offenses such as bribery, illegal gratuities and obstruction of justice—but rather than force the hand of the House to expel them, they took the noble way out and resigned their office. I had hoped that Representative TRAFICANT would have done the same thing, and resign his office rather than force the House to remove him. However, the current situation is before us, and we must act.

On April 11, 2002 the Committee on Standards of Official Conduct gave notice that the federal jury returned a guilty verdict in the criminal trial of Representative TRAFICANT. Six days later the Committee voted to establish an Investigative Subcommittee to conduct a formal inquiry regarding Representative TRAFICANT. On June 27, 2002 the Investigative Subcommittee transmitted to the full Committee on Standards of Official Conduct a 10 count Statement of Alleged Violations and set the stage for a public adjudicatory hearing to determine whether any counts in the Statement of Alleged Violations have been proven by clear and convincing evidence. I would like to read from the statement issued by the Committee:

"The Statement of Alleged Violations charge that Representative TRAFICANT violated the Code of Official Conduct of the House of Representatives and the Code of Ethics for Government Service through a number of means, including: Agreeing to perform, and performing, official acts on behalf of individuals and/or businesses for which those individuals and/or businesses agreed to and did provide Representative TRAFICANT with things of value; Agreeing to employ a member of his congressional district staff in exchange for $2,500 per month in salary kickbacks from the employee; Endeavoring to persuade this same employee to destroy evidence and to give false testimony to a federal grand jury; Defrauding the United States of money and property by a variety of means; Filing false income tax returns; Engaging in a continuing pattern and practice of official misconduct through which he misused his office for personal gain".

From July 15 through July 18 the adjudicatory House subcommittee heard from Representative TRAFICANT where he argued that he broke no laws and contended that the government was out to get him—the same argument he made during his criminal trial. He argued against each of the points that the Subcommittee Counsel raised and was unable to make a clear argument against the evidence raised. The Subcommittee eventually determined that he was guilty of several ethics violations and that nine of the ten counts were proven by clear and convincing evidence.

Representative TRAFICANT misused his office for personnel gain; he misused the public trust; he misused the public's money, through his conduct in receiving congressional salary kickbacks from employees and receiving personal labor and services from congressional staff while they were on congressional work time; and he misused his powerful position to persuade individuals to destroy evidence and provide false testimony to a federal jury to conceal his abuse of office.

Mr. Speaker prior to entering office we each made the following declaration:

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

While the power of removal is a strong measure and one that should never be taken lightly, it is one tool afforded to us by the Constitution to use on those who have violated their public trust as Members of Congress. Besides violating the public trust Representative TRAFICANT broke his solemn oath of office. He did not faithfully discharge the duties of the office, which he now serves, and because of this and the clear evidence before us he should be expelled from the House of Representatives.

Mr. HEFLEY. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 420, noes 1, answered ''present'' 9, not voting 4, as follows:

[Roll No. 346]

AYES—420

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Collins
Combest
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NOES—1

Condit

ANSWERED ''PRESENT''—9

Bartlett
Bilirakis
Callahan
Ford
Hostettler
Otter
Paul
Simpson
Young (AK)

NOT VOTING—4

Bonior
Knollenberg
Stearns
Traficant

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today's House proceedings will be continued in the next issue of the Record.

CONFERENCE REPORT ON H.R. 3763, SARBANES-OXLEY ACT OF 2002

Mr. OXLEY submitted the following conference report and statement on the bill (H.R. 3763) to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes:

CONFERENCE REPORT (H. REPT. 107–610)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Sarbanes-Oxley Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Commission rules and enforcement.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Sec. 101. Establishment; administrative provisions.
Sec. 102. Registration with the Board.
Sec. 103. Auditing, quality control, and independence standards and rules.
Sec. 104. Inspections of registered public accounting firms.
Sec. 105. Investigations and disciplinary proceedings.
Sec. 106. Foreign public accounting firms.
Sec. 107. Commission oversight of the Board.
Sec. 108. Accounting standards.
Sec. 109. Funding.

TITLE II—AUDITOR INDEPENDENCE

Sec. 201. Services outside the scope of practice of auditors.
Sec. 202. Preapproval requirements.
Sec. 203. Audit partner rotation.
Sec. 204. Auditor reports to audit committees.
Sec. 205. Conforming amendments.
Sec. 206. Conflicts of interest.
Sec. 207. Study of mandatory rotation of registered public accounting firms.
Sec. 208. Commission authority.
Sec. 209. Considerations by appropriate State regulatory authorities.

