thousands here on the House floor, and yet passing this bill will be very important for the economy of our Nation and for the advance of science, and it is something we can do together proudly and serve our country quite well. I am happy to be involved in this effort.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H.R. 2391, the Cooperative Research and Technology Enhancement (CREATE) Act introduced on June 9, 2003. We held a markup hearing for this legislation in January of this year, and I offered my support at that time. To spur innovation and accelerate new technologies, this bill encourages cooperative research efforts that involve the private sector, universities, non-profit institutions and public entities. In a recent decision (*Oddzon Products, Inc.*, v. *Just Toys, Inc., et al.*, 122 F.3d 1396, 43 U.S.P.Q.2d 1641 (Fed. Cir. 1997), or Oddzon), the Federal Circuit Court of Appeals narrowed the scope of a 1984 law that promoted collaborative research. I support H.R. 2391 because it will only result in the overall improvement of the quality of research that is done by collaborating members of the academic community in the areas of science, art and information resourcing.

In Oddzon, the Federal Circuit found that in the case of an inventive collaboration involving researchers from multiple organization, the novelty (§ 102) and non-obvious (§ 103) requirements of the Patent Act could be read to cover prior art so as to invalidate a patent. The court wrote:

> The statutory language provides a clear statement that subject matter that qualifies as prior art under subsection (f) or (g) cannot be combined with other prior art to render a claimed invention obvious and hence inpatentable when the relevant prior art is commonly owned with the claimed invention at the time the invention was made. While the statute does not expressly state . . . that § 102(f) creates a type of prior art for purposes of § 103, nonetheless that conclusion is inescapable; the language that states that § 102(f) subject matter is not prior art under limited circumstances clearly implies that it is prior art otherwise.

In making this ruling, the court states ''[t]here is no clearly apparent purpose in Congress's inclusion of § 102(f) in the amendment other than an attempt to ameliorate the problems of patenting the results of team research.'' Finally, the court added ''while there is a basis for an opposite conclusion, principally based on the fact that § 102(f) does not refer to public activity, as do the other provisions that clearly define prior art, nonetheless we cannot escape the import of the 1984 amendment.'' The holding creates a significant problem due to the way that most public-private sector research and development projects are structured. Since the early 1980s, universities, States and the Federal Government have become much more adept at generating licensing revenue from intellectual property developed by their faculty, staff and students. Many States and the Federal Government now operate under laws and practices under which they cannot or will not assign their rights to inventions to a private-sector collaborative partner. Typically, the university, State or Federal Government retains sole ownership of the invention, while the invention is licensed for commercial exploitation to their research partner.

The Oddzon decision has created a situation where an otherwise patentable invention may be rendered nonpatentable on the basis of information routinely exchanged between research partners. Thus, parties who enter into a clearly defined and structured research relationship, but who do not or cannot elect to define a common ownership interest in or a common assignment of the inventions they jointly develop, can create obstacles to obtaining patent protection by simply exchanging information among them. There is no requirement that the information be publicly disclosed or commonly known; all that is required is that the collaborators exchange the information.

The CREATE Act's purposes are to promote communication among team researchers from multiple organizations, to discourage those who would use the discovery process to harass co-inventors who voluntarily collaborated on research, to increase public knowledge and to accelerate the commercial availability of new inventions. Overall, this bill will serve to create a more technology-friendly environment and encourage continued collaboration and innovation.

Mr. Speaker, I support this bill and hope that my colleagues will do the same.

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

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

The SPEAKER pro tempore (Mr. CULBERSON). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 2391, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises.''.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 339.

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

There was no objection.

PERSONAL RESPONSIBILITY IN FOOD CONSUMPTION ACT

The SPEAKER pro tempore (Mr. SMITH of Texas). Pursuant to House Resolution 552 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 339.

□ 1223

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 339) to prevent frivolous lawsuits against the manufacturers, distributors, or sellers of food or non-alcoholic beverage products that comply with applicable statutory and regulatory requirements, with Mr. CULBERSON in the chair.

The Clerk read the title of the bill.

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

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

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

Mr. Chairman, the food industry is our Nation's largest private sector employer, providing jobs to some 12 million Americans. Today, that industry is threatened by an array of legal claims alleging that it should be liable to pay damages for the overconsumption of its legal products by others. H.R. 339, the Personal Responsibility in Food Consumption Act, is designed to foreclose frivolous obesity-related lawsuits against the food industry.

From June 20 to the 22nd of last year, personal injury lawyers from across the country gathered at a conference designed to ''encourage and support litigation against the food industry.'' Attendees were required to sign an affidavit in which they agreed to keep the information they learned confidential and to refrain from consulting with or working for the food industry before December 31, 2006, apparently setting a deadline for bringing that vital industry to its knees in a nationally coordinated legal attack.

The hatred of some lawyers for the food industry is stark. Ralph Nader, for example, has compared food companies to terrorists, saying that the double cheeseburger is ''a weapon of mass destruction.''

H.R. 339 prohibits obesity or weight-gain-related claims against the food industry, with reasonable exceptions, including those in which a State or Federal law was broken and as a result the person gained weight, and those in which a company violates an expressed contract or warranty. Also, because this bill only applies to claims based on ''weight gain'' or ''obesity,'' lawsuits could go forward under the bill, if, for example, someone gets sick from a tainted hamburger.

The bill also contains essential provisions governing the conduct of legal proceedings. H.R. 339 includes the very same discovery provisions designed to prevent fishing expeditions that are already a part of our Federal securities laws. It also contains provisions that appropriately require that a complaint set out the fact as to why the case should be allowed to proceed.

Some trial lawyers are mounting an attack on personal responsibility

against the advice of the Nation's leading weight-loss experts. Listen to the insightful words of Dr. Gerard Musante, a clinical psychologist with training at Duke University Medical Center, who has worked for more than 30 years with thousands of obese patients. He is the founder of Structure House, a residential weight-loss facility in Durham, North Carolina. Dr. Musante said the following at a Senate hearing on this legislation:

''Through working with obese patients, I have learned that the worst thing one can do is to blame an outside force to get themselves 'off the hook,' to say it's not their fault and that they are a victim. Congress has rightly recognized the danger of allowing Americans to continue blaming others for the obesity epidemic. It is imperative that we prevent lawsuits from being filed against any industry for answering consumer demands. The fact that we are addressing the issue here today is a step in the right direction.''

The chairman of the American Council for Fitness and Nutrition, Susan Finn, has also written that ''if you are obese, you don't need a lawyer; you need to see your doctor, a nutritionist and a physical trainer. Playing the courtroom blame game won't make anyone thinner or healthier.''

Even the Los Angeles Times, which rarely agrees with people on this side of the aisle, has editorialized against such lawsuits, stating, ''People shouldn't get stuffed, but this line of litigation should.''

On the other hand, the lobbying organization for personal injury attorneys, the Association of Trial Lawyers of America, which opposes this legislation, has published a litigation instruction manual that openly belittles jurors who believe in ''personal responsibility.'' According to that instruction manual, ''Often a juror with a high need for personal responsibility fixates on the responsibility of the plaintiff. According to these jurors, a plaintiff must be accountable for his or her own conduct. The personal responsibility jurors tend to espouse traditional family values. Often these jurors have strong religious beliefs. The only solution is to identify these jurors and exclude them from the jury.''

Besides threatening to erode values of personal responsibility, the legal campaign against the food industry threatens the separation of powers.

□ 1230

Nationally coordinated lawsuits seek to accomplish through litigation that which has not been achieved by legislation and the democratic process. As one mastermind behind lawsuits against the food industry has stated, ''If the legislatures won't legislate, then the trial lawyers will litigate.'' In order to preserve the separation of powers and support the principle of personal responsibility and to protect the largest private sector employer of the United States, let us pass H.R. 339.

Mr. Chairman, at this time, I will insert in the RECORD jurisdictional letters the gentleman from Texas (Chairman BARTON) and I have exchanged regarding this legislation.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 4, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: On January 28, 2004, the Committee on the Judiciary ordered reported H.R. 339, the Personal Responsibility in Food Consumption Act. As ordered reported by your Committee, this legislation contains a number of provisions that could fall within the jurisdiction of the Committee on Energy and Commerce.

Specifically, I believe that H.R. 339 would impose a new scienter requirement with respect to certain enforcement actions taken by agencies and statutes within our jurisdiction. This requirement could fundamentally alters how agencies, such as the Federal Trade Commission and the Food and Drug Administration, enforce violations of laws they administer.

Recognizing your interest in bringing this legislation before the House expeditiously, the Committee on Energy and Commerce agrees not to seek a sequential referral of the bill. In exchange, you have agreed to eliminate our jurisdictional concerns with a floor amendment that expressly eliminates lawsuits brought under the Federal Trade Commission Act and the Federal Food, Drug, and Cosmetic Act from the definition of ''qualified civil liability action'' under the legislation.

By agreeing not to seek a sequential referral, the Committee on Energy and Commerce does not waive its jurisdiction over the bill as your committee ordered it reported. In addition, the Committee on Energy and Commerce reserves its right to seek conferees on any provisions within its jurisdiction which are considered in any House-Senate conference.

I request that you include this letter and your response as part of the Congressional Record during consideration of this bill by the House.

Sincerely,

JOE BARTON,
Chairman.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 5, 2004.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC 20515

DEAR CHAIRMAN BARTON: Thank you for your letter regarding H.R. 339, the ''Personal Responsibility in Food Consumption Act.'' I appreciate your willingness not to seek a sequential referral of the bill.

I strongly disagree with your assertion of jurisdiction over the bill. I do not believe that H.R. 339, as reported, contains provisions that affect lawsuits by the Federal Trade Commission or the Food and Drug Administration, and the drafters did not intend such suits. Nor do I agree with the description of the bill in the second paragraph of your letter. However, I will include language (a copy of which is attached) in a manager's amendment on the floor to make it clear that such suites are not precluded or otherwise affected by the bill. I will also include language our staffs have discussed in the Committee's report (a copy of which is attached) to further clarify this point.

By agreeing to this resolution of this matter, the Committee on the Judiciary does not acknowledge that the Committee on Energy and Commerce had jurisdiction over provisions of the bill. In addition, the Committee on the Judiciary does not waive any of its jurisdictional claims in these matters.

I will include your letter and this response in the Committee's report on H.R. 339 and in the Congressional Record during the consideration of this bill in the House. I appreciate your cooperation in this matter.

Sincerely,

F. JAMES SENSENBRENNER, Jr.
Chairman.

AMENDMENT LANGUAGE

Strike the current §4(5)(C) (the language that excludes suits relating to adulterated foods) and insert:

''(C) Such term shall not be construed to include an action brought under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or the Federal Food, Drug, and Cosmetic Act (21 U.S. 301 et seq.).''

REPORT LANGUAGE

After the Committee on the Judiciary's markup of H.R. 339, the Committee on Energy and Commerce expressed concerns that the definition of ''qualified civil liability action'' might be construed to include actions under the Federal Trade Commission Act or actions under the Federal Food, Drug, and Cosmetic Act. The Committee on the Judiciary did not intend to include such actions in the definition and did not believe that the actions were included within its clear terms. Notwithstanding that, both Committees agree on the policy that such actions should not be precluded by H.R. 339. To make this policy agreement abundantly clear, a manager's amendment to be offered during floor consideration of H.R. 339 will strike the current language in §4(5)(C) excluding adulteration suits and replace it with language stating explicitly that the definition shall not be construed to include actions under the Federal Trade Commission Act or the Federal Food, Drug, and Cosmetic Act. The Committee on the Judiciary believes that this language will resolve the practical concerns of the Committee on Energy and Commerce.

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

Mr. WATT. Mr. Chairman, I ask unanimous consent to substitute myself for the gentleman from Virginia (Mr. SCOTT) and control the time in opposition to the bill.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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

I want to start by putting a couple of things in perspective. First of all, I agree with a lot of what the gentleman from Wisconsin (Chairman SENSENBRENNER) has said about personal responsibility, so I want to go on record as saying that. I personally like fast food on some occasions, but I also take personal responsibility for my own fitness. So I am not here about personal responsibility. People do have personal responsibility. Let me put that on record.

I am here as the ranking member of the Subcommittee on Commercial and Administrative Law, a subcommittee of the Committee on the Judiciary and, for that reason, I have the responsibility to control the disposition of time on this bill. And because I am standing

in the middle of it, I suspect there will be a number of things said that I need to clarify in advance to position myself.

First of all, I suspect that my colleagues are going to hear that I am somehow a defender of fat, irresponsible people today. I suspect that at some time during the course of this debate, I am going to be characterized as the defender of irresponsible litigation. I suspect at some point during the course of this debate today I am going to be characterized as the defender of trial lawyers, the hated trial lawyers that many of my Republican colleagues just despise so much.

Let me make it clear at the outset of this debate that I am not here as any of those things. I personally do not think much of these kinds of lawsuits, and I want to go on record as saying that. But that is not the criteria in which I can evaluate this proposed legislation.

As a member of the Committee on the Judiciary, I have some other responsibilities. I have a responsibility to defend the federalist system that has been set up under which we operate and which is a constitutional framework over which States and local governments have certain responsibilities and over which the Federal Government has certain responsibilities. And too often, what we hear in this body is lip service to that federalist system and lip service to the proposition that people support States' rights and, yet, when the rubber meets the road, they walk away from any commitment to it. I think that is what is happening with this legislation that we are debating today, because this has been an area that has been uniquely within the province of States and State judiciaries and State legislatures.

I also want to warn us against this notion that somehow or another, our court system is run amok and that we should take responsibility as Members of Congress in trying to correct every aspect of our court system. Now, I want to tell my colleagues, I suspect that if there was anybody here who ought to be suspicious and concerned about State courts and State courts running amok, it would be me. I grew up in the era of the civil rights movement, and many of the State court judges during that era were not especially sensitive to people who looked like me and had the racial characteristics that I do. But one of the things that I learned during that process is that I do not always like the result that a court comes out with, but the system of justice and judicial responsibility and the division of responsibilities between the legislative branch and the judicial branch, between the Federal, State, and local governments is a pristine, wonderful system that we should honor, and sometimes we have to be patient and let this work itself out in a way over time, and that is exactly what has happened in this case. From the dropping of this bill to the time that we have come to the floor to debate it today, every single lawsuit that has been filed dealing with this issue, every single lawsuit has been dismissed by the courts.

So when I say this is a solution in search of a problem, understand that there is no problem out there. The court system has already addressed this perceived problem that we have. This, I say to my colleagues, is an effort to take this politicized notion of personal responsibility and try to rub people's faces in it without regard to the federalist system in which we are operating.

This bill would insulate an entire industry from liability and would undermine and insult, insult our State judiciaries in the various States around the country, and the State legislatures and the whole concept of Federalism. The growing trend in this body to attempt to preempt by legislation litigation that is deemed ''undesirable'' or ''frivolous'' is very troublesome. It gets us to a legislation by anecdote, a legislation by result, rather than any kind of honoring of the process that we should be working within.

I believe it is arrogant and disrespectful of our system of government. This bill and others like it presume that State courts, State legislatures, and the citizens of the States themselves are woefully incompetent to address burdens on their systems of government and that, somehow, we, as Members of Congress, have some great intellectual capacity and responsibility up here to control everything that exists in our country. It is a wrong-headed approach that we have set upon.