TITLE III—CORPORATE RESPONSIBILITY

Sec. 301. Public company audit committees.
Sec. 302. Corporate responsibility for financial reports.
Sec. 303. Improper influence on conduct of audits.
Sec. 304. Forfeiture of certain bonuses and profits.
Sec. 305. Officer and director bars and penalties.
Sec. 306. Insider trades during pension fund blackout periods.
Sec. 307. Rules of professional responsibility for attorneys.
Sec. 308. Fair funds for investors.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

Sec. 401. Disclosures in periodic reports.
Sec. 402. Enhanced conflict of interest provisions.

Sec. 403. Disclosures of transactions involving management and principal stockholders.
Sec. 404. Management assessment of internal controls.
Sec. 405. Exemption.
Sec. 406. Code of ethics for senior financial officers.
Sec. 407. Disclosure of audit committee financial expert.
Sec. 408. Enhanced review of periodic disclosures by issuers.
Sec. 409. Real time issuer disclosures.

TITLE V—ANALYST CONFLICTS OF INTEREST

Sec. 501. Treatment of securities analysts by registered securities associations and national securities exchanges.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

Sec. 601. Authorization of appropriations.
Sec. 602. Appearance and practice before the Commission.
Sec. 603. Federal court authority to impose penny stock bars.
Sec. 604. Qualifications of associated persons of brokers and dealers.

TITLE VII—STUDIES AND REPORTS

Sec. 701. GAO study and report regarding consolidation of public accounting firms.
Sec. 702. Commission study and report regarding credit rating agencies.
Sec. 703. Study and report on violators and violations
Sec. 704. Study of enforcement actions.
Sec. 705. Study of investment banks.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

Sec. 801. Short title.
Sec. 802. Criminal penalties for altering documents.
Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.
Sec. 804. Statute of limitations for securities fraud.
Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.
Sec. 806. Protection for employees of publicly traded companies who provide evidence of fraud.
Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

Sec. 901. Short title.
Sec. 902. Attempts and conspiracies to commit criminal fraud offenses.
Sec. 903. Criminal penalties for mail and wire fraud.
Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
Sec. 906. Corporate responsibility for financial reports.

TITLE X—CORPORATE TAX RETURNS

Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.

TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY

Sec. 1101. Short title.
Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.
Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.
Sec. 1104. Amendment to the Federal Sentencing Guidelines.
Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.
Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.
Sec. 1107. Retaliation against informants.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term ''appropriate State regulatory authority'' means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) AUDIT.—The term ''audit'' means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) AUDIT COMMITTEE.—The term ''audit committee'' means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) AUDIT REPORT.—The term ''audit report'' means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) BOARD.—The term ''Board'' means the Public Company Accounting Oversight Board established under section 101.

(6) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(7) ISSUER.—The term ''issuer'' means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) NON-AUDIT SERVICES.—The term ''non-audit services'' means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) IN GENERAL.—The terms ''person associated with a public accounting firm'' (or with a ''registered public accounting firm'') and ''associated person of a public accounting firm'' (or of a ''registered public accounting firm'') mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term ''professional standards'' means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) PUBLIC ACCOUNTING FIRM.—The term ''public accounting firm'' means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) REGISTERED PUBLIC ACCOUNTING FIRM.—The term ''registered public accounting firm'' means a public accounting firm registered with the Board in accordance with this Act.

(13) RULES OF THE BOARD.—The term ''rules of the Board'' means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) SECURITY.—The term ''security'' has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) SECURITIES LAWS.—The term ''securities laws'' means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting ''the Sarbanes-Oxley Act of 2002,'' before ''the Public''.

SEC. 3. COMMISSION RULES AND ENFORCEMENT.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

(1) IN GENERAL.—A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the

same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(A) in subsection (a)(1), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,'';

(B) in subsection (d)(1), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,'';

(C) in subsection (e), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,''; and

(D) in subsection (f), by inserting ''or the Public Company Accounting Oversight Board'' after ''self-regulatory organization'' each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by inserting ''registered public accounting firm (as defined in section 2 of the Sarbanes-Oxley Act of 2002),'' after ''government securities dealer,''.

(4) ENFORCEMENT BY FEDERAL BANKING AGENCIES.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) is amended by—

(A) striking ''sections 12,'' each place it appears and inserting ''sections 10A(m), 12,''; and

(B) striking ''and 16,'' each place it appears and inserting ''and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002,''.

(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) APPOINTMENT OF BOARD MEMBERS.—

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) TERM OF SERVICE.—

(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

(g) RULES OF THE BOARD.—The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the

Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) ANNUAL REPORT TO THE COMMISSION.—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

SEC. 102. REGISTRATION WITH THE BOARD.

(a) MANDATORY REGISTRATION.—Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.

(b) APPLICATIONS FOR REGISTRATION.—

(1) FORM OF APPLICATION.—A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) ACTION ON APPLICATIONS.—

(1) TIMING.—The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) REGISTRATION AND ANNUAL FEES.—The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) ADVISORY GROUPS.—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) INDEPENDENCE STANDARDS AND RULES.—The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.—

(1) IN GENERAL.—The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) BOARD RESPONSES.—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) EVALUATION OF STANDARD SETTING PROCESS.—The Board shall include in the annual report required by section 101(h) the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) IN GENERAL.—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) INSPECTION FREQUENCY.—

(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) INTERIM COMMISSION REVIEW.—

(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be ''final agency action'' for purposes of section 704 of title 5, United States Code.

(3) TIMING.—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

(a) IN GENERAL.—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) INVESTIGATIONS.—

(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

(A) COORDINATION.—The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work

with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) REFERRAL.—The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iii) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation; and

(IV) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) RULE OF CONSTRUCTION.—No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) CONTENTS.—The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of

such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

(b) PRODUCTION OF AUDIT WORKPAPERS.—

(1) CONSENT BY FOREIGN FIRMS.—If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

(2) CONSENT BY DOMESTIC FIRMS.—A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) DEFINITION.—In this section, the term ''foreign public accounting firm'' means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a ''registered securities association'' for purposes of those sections 17(a)(1) and 17(b)(1).

(b) RULES OF THE BOARD.—

(1) DEFINITION.—In this section, the term ''proposed rule'' means any proposed rule of the Board, and any modification of any such rule.

(2) PRIOR APPROVAL REQUIRED.—No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a ''registered securities association'' for purposes of that section 19(b), except that, for purposes of this paragraph—

(A) the phrase ''consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization'' in section 19(b)(2) of that Act shall be deemed to read ''consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors''; and

(B) the phrase ''otherwise in furtherance of the purposes of this title'' in section 19(b)(3)(C) of that Act shall be deemed to read ''otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002''.

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a ''registered securities association'' for purposes of that section 19(c), except that the phrase ''to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title'' in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read ''to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board''.

(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—

(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to ''members'' of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase ''consistent with the purposes of this title'' in that section 19(e)(1) shall be deemed to read ''consistent with the purposes of this title and title I of the Sarbanes-Oxley Act of 2002'';

(D) references to rules of the Municipal Securities Rulemaking Board in that section 19(e)(1) shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

SEC. 108. ACCOUNTING STANDARDS.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

''(b) RECOGNITION OF ACCOUNTING STANDARDS.—

''(1) IN GENERAL.—In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934, the Commission may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body—

''(A) that—

''(i) is organized as a private entity;

''(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

''(iii) is funded as provided in section 109 of the Sarbanes-Oxley Act of 2002;

''(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

''(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is

necessary or appropriate in the public interest and for the protection of investors; and

''(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

''(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.''.

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) NO EFFECT ON COMMISSION POWERS.—Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) STUDY AND REPORT ON ADOPTING PRINCIPLES-BASED ACCOUNTING.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 109. FUNDING.

(a) IN GENERAL.—The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d).

(c) SOURCES AND USES OF FUNDS.—

(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (i), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.—

(1) ESTABLISHMENT OF FEE.—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) LIMITATION ON FEE.—The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) in subparagraph (A), by striking ''and'' at the end; and

(2) in subparagraph (B), by striking the period at the end and inserting the following: ''; and

''(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.''.

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(j) START-UP EXPENSES OF THE BOARD.—From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

TITLE II—AUDITOR INDEPENDENCE

SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF AUDITORS.

(a) PROHIBITED ACTIVITIES.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended by adding at the end the following:

''(g) PROHIBITED ACTIVITIES.—Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Sarbanes-Oxley Act of 2002 (in this section referred to as the 'Board'), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

''(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;

''(2) financial information systems design and implementation;

''(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

''(4) actuarial services;

''(5) internal audit outsourcing services;

''(6) management functions or human resources;

''(7) broker or dealer, investment adviser, or investment banking services;

''(8) legal services and expert services unrelated to the audit; and

''(9) any other service that the Board determines, by regulation, is impermissible.

''(h) PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.—A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i).''.

(b) EXEMPTION AUTHORITY.—The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

SEC. 202. PREAPPROVAL REQUIREMENTS.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(i) PREAPPROVAL REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort

letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

''(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

''(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the nonaudit services are provided;

''(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

''(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

''(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

''(3) DELEGATION AUTHORITY.—The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

''(4) APPROVAL OF AUDIT SERVICES FOR OTHER PURPOSES.—In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.''.

SEC. 203. AUDIT PARTNER ROTATION.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(j) AUDIT PARTNER ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.''.

SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(k) REPORTS TO AUDIT COMMITTEES.—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

''(1) all critical accounting policies and practices to be used;

''(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

''(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.''.

SEC. 205. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

''(58) AUDIT COMMITTEE.—The term 'audit committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

''(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

''(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term 'registered public accounting firm' has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.''.