There is absolutely no evidence in support of the proposition that our States cannot handle these matters. The details of this bill drafted in haste will be aptly debated throughout the amendment process. But my major concern, and one that I will reflect in the amendments to the bill that I offer, is what we should be doing as national policymakers. I do not believe that overreacting to every headline constitutes responsible legislating. I hope that this body will get back to the business of evaluating the serious problems confronting the American people and developing some solutions to those problems: employment, the economy, deficits, war. And this bill does not do that. Simply put, as I indicated before, this is a solution in search of a problem, and it would not even be on the floor, I think, today if we were dealing with some of the problems that we really ought to be confronting.

Mr. Chairman, with that, having set the framework, I will reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. KELLER), the author of the bill.

Mr. KELLER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, the food industry is the largest private sector employer in the United States, providing jobs for 12 million American citizens. The consequences of these obesity lawsuits against the food industry is that consumers will pay a higher price for food in restaurants. Mom and pop restaurants would face unaffordable insurance rate hikes, and jobs could be cut as a result.

This legislation, in essence, provides that a seller or maker of a lawful food product shall not be subject to civil liability where the claim is premised upon an individual's weight gain relating to the consumption of that food. This is a narrowly-drawn, measured piece of legislation. It does not immunize the food industry. This legislation does not preclude suits from false advertising, mislabeling of food, adulterated foods, or injuries from eating tainted food. The gist of this legislation is that there should be common sense in the food court, not blaming other people in the legal court.

Most people have enough common sense to realize that if they eat an unlimited amount of french fries, milk shakes, and cheeseburgers without exercising, it can possibly lead to obesity. But in a country like the United States where freedom of choice is cherished, nobody is forced to supersize their fast food meals or to choose less healthy options on the menu. Similarly, no one is forced to sit in front of their TV all day and play video games, instead of walking or bike riding.

Richard Simmons, the famous exercise guru, recently said that people who bring these lawsuits against the food industry do not need a lawyer, they need a psychiatrist, and the American public seems to agree. In a recent objective Gallup poll, nearly nine out of 10 Americans, 89 percent, oppose holding the fast food industry legally responsible for the diet-related health problems of people who eat that kind of food. Interestingly, overweight people agreed with skinny people that the fast food industry should not be held responsible for these types of claims.

Which brings me to the subject of lawyers. And, while we are here, some of the same lawyers who went after the tobacco industry now have a goal of suing the food industry for $117 billion, which is the amount the Surgeon General estimates as the public health costs attributable to being overweight.

Now, based on a standard contingency fee of 40 percent, that means these selfless lawyers interested in public good would be recovering $47 billion for themselves in attorneys' fees, and that is, ultimately, what this is about. In fact, in June of 2003, lawyers from all across the United States gathered in Boston for what they called the first annual conference on legal approaches to the obesity epidemic. To attend each work shop, the people had to sign an affidavit to attend the legal work shop in which it said, ''This is intended to encourage and support litigation against the food industry.''

One of the ringleaders of this litigation conference is a lawyer named John Banzhaf. Mr. Banzhaf freely admits that his goal is to open the floodgates of litigation against our Nation's largest private sector employer: the food industry.

□ 1245

Specifically, Mr. Banzhaf said this: ''Somewhere there is going to be a judge and a jury that will buy this. And once we get the first verdict, as we did with tobacco, it will open the flood gates.''

Now, the Democrats could have called anybody they wanted to. We had a hearing on this. But they chose to call this man who says it will open the flood gates. He wants to open the flood gates. That is what they said then. Then they come here today and it is, What do you mean? There is no intent to sue the food industry. Well, indeed, lawsuits have been filed against McDonald's, Burger King, Wendy's, KFC, Kraft/Nabisco with new suits now threatened by Mr. Banzhaf and others against the makers of ice cream.

The New York suits included one with a man named Caesar Barber, who went on ''60 Minutes'' and told them, ''I want compensation for pain and suffering.'' ''60 Minutes'' said, ''How much money do you want?'' Caesar Barber: ''Maybe $1 million. That is not a lot of money right now.''

We must think of what this is about. The litigation against the food industry is not going to make a single person any skinnier; it is only going to serve to make the trial attorneys' bank accounts a lot fatter.

In summary, we need to make it tougher for lawyers to file frivolous lawsuits. We need to care about each other more and sue each other less. We need to get back to the old-fashioned principles of common sense, of personal responsibility and get away from this new culture where everybody plays the victim and sues others for their problem.

This legislation is a step in the right direction. I urge my colleagues to vote ''yes'' on H.R. 339.

Mr. WATT. Mr. Chairman, I yield myself 1 minute simply to respond to the prior speaker.

Here we go, exactly what I said was about to happen is happening. 89 percent of the public support does not support these kinds of lawsuits, but that does not mean that we need a Federal statute to deal with this issue. In fact, it probably means exactly the opposite of that.

Second, there have been a number of suits filed and every single one of them has been dismissed up to this point. So the process is working. And you are already beginning to see that this is really about having this opportunity in an official context to beat up on trial lawyers. We ought to be trying to do some serious legislating rather than just politicking with this bill.

Mr. Chairman, I yield 3 minutes to the gentleman from Virginia, Mr. SCOTT.

Mr. SCOTT of Virginia. Mr. Chairman, I thank the gentleman for yielding.

Whatever the merits of the lawsuits which provoke this legislation are, we ought to focus on the fact that lawsuits ought to be tried in court, where evidence can be heard and objective law applied.

Today, we are allowing one industry to have the privilege of trying its lawsuit with politicians who will take politics and polls into consideration instead of being treated the same as other citizens who have to try their cases in court. If the case on behalf of the food industry is strong, then courts will know what to do; they can dismiss the cases.

Furthermore, if based on the evidence and the law the court finds that the law suit is frivolous, the court may assess sanctions against the plaintiffs and lawyers who file the suits. In fact, it is my understanding that all of the lawsuits have in fact been dismissed. So what is wrong with the food industry being treated the same as other industries when it comes to courts deciding whether or not there is responsibility for injuries to others? And what is wrong with trying cases in court with unbiased judges and juries hearing both sides of the case according to rules which allow both sides to produce all relevant witnesses who will be heard and cross-examined?

This process is in stark contrast to the congressional procedure where committee chairmen invite the witnesses they want and cross-examination of witnesses is severely constrained both in time and by the fact that the interested parties are not able to cross-examine anyone.

Mr. Chairman, in a democracy it is fundamentally wrong for some industries to have the privilege of trying their cases in a forum where their political allies will decide the merits of the case while everyone else is relegated to the court system where evidence is heard and the law applied by judges and juries without political considerations. This bill sets a bad precedent. I therefore hope my colleagues will oppose this bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. GRANGER).

Ms. GRANGER. Mr. Chairman, on Saturday I handed out awards to some 4,600 kids that participated with me in the Cowtown 5–K running race the weekend before. I was happy to promote an activity that gets kids moving. And I think that getting young people in events like the Cowtown race is a much better way to combat obesity than targeting fast-food restaurants with frivolous lawsuits.

The question before this body today is simply, Should it be just as easy to file a lawsuit against a restaurant for causing obesity as it is to drive through the nearest take-out window for a quick burger and fries? The answer is no.

The issue before us is responsibility, individual and personal responsibility for how we eat and how we exercise. We all know the statistics: two-thirds of Americans are overweight; 15 percent of our children are too heavy; obesity rates among teenagers have tripled in the last 20 years. Blaming the fast-food industry is not the answer to reducing obesity in America.

Americans can sue the McDonald'ses and Burger Kings of the world until these establishments can pay no more, but not one American will lose weight until they eat better and exercise more frequently.

I support this legislation because I do not want Americans to have a crutch for their overweight problem: restaurants and the fast-food industry. Instead, I want to provide Americans a better way, a healthy life-style.

If we really want to address the obesity epidemic, we must focus on educating youngsters about the dangers of being overweight and how eating the wrong foods only packs the pounds on. You could utilize programs such as the CDC's Youth Media Campaign, otherwise known as the VERB program.

VERB is a proven program that encourages kids to get out and walk, bike, run, jog, play basketball, baseball, skateboard, anything but just sitting in the house and watching television.

The net result of lawsuits that blame the fast-food industry for our overweight problems will be higher prices and lost jobs, not healthier Americans. Eating right and increasing physical activity is the answer to a slimmer, trimmer, fitter America, not lawsuits.

Mr. WATT. Mr. Chairman, I yield 5 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Chairman, I thank the gentleman from North Carolina (Mr. WATT), the subcommittee chair, for yielding and for his very sensible approach to this issue.

I do not know if my good friends on the other side of the aisle are trying to change their political identity, but I thought they stood for federalism and local control. They are, however, developing a pattern of coming to the floor in response to interest groups to knock out lawsuits even when they are winning in the courts. What a waste of time.

Fast-food suits can hardly be the American answer to obesity, a public health problem; but they may be part of a revolution that is occurring in the fast-food industry. And I say to the fast-food industry, keep bringing on those changes at McDonald's and all the rest of these fast-food places that are hearing us one way or the other.

We all believe you have to take responsibility for what goes into your own mouth. I come to the floor because I think there is a great audacity in coming to the floor, as the other side is, to talk about personal responsibility when we are talking about a public health problem for which our government has not taken responsibility.

I worked with Chairman Porter, who, a couple years ago, retired from the House, on an appropriation that started at $125 million. He started with children. I had a bill called Lifetime Improvement in Food and Exercise, LIFE; and we joined forces. He came to the Congress to a reception just to press the notion once again last year.

Secretary Thompson had the audacity to go on television yesterday talking about some penny ante things that the administration is going to do. After having reduced this amount from $125 million this year to $5 million, they tried in the last 2 years to get it to zero. This is money that was going into reducing obesity among children.

In today's Washington Times, the front page says, and I quote, ''Inactive Americans are Eating Themselves to Death at an Alarming Rate. Their unhealthy habits are approaching tobacco as the top underlying preventable cause of death, a government study found.''

What is the government going to do about its government study? I hope it does more than stop the trial litigation in the States, obviously not the answer to this problem when 60 percent of our people are overweight or obese.

An ad campaign as described by the Secretary himself consists of humor when they say you should get off your duff and walk your children around the block. Mr. Chairman, this is far more serious than that. This is the major health problem second only to smoking.

I am grateful to the Committee on Appropriations that instead of zeroing out public health money for the last 2 years, the appropriation has put in money. We are going to be trying to get money again this year so we do more than talk about obesity or try to stop litigation.

When you look at the amount of money that we have put into this problem ourselves, we started with a good Republican Chair of the HHS subcommittee, starting at $125 million. Then he retires and the administration, his administration tries to zero it out.

This Congress says, no, we will not put 125. If the President wants it gone, we will put 68, then the third year 51, last year $35.8 million. Well, we are going down, not up; but people rush to the floor, the Committee on the Judiciary regards it as a priority to stop some lawsuits that are stopping themselves. That is my concern.

My bill, Lifetime Improvement in Food and Exercise, which I joined with Chairman Porter in producing this first, first significant public health money, is now being eroded by the administration. And I now find myself with only $5 million in the administration's budget this time rather than zero; $5 million reduced from $125 million means they want public health money to combat obesity gone.

I am going to ask the Members of this House to help me in restoring money to face this public health problem so that people who are bringing lawsuits out there know that we can do more than try to knock out lawsuits that are knocking themselves out, but that we are taking public health responsibility for a public health crisis, just as we expect them to take personal responsibility for what they eat every day.

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

Mr. Chairman and Members, I would just reiterate a couple of points. It strikes me that given what has transpired since this bill was introduced, even if it was originally a good idea and even if you accepted the notion that State courts were going to be irresponsible and not do what they are supposed to be doing, now that we have seen the passage of time and had the proof that State courts will dismiss these lawsuits, even if this bill was a good idea, it seems to me that we have proven with the passage of time that it is now definitely a solution in search of a problem. The lawsuits have been dismissed.

□ 1300

So, in effect, the system has worked exactly like we would like it to work. That is the way our system is set up. If an individual believes that he has a cause of action and they believe that they have been wronged, or somebody has failed in meeting a standard that is applicable, they have the right to file a lawsuit, go to court, and have that court make a determination on their lawsuit. And that is exactly what has happened.

Now, quite often people make those judgments in different ways and you end up with lawsuits being filed that get dismissed. And that happens to probably well over 90 percent of the cases that get filed in court—they get dismissed before they come to trial.

Does that mean that they are all frivolous? Well, some of them probably are frivolous. And there are rules in place that allow the courts to sanction people and fine them and charge them attorneys fees of the opposing party when they file frivolous lawsuits. But people still file frivolous lawsuits, and those rules then are triggered and the courts handle that.

Does it mean that even the frivolous lawsuits should not have been dismissed? Well, there is another category of cases where there is not enough law to support filing a lawsuit. Whether you have a good lawsuit is a function of whether you have got the facts and a function of whether you have got the law on your side. But our system is set up to allow courts to make that determination, and I would submit that State courts have as much expertise, probably more expertise, in making these determinations than our Federal judiciary.

The next point I would draw from this is that as these lawsuits have been dismissed, it strikes me that it is less and less and less likely that subsequent lawsuits will be filed because then you have got a backdrop against which people can go into court and say, well, this issue has been determined by a court adversely and so it should not be here. There is an increased possibility, probability that courts will find that subsequent lawsuits are frivolous in this area. But all of those things argue for our staying out of this and not building a whole new Federal framework for dealing with a problem that does not exist because our system is working.

Now, the next point I want to make that I have heard come out of this general debate up to this point is this job loss notion. I have heard some really interesting explanations by this administration about why we are losing jobs in this country. But this about takes all I have heard. Here we are now with some of my colleagues saying, well, if we allow these lawsuits to be filed against McDonalds or whatever the fast food chains are, we are going to result in job loss, and that is what is causing the big job loss in this country.

Give me a break. We ought to know better. And there are a bunch of reasons that I could go into about why we are losing jobs, but this would be about the 999,000th reason that I would get to before I would be identifying a source for job loss in this country. So we are kind of grasping at straws here, from my perspective, on that argument.

Finally, it amazes me how the same people who, over and over and over, had campaigned saying they believe in local control and States' rights. When they do not get the result that they want at the State level or even in this case when they do get the result that they want at the State level because all of these cases have been resolved adversely that have been filed, it is amazing to me why we think in our arrogance in this body that we ought to just take over because we do not like the result or we think State legislators are incompetent or local elected officials are incompetent, we ought to take it over at the Federal level and forget about the constitutional framework that we are operating in. And it is more inexcusable to me when these bills come out of the Committee on the Judiciary, where there should be the highest of respect for the constitutional parameters in which we operate.

This is not something that we should be doing from a number of different perspectives. And I just beg my colleagues, I guess it is a good debate. It is a good way to get us out here on the floor and take up some time when we really ought to be talking about the things that are really causing job loss. We are out here grasping at straws looking for some something to do today. Do we not have something else that we could be doing on the floor today that really honors our constitutional framework? Surely there must be something better.

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

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

Mr. Chairman, I have been listening to this debate since it began and until the gentleman from North Carolina (Mr. WATT) got up and brought in the whole subject of job loss, I did not hear anything about job loss at all.

Well, this bill is about preventing job loss because if a franchisee of a major national fast food chain ends up getting sued, he will be out of business, even if he wins his lawsuits because of all the legal fees and deposition fees and expert witness fees that he is going to have to pay.

So it seems to me that for once, Congress is getting ahead of the curve on this because we do have the evidence that a bunch of plaintiffs lawyers got together and they required everybody who went to this conference to sign an affidavit of confidentiality and a promise that they would not consult with or represent the food industry until the end of 2006.