(b) AUDITOR REQUIREMENTS.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended—

(1) by striking ''an independent public accountant'' each place that term appears and inserting ''a registered public accounting firm'';

(2) by striking ''the independent public accountant'' each place that term appears and inserting ''the registered public accounting firm'';

(3) in subsection (c), by striking ''No independent public accountant'' and inserting ''No registered public accounting firm''; and

(4) in subsection (b)—

(A) by striking ''the accountant'' each place that term appears and inserting ''the firm'';

(B) by striking ''such accountant'' each place that term appears and inserting ''such firm''; and

(C) in paragraph (4), by striking ''the accountant's report'' and inserting ''the report of the firm''.

(c) OTHER REFERENCES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by striking ''independent public accountants'' each place that term appears and inserting ''a registered public accounting firm''; and

(2) in subsections (e) and (i) of section 17 (15 U.S.C. 78q), by striking ''an independent public accountant'' each place that term appears and inserting ''a registered public accounting firm''.

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended—

(1) by striking ''DEFINITION'' and inserting ''DEFINITIONS''; and

(2) by adding at the end the following: ''As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.''.

SEC. 206. CONFLICTS OF INTEREST.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(l) CONFLICTS OF INTEREST.—It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.''.

SEC. 207. STUDY OF MANDATORY ROTATION OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) STUDY AND REVIEW REQUIRED.—The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) DEFINITION.—For purposes of this section, the term ''mandatory rotation'' refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

SEC. 208. COMMISSION AUTHORITY.

(a) COMMISSION REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title.

(b) AUDITOR INDEPENDENCE.—It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGULATORY AUTHORITIES.

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

TITLE III—CORPORATE RESPONSIBILITY

SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

''(1) COMMISSION RULES.—

''(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

''(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

''(2) RESPONSIBILITIES RELATING TO REGISTERED PUBLIC ACCOUNTING FIRMS.—The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

''(ii) be an affiliated person of the issuer or any subsidiary thereof.

''(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

''(4) COMPLAINTS.—Each audit committee shall establish procedures for—

''(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

''(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

''(5) AUTHORITY TO ENGAGE ADVISERS.—Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

''(6) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

''(B) to any advisers employed by the audit committee under paragraph (5).''.

SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) REGULATIONS REQUIRED.—The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) FOREIGN REINCORPORATIONS HAVE NO EFFECT.—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

(c) DEADLINE.—The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act.

SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) RULES TO PROHIBIT.—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROFITS.

(a) ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) COMMISSION EXEMPTION AUTHORITY.—The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.

(a) UNFITNESS STANDARD.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(2) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(b) EQUITABLE RELIEF.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following:

''(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.''.

SEC. 306. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS.

(a) PROHIBITION OF INSIDER TRADING DURING PENSION FUND BLACKOUT PERIODS.—

(1) IN GENERAL.—Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) REMEDY.—

(A) IN GENERAL.—Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this subsection may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) RULEMAKING AUTHORIZED.—The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) BLACKOUT PERIOD.—For purposes of this subsection, the term ''blackout period'', with respect to the equity securities of any issuer—

(A) means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and

(B) does not include, under regulations which shall be prescribed by the Commission—

(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer, if such period is—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(5) INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection, the term ''individual account plan'' has the meaning provided in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34), except that such term shall not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of such Act (29 U.S.C. 1021(i)(8)(B))).

(6) NOTICE TO DIRECTORS, EXECUTIVE OFFICERS, AND THE COMMISSION.—In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

(b) NOTICE REQUIREMENTS TO PARTICIPANTS AND BENEFICIARIES UNDER ERISA.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by redesignating the second subsection (h) as subsection (j), and by inserting after the first subsection (h) the following new subsection:

''(i) NOTICE OF BLACKOUT PERIODS TO PARTICIPANT OR BENEFICIARY UNDER INDIVIDUAL ACCOUNT PLAN.—

''(1) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any blackout period with respect to an individual account plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

''(2) NOTICE REQUIREMENTS.—

''(A) IN GENERAL.—The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include—

''(i) the reasons for the blackout period,

''(ii) an identification of the investments and other rights affected,

''(iii) the expected beginning date and length of the blackout period,

''(iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and

''(v) such other matters as the Secretary may require by regulation.

''(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

''(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

''(i) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1), and a fiduciary of the plan reasonably so determines in writing, or

''(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

''(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

''(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO BLACKOUT PERIOD.—In the case of any blackout period in connection with an individual account plan, the plan administrator shall provide timely notice of such blackout period to the issuer of any employer securities subject to such blackout period.

''(3) EXCEPTION FOR BLACKOUT PERIODS WITH LIMITED APPLICABILITY.—In any case in which the blackout period applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

''(4) CHANGES IN LENGTH OF BLACKOUT PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

''(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

''(6) GUIDANCE AND MODEL NOTICES.—The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

''(7) BLACKOUT PERIOD.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'blackout period' means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

''(B) EXCLUSIONS.—The term 'blackout period' does not include a suspension, limitation, or restriction—

''(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

''(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

''(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 206(d)(3)(K)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i)).

''(8) INDIVIDUAL ACCOUNT PLAN.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'individual account plan' shall have the meaning provided such term in section 3(34), except that such term shall not include a one-participant retirement plan.

''(B) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of subparagraph (A), the term 'one-participant retirement plan' means a retirement plan that—

''(i) on the first day of the plan year—

''(I) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or

''(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation (as defined in section 1361(a) of the Internal Revenue Code of 1986)),

''(ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business,

''(iii) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses),

''(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(v) does not cover a business that leases employees.''.

(2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(3) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking ''(5), or (6)'' and inserting ''(5), (6), or (7)'';

(B) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(C) by inserting after paragraph (6) of subsection (c) the following new paragraph:

''(7) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.''.

(3) PLAN AMENDMENTS.—If any amendment made by this subsection requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this subsection takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this subsection, and

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

(c) EFFECTIVE DATE.—The provisions of this section (including the amendments made thereby) shall take effect 180 days after the date of the enactment of this Act. Good faith compliance with the requirements of such provisions in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

SEC. 307. RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

SEC. 308. FAIR FUNDS FOR INVESTORS.

(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

(b) ACCEPTANCE OF ADDITIONAL DONATIONS.—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for a disgorgement fund described in subsection (a). Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (a).

(c) STUDY REQUIRED.—

(1) SUBJECT OF STUDY.—The Commission shall review and analyze—

(A) enforcement actions by the Commission over the five years preceding the date of the enactment of this Act that have included proceedings to obtain civil penalties or disgorgements to identify areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors; and

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

(2) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after of the date of the enactment of this Act, and shall use such findings to revise its rules and regulations as necessary. The report shall include a discussion of regulatory or legislative actions that are recommended or that may be necessary to address concerns identified in the study.

(d) CONFORMING AMENDMENTS.—Each of the following provisions is amended by inserting '', except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002'' after ''Treasury of the United States'':

(1) Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)).

(2) Section 21A(d)(1) of such Act (15 U.S.C. 78u-1(d)(1)).

(3) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(4) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).

(5) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).

(e) DEFINITION.—As used in this section, the term ''disgorgement fund'' means a fund established in any administrative or judicial proceeding described in subsection (a).

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

SEC. 401. DISCLOSURES IN PERIODIC REPORTS.

(a) DISCLOSURES REQUIRED.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

''(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.''.

(b) COMMISSION RULES ON PRO FORMA FIGURES.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act fo 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.—

(1) STUDY REQUIRED.—The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934, as added by this section, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) REPORT AND RECOMMENDATIONS.—Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

(a) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

''(1) IN GENERAL.—It shall be unlawful for any issuer (as defined in section 2 of the Sarbanes-Oxley Act of 2002), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after that date of enactment.

''(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners' Loan Act (12 U.S.C. 1464)), consumer credit (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or a charge card (as defined in section 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(e)), or any extension of credit by a broker or dealer registered under section 15 of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 7 of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

''(A) made or provided in the ordinary course of the consumer credit business of such issuer;

''(B) of a type that is generally made available by such issuer to the public; and

''(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

''(3) RULE OF CONSTRUCTION FOR CERTAIN LOANS.—Paragraph (1) does not apply to any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).''.

SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.

(a) AMENDMENT.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by striking the heading of such section and subsection (a) and inserting the following:

"SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

''(a) DISCLOSURES REQUIRED.—

''(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission (and, if such security is registered on a national securities exchange, also with the exchange).

''(2) TIME OF FILING.—The statements required by this subsection shall be filed—

''(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g);

''(B) within 10 days after he or she becomes such beneficial owner, director, or officer;

''(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note)) involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

''(3) CONTENTS OF STATEMENTS.—A statement filed—

''(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

''(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under such subparagraph.

''(4) ELECTRONIC FILING AND AVAILABILITY.—Beginning not later than 1 year after the date of enactment of the Sarbanes-Oxley Act of 2002—

''(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

''(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

''(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective 30 days after the date of the enactment of this Act.

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(a) RULES REQUIRED.—The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) INTERNAL CONTROL EVALUATION AND REPORTING.—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

SEC. 405. EXEMPTION.

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFICERS.

(a) CODE OF ETHICS DISCLOSURE.—The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

(b) CHANGES IN CODES OF ETHICS.—The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers.

(c) DEFINITION.—In this section, the term ''code of ethics'' means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL EXPERT.