Now, let us get back to what this bill consists of. This bill consists of imposing personal responsibility. And in my part of the general debate, I quoted Susan Finn, who is the head of the American Council on Fitness and Nutrition. She said, ''If you are obese, do not get a lawyer. See your doctor. See a nutritionist and see a personal trainer, because you made yourself obese. It was not the system that did it or the local fast food chain that did it. You did it yourself.''

And then I quoted the doctor who runs the residential facility in Durham, North Carolina, and he said, ''The worst thing in the world you can do for an obese person is to give them a way out, to let them blame somebody else. They are going to have to look in the mirror if they want to get better and they want to prevent themselves from having all the health problems and lowered life expectancy as a result of eating too much and eating too much of bad stuff.''

So, let us talk about saving jobs before they go. Let us talk about not giving people who are in denial a reason to get themselves off the hook. And let us talk about putting some sense in our legal system because it is not the food industry or those who sell a legal product that make people obese. It is people buying too much and consuming too much of that legal product. That is what this bill attempts to address and that is why it ought to pass.

Mr. CANTOR. Mr. Chairman, I rise today in support of legislation to end misguided obesity-related lawsuits. The Personal Responsibility in Food Consumption Act, H.R. 339, would take a strong step forward in accomplishing this goal. I strongly support this common sense legislation and believe it is time to end frivolous lawsuits against our nation's 878,000 restaurants and their 12 million employees.

In recent years, our nation's vast restaurant industry has come under attack from absurd obesity lawsuits. This litigation has bogged down the judicial process and threatens small business owners. A recent poll shows that 89 percent of Americans believe that restaurants should not be held liable for an individual's obesity or weight gain. The National Restaurant Association believes lawsuits attacking food is not the answer to our nation's obesity problem. Emphasis must be placed on education, personal responsibility, moderation, and healthier lifestyles.

This legislation would prevent food companies from being held liable for the condition of obese and overweight consumers. Our public health would remain protected and any establishment distributing food that has a defect or that is improperly prepared will be held accountable.

Mr. Chairman, the time has come to end these lawsuits against our American restaurants and small business owners.

Mr. STARK. Mr. Chairman, I rise in opposition to the so-called Personal Responsibility in Food Consumption Act. This legislation is unnecessary. Lawsuits brought against fast food companies for allegedly causing obesity have been routinely thrown out. The fact is the law has worked in repelling bogus legal claims.

Yet, I suppose just like every other self-serving business lobby in Washington, the fast food industry wants the Republicans to protect them from being responsible. It's as if they're asking the GOP to ''super size it'' with a massively overreaching bill that grants fast food companies broad and unprecedented liability protection even in instances where they are clearly negligent.

Remember now that this legislation is an unnecessary response to a completely imagined problem. Consider then the impact it will have on ordinary Americans if they are injured by reckless behavior.

Well, to start with, this bill says that if a fast food chain is reckless and causes injury in a manner that is not already prohibited under state or federal law, they can't be held accountable. Second, if a fast food restaurant does break a state or federal law but says they didn't mean to do it, they get off just as easy.

This is a question of responsibility. I don't think most Americans believe anyone ought to get this kind of special treatment, especially when the result might well be more reckless and dangerous behavior.

Finally, let me just say that I find it interesting we would bring up the issue of obesity without a meaningful discussion of ways in which we can promote better health.

There is no discussion in this chamber today about making sure children are learning about and getting better nutrition. There is not a word mentioned about better food labeling so that Americans are better informed about the impact their choice of diet has on their health and longevity. We aren't talking about making sure the fast food industry fully discloses the health risks of high fat food that they have continually marketed and made easily accessible in every corner of this country.

I ask my colleagues to vote down this unneeded and potentially damaging legislation—it's a matter for the courts, not Congress. We ought to focus on bringing Americans to better health, rather than the healthy profits of the fast food industry.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I strongly oppose this bill. It is advertised as a bill that stops frivolous lawsuits. Essentially, it really is frivolous legislation. Fast food lawsuits are extremely rare, and existing court procedures already weed most of them out before they get to trial. This is a manufactured issue, and this bill was created just to get a political score, catering to big corporations. The real problem is that to get that political score, this bill compromises the rights of states, denies citizens their right to be heard in a court of law, and impinges on the judiciary.

Furthermore, this bill will stifle a dialogue that is leading to better information and education about the health effects of various ingredients, and encouraging the food industry to develop more healthful products. This silly bill could cost lives.

Court procedures that have been carefully developed over the centuries already ensure that defendants are treated fairly. It is up to the courts to decide if a case is frivolous. Our legal system has multiple procedural safeguards to ensure defendants' rights. For example, judges monitor filings at every step, and can dismiss cases that lack merit at any time. Sufficient quality evidence must be present for any case to proceed. Attorneys can be punished and, in some cases, may be required to pay monetary penalties if they bring frivolous cases to court, or otherwise abuse the process. Also, the contingency fee system keeps attorneys from taking baseless cases. Usually, they only get paid if a judge or jury determines that the case was not frivolous.

However, just the threat of such cases has made our food supply safer and more healthful. Since the press coverage of obesity lawsuits began, fast food chains and junk food producers have taken more responsibility for their products. Consider the following developments: after publicity over a lawsuit against Kraft Foods regarding the dangerous trans-fat found in Oreo cookies, the FDA issued requirements that food labels reveal exact levels of the artery-clogger. According to the Associated Press; ''the FDA has estimated that merely revealing trans-fat content on labels would save between 2,000 and 5,600 lives a year, as people either would choose healthier foods or manufacturers would change their recipes to leave out the damaging ingredient.''

The New York Times has reported that Kraft and other major food companies, like McDonalds, Kellogg and PepsiCo, have promised to change how they produce foods and to take health concerns into greater consideration. The New York City public school system banned candy, soda and other sugary snacks from school vending machines to combat obesity among schoolchildren.

Although the most recent lawsuit against McDonalds was dismissed in September, it was still followed by a sudden wave of corporate responsibility. McDonalds will now offer a ''Go Active Meal'' for adults modeled after the children's Happy Meal. It will contain a healthy salad along with exercise tools. Burger King has joined the effort by creating low fat chicken baguettes for health conscious consumers, and Pizza Hut is offering the Fit 'N Delicious pizza that is only 150 calories per large pizza compared to the 450 calories in just one slice of its Stuffed Crust pizza.

I am against frivolous lawsuits, and hope the courts will continue to exercise restraint and control in protecting the defendants from

ridiculous claims. But the few suits that have come up have cost very little overall, and have started a public dialogue that has led to a new level of corporate responsibility and consumer awareness. We should not interfere with that dialogue.

In effort to lessen the frivolous nature of this bill, I offer two amendments and ask that my colleagues join me to save what promises to be an attempted legislative fix to a problem that has already been addressed in the courts. First of all, for the sake of clarification, this bill prohibits suits against food manufacturers, and relies on the definition of ''food'' under the Food, Drug and Cosmetic Act. In 1994, Congress passed the Dietary Supplement Health and Education Act to clarify that ''a dietary supplement shall be deemed to be a food'' for all purposes within the Food, Drug and Cosmetic Act (21 USC 301 (ff)). Because this bill relies on this definition of ''food,'' it also applies to dietary supplements.

The first of these amendments, ''MJ–004,'' will ensure that dietary supplement manufacturers don't get away with murder. This bill, as drafted, bans not only so-called ''obesity-related suits,'' but any civil action that ''relate[s] to . . . a person's consumption of a qualified product . . . and any health condition that is associated with a person's weight gain.'' Note that the person with the health condition does not have to be obese, they only have to have a health condition that obese people also have. Heart disease and kidney problems would be some of those diseases, for example. Hidden in this convoluted definition is the fact that this bill will shield the producers of dietary supplements from all liability. I offer this amendment to ensure that makers of these highly dangerous—and highly unregulated—drugs are held accountable for their actions.

Now that ephedra is gone, new diet drugs are already taking its place: bitter orange, aristolochic acid and usnic acid. All three have been associated with kidney and liver problems. While the FDA claims that it will look into the matter, we all saw what happened the last time the FDA began its cumbersome process. How many people will die this time? While the government works through its bureaucratic process, we have to let people have their day in court to stop these tragic events from happening again.

I offered an amendment, ''WATT–019,'' in addition to ''MJ–004.'' This amendment would prohibit the food industry—which enjoys broad immunity under this bill—from initiating lawsuits against any person for damages for other relief due to injury or potential injury based on a person's consumption of a qualified product and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity.

This amendment is necessary to insure that the public debate on the health and nutritious effects of mass marketed food products is not completely squelched by this bill.

In 1996, Oprah Winfrey was sued under my home state's ''food disparagement'' laws by the beef industry for comments she made following the first ''Mad cow'' scare this country witnessed. After years of litigation, transfer of her television show to Texas, and an expenditure of over $1 million, Ms. Winfrey prevailed at trial and on appeal.

My amendment insures that what's good for the geese is good for the gander. Those advancing healthy diets by discouraging the consumption of certain foods because of their adverse effects on a person's health and weight gain should not be subject to litigation from the food industry while it stands immunized from any accountability under this bill.

I will vote against this bill and urge my colleagues to do the same.

Mr. SHUSTER. Mr. Chairman, I rise today in support of H.R. 339, the Personal Responsibility in Food Consumption Act. This common sense legislation would prohibit lawsuits that claim a food manufacturer or seller is responsible for an individual's weight gain or obesity.

The food service industry is our nation's largest private sector employer, providing more than 12 million jobs in this country. Due to the industry's success of selling a legal product and meeting consumer demands, they have become the next target for the personal injury trial lawyers. If we do not pass this legislation, we will clear the way for the next free-for-all and litigation-lottery created to line the pockets of trial lawyers and send the message to Americans that they no longer have to be responsible for their actions. Make no mistake about it, this legislation is about personal responsibility. Each individual must be held accountable for their own personal choices and that includes the choices they make regarding what and how much they eat.

By supporting this legislation, we are not turning our backs on this country's problem with obesity but will in fact take one step closer in addressing the issue in a responsible and reasonable manner. As a nation, we must look for solutions to this public health problem. However, the solutions will not be found in the courtroom. Baseless and frivolous lawsuits are a misguided attempt to correct the poor eating habits of Americans and will not help a single individual in their struggle with obesity. The answers to our nation's struggle with weight and the associated health problems can be found by educating individuals about healthy lifestyle choices. It is doctors, nutritionists, and other health care providers that can offer help to overweight Americans—not personal injury lawyers. If lawsuits that blame the food industry for an individual's weight gain are allowed, we will simply make it easier for individuals to shift the blame to someone else. In a society that values choices and personal freedom, I believe we must take responsibility for our own choices in order to preserve them. We cannot stand by and let trial lawyers attempt to legislate through litigation. I urge my colleagues to vote for common sense and personal responsibility by supporting this important legislation.

Mr. BLUMENAUER. Mr. Chairman, if anyone needed an example of how Congress misses opportunities to make a difference, they need only to look at today's discussion of H.R. 339, a fast food tort reform bill. The very title invites parody. At a time when obesity is the fastest growing health care in America, affecting over one-third of American adults and touching almost every family, and when we have particular concern about an explosion of childhood obesity and related illnesses, there is good reason for Congress to become concerned.

Congress could make a real difference by providing reasonable diet standards including school lunch programs to help remedy this epidemic. Another step would be to have education reform and ''leave no child behind,'' have a provision dealing with children's health. Physical education is not a part of Congress' answer to school reform, and we find today that most of our children do not get regular physical activity as a daily part of the school curriculum. In our transportation bill we could provide major opportunities for safe routes to school so that our children could walk and bike to school on their own. These would be simple, commonsense, cost-effective steps to improve the health of our children and their families, while improving the environment and quality of life.

Instead of dealing substantively with the obesity problem, Congress in its wisdom has seen fit to continue selectively tinkering with the legal system by providing immunity from litigation. Never mind there has never been a jury verdict for a plaintiff in an obesity lawsuit. Corporations like McDonalds are well suited to take care of themselves, but the House leadership is taking a page out of their recent outrageous, unprecedented immunity for gun manufacturers. Not only is this legislation unneeded, but it would immunize defendants for negligent and reckless behavior including mislabeling of food products, something that I find impossible to explain to American consumers.

I find this trivializing a serious issue, undercutting fundamental legal protections, and providing a remedy for a problem that does not, at this point, appear to exist.

Mr. HAYES. Mr. Chairman, I rise today in support of H.R. 339—the Personal Responsibility in Food Consumption Act. This legislation will help to avoid frivolous lawsuits that will serve only to victimize innocent restaurants and make the American consumer pay a price. Frivolous lawsuits are driving up the cost of doing business in this country and it's costing us jobs. The simple fact is that responsibility for obesity here in America rests with the individual choices made by each citizen. And this legislation makes that clear.

Recently, an editor in my district made this point very clear. I would like to quote from his column, which ran in the Richmond County Daily Journal, which I believe represents the spirit of this important legislation.

> McDonald's nor any of its comrades in the fast-food world, doesn't hold a gun to your head and force you to eat Supersize fries. You—and you alone—make that decision; McDonald's is simply following supply-and-demand protocol by offering Supersize fries.
>
> The Big M in the Sky didn't make you obese; you did.

It is past time in this country for all individuals to take responsibility for the choices and freedoms available to us as Americans and cease passing the buck through frivolous lawsuits that blame others for our poor decisions.

I strongly urge my colleagues to support this legislation that will prevent lawsuits based on poor decision-making.

Mr. CONYERS. Mr. Chairman, I rise in strong opposition to this legislation which is both misleading and frivolous.

H.R. 339 goes much further than its stated purpose of banning the small handful of private suits brought against the food industry. It also bans suits for harm caused by dietary supplements and mislabeling which have nothing to do with excess food consumption, and would prevent state law enforcement officials from bringing legal actions to enforce their own consumer protection laws.

If you don't believe me, I implore you to read the bill. Section 4(5) would prevent any

legal action relating to ''any health condition that is associated with a person's weight gain or obesity'' stemming from consumption of a ''qualified food product,'' which in turn is defined to include food and nutritional supplements. There is no requirement whatsoever that the person actually have gained weight as a result of consuming the product. As a result, the bill would prevent persons who develop heart disease and diabetes from dietary supplements such as Ephedra and Phen Phen from being able to obtain redress. Moreover, under the Manager's amendment, private actions for harm caused by adulterated or poisoned products would also be limited.

Even worse, the bill bans these lawsuits on a retroactive basis, so it would throw out dozens of Ephedra and Phen Phen cases currently pending in court. This is a far cry from the concerns that led to this legislation.

H.R. 339 would also prevent state law enforcement officials from enforcing their own laws. Under section 4(3) the bill applies to legal actions brought by any ''persons,'' which in turn is defined to include any ''governmental entity.'' That means state attorneys general will be prevented from pursuing actions for deceptive practices and false advertising against the food industry. Again, this is a vast departure from most of the so-called tort reform bills considered by this Congress, which are drafted to apply to private lawsuits.

The legislation is frivolous because it deals with a non-existent problem. To date every single private lawsuit against the industry—a total of five—have been dismissed. The system is working fine, there is absolutely no crisis. Frivolous suits are thrown out of courts, and lawyers who bring them are subject to fines and other sanctions. It is absurd that this Congress would even consider eliminating liability when today's Washington Post is reporting that obesity is passing smoking as the leading avoidable cause of death in our nation.

Lets not pass a bill which harms the victims of Ephedra and Phen Phen, or handcuffs our state attorneys general from protecting consumers.

I urge a ''no'' vote.