(a) RULES DEFINING ''FINANCIAL EXPERT''.—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term ''financial expert'' for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 408. ENHANCED REVIEW OF PERIODIC DISCLOSURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Commission shall review disclosures made by issuers reporting under section 13(a) of the Securities Exchange Act of 1934 (including reports filed on Form 10–K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) REVIEW CRITERIA.—For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors—

(1) issuers that have issued material restatements of financial results;

(2) issuers that experience significant volatility in their stock price as compared to other issuers;

(3) issuers with the largest market capitalization;

(4) emerging companies with disparities in price to earning ratios;

(5) issuers whose operations significantly affect any material sector of the economy; and

(6) any other factors that the Commission may consider relevant.

(c) MINIMUM REVIEW PERIOD.—In no event shall an issuer required to file reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 be reviewed under this section less frequently than once every 3 years.

SEC. 409. REAL TIME ISSUER DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(l) REAL TIME ISSUER DISCLOSURES.—Each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.''.

TITLE V—ANALYST CONFLICTS OF INTEREST

SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REGISTERED SECURITIES ASSOCIATIONS AND NATIONAL SECURITIES EXCHANGES.

(a) RULES REGARDING SECURITIES ANALYSTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15C the following new section:

"SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS.

''(a) ANALYST PROTECTIONS.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

''(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

''(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

''(B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

''(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

''(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

''(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

''(4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

''(b) DISCLOSURE.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

''(1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

''(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

''(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

''(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

''(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

''(c) DEFINITIONS.—In this section—

''(1) the term 'securities analyst' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

''(2) the term 'research report' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.''.

(b) ENFORCEMENT.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended by inserting ''15D,'' before ''15B''.

(c) COMMISSION AUTHORITY.—The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934, as added by this section, as is necessary for the protection of investors and in the public interest.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $776,000,000 for fiscal year 2003, of which—

''(1) $102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107–123; 115 Stat. 2390 et seq.);

''(2) $108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

''(3) $98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.''.

SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4B the following:

''SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

''(a) AUTHORITY TO CENSURE.—The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

''(1) not to possess the requisite qualifications to represent others;

''(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

''(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

''(b) DEFINITION.—With respect to any registered public accounting firm or associated person, for purposes of this section, the term 'improper professional conduct' means—

''(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

''(2) negligent conduct in the form of—

''(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or

''(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.''.

SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY STOCK BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)), as amended by this Act, is amended by adding at the end the following:

''(6) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

''(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

''(B) DEFINITION.—For purposes of this paragraph, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.''.

(b) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following:

''(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

''(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

''(2) DEFINITION.—For purposes of this subsection, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.''.

SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF BROKERS AND DEALERS.

(a) BROKERS AND DEALERS.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by striking subparagraph (F) and inserting the following:

''(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;''; and

(2) in subparagraph (G), by striking the period at the end and inserting the following: ''; or

''(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

''(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.''.

(b) INVESTMENT ADVISERS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

(1) by striking paragraph (7) and inserting the following:

''(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;'';

(2) in paragraph (8), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

''(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.''.

(c) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 3(a)(39)(F) (15 U.S.C. 78c(a)(39)(F))—

(i) by striking ''or (G)'' and inserting ''(H), or (G)''; and

(ii) by inserting '', or is subject to an order or finding,'' before ''enumerated'';

(B) in each of section 15(b)(6)(A)(i) (15 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4) of section 15B(c) (15 U.S.C. 78o–4(c)), and subparagraphs (A) and (C) of section 15C(c)(1) (15 U.S.C. 78o–5(c)(1))—

(i) by striking ''or (G)'' each place that term appears and inserting ''(H), or (G)''; and

(ii) by striking ''or omission'' each place that term appears, and inserting '', or is subject to an order or finding,''; and

(C) in each of paragraphs (3)(A) and (4)(C) of section 17A(c) (15 U.S.C. 78q–1(c))—

(i) by striking ''or (G)'' each place that term appears and inserting ''(H), or (G)''; and

(ii) by inserting '', or is subject to an order or finding,'' before ''enumerated'' each place that term appears.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended—

(A) by striking ''or (8)'' and inserting ''(8), or (9)''; and

(B) by inserting ''or (3)'' after ''paragraph (2)''.

TITLE VII—STUDIES AND REPORTS

SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to identify—

(A) the factors that have led to the consolidation of public accounting firms since 1989 and the consequent reduction in the number of firms capable of providing audit services to large national and multi-national business organizations that are subject to the securities laws;

(B) the present and future impact of the condition described in subparagraph (A) on capital formation and securities markets, both domestic and international; and

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among public accounting firms, including—

(A) higher costs;

(B) lower quality of services;

(C) impairment of auditor independence; or

(D) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among public accounting firms.