Mr. PAUL. Mr. Chairman, Congress is once again using abusive litigation at the state level as a justification nationalizing tort law. In this case, the Personal Responsibility in Food Consumption Act (H.R. 339) usurps state jurisdiction over lawsuits related to obesity against food manufactures.

Of course, I share the outrage at the obesity lawsuits. The idea that a fast food restaurant should be held legally liable because some of its customers over indulged in the restaurants products, and thus are suffering from obesity-related health problems, is the latest blow to the ethos of personal responsibility that is fundamental in a free society. After all, McDonalds does not force anyone to eat at its restaurants. Whether to make Big Macs or salads the staple of one's diet is totally up to the individual. Furthermore, it is common knowledge that a diet centering on super-sized cheeseburgers, french fires, and sugar-filled colas is not healthy. Therefore, there is no rational basis for these suits. Some proponents of lawsuits claim that the fast food industry is ''preying'' on children. But isn't making sure that children limit their consumption of fast foods the responsibility of parents, not trial lawyers? Will trial lawyers next try to blame the manufactures of cars that go above 65 miles per hour for speeding tickets?

Congress bears some responsibility for the decline of personal responsibility that led to the obesity lawsuits. After all, Congress created the welfare state that popularized the notion that people should not bear the costs of their mistakes. Thanks to the welfare state, too many Americans believe they are entitled to pass the costs of their mistakes on to a third party—such as the taxpayers or a corporation with ''deep pockets.''

While I oppose the idea of holding food manufactures responsible for their customers' misuse of their products, I cannot support addressing this problem by nationalizing tort law. It is long past time for Congress to recognize that not every problem requires a federal solution. This country's founders recognized the genius of separating power among federal, state, and local governments as a means to maximize individual liberty and make government most responsive to those persons who might most responsibly influence it. This separation of powers strictly limits the role of the federal government in dealing with civil liability matters; and reserves jurisdiction over matters of civil tort, such as food related negligence suits, to the state legislatures.

Finally, Mr. Chairman, I would remind the food industry that using unconstitutional federal powers to restrict state lawsuits makes it more likely those same powers will be used to impose additional federal control over the food industry. Despite these lawsuits, the number one threat to business remains a federal government freed of its Constitutional restraints. After all, the federal government imposes numerous taxes and regulations on the food industry, often using the same phony ''pro-consumer'' justifications used by the trial lawyers. Furthermore, while small businesses, such as fast-food franchises, can move to another state to escape flawed state tax, regulatory, or legal policies, they cannot as easily escape destructive federal regulations. Unconstitutional expansions of federal power, no matter how just the cause may seem, are not in the interests of the food industry or of lovers of liberty.

In conclusion, while I share the concern over the lawsuits against the food industry that inspired H.R. 339, this bill continues the disturbing trend of federalizing tort law. Enhancing the power of the federal government is in no way in the long-term interests of defenders of the free market and Constitutional liberties. Therefore, I must oppose this bill.

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

The CHAIRMAN pro tempore (Mr. OSE). All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered read.

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

H.R. 339

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Personal Responsibility in Food Consumption Act''.

SEC. 2. PURPOSE.

The purpose of this Act is to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

SEC. 3. PRESERVATION OF SEPARATION OF POWERS.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of the enactment of this Act shall be dismissed immediately by the court in which the action was brought or is currently pending.

(c) DISCOVERY.—

(1) STAY.—In any qualified civil liability action, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(2) RESPONSIBILITY OF PARTIES.—During the pendency of any stay of discovery under paragraph (1), unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under applicable Federal or State rules of civil procedure, as the case may be. A party aggrieved by the willful failure of an opposing party to comply with this paragraph may apply to the court for an order awarding appropriate sanctions.

(d) PLEADINGS.—In any action of the type described in section 4(5)(A), the complaint initiating such action shall state with particularity the Federal and State statutes that were allegedly violated and the facts that are alleged to have proximately caused the injury claimed.

SEC. 4. DEFINITIONS.

In this Act:

(1) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' means a person who manufactures, markets, distributes, advertises, or sells a qualified product in the person's regular course of trade or business.

(2) MANUFACTURER.—The term ''manufacturer'' means, with respect to a qualified product, a person who is lawfully engaged in the business of manufacturing the product in interstate or foreign commerce.

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

(4) QUALIFIED PRODUCT.—The term ''qualified product'' means a food (as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f))).

(5) QUALIFIED CIVIL LIABILITY ACTION.—The term ''qualified civil liability action'' means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, penalties, declaratory judgment, injunctive or declaratory relief, restitution, or other relief arising out of, related to, or resulting in injury or potential injury resulting from a person's consumption of a qualified product and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity, including an action brought by a person other than the person on whose weight gain, obesity, or health condition the action is based, and any derivative action brought by or on behalf of any person or any representative, spouse, parent, child, or other relative of any person, but shall not include—

(A) an action in which a manufacturer or seller of a qualified product knowingly and willfully violated a Federal or State statute applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the product, and the violation was a proximate cause of injury related to a person's weight gain, obesity, or any health condition associated with a person's weight gain or obesity;

(B) an action for breach of express contract or express warranty in connection with the purchase of a qualified product; or

(C) an action regarding the sale of a qualified product which is adulterated (as described in section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342)).

(6) SELLER.—The term ''seller'' means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling a qualified product in interstate or foreign commerce.

(7) STATE.—The term ''State'' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term ''trade association'' means any association or business organization (whether or not incorporated under Federal or State law) that is not operated for profit, and 2 or more members of which are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product.

The CHAIRMAN pro tempore. No amendment to that amendment shall be in order except those printed in the designated place in the CONGRESSIONAL RECORD and pro forma amendments for the purpose of debate. Amendments printed in the RECORD may be offered only by the Member who caused it to be printed or his designee and shall be considered read.

Are there any amendments?

AMENDMENT NO. 5 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. SENSENBRENNER:

Section 3(c)(1), strike ''In any qualified civil liability action,'' and insert ''In any action of the type described in clause (i) or (ii) of section 4(5)(B),''.

Section 3(d), strike ''section 4(5)(A)'' and insert ''section 4(5)(B)(i)''.

Section 4(5), strike ''The term'' and insert ''(A) Subject to subparagraphs (B) and (C), the term''.

Section 4(5), strike ''any person, but shall not include—'' and insert ''any person.''

Section 4(5), insert after ''any person.'' (as inserted by the preceding instruction) the following:

(B) Such term shall not include–

Section 4(5), strike ''(A) an action'' and insert ''(i) an action''.

Section 4(5), insert ''or'' after ''obesity;''.

Section 4(5), strike ''(B) an action'' and insert ''(ii) an action''.

Section 4(5), strike ''; or'' and insert a period.

Section 4(5), strike subparagraph (C) and insert the following:

(C) Such term shall not be construed to include an action brought under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

Mr. SENSENBRENNER. Mr. Chairman, my amendment does not alter the substance of the bill, it simply clarifies it further. First, to clarify and ensure consistency in interpretation, it simply amends one phrase in the bill's stay provisions in Sec. 3(c) to track language used in the bill's pleading requirements in Sec. 3(d). Second, it replaces Sec. 4(5)(c) with language making it clear that the term ''qualified civil liability action'' does not include an action brought under the Federal Trade Commission Act or the Federal Food, Drug and Cosmetic Act.

I believe that this change satisfies the objections that the Committee on Energy and Commerce levied against the bill.

I would urge the Members to support my clarifying amendment.

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment.

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

Mr. DINGELL. Mr. Chairman, I rise in support of this amendment. I rise in support of the thesis that we should be considering these matters.

This legislation is a very important part of the administration's program. Just think what it does for this Nation. It says that civility liabilities actions in Federal, State courts against food manufacturers, distributors or sellers that are based on a claim that the person's food consumption resulted in weight gain, obesity or a health condition that is associated with weight gain or obesity is terminated. A very important step.

Now let me give you the history of what we are talking about here, because the administration has an economic program and it is an important economic program and the American people need to know what it is.

First, the Chairman of the Council of Economic Advisors said that the transportation of American jobs abroad or outsourcing is a normal part of trade and he supports it. Second, the administration has come forward with a serious attempt to expand the definition of manufacturing in this country, something which is very important, especially if you are sending manufacturing jobs overseas. And this administration has sent 2.7 million manufacturing jobs overseas. They have also lost 3.3 million jobs in the United States. So there is a serious attempt on the part of this administration to grapple with that problem.

They seek to see to it that we can change the definition of manufacturing jobs now so that they cover fast food handling. Just think of what this means in terms of jobs for the American people. Jobs in manufacturing that paid $27 an hour will now pay minimum wages at McDonalds or Wendy's or Burger King or somebody like that. But just think of the number of new jobs that they can create.

Now, this bill is going to protect those new manufacturing jobs against the prospect of lawsuits which might, in some way, jeopardize the expansion of the American economy and the creation of new jobs in manufacturing.

□ 1315

I think that this tells us many things. First of all, it says they no longer care about autos or steel or aircraft or other important manufacturing concerns and interests that mean jobs, real jobs for the American people, but at least it means that they are paying attention to the fact that we have got to have something done for job creation in this country. It means that they are finally recognizing that we have to protect some portion of the American economy.

The fact that they are beginning with fast food, and food should not be a source of condemnation but rather one of praise, because it means that after a long slumber, they have come alert to a significant problem, the fact that they are not competent to come forward with a real solution, which puts Americans back to work in real jobs, which would enable Americans to have jobs, which will enable them to feed their families, to house them properly, to see to it that they are properly educated or go to college is only a beginning.

We must hope that with the assistance of this body and the passage of this important legislation that perhaps, just perhaps, we will begin down the road towards doing something about protecting American manufacturing, about protecting American manufacturing jobs and about seeing to it that Americans go back to work.

I do not want my colleagues to denigrate the administration. It is not funny. It is sad, and what I want to say to my colleagues is, it is time we do something more than just pass this kind of legislation.

Let us address the problem of the sanctions that the Europeans are getting ready to put on American manufacturers and American industry and the American economy. There is a discharge petition down here at the clerk's desk. My colleagues can sign on it if they want. We can begin to address the fact that this administration does not care about manufacturing, that they have lost millions of manufacturing jobs, that they are not able to be truthful about it.

Last month, we got 22,000 jobs through. In these jobs, 21,000 of them were government jobs, State and local. They were not manufacturing. They were not jobs that put people to work, and they were not jobs that increase productivity for the economy. They were just jobs in the service industry.

If my colleagues look, they will find that there are hundreds of thousands of Americans every month who are falling off the unemployment rolls. If my colleagues look, they will find that there are millions of Americans looking for jobs. They will find that the real unemployment level is around 7.4 million instead of the 5.6 percent that they are

talking about. This is a serious problem. It needs to be addressed. This kind of legislation will not do it.

Mr. WATT. Mr. Chairman, I move to strike the last word, and I am going to ask the gentleman from Michigan if I can ask him a question or two, if he will go back to the microphone because he touched on a subject that I talked about in the general debate here, and he at least has tried to put this in perspective for me.

I could not quite figure out what it was that the argument was that this bill was about job creation. Is the gentleman now saying that the production of hamburgers is a manufacturing job?

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

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

Mr. DINGELL. Mr. Chairman, that is what the administration would tell us, but I would say to my friend, that I am as confused on what the administration's policy is as the administration is and as my good friend is, because they do not seem to know what they are doing, what they are standing for or what they are about. They like jobs going overseas. They think that manufacturing jobs should be flipping hamburgers or handling trays or dealing with mopping the floor in a McDonald's. Those, to this administration, are massive manufacturing jobs.

At the same time, they are not giving tax cuts to the people who would buy those hamburgers or who would buy American automobiles or do other things to make the economy really move and go as it should.

Mr. WATT. Mr. Chairman, I appreciate the gentleman giving me that enlightenment because I had been trying to stretch my imagination to figure out how this debate was about jobs, and I think the gentleman has put his finger on it. I do not necessarily agree with him, but at least that gives the argument some plausibility if one is trying to argue that the processing of hamburgers is manufacturing jobs and it is a manufacturing process and that we have got to protect manufacturing jobs in this country, then we want to do everything we can, but I think it is a stretch.

As I said before the gentleman arrived on the floor, I have heard some pretty interesting explanations for job loss in this country, but this would be way, way, way down the list, like 999,000 on my list of the problems that is creating job loss in this country. I am surprised that the sponsors of this bill have couched it in terms of job creation, but the gentleman has certainly, with the years of experience he has been here, given me some framework within which to evaluate that. I am most appreciative to him.

I yield to the gentleman.

Mr. DINGELL. Mr. Chairman, I thank the gentleman. I will observe that the creation of jobs is one of the major functions of government and seeing to it that we have the prosperity that is needed, that people can work, they can raise their families well, that they can heighten expectation of this generation and the next generation for the future of this country.

I would say that sending jobs to India or China is not a function of which the administration could be proud. I would say that the administration's got to start functioning and focusing on those questions. I would say they are not. I would say this body, with this legislation, is not focusing on those questions either.

It is time we get down to the serious business of addressing jobs, manufacturing, opportunities for Americans and stop all of this piddling around with nonsense that accomplishes nothing in the broad public interest.

Mr. WATT. Mr. Chairman, reclaiming my time, I am going to join my colleague from Michigan in supporting the amendment. I am not sure whether it was tongue-in-cheek that he was supporting the whole concept, but I cannot join him in supporting the bill if he is supporting the bill. I doubt that that is what he is doing. I think that was kind of tongue-in-cheek that he was proceeding, but I certainly support this amendment. It makes a terrible bill less terrible. We could not make it any worse, I do not think, and more importantly, from the sponsor's perspective, it keeps the bill from having to go to the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, if the gentleman would yield, we will receive this bill most kindly in the Committee on Energy and Commerce, and we would have some splendid questions for the sponsors of this legislation about jobs and job creation.

Mr. WATT. But this is such a critical piece of legislation that it must be considered on the floor today and anything that would delay the consideration of it on the floor today, even if it went to the Committee on Energy and Commerce, which has jurisdiction over most food issues and matters of commerce of this kind, would surely be counterproductive.

Mr. DINGELL. Mr. Chairman, it would be helpful, I believe.

The CHAIRMAN pro tempore (Mr. OSE). The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The amendment was agreed to.

AMENDMENT NO. 6 OFFERED BY MR. SCOTT OF VIRGINIA

Mr. SCOTT of Virginia. Mr. Chairman, as the designee of the gentleman from North Carolina (Mr. WATT), I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. SCOTT of Virginia:

At the end of the bill (preceding the amendment to the long title), insert the following new section:

SEC. 5. STATE CONSUMER PROTECTION ACTIONS.

Notwithstanding any other provision to the contrary in this Act, this Act does not apply to an action brought by a State agency to enforce a State consumer protection law concerning mislabeling or other unfair and deceptive trade practices.

Mr. SCOTT of Virginia. Mr. Chairman, this amendment reads simply: ''Notwithstanding any other provision to the contrary in this Act, this Act does not apply to an action brought by a State agency to enforce a State consumer protection law concerning mislabeling or other unfair and deceptive trade practices.''

Mr. Chairman, if the House is going to decide that we will try some cases instead of letting them be tried in court, we ought to at least limit that to the fast food rhetoric that we have heard on the floor. This bill, in fact, covers not only fast food lawsuits, but also litigation involving consumer protection when obesity may be one of the elements of the case.