(b) CONSULTATION.—In planning and conducting the study under this section, the Comptroller General shall consult with—

(1) the Commission;

(2) the regulatory agencies that perform functions similar to the Commission within the other member countries of the Group of Seven Industrialized Nations;

(3) the Department of Justice; and

(4) any other public or private sector organization that the Comptroller General considers appropriate.

(c) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 702. COMMISSION STUDY AND REPORT REGARDING CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the role of credit rating agencies in the evaluation of issuers of securities;

(B) the importance of that role to investors and the functioning of the securities markets;

(C) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;

(D) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers;

(E) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings; and

(F) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED.—The Commission shall submit a report on the study required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 180 days after the date of enactment of this Act.

SEC. 703. STUDY AND REPORT ON VIOLATORS AND VIOLATIONS.

(a) STUDY.—The Commission shall conduct a study to determine, based upon information for the period from January 1, 1998, to December 31, 2001—

(1) the number of securities professionals, defined as public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

(A) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (collectively referred to in this section as ''Federal securities laws''), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such an action or proceeding (referred to in this section as ''aiders and abettors''); and

(B) who have been found to have been primary violators of the Federal securities laws;

(2) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

(A) the specific provision of the Federal securities laws violated;

(B) the specific sanctions and penalties imposed upon such aiders and abettors and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

(C) the occurrence of multiple violations by the same person or persons, either as an aider or abettor or as a primary violator; and

(D) whether, as to each such violator, disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

(3) the amount of disgorgement, restitution, or any other fines or payments that the Commission has assessed upon and collected from, aiders and abettors and from primary violators.

(b) REPORT.—A report based upon the study conducted pursuant to subsection (a) shall be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives not later than 6 months after the date of enactment of this Act.

SEC. 704. STUDY OF ENFORCEMENT ACTIONS.

(a) STUDY REQUIRED.—The Commission shall review and analyze all enforcement actions by the Commission involving violations of reporting requirements imposed under the securities laws, and restatements of financial statements, over the 5-year period preceding the date of enactment of this Act, to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this Act, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 705. STUDY OF INVESTMENT BANKS.

(a) GAO STUDY.—The Comptroller General of the United States shall conduct a study on whether investment banks and financial advisers assisted public companies in manipulating their earnings and obfuscating their true financial condition. The study should address the

rule of investment banks and financial advisers—

(1) in the collapse of the Enron Corporation, including with respect to the design and implementation of derivatives transactions, transactions involving special purpose vehicles, and other financial arrangements that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company;

(2) in the failure of Global Crossing, including with respect to transactions involving swaps of fiberoptic cable capacity, in the designing transactions that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company; and

(3) generally, in creating and marketing transactions which may have been designed solely to enable companies to manipulate revenue streams, obtain loans, or move liabilities off balance sheets without altering the economic and business risks faced by the companies or any other mechanism to obscure a company's financial picture.

(b) REPORT.—The Comptroller General shall report to Congress not later than 180 days after the date of enactment of this Act on the results of the study required by this section. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the ''Corporate and Criminal Fraud Accountability Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

''Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

''§ 1520. Destruction of corporate audit records

''(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

''(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

''(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.

''(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

''1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

''1520. Destruction of corporate audit records.''.

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end, the following:

''(19) that—

''(A) is for—

''(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

''(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

''(B) results from—

''(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

''(ii) any settlement agreement entered into by the debtor; or

''(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.''.

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Except''; and

(2) by adding at the end the following:

''(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

''(1) 2 years after the discovery of the facts constituting the violation; or

''(2) 5 years after such violation.''.

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

(a) ENHANCEMENT OF FRAUD AND OBSTRUCTION OF JUSTICE SENTENCES.—Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(B) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(5) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

(b) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the prcedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

''§ 1514A. Civil action to protect against retaliation in fraud cases

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

''(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

''(b) ENFORCEMENT ACTION.—

''(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

''(A) filing a complaint with the Secretary of Labor; or

''(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

''(2) PROCEDURE.—

''(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

''(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

''(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

''(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

''(B) the amount of back pay, with interest; and

''(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

''(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

''1514A. Civil action to protect against retaliation in fraud cases.''.

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Securities fraud

''Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 25 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1348. Securities fraud.''.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 901. SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 902. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMINAL FRAUD OFFENSES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1348 as added by this Act the following:

''§ 1349. Attempt and conspiracy

''Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1349. Attempt and conspiracy.''.

SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five'' and inserting ''20''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five'' and inserting ''20''.

SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(1) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this Act.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this Act, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address whether the guideline offense levels and enhancements for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1349, as created by this Act, the following:

''§ 1350. Failure of corporate officers to certify financial reports

(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act pf 1934 (15 U.S.C. 78m or 78o(d)) and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

''(c) CRIMINAL PENALTIES.—Whoever—

''(1) certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

''(2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1350. Failure of corporate officers to certify financial reports.''.