Every single State has laws in the books to protect its consumers. Each State has laws to protect its consumers from misleading practices. As written, the bill will prevent States' Attorneys General from enforcing these laws. It will not just stop the fast food suits that my colleagues have discussed, but because a person is defined in section 4(3) of the bill to include governmental entities, it will prevent States from getting injunctions, cease and desist orders, or imposing fines against those who endanger consumers.

The exception for a willful and knowing violation is not just enough. State deceptive practices are just like the Federal Trade Commission Act. They allow civil enforcement actions whether or not the defendant knowingly or willfully violated the law. In fact, food labeling and deceptive practices often have exacted strict liability, that is, that the government can get an injunction whether or not the person was intentionally or knowingly in violation.

Mr. Chairman, my State of Virginia has a Consumer Protection Act which prohibits, and I quote, representing that goods and services have characteristics, ingredients, uses, benefits or qualities that they do not have or any other conduct which similarly creates a likelihood of confusion or misunderstanding. A court may order an injunction or restitution to injured parties, even if the violation was unintentional.

The fact is Virginia is not alone. Twelve States have adopted the Uniform Deceptive Trade Practices Act section 3 which says intentional deception is not necessary to get injunctive relief, and at least 23 other States have similar standards.

So, Mr. Chairman, the amendment I present today will fix the problem. It will ensure that States can still put an end to mislabeling, deceptive practices and false advertising within their borders. Whatever we think of the fast food suits, please do not prevent States Attorneys General from protecting their citizens.

Mr. KELLER. Mr. Chairman, I move to strike the last word.

I am not going to support this amendment, and I would ask all of my colleagues to vote no on this amendment on two grounds.

The first ground is that the bill only precludes lawsuits in which the injury claimed is obesity and weight gain. State consumer protection statutes are not lawsuits in which the injury claimed is obesity or weight gain. Rather, in the State consumer protection cases, the injuries claimed are unfair and deceptive trade practices or misleading labeling.

However, because the amendment implies that the State consumer protection laws somehow do allow lawsuits in which the injury claim is obesity or weight gain, Courts may well read it to grant all State agencies new power to use their State consumer protection laws to seek damages against the food industry for obesity-related claims. In other words, this would essentially gut the bill by allowing State Attorneys General to bring the very same claims that we are trying to get rid of.

I cannot think of a single State consumer protection law right now that allows a State agency to sue because someone got fat from eating too much.

The second ground I object to this amendment on is the gentleman from Virginia (Mr. SCOTT) said he does not like the fact we have the knowing and willful standard. The knowing and willful standard is exactly the same standard used in H.R. 1036, the Protection of Lawful Commerce and Arms Act that overwhelmingly passed this House in a bipartisan fashion. It got 285 votes, and so anyone who voted for H.R. 1036 and who votes for this amendment will literally be voting for stronger protection for gun manufacturers than for the food industry, which is the largest private sector employer, providing jobs to some 12 million Americans.

I urge my colleagues to vote no on this amendment.

Mr. WATT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the gentleman from Virginia's (Mr. SCOTT) amendment. It seems to me to be absolutely consistent with the manager's amendment which said that this legislation was not going to be construed to include an action brought under the Federal Trade Commission Act.

State consumer protection laws are characteristically State counterparts to the Federal Trade Commission Act. They are States' efforts to protect the same kind of things at the State level that the Federal Trade Commission has jurisdiction over at the Federal level.

□ 1330

Now, this kind of takes me back to the argument before, I had the notion that the reason that they really were striking the Federal Trade Commission Act from the applicability of this proposed law was because they really did not want this legislation to have to go to the Committee on Energy and Commerce, so it was more about them not wanting to delay today's proceedings and not wanting them to let the Committee on Energy and Commerce, for which there has been a long-standing tension on many issues between the Committee on the Judiciary and the Committee on Energy and Commerce, they did not want them to have any jurisdiction over this.

But if we are going to exclude actions brought under the Federal Trade Commission Act at the Federal level, in fairness, unless we are saying to the States that somehow or other they are less attentive to these issues or less intelligent or have less of an interest in protecting your citizens than your big brother Federal Government has, then it seems to me that we ought to be following the same process at the State level, and it is the State consumer protection laws that are the equivalent of the Federal Trade Commission Act on the Federal basis.

So if we are going to be parallel or consistent in our evaluation of these things, it seems to me that the amendment of the gentleman from Virginia (Mr. SCOTT) makes patently good sense. And of course I am not sure that any of this is designed to make patently good sense, but I think it is our obligation in this body to at least try to bring some consistency to it.

Now I am assuming that under the Federal Trade Commission Act, if there are any individual causes of action, those things would be protected also. I do not know that. We have not had any hearings on this to make that kind of determination, but certainly the word ''person,'' as it is defined, would exclude State consumer protection laws that are typically administered by the attorney general for the protection of the citizens in that particular State, and perhaps that is the reason that the State attorneys general are so vigorously opposed to this legislation. They do not view us or the Federal Trade Commission as being their big brothers, and more brilliant, sometimes more arrogant, they would tell you. They think that they serve a pretty valuable role in this Federal system that we have. Again, we are dishonoring that role. I urge support for the gentleman's amendment.

Mr. CANNON. Mr. Chairman, I move to strike the requisite number of words.

I rise in opposition to this amendment. Recently, the food industry has been targeted by a variety of legal claims which allege businesses should pay monetary damages and be subject to equitable remedies based on legal theories of liability for the overconsumption of its legal products.

In our subcommittee hearings last year, we explored the threat the food industry faces from frivolous litigation, the threat to personal responsibility posed by the proliferation of such litigation, and the need for H.R. 339, the Personal Responsibility in Food Consumption Act.

H.R. 339 currently has 119 cosponsors. A similar bill was signed into law by Louisiana Governor Mike Foster on June 2, 2003, with huge bipartisan support. Every Republican in both legislative Chambers voted for the measure, as did 93 percent of Democrats in the Louisiana House and 83 percent of Democrats in the Louisiana Senate.

Recent history shows why similar legislation is necessary at the Federal level. We have seen industries brought to the verge of bankruptcy by frivolous lawsuits seeking billions of dollars. Today we have Ralph Nader comparing fast food companies to terrorists by telling The New York Times that the double cheeseburger is ''a weapon of mass destruction.'' In a hearing before our subcommittee last year, a law professor who helped spearhead lawsuits against the tobacco companies has said of fast food litigation, ''If the legislatures won't legislate, then the trial lawyers will litigate.''

It is clear that obesity is a problem in America. Equally clear, however, is the simple availability of high-fat food is not a singular or even a primary cause. For example, recent findings drawing on government databases and presented at a scientific conference of the Federation of American Societies for Experimental Biology biological showed that over the past 20 years, teenagers have, on average, increased their caloric intake by 1 percent. During that same time period, the percentage of teenagers who said they engaged in some sort of physical activity for 30 minutes a day dropped by 13 percent. Not surprisingly, teenage obesity over that same 20-year period increased by 10 percent, indicating it is not junk food that is making teenagers overweight, but rather a lack of activity.

In short, it is unlikely that lawsuits against food establishments over their menu offerings will do much, if anything, to make us healthier. On the other hand, such lawsuits will threaten thousands of jobs that are today available to teenagers and other entry-level workers who need those jobs. Further, such lawsuits send the wrong message regarding personal choices and responsibility. Do we want our kids growing up believing it is a restaurant's fault that they are eating too many cheeseburgers?

Besides threatening to erode values of personal responsibility, the legal campaign against the food industry threatens our notion of government. Nationally coordinated lawsuits seek to accomplish through litigation what has not been, and will likely not be, achieved through legislation.

Last year, the House passed H.R. 1036, the Protection of Lawful Commerce in Arms Act by a large, bipartisan vote. That bill bars frivolous lawsuits against the firearms industry for the misuse of legal products by others. H.R. 339 similarly seeks to bar frivolous lawsuits against the food industry for overconsumption of its legal products by others. It is appropriate for Congress to respond to this growing legal assault on the concept of personal responsibility.

Mr. Chairman, it is not only important, but also fundamental that Americans have access to courts to redress legitimate wrongs and the harms they cause. The trial bar serves an invaluable purpose in helping average Americans gain rightful and proportionate compensation when harm is done. However, frivolous lawsuits such as the ones this legislation seeks to prevent serve only to undermine our legal system and those who truly need its protections.

Mr. Chairman, I urge my colleagues to oppose this amendment and support the underlying bill, H.R. 339.

Mr. ANDREWS. Mr. Chairman, I move to strike the requisite number of words.

I would like to speak in favor of the Scott amendment. The wisdom of the common law has evolved and worked for centuries. It is older than the United States of America. It is bizarre that this House created one exception to the common law in the case of gun manufacturers, now it is trying to create another one in the case of certain food purveyors.

If you can sum up the history of the western jurisprudential system, it is that common law is usually right and statutory interferences with common law is usually wrong.

Mr. SCOTT of Virginia. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Chairman, I think we need to review what the amendment actually is. In section 4.3, they define person who can bring these lawsuits as individuals, corporations, companies, but it includes any governmental entity.

The lawsuits we are talking about are lawsuits arising out of, related to, or resulting in injury or potential injury resulting from person's consumption of a qualified product and weight gain, obesity or any health condition that is associated with a person's weight gain or obesity, including, and it goes on. This is overly broad.

Let us just read what the amendment says. It says that the Act does not apply to an action brought by a State agency to enforce a State consumer protection law concerning mislabeling or other unfair or deceptive trade practice. We do not need protection from State attorneys general enforcing our consumer protection laws. I would hope that we adopt the amendment.

The CHAIRMAN pro tempore (Mr. OSE). The question is on the amendment offered by the gentleman from Virginia (Mr. SCOTT).

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

Mr. KELLER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Virginia (Mr. SCOTT) will be postponed.

□ 1345

AMENDMENT NO. 7 OFFERED BY MR. WATT

Mr. WATT. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore (Mr. OSE). The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. WATT:
Section 3(a), strike ''or State''.

Mr. WATT. Mr. Chairman, the amendment that is being offered simply strikes two words from the bill. Those words are ''or State.''

This is an opportunity for those of us who really believe in the Federalist system in which we operate. Those of us who believe truly in the rights of States to control what happens in their States and in their communities, those who believe truly in States' rights to get it right, I am giving you the opportunity.

If there is a rationale for our involvement in this and if there is something that we should be exercising jurisdiction over, it is what comes into the Federal courts, and not what goes into the State courts. So the effect of this amendment is simply to take out the State court component of this.

I want to confess up front that I think this is a bad idea, whether it is in the Federal court or the State court; so I am going to vote against the bill even if this amendment passes. But for those who believe that this is a good bill, that this is a worthy cause, if you have any belief in the Federalist form of government in which we operate, that States and State judiciaries and legislators have certain powers, then you should be supporting this amendment.

State courts and legislatures are perfectly capable of determining which lawsuits are appropriate and which lawsuits constitute an undesired drain on their resources. Right now, 11 State legislatures, including California, Colorado, Florida, Idaho, Louisiana, Missouri, Nebraska, Ohio, South Dakota, Washington and Wisconsin, the chairman's own State, have introduced or passed legislation to ban some form of obesity-related lawsuits. Some of those States have banned a broader range of cases than this proposed legislation would ban.

H.R. 339, this legislation that we are considering, would displace and disrespect the actions of those State legislatures that have acted and impose a ban on those States that have not perceived a need to enact legislation banning obesity suits.

The bill arrogantly presumes that State court judges are incapable; and I am going to keep saying that over, and over and over again. I have said it a million times; I may say it a million more times before this debate is over. It is arrogant for us to assume that State court judges are incapable of carrying out their judicial responsibilities. Should State court judges determine that any lawsuit lacks merit or appropriate proof, they can dismiss it. If they determine that a case is frivolous, they can dismiss it and sanction the attorneys involved.

The proponents of this bill seek to prevent cases that have already gone through the system and have been dismissed. This bill is a solution in search of a problem, believe me.

If there is a rationale for this bill, and I do not believe there is, we at least ought to respect the Federalist form in which we are operating and limit the application of the bill to cases filed in the Federal court. We are not Big Brother here in this body, and my colleagues have reminded us of that many, many times rhetorically. They say they believe in States' rights. If they do, if you do, my colleagues, please support the Watt amendment.

Mr. SENSENBRENNER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from North Carolina and I have a little bit different view of the role of federalism in our country. All I can say is I am happy that his view did not prevail during the great debates on civil rights that occurred in this Chamber and down the hall in the Senate Chamber during the sixties, seventies and eighties, because the notion of States' rights would not have been agreed to by the gentleman from North Carolina.

I think this amendment must be defeated because it would gut the bill and also fail to protect the decisions of State legislatures regarding food policy. I do not think we want to see a single judge in a single State court deciding to establish national policy. We have seen far too much of that, and the Watt amendment would allow that type of judicial misinterpretation to occur in a State court somewhere in this country.

This bill is also about protecting the separation of powers and the legislative prerogatives of the elected representatives at the State level. The amendment would gut those provisions.

The drive by overeaters' personal injuries attorneys to blame those who serve them food and to collect unlimited monetary damages is an attempt to accomplish through litigation that which has not been achieved by legislation and the democratic process.

John Banzhaf, a law professor at George Washington University who helped spearhead lawsuits against tobacco companies, has said, ''If the legislatures won't legislate, then the trial lawyers will litigate.'' National Public Radio, August 8, 2002.

Various courts have described similar lawsuits against the firearms industry for harm caused by the misuse of its products by others as an attempt to ''regulate through the medium of the judiciary'' and ''improper attempts to have the court substitute its judgment for that of the legislature, something which the court is neither inclined to

nor empowered to do.'' Such lawsuits break down the separation of powers between the branches of government.

Large damage awards and requests for injunctive relief have the potential to force the judiciary to intrude into the decision-making process properly within the sphere of another branch of government, namely, State legislatures. That is the intent behind these fast-food lawsuits, to circumvent legislatures, to circumvent the Congress and the popular will of the people who elect us.

Further, Congress has the clear constitutional authority and the responsibility to enact H.R. 339. The lawsuits against the food industry H.R. 339 addresses directly implicate core federalism principles articulated by the United States Supreme Court, which has made clear that ''one State's powers to impose burdens on the interstate market is not only subordinate to the Federal power over interstate commerce, but is also constrained by the need to respect the interests of other States.''

Congress can, of course, exercise its authority under the Commerce Clause to prevent a few State courts from bankrupting the food industry.

In fast-food lawsuits, personal injury lawyers seek to obtain through the court stringent limits on the sale and distribution of food beyond the court's jurisdictional boundaries. By virtue of the enormous compensatory and punitive damages sought, and because of the types of injunctive relief requested, these complaints in practical effect would require manufacturers of lawfully produced food to curtail or cease all lawful commercial trade in that food in the jurisdictions within which they reside, almost always outside of the States within which the States are brought, to prevent potentially limitless liability. Insofar as these complaints have the practical effect of halting or burdening interstate commerce in food, they seek remedies in violation of the Constitution.

Such personal injury attorneys' claims directly implicate core federalism principles articulated by the Supreme Court in BMW of North America v. Gore, 1996. The Gore case makes clear that ''one State's power to impose burdens on the interstate market is not only subordinate to the Federal power over interstate commerce, but is also constrained by the need to respect the interests of other States.''

The CHAIRMAN pro tempore. The time of the gentleman from Wisconsin (Mr. SENSENBRENNER) has expired.

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

Mr. SENSENBRENNER. Mr. Chairman, the Supreme Court in Healy v. Beer Institute, 1989, elaborated on these principles concerning the extraterritorial effects as follows: ''The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. The practical effect of the statute must be evaluated not only by considering the consequences of the law itself, but also by considering how the challenged law may interact with the legitimate regulatory regimes of other States and what effect would arise if one, but many or every, State adopted similar laws. Generally speaking, the Commerce Clause protects against inconsistent laws arising from the projection of one State regulatory regime into the jurisdiction of another State.''

So this bill is supported by sound federalism principles, there is a national interest involved, and that is why the amendment should be defeated.

Mr. ANDREWS. Mr. Chairman, I rise in support of the Watt amendment.

Mr. Chairman, I must say with respect to the issue of federalism and the proper role, I think the comparison of this issue to civil rights is completely inapposite. The principle of civil rights is when State legislation or State action violates a fundamental constitutional right, it cannot stand. There is no fundamental constitutional right involved here. This is the power the 10th amendment expressly meant to be reserved to the States, either through their legislatures or their courts.

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

Mr. ANDREWS. I yield to the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I thank the gentleman for yielding. The gentleman puts it a lot milder than I do.

I am not surprised, but I am extremely insulted, that this piece of crap, this bill, would be put on the same level that our civil rights laws in this country have been put on.

Now, I am not surprised. I knew that was coming, because we have had this discussion with my chairman on several occasions on this floor. But I want you to know that the notion that there are basic constitutional rights that the civil rights laws had to enact to enforce was based on rights that were articulated in the Constitution. The right to vote, and it is a shame that we had to have legislation at the Federal level to make it clear that the right to vote applied to all of our citizens in this country, there is no comparison between this bill and that.

The right to travel on a bus and sit where you want, it is a shame that we had to have Federal legislation to tell the States that they had to enforce that basic human constitutional right.

I am insulted that this piece of legislation, and if I went too far in calling it a piece of crap, I apologize to the Chair. I knew he shuddered when I said that, so maybe that is going too far. But it is an abomination for us to be trying to compare this statute to the civil rights laws.

I am really disappointed that this kind of expansive, unprecedented interpretation of the Commerce Clause would be articulated by the chairman of our committee on the floor of the House of Representatives. Under the theory that has just been advanced, to tie it back to the Commerce Clause, to tie this legislation back to the Commerce Clause, anything could be taken over by the Federal Government. There would not be any State legislatures or State courts. Anything in commerce of any kind could be taken over.

That is not what the Commerce Clause says. And with all due respect, I went to law school too. I took my constitutional law under a guy named Robert Bork. I do not think he would say that is what the Commerce Clause says.

I am flabbergasted that we would be told on this floor that this proposed legislation is sanctioned by the Commerce Clause and that it is anywhere in the ball park close to what the civil rights laws were designed to do.

We ought be ashamed of ourselves. And we ought be ashamed of ourselves for destroying the Federal concept that our Founding Fathers made for us. It would be something else if we were doing it about something that is real. There is not a single pending lawsuit now involved that has not already been dismissed. The States are already acting on this. It is not as if they are ignoring it.

If you were in the State legislature, if you want to go vote on stuff like this, go to the State legislature. Many of us came out of the State legislatures. There are people there that are just as smart, just as intelligent as we are here in this body. For us to insult our State legislators and our State judiciary for some political purpose is unforgivable, in my opinion.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. The Chair would urge Members to exercise discipline in vocabulary to preserve the decorum of the House.

Mr. KELLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I appreciate the enthusiasm of the gentleman from North Carolina (Mr. WATT), and as the author of the bill that was described that way, I can assure you that I take no offense. Sometimes in the heat of passion things come out, so there is no need to apologize to me.

Let me just say this with respect to the gentleman from North Carolina (Mr. WATT), he is at least consistent. He offered this same amendment in committee, made the same arguments, it was rejected in committee. I urge my colleagues to reject it once again here on the House floor and for the very same reason.

This amendment would essentially gut the bill and encourage venue shopping among very creative trial lawyers. Let me just give you one example.

The Louisiana legislature, which, by the way, is a Democrat legislature, both the House and the Senate, passed a very similar bill to mine after I filed mine with 94 percent of the legislators voting ''yes,'' broad bipartisan support.

So, yes, you cannot bring an obesity lawsuit in Louisiana.

So if you are an ambitious trial lawyer, what about Mississippi? Well, they do not have such a law, and that is exactly where the suit would be filed, or some other State that is a nice haven for tourists.

We do not have to guess about this, because we had a hearing on this matter; and the Democrats could have chosen anyone to appear, and they chose a man named Mr. Banzhaf, who says it is his goal to open the flood gates of litigation against our major employers such as McDonald's.

This is what he said. Keep in mind the potential Mississippi lawsuit: ''Somewhere there is going to be a judge and a jury that will buy this, and once we get the first verdict, as we did with tobacco, it will open the flood gates.'' We do not have to guess what their theories are; they have already told us.

So Congress, of course, can exercise its authority under the Commerce Clause to prevent a few States from bankrupting the food industry, which is the largest nongovernmental employer in the United States. Congress, of course, has the authority under the Commerce Clause. That is not just the opinion of the gentleman from Wisconsin (Chairman SENSENBRENNER) or myself. The U.S. Supreme Court in Healy v. Beer Institute said, ''Generally speaking, the Commerce Clause protects against inconsistent laws arising from the projection of one State regulatory regime into the jurisdiction of another State.''

I urge my colleagues to vote ''no'' on the Watt amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

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

Mr. WATT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from North Carolina (Mr. WATT) will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. ANDREWS

Mr. ANDREWS. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. ANDREWS: Section 4(4), insert before the period at the end the following: ''", except that a food that contains a genetically engineered material is not a qualified product unless the labeling for such food bears a statement providing that the food contains such material and the labeling indicates which of the ingredients of the food are or contain such material''.

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

□ 1400

Mr. ANDREWS. Mr. Chairman, the rationale of the underlying bill, with which I disagree, but the rationale of the underlying bill is that educated and knowing consumers who make a choice as to what they eat are responsible for the consequences of what they eat. So that if someone eats a lot of food that is high in saturated fat and suffers heart disease or other health-related problems as a result, that they are responsible for that result, and it should not be the person who sold them the food. Frankly, I think that the judicial system of the country is reaching the same answer and does not need our interference to push them toward that answer, but that is the underlying premise of the bill. Informed consumer choice trumps litigation.

My amendment is designed to provide an informed consumer choice, and here is what it says. It says that if a seller of food is selling genetically-altered food, it can only receive the immunity granted by this bill if the seller of the genetically-altered food fully discloses to the person buying and eating the food the fact that it has been genetically-altered and the nature of the genetic alteration that took place. Let me explain.

We have had instances where, for example, the cornmeal that is used for taco shells has been found to be genetically-altered. People have three objections to this. The first is that they are fearful it will make them sick. The jury is out on this. There are people who will say that these foods are dangerous. There are people who will say that the foods are not dangerous. But there are people who want to make that choice for themselves as to whether or not they eat genetically-altered food.

The second problem is that people may have allergies to genetically-altered food, but if they are not aware of the fact that the food has been altered in such a way, they may be subjecting themselves to the health hazards associated with an allergic reaction.

Thirdly, there are people who, for religious or cultural reasons, do not wish to eat genetically-altered food, particularly if the genes that are used for that genetic alteration come from a food product that they do not ordinarily eat as part of their religious or cultural practices.

So what this bill says is that we offer the food purveyor a choice. If the food purveyor discloses fully to the consumer the fact that the food has been genetically-altered and is precise in disclosing the nature of the genetic alteration, then that food purveyor will enjoy the immunity granted by this bill. But if the food purveyor chooses not to make that disclosure, if it chooses not to disclose the fact that the food has been genetically-altered and chooses not to disclose the nature of the genetic alteration, well then, under those circumstances, that food purveyor would not enjoy the immunities granted by this bill.

Mr. Chairman, between 1987 and 2000, the United States Department of Agriculture authorized 14 field tests of crops engineered with animal or human genes. An example of some of the combinations being done are chicken genes in corn, wheat, and Creeping Bent Grass. Human genes in barley, corn, tobacco, rice, and sugarcane. Mouse genes in corn, along with human genes. Cow genes in tobacco, carp genes in safflower, pig genes in corn, Simian Immunodeficiency Virus, or SIV and Hepatitis B genes in corn.

Now, as I said a minute ago, Mr. Chairman, the jury is out as to whether there are deleterious health effects with respect to genetically-altered food. We are going to have scientific evaluation and come to a conclusion on that question. But I would certainly think the majority, which believes so strongly in informed choice by consumers, would extend that principle to this case and would want consumers to be fully informed that they are choosing genetically-altered food and they would want them to know the nature of the genetic alteration. The idea behind this amendment is to encourage that disclosure, not require it, but to encourage that disclosure by granting the underlying immunity that is granted in the bill to food purveyors who make the disclosure and denying the underlying immunity in the bill to those who fail to make that disclosure.

The argument for this bill, as I understand it, is that personal responsibility should trump litigation. If you know what you are eating and you choose to eat it, and you get sick as a result of eating it, you live with the consequences and you cannot visit those consequences through civil litigation on the person who sold you the food.

Well, if you accept that underlying principle, then you ought to accept the argument that in the case of genetically-altered food, the consumer has the right to know, because if the consumer does not have the right to know, then the consumer is not making a knowing and intelligent choice as to what he or she is eating. That has consequences for potential health risks, it has consequences for exposure to allergic reaction, and it has consequences for the religious and cultural practices that many of our fellow citizens and many other residents of America follow in their dietary practices.

I disagree with the underlying premise of this bill, but I would implore those who disagree with me on that point to embrace this amendment, because if you want to support knowing and voluntary choice in the food you are eating, then let us really make it a knowing and voluntary choice when it comes to the very controversial question of genetically-altered foods.

There are many Members of this Chamber who believe that genetically-altered foods are appropriate. They oppose legislation that would limit or prohibit the use of genetically-altered foods. There are other Members who

feel strongly that genetically-altered foods should be limited or prohibited. Irrespective of where one comes down on that debate, it seems to me one ought to embrace the position that the consumer has the right to make that choice.

Mr. Chairman, I urge the adoption of the amendment.

Mr. KELLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am going to ask my colleagues to vote ''no'' on the Andrews amendment on several grounds. This amendment opposes additional regulations on the food industry, increasing their cost of doing business and threatening additional jobs in the food industry, our Nation's largest private sector employer. But more problematic, the amendment contains no definitions of what would constitute a proper label and, therefore, it would expose even those companies who could afford to comply with the new regulations to lawsuits that would cost yet more jobs.

This amendment is an attempt to regulate an entire industry with one clause, and that is a recipe for confusion and disaster. Even companies who labeled, in an attempt to gain the benefits of the bill, might not get such protections because some judge somewhere will deem their attempt to label inadequate, and the amendment provides no standards to guide either the private sector or judges. Additionally, there is no definition in the amendment of genetically engineered, so people will not even know if their products have to comply with these additional regulations.

Essentially where the gentleman from New Jersey (Mr. ANDREWS) should have his day is trying to amend the Federal Food, Drug and Cosmetic Act and make his changes there, but not here where it is so vague that it does not have those definitions that would be needed.

Also I would point out that if there is some State statute dealing with genetically-altered foods and it requires certain labeling and so on and so forth or advertisement requirements, and if that State statute is violated, under the provisions of this bill, the claims could go forward.

So I would ask my colleagues to vote ''no'' on the Andrews amendment for the reasons suggested earlier.

Mr. WATT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Andrews amendment, and I would say that this is one of the areas, one of several areas, in fact, that the processing of this bill without really letting it go through the Committee on Commerce or without really a whole heck of a lot of deliberation in the Committee on the Judiciary, and hearings, this is just one of those areas that might have been dealt with if the bill were being considered in a serious legislative process, rather than just a political vehicle.

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

Mr. WATT. I yield to the gentleman from New Jersey.

Mr. ANDREWS. Mr. Chairman, I thank my friend for yielding, and I would say to my friend, the gentleman from Florida, who just spoke, that I respectfully believe that he is in error in two points in criticizing the amendment. First, he says that my amendment imposes regulation on the food industry; that is not the case. It provides the industry with a choice. If it chooses to reach for the immunity granted by the underlying bill, yes, then it is subject to this disclosure requirement. But if it chooses not to reach for that immunity, then it is not subject to the disclosure requirement.

Second, the gentleman is critical of the lack of definitions in the amendment. I would submit that this amendment will be defined and interpreted in the same way his underlying bill is, which is to say there will be litigation over the meaning of ambiguous terms and the courts will determine what they mean. Unless I am missing something, I notice that the underlying bill does not define the word ''obesity,'' for example, and there could be a spate of litigation as to whether a suit is over a product associated with obesity or not, because you claim it is associated with diabetes or it is associated with heart disease or it is associated with mental illness. I mean, one could make a lot of different claims to work one's way around the bill.

As the gentleman knows, and I know he is a skilled attorney, as the gentleman knows, one of the functions of our judiciary is to provide case law that defines terms not specifically defined in statute. So no one should oppose this amendment if they believe that it imposes regulations on the food industry, because it does not.

I would conclude by saying that when the gentleman says that this subject matter is best dealt with through the Committee on Commerce and the Food and Drug Administration, he is right, which is one of the reasons why we should defeat the underlying bill on the floor.

Mr. WATT. Mr. Chairman, reclaiming my time, I would just say that the gentleman need not worry about whether there is a definition of obesity. If they do not like the definition of ''obesity'' that the courts give, I guarantee my colleagues we will be back here next year or the year after next with a Federal piece of legislation that is designed to solve that problem. That is the way this bill is being processed and the spirit in which it is being processed. Unfortunately, nobody has any good ideas or can protect their own States, other than this Congress or my colleagues on this committee, and that is the way they proceeded.

Mr. SENSENBRENNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am very supportive of food labeling requirements, including labeling requirements for a genetically-modified food, and would support such legislation if it were coming as an amendment to the Pure Food, Drug and Cosmetic Act. However, the amendment of the gentleman from New Jersey is the wrong way to do it, and here is why.

If the amendment of the gentleman from New Jersey passes and the bill is enacted into law with his amendment, then all someone needs to do to defeat the immunity that is given to the food industry under this bill is to simply allege that there was not the proper notice that was given. This allegation, at least in terms of the preliminary motions in court, is taken as true, and that sets up a question of fact. All of the expenses that are needed in terms of defending a lawsuit, such as depositions and the like, are going to have to be incurred in order to prove that there was the proper notice given or that there were no genetically-modified organisms that were supplied in the food that the plaintiff consumed.

So as a result, in the name of better labeling rather than attacking this issue as an amendment to the Pure Food, Drug and Cosmetic Act, which is where I think it belongs, the gentleman attempts to have what is in the jurisdiction of another committee and which deals with another enactment on the statute books of the United States of America through this method.

I would support the gentleman from New Jersey if he was doing it the proper way through an amendment to the Food, Drug and Cosmetic Act, but this is not the way to do it.

Now, secondly, there is nothing in the gentleman's amendment that says what constitutes an adequate notification. Does an adequate notification consist of the nutritional sign on the wall of a fast food restaurant that talks about ingredients and that nobody stands and stares at unless the line is so long that they have to do it? Does it require that there be this kind of a label on every package that is handed to the customer with the food contained in it? These are the types of things that really should not be left up to the courts to, in their infinite imagination, determine what is adequate and what is not; it should be done in the proper way by the proper committee, and that is why this amendment ought to be rejected.

□ 1415

Mr. DOOLEY of California. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, I also rise in opposition to this amendment. I do not think this is the proper vehicle for us to be attaching this to. The issue of genetically enhanced products is something that we have spent a lot of time on. I think our existing regulatory structure gives us the opportunity to really get

verification in whether or not any of these new approaches do pose any health risk to consumers.