TITLE X—CORPORATE TAX RETURNS

SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

TITLE XI—CORPORATE FRAUD ACCOUNTABILITY

SEC. 1101. SHORT TITLE.

This title may be cited as the ''Corporate Fraud Accountability Act of 2002''.

SEC. 1102. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.''.

SEC. 1103. TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Section 21C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)) is amended by adding at the end the following:

''(3) TEMPORARY FREEZE.—

''(A) IN GENERAL.—

''(i) ISSUANCE OF TEMPORARY ORDER.—Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

''(ii) STANDARD.—A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

''(iii) EFFECTIVE PERIOD.—A temporary order issued under clause (i) shall—

''(I) become effective immediately;

''(II) be served upon the parties subject to it; and

''(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

''(iv) EXTENSIONS AUTHORIZED.—The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

''(B) PROCESS ON DETERMINATION OF VIOLATIONS.—

''(i) VIOLATIONS CHARGED.—If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

''(ii) VIOLATIONS NOT CHARGED.—If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person.''.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking ''This'' and inserting ''paragraph (1)''.

SEC. 1104. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Sentencing Commission pursuant to paragraph (2) and any additional policy recommendations the Sentencing Commission may have for combating offenses described in paragraph (1).

(b) CONSIDERATIONS IN REVIEW.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) ensure that guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(5) ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553 (a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 180 days after the date of enactment of this Act, in accordance with the procedures sent forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 1105. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end of the following:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 1106. INCREASED CRIMINAL PENALTIES UNDER SECURITIES EXCHANGE ACT OF 1934.

Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended—

(1) by striking ''$1,000,000, or imprisoned not more than 10 years'' and inserting ''$5,000,000, or imprisoned not more than 20 years''; and

(2) by striking ''$2,500,000'' and inserting ''$25,000,000''.

SEC. 1107. RETALIATION AGAINST INFORMANTS.

(a) IN GENERAL.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.''.

And the Senate agree to the same.

From the Committee on Financial Services, for consideration of the House bill and the Senate amendments, and modifications committed to conference:

MICHAEL G. OXLEY,
RICHARD H. BAKER,
ED ROYCE,
ROBERT W. NEY,
SUE W. KELLY,
CHRIS COX,
JOHN J. LAFALCE,
BARNEY FRANK,
PAUL E. KANJORSKI,
MAXINE WATERS,

Provided that Mr. Shows is appointed in lieu of Ms. Waters for consideration of section 11 of the House bill and section 305 of the Senate amendment, and modifications committed to conference:

RONNIE SHOWS,

From the Committee on Education and the Workforce, for consideration of sections 306 and 904 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
SAM JOHNSON,
GEORGE MILLER,

From the Committee on Energy and Commerce, for consideration of sections 108 and 109 of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
JAMES GREENWOOD,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of section 105 and titles VIII and IX of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
LAMAR SMITH,
JOHN CONYERS,

From the Committee on Ways and Means, for consideration of section 109 of the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
JIM MCCRERY,
CHARLES B. RANGEL,

Managers on the Part of the House.

PAUL SARBANES,

CHRISTOPHER DODD,
TIM JOHNSON,
JACK REED,
PATRICK J. LEAHY,
RICHARD C. SHELBY,
ROBERT F. BENNETT,
MICHAEL B. ENZI,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

The Managers on the part of the House and the Senate met on July 19 and July 24, 2002 (the House chairing), and reconciled the differences between the House bill and the Senate amendment.

From the Committee on Financial Services, for consideration of the House bill and the Senate amendments, and modifications committed to conference:

MICHAEL G. OXLEY,
RICHARD H. BAKER,
ED ROYCE,
ROBERT W. NEY,
SUE W. KELLY,
CHRIS COX,
JOHN J. LAFALCE,
BARNEY FRANK,
PAUL E. KANJORSKI,
MAXINE WATERS,

Provided that Mr. Shows is appointed in lieu of Ms. Waters for consideration of section 11 of the House bill and section 305 of the Senate amendment, and modifications committed to conference:

RONNIE SHOWS,

From the Committee on Education and the Workforce, for consideration of sections 306 and 904 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
SAM JOHNSON,
GEORGE MILLER,

From the Committee on Energy and Commerce, for consideration of sections 108 and 109 of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
JAMES GREENWOOD,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of section 105 and titles VIII and IX of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
LAMAR SMITH,
JOHN CONYERS,

From the Committee on Ways and Means, for consideration of section 109 of the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
JIM MCCRERY,
CHARLES B. RANGEL,
Managers on the Part of the House.

PAUL SARBANES,
CHRISTOPHER DODD,
TIM JOHNSON,
JACK REED,
PATRICK J. LEAHY,
RICHARD C. SHELBY,
ROBERT F. BENNETT,
MICHAEL B. ENZI,
Managers on the Part of the Senate.