And I think now we can have great confidence that the products that are coming onto the market, that are containing genetically enhanced products are, in fact, determined to be safe for human consumption.

I think when we have an amendment such as this it poses, I think, a situation where we will actually impede the development of an industry and of a technology that has the potential to actually have tremendous benefits in dealing with the obesity problem that we have in this country.

There are a number of genetically enhanced products that are being developed now that are going to result in some of our oils being lowered and some of the trans fats and saturated fats that actually can be incorporated into some of our food products that are going to result in less obesity.

I think we would be running the risk of setting back the industry and setting back some of the developments in new technology that actually could be a benefit in improving the nutrition of a lot of our food products and this amendment would actually pose an impediment, would impose a liability that would deny some of these new developments that actually can be of great benefit in terms of enhancing the nutrition that a lot of our citizens are consuming.

Mr. Chairman, I hope we will oppose this amendment.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of H.R. 339, the Personal Responsibility in Food Consumption Act and in strong opposition to the amendment offered by the gentleman from New Jersey (Mr. ANDREWS).

The food service industry employs some 11.7 million people, making it the Nation's largest employer outside of the government. However, this vital industry has recently come under attack by waves of lawsuits arguing it should be liable for the misuse or overconsumption of its legal products by others.

Frivolous lawsuits require businesses to devote crucial resources to litigate unmerited claims. In order to help ensure that America continues to be an advantageous place to do business, and to help create and maintain American jobs, it is important that we not allow opportunistic trial lawyers to extort money from legitimate companies.

Simply put, businesses in the food industry should not be held responsible for the bad eating habits of consumers. The people of America agree. According to a recent poll, approximately 89 percent of Americans oppose holding the fast-food industry legally responsible for the diet-related health problems of people who eat fast food on a regular basis.

H.R. 339 will help prevent frivolous lawsuits against the foods industry while preserving State and Federal laws. Specifically, the bill would prevent frivolous lawsuits that claim that the consumption of lawful food products cause injuries resulting from obesity or weight gain.

While the bill would prohibit frivolous lawsuits, it would protect legitimate ones. For example, the bill would not protect businesses that knowingly or willfully violate a State or Federal statute when the violation is a proximate cause of an injury. In addition, the bill would not protect those that violate State or Federal food labeling laws or those that offer adulterated food products.

H.R. 339 is a commonsense bill that will protect legitimate businesses from frivolous lawsuits. I urge my colleagues to support this important legislation. But the amendment offered by the gentleman from New Jersey (Mr. ANDREWS) runs the risk, if it is passed, of gutting this legislation.

The reasons set forth by the gentleman from Wisconsin (Mr. SENSENBRENNER), who has done an outstanding job bringing this legislation to this point, are all valid reasons for opposing this amendment; but in addition there are more. There is absolutely no reason why we have to draw a distinction between two different types of perfectly legitimate products that the appropriate regulatory agencies have found to have no ill effect upon consumers. There would be no difference whether it was a natural product or whether it was one that had been changed through hybridization and all the other ways that we have improved food through the decades, in fact through the centuries, or through biotech-enhanced foods either.

And so for that reason, I strongly oppose this. If the amendment were to pass, it is a back-door way to try to impose labeling in this country. We have opposed this for a long time because there is no distinction between foods that contain biotech crops and those that do not. And the issue is very clear that if you will require it, virtually every product produced in this country made with corn, virtually every product made in this country using soy beans, virtually every product grown in this country with any kind of livestock that have been enhanced, and virtually any kind of product that may be developed in the future, there would become a disincentive to produce these improved products, as the gentleman from California (Mr. DOOLEY) just correctly noted.

This is a huge problem. It would effectively gut this important legislation. H.R. 339 generally prohibits obesity or weight-gain-related claims against the foods industry. This amendment would require manufacturers to label genetically engineered material before being afforded the protections of the underlying bill. The irony is that, as the gentleman from California (Mr. DOOLEY) noted, the opportunity exists with genetically modified food to improve the problem for people who have obesity, not to make the problem worse.

So I do not understand how this amendment relates to H.R. 339. Biotech crops do not lead to obesity. In fact, biotech research may lead to food products that help combat the obesity problem in America and nutrition problems in the developing world.

Farmers have been growing hybrid and other genetically engineered crops safely for decades. Biotechnology is as safe as conventionally bred crops, according to numerous studies by the National Academy of Sciences, the American Medical Association, and other scientific bodies.

Furthermore, before biotech foods can be sold to consumers, their safety is reviewed by three government agencies: the U.S. Department of Agriculture, the Environmental Protection Agency, and the Food and Drug Administration.

The Andrews amendment runs counter to long-standing U.S. Government food labels policy which preserves food labels for help safety and nutritional information. This amendment is just another ill considered attempt to discourage consumption of biotech foods, which every American, every American consumes on a daily basis and encourages frivolous lawsuits.

I urge my colleagues to oppose this amendment.

The CHAIRMAN pro tempore (Mr. OSE). The question is on the amendment offered by the gentleman from New Jersey (Mr. ANDREWS).

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

Mr. ANDREWS. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New Jersey (Mr. ANDREWS) will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. INSLEE

Mr. INSLEE. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. INSLEE:

Section 4(5)(A), insert after ''knowingly and willfully'' the following: ''or negligently''.

Mr. INSLEE. Mr. Chairman, I think there is a bipartisan consensus here today that educated and informed consumers regarding what is in their food should not have a claim relating to obesity and that we would all attempt to write a law that will effectuate that goal. But as Mark Twain said, the difference between the right word and almost the right word is the difference between lightening and a lightning bug. And the difference between a well-crafted bill and one that misses the mark a little bit is the difference between a radical restructuring of civil

liability law in the United States and a bill that we want to produce. And, unfortunately, this bill lacks two words. And our amendment would cure that defect.

Mr. Chairman, it is a very well-accepted principle, if I can compare this scenario, it is a very well-accepted principle that in America if a person is inattentive for a few moments and violated a law by going through a stop sign, they are responsible to the injured party for the wreck. It is a very well-accepted principle that if a person who manufactures jet airplanes is inattentive for a moment, and they fail to put a bolt on an engine and the engine falls off and 250 people are killed, they are legally, or their corporation is legally, responsible for that violation of the law.

It is clear at this moment that if an employee of a company is inattentive and puts the wrong information on the box of a food or a bench or a medical product and someone dies as a result, that corporation is liable for their inattention.

But because of the absence of the word ''negligence'' in this bill, we would have removed liability for that very, very well-accepted principle. Let me tell you why that is important. Take the case of Steve Beckler, former pitcher for the Baltimore Orioles who took a product called Xenadrine RFA–1. It is a dietary supplement, and it appears to be covered under the definition of food of this statute or proposal. It was sold and Mr. Beckler died. It was advertised as having the quality of a rapid fat-loss catalyst. The medical examiner concluded that his death was a proximate result of this medication.

Now, I do not know exactly about the circumstances of the warnings or lack of warning on that product; but under this bill as currently drafted without the Inslee amendment, if the clear testimony was that the label that said do not take this if you have high blood pressure was left off due to inattention, there would not be a responsibility. And the widow of this gentleman would be out of luck.

If, in fact, someone violated the clear mandate of Congress or a State legislative body to give a specific warning that is identified in law, and if that warning did not get on the product, the victim would still be out of luck.

And I want to make sure people understand this. By inserting the word ''negligence'' into this bill, we will not be giving jurors the right to determine what warnings or information should be on the product. That is not giving jurors that ambit. All this will say is if my good friend, the gentleman from Wisconsin (Mr. SENSENBRENNER), the gentleman from North Carolina (Mr. WATT), and all of us get together and we pass a law that certain information has to be on the box, like do not take this weight loss supplement if you have high blood pressure, or do not take it if you have evidence of stroke or previous history of stroke, and due to someone's inattention or the fact that they were asleep at the switch or they just were not doing their job, the victim will not have a claim under law. And I do not think that is what the majority of us ought to be about if we are imposing this obligation.

I ask the majority party, let me just pose this as a friendly question to my friends, if indeed we pass a bill here that requires, for instance, that a warning be on a weight-loss product that says do not take this weight loss product if you have an evidence of high blood pressure, and if an employee is asleep at the switch or is inattentive at the brief moment and the product goes out without the label and somebody dies, I am asking the majority party why the widow or family of such a victim who died as a result of an obligation we voted to impose in United States Congress, why do you intend to deny that person a remedy? That is an open question to anyone in the majority.

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

Mr. INSLEE. I yield to the gentleman from Florida.

Mr. KELLER. Mr. Chairman, that scenario you just posed about someone taking some kind of improperly labeled diet drug has nothing to do with this legislation. That claim would still go forward and be unimpacted.

This legislation specifically is narrowly targeted to claims based on weight-gain or obesity.

Mr. INSLEE. Mr. Chairman, I reclaim my time.

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

Mr. KELLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, at the committee there was an attempt to strike the knowing and willful standard from the bill. That was unsuccessful. I would ask my colleagues to vote ''no'' on this amendment as well, which is kind of a new twist there, keeping the knowing and willful, but then they also add ''negligently,'' which in effect does the same thing, strike it. So all you have to do is prove negligence.

This bill already allows a case to go forward any time a Federal or State statute has been knowingly and willfully violated and that violation is a proximate cause of the injury.

□ 1430

Let me tell you why it is important to have this knowing, willful standard and what the precedent is.

The knowing and willful standard is the exact same standard used in H.R. 1036, the Protection of Law Commerce and Arms Act that overwhelmingly passed this House in a bipartisan fashion. In fact, it received 285 votes. Therefore, anyone who voted for H.R. 1036 and who votes for this amendment will be voting for stronger protections for firearms manufacturers than for the food industry, which is the largest private sector employer in the country providing 12 million jobs.

The claim that it is too burdensome to require a person to knowingly violate a law before they can be said to meet the exceptions to this bill, fails to understand the flexible nature of the requirements. Let me give you an example. A typical jury instruction regarding what the so-called mens rea requirement for knowing means states as follows: ''Knowledge may be proved by all the facts and circumstances surrounding the case. You, the jury, may infer knowledge from a combination of suspicion and indifference to the truth. If you find a person had a strong suspicion that things were not what they seemed or that someone had withheld important facts yet shut his eyes for fear of what he may learn, you may conclude that he acted knowingly.''

Therefore, the knowing standard is certainly flexible enough to produce justice in our courts in all circumstances. There is precedent for it, and it should be used here as well. I also would point out that under the bill, claims can go forward for breach of contract, or breach of warranty as well.

I ask my colleagues to vote ''no.''

Mr. WATT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the gentleman from Washington's (Mr. INSLEE) amendment; and I want to yield to him, but I want to make one comment before I do so.

My colleague, the sponsor of this bill, has on several occasions told us a persuasive, powerful reason for doing something related to this bill is something that we did related to H.R. 1036. First of all, many of us voted against H.R. 1036. It did pass this body, but then it went to the Senate and the Senate jettisoned the bill. So to use as some powerful reason that something is in a bill that had not even gone through the legislative process, was not even worthy of sending to the President's desk for signature, strikes me as being about as far a stretch as saying that this bill is about employment rather than politics.

Mr. Chairman, I yield to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Chairman, I want to again reiterate I think there is a mutual desire to try to find the right language that will accomplish our mutual end, but this bill does not use the right language to do it.

I want to respond to the gentleman from Florida's (Mr. KELLER) statement that my situation was inappropriate. I think I would refer the gentleman to the language of section 5 which cuts off claims for a whole host of injuries including ''any health condition that is associated with a person's weight gain or obesity.''

Any health condition that is associated with a person's weight gain or obesity. The fact of the matter is if someone forgets to put the label on that says do not take this if you have high blood pressure, and you gain weight and your high blood pressure

goes through the roof, you have a claim associated to your obesity. There is no reason to have to include that language. And if you are going to include that language, you ought to at least include the well-accepted principle of American jurisprudence in 50 States which is this:

If someone refuses to honor the legal mandate for conduct that the U.S. Congress imposed due to inattention or negligence, there is legal responsibility for that. And for the first time as I know it, and I think the gun law is not applicable because that applied to creating an obligation through the obligation of exercising reasonable care, what this amendment does is say if Congress imposes an obligation to say X, Y or Z, it is not the jurors coming up with that obligation to say something on the label. We are simply saying if you do not follow the law, there is a responsibility.

I am asking my colleagues to consider this closely for an additional reason. Yesterday, Julie Gerberding, the director of the Federal Center of Disease Control and Prevention said, ''Obesity is catching up to tobacco as the leading cause of death in America. If this trend continues, it will soon overtake tobacco. This is a tragedy,'' Gerberding said. ''We are looking at this as a wake-up call,'' suggesting that over 500,000 deaths annually will occur due to obesity.

Now, in light of this scientific information, what is the first thing the House of Representatives does? It rushes to immunity for corporations, which may be appropriate in this particular case; but let us show a little care how we define which cases, so the people who die as a result of negligence and people asleep at the switch and their refusal to do what Congress told them to do are not swept up in this bill.

Mr. WATT. Reclaiming my time, I would just reiterate the points that the gentleman from Washington (Mr. INSLEE) has made and suggest to him and the body and the chairman that it is unfortunate that the Committee on the Judiciary in the House has become the repository of everything essentially political. And so two things quite often result from that: number one, just about every vote is a party-line vote because we know that there is a political reason, not a substantive reason that the legislation is being put forward.

The CHAIRMAN pro tempore (Mr. OSE). The time of the gentleman from North Carolina (Mr. WATT) has expired.

(By unanimous consent, Mr. WATT was allowed to proceed for 2 additional minutes.)

Mr. WATT. Number two, it quite often puts us in a position of thinking, well, this legislation is not serious and it is not going anywhere anyway, and as happened with the legislation that has been referred to on several occasions here, well, the United States Senate, the more deliberative body, will bail us out and save us from ourselves.

I think that is a dangerous slippery slope that our committee has gotten on, and I wish there was some way to pull us back from that so that we would in our committee anticipate, have hearings, and deal with the kind of serious problem that has been identified by the gentleman from Washington (Mr. INSLEE) here; and it would not be just a question of whether the sponsor of the bill thinks that this does not apply or may not apply. Maybe under those circumstances the committee and its members would look at what this stuff really says, the bill, look at the drafting of the bill. That is part of our responsibility as legislators, and it is even more a part of our responsibility as members of the Committee on the Judiciary; and I fear that we have failed in that responsibility.

Mr. SENSENBRENNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, listening to the gentleman from Washington (Mr. INSLEE) I think shows the differences between those of us who support this legislation and those of us who oppose this legislation.

First, the example that he used relative to the professional baseball player who unfortunately passed away, this bill does not apply to. It is a complete unrelated argument and the gentleman from Florida (Mr. KELLER) has pointed that out. But the gentleman from Washington (Mr. INSLEE) persists on using this as an example. And then the gentleman from Washington (Mr. INSLEE) quotes the story of the press conference that was held yesterday relative to obesity catching up to tobacco as the number one killer of people in the United States of preventable conditions.

Now, the problem with that attitude is that those who espouse it expect the government to take over personal responsibility. The victim always finds someone else to blame for his or her own behavior. And what this bill does is that it says, do not run off and file a lawsuit if you are too fat and you end up getting the diseases associated with obesity. It says, look in the mirror, because you are the one who is to blame. And I have referred twice to a doctor in North Carolina and to the woman who is the president of the American Council on Fitness and Nutrition in saying that if you are obese, do not get a lawyer. See your doctor. See a nutritionist. See a personal trainer. And what this bill does is it will pin the responsibility of those whose job it is to correct the problem to begin with and that is the person who caused the condition which could have been preventable.

Mr. Chairman, I yield to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Chairman, to go back to the gentleman from Washington's (Mr. INSLEE) question about the diet drug, I have explained it does not apply. It talks about ''a person's consumption of a qualified product.'' What is that? That is food under the definition. Food means articles used for food or drink, chewing gum and articles used or components of such article.

The second part of it is of a weight gain, obesity or any health condition that is associated with a person's weight gain. What are the health conditions associated with a person's weight gain? High cholesterol, for example, diabetes, for example, cardiovascular disease. This has nothing to do with diet drugs or labeling of diet drugs or mislabeling. Whatever that person's claim under State law for negligence can go forward and is completely and totally unrelated to this bill.

Mr. TIERNEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Chairman, I want to respond to my friend, the gentleman from Wisconsin's (Mr. SENSENBRENNER) appropriate reference to the idea of accountability because, as I said, we on a bipartisan basis ought to be able to craft a bill that appropriately says if a person has information about their food and they are not personally responsible and become obese due to their own lack of personal responsibility, they should not have a claim. And I am first to say that, or second or third. But there is another personal accountability that the way this bill is drafted ignores. And that is that if the gentleman from Wisconsin (Mr. SENSENBRENNER) and I both voted for a bill that imposed a personal legal responsibility to put on every package of phenadrine or any other product that you can think of that says do not take this if you have history of a stroke, and they do not do this, and this is not a jury-imposed obligation, it is one imposed by the gentleman from Wisconsin (Mr. SENSENBRENNER) and myself, together, and they fail to do it, they ought to be held accountable because accountability and personal responsibility work two ways in our society.

Hold the person who has information about fatty products and they get fat because they are irresponsible, hold them accountable and they have no claim, and this bill should accomplish that end. But for the person who refuses to abide by the mandate of this Congress what to put on food products, they should be held accountable for their lack of responsibility; and this bill clearly obviates that in the language that says ''any health condition that is associated with a person's weight gain or obesity.'' You are cutting off, perhaps unintentionally, claims for injury due to high blood pressure, stroke, cardiac arrest and a whole other group of diseases associated with weight gain.

Frankly, I do not think you are intending to do that. Because if I think that you think your constituents, if somebody fouls up a label and they die due to a stroke, I do not think you intend to cut that off; but you are doing

it. And it is unfortunate, and I wish you would help me fix it.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Washington (Mr. INSLEE).

The amendment was rejected.

AMENDMENT NO. 1 OFFERED BY MR. ACKERMAN

Mr. ACKERMAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. ACKERMAN:

Section 4(2), insert after the period at the end the following: ''However, such term shall not include any slaughtering, packing, meat canning, rendering, or similar establishment that manufactures or distributes for human consumption any cattle, sheep, swine, goats, or horses, mules, or other equines, that, at the point of examination and inspection as required by section 3(a) of the Federal Meat Inspection Act (21 USC 603(a)), are unable to stand or walk unassisted at such establishment.''.

Section 4(6), insert after the period at the end the following: ''However, such term shall not include any slaughtering, packing, meat canning, rendering, or similar establishment that distributes for human consumption any cattle, sheep, swine, goats, or horses, or mules, or other equines, that, at the point of examination and inspection as required by section 3(a) of the Federal Meat Inspection Act (21 USC 603(a)), are unable to stand or walk unassisted at such establishment.''.

Mr. ACKERMAN. Mr. Chairman, this amendment has nothing to do with trial lawyers or any other issue that has been basically discussed here today, but it is merely to correct what I think is an inadvertent omission in the bill.

My amendment would expand the definitions in the act to exclude any establishment that manufactures or sells meat from downed animals for human consumption from the protections of the bill.

Mr. Chairman, nearly 3 months have passed since the first mad cow was discovered in the United States and the very first food-related bill has reached the House floor. It is not a bill to protect the American people from mad cow disease and to safeguard the food chain, but it is instead a bill to protect lawsuits against food manufacturers for injuries related to weight gain.

□ 1445

With America's food and meat supply at risk, it is embarrassing that this special interest legislation is our first response to reforming food safety in the United States.

The USDA banned downers from the food supply noting that a non-ambulatory animal was 49 times more likely to have mad cow disease, and they issued a regulation banning it. Those who oppose this amendment will tell us that the amendment is not necessary because the bill before us already says companies that knowingly violate Federal or State law get no protection in the bill and that the USDA banned downers, but the USDA is not the Congress and a USDA ban on downers is not the law. It is merely a regulation.

So this amendment is needed to make it a law, as was, I believe, intended. Otherwise, slaughterers who knowingly violate the regulation, not a law, get protection from legal action for selling diseased meat from mad cows to someone whose brain may rot some 8 years from now.

In the aftermath of our first discovery of mad cow disease, Americans deserve more from Congress than just a bill preventing frivolous lawsuits which have already been successfully defeated in U.S. courts. Instead, we should be working to assure our constituents that the meat they are eating and feeding to their children is safe and free of mad cow disease.

Personal responsibility, yes, add me to the long line of people who have already said that they believe in it, but people should take personal responsibility from acts that they knowingly take and knowingly violate and voluntarily take.

A person cannot know that they are eating the meat of a sick animal because it is not labeled, and that is another issue. What about personal responsibilities of companies that knowingly sell meat from downers, from diseased animals, too sick to walk to the slaughter? We could take personal responsibility if the corporations took personal responsibility and put labels that said the meat we are eating is from a diseased downed cow or that the meat we are about to eat had a 99 percent chance of never being inspected.

According to a Consumers Union poll, seven in 10 Americans who eat meat say they would pay more for beef to support increased testing in the cattle, and in a Zogby poll, three out of four Americans find it unacceptable to have downed animals in our food system. In fact, the USDA tells us that it was a downed animal from Washington State that proved positive for mad cow disease this past December, and early last year in Canada, the infected mad cow was also a downed animal. That is not a coincidence.

The USDA ban on slaughtering downed animals for human consumption is based on sound science and is nearly identical to the Ackerman-LaTourette amendment that failed just three votes short of passage in this House in the past summer, and that was before the discovery of mad cow disease in the United States. Surely there are three more people in this House who now better understand this issue.

Mr. Chairman, we should not be passing bills to protect the irresponsible establishments that may knowingly sell meat from sick and fallen animals. This amendment would ensure that manufacturers and sellers who ignore the proven health risks from downed animals who ignore the USDA ban, not a law, and sell tainted meat from downed animals to the American public, are not protected from lawsuits under this Act. I do not believe that was the intention.

Mr. Chairman, the time is long overdue for this issue. This issue is so ripe it is beginning to get rotten. The American people deserve better than that, Mr. Chairman, and this Congress has the opportunity to act right now to do the right and proper thing to protect all of our constituents from an inadvertency that occurs within this bill.

Mr. SENSENBRENNER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this bill provides for a specific exemption for adulterated food, and anybody who eats meat which may have been infected with mad cow disease and comes down with the human variant of mad cow disease under this bill will have a cause of action against those who are responsible.

Secondly, if a person eats an adulterated hamburger and becomes seriously ill or perhaps dies of salmonella infection, this bill does not apply. The survivors will have a cause of action against those who provided the adulterated meat in the food chain.

What this bill does apply to is lawsuits that currently can be filed as a result of people eating too much, becoming obese and coming down with the diseases that are associated with obesity. That has nothing to do with downer cattle. It has nothing to do with mad cow disease. It merely means that people who have eaten too much cannot go back at those who have sold or provided a legal product in legal commerce.

Now, I wish that this debate would concentrate on the issues that are posed in this bill. The issue that the gentleman from New York (Mr. ACKERMAN) has brought up is a very serious issue, but that issue is not presented in this bill, and if the gentleman from New York would look at page 6, lines 9 through 12 inclusive of the bill as reported by the Committee on the Judiciary, he would see that exemption there plain as day.

Mr. WATT. Mr. Chairman, I move to strike the last word.

The chairman of our committee may be correct about that part of the bill, but only if the manager's amendment passes, I think would he be correct in what he has said, and at this point, while all of us are in support of the manager's amendment, I guess until this bill passes, I mean, we are still here.

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

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

Mr. ACKERMAN. Mr. Chairman, I thank the gentleman for yielding, and then again, the distinguished Chairman of the committee, although very knowledgeable, may very well be wrong.

I am holding the page with the very lines that he asked me to refer to, and what it basically does is it refers to

government action, government action against those companies, not individual actions of those people. The government is not getting sick or certainly not getting sicker from eating the meat of diseased animals, but human beings are denied under this, not the government. Human beings who have eaten diseased meat from downed animals have no recourse under the law the way this is written.

Yes, if a person gains weight, and some of us have done that, from eating wrong and indulging a little bit too much, sometimes that evidence is all too evident, but when a person eats the meat of a diseased animal, they have already eaten the evidence, and the case is difficult enough to prove.

People have no protection, no ability to sue, and the gentleman, what he sought to do, if he rereads what he has asked me to do, he will see very, very clearly that they are not exempted from government action, but they are still protected from private citizens bringing private courses of action.

Mr. WATT. Mr. Chairman, reclaiming my time just for a second, because when we are in the middle of a debate and we are trying to figure out the impact of amendments and coordinate them, it becomes a little unclear what is happening.

The original bill did say that an action regarding the sale of a qualified product which is adulterated, as described in section 402 of the Federal Food, Drug and Cosmetic Act was one of the things that was not covered under the base bill. The manager's amendment, however, struck that language and inserted instead, such terms shall not be construed to include an action brought under the Federal Trade Commission Act. It makes no reference to adulterated, I believe. Maybe I am misreading this, but this is one of those things where I think we should take absolutely no chance.

Even if it is redundant in some way, it clearly was not intended and I would hope that my colleagues would just accept the amendment. If it turns out to be redundant, then there are a whole bunch of things in the law that are redundant. That has never been something that we have shied away from. If we want to make something patently clear, we quite often make it redundant. We might say it three, four or five times in the same statute, and this is a point that I think needs to be made patently clear.

I yield back to the gentleman from New York (Mr. ACKERMAN).

Mr. ACKERMAN. Mr. Chairman, the distinguished chairman assured us at the outset of his remarks that private citizens would not be precluded from bringing private actions. It is very clear, to at least some of us who read the language of what is in the actual bill, that that is what happens, but given the chairman's genuine assurance that citizens would not be precluded, I fail to see what harm would be done if we specifically say that people have a right to bring action against those companies that knowingly and willfully sell meat from diseased fallen animals to the consuming public.

Mr. WATT. Reclaiming my time, the gentleman seems to be shaking his head yes. Maybe that means he is going to accede to the argument. If he is, I am happy to yield to him for that purpose.

Mr. KELLER. Mr. Chairman, it is not worth yielding then. I am not going to accede to this.

Mr. WATT. The gentleman is not there yet. In that case, I hope he will get there, because if there is any ambiguity in this, we need to make sure that it is cleared up, and I think it is very ambiguous at this point. I would rather have a redundant provision in the bill than to have an ambiguous or no provision in the bill.

Mr. KELLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am going to ask that my colleagues vote ''no'' on the Ackerman amendment on three separate grounds.

First, the concept of adulterated food claims are specifically allowed, both under the base bill, where it specifically says adulterated in section 402 of the Federal Food, Drug and Cosmetic Act, and under the manager's amendment, which specifically says that the term ''qualified civil liability action'' does not include an action brought under the Federal Trade Commission Act or the Federal Food, Drug and Cosmetic Act.

Under the Federal Food, Drug and Cosmetic Act, it specifically defines adulterated food in section 342. A food shall not be deemed to be adulterated if it is considered in whole or part of any filthy, putrid or decomposed substance, which, clearly, mad cow disease or e-coli or anything else would be considered.

The second reason to reject this that it does not apply is the language of this particular bill expressly says that we are talking about claims relating to weight gain, obesity or any health condition that is associated with weight gain or obesity: diabetes, high cholesterol, heart disease. It does not have anything to do with mad cow disease. If a person eats a mad cow burger, their claim goes forward. If a person eats an e-coli burger, their claim goes forward.

□ 1500

A final reason. The gentleman says, well, if that is the case, why does the gentleman care about my amendment? Well, let me address that as well.

This amendment would exclude from the protections of the bill any company that uses particular methods to slaughter perfectly healthy animals. For example, if a company during the slaughtering process places cattle in positions, like in a coral, in which they cannot walk unassisted, then these perfectly law-abiding companies that make meat from perfectly healthy animals would be unfairly excluded from the bill. That is wrong.

Perfectly healthy animals may be unable to stand or walk unassisted during the production process, so this amendment unfairly excludes many law-abiding sellers or perfectly healthy meat from perfectly healthy animals.

For the aforementioned reasons, that it is not needed; and even if it was, it is inappropriate.

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

Mr. KELLER. I yield to the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I am just wondering whether we have the right manager's amendment, because I do not for the life of me see any of what the gentleman just described as being in the manager's amendment, or in the amendment that I have. Perhaps I have the wrong one.

The manager's amendment I have substitute language that says nothing about adulteration.

Mr. KELLER. Reclaiming my time, Mr. Chairman. The manager's amendment specifically says, ''Such terms shall not be construed to exclude an action brought under the Federal Trade Commission Act or the Federal Food, Drug and Cosmetic Act.'' I read the gentleman a section under the Federal, Food, Drug and Cosmetic Act dealing with adulterated products.

Mr. WATT. Mr. Chairman, if the gentleman will continue to yield, is it not true that only the government could bring an action there? It would not be an individual action. And would that not be the exact point that the gentleman from New York (Mr. ACKERMAN) is making?

Mr. KELLER. Reclaiming my time once again, Mr. Chairman, I still, on the other grounds I mentioned earlier, it is still not needed because we are not talking about a claim based on weight gain or obesity.

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

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

Mr. ACKERMAN. Mr. Chairman, I think the gentleman is overlooking something. The government brings lawsuits for violation of the FDA act. Individuals cannot bring actions under the FDA act. Individuals bring civil cases under the tort laws, and that is what we are talking here.

This bill allows the government to bring a lawsuit. I want Mrs. JONES to be able to bring a lawsuit because her 8-year-old son was just made brain damaged and is going to die in 3 months because he ate a hamburger that somebody knowingly sold him that came from a downed animal that had mad cow disease. They cannot do that under this act because they are not the government.

Mr. KELLER. Mr. Chairman, reclaiming my time, and I respect the gentleman's enthusiasm, but his claim that that would be barred is patently

untrue. Brain damage or death as a result of eating meat from an animal with mad cow disease is not a claim for weight gain or obesity. It is just totally not. It has nothing to do with this.

Mr. ACKERMAN. Mr. Chairman, if the gentleman will continue to yield, I would then ask, Why is the gentleman protecting companies that allow that?

Mr. KELLER. Why do people allow mad cow burgers to be sold? I do not know that any company does knowingly allow mad cow burgers to be served.

Mr. ACKERMAN. We do not prevent it.

Mr. KELLER. Well, that is for another day and another forum. It has nothing to do with this particular bill.

Mr. ACKERMAN. It certainly does. That is exactly the point of this amendment the gentleman is speaking on.

Mr. STENHOLM. Mr. Chairman, I move to strike the requisite number of words.

I want to begin by acknowledging the tenacity of my friend from New York in continuing to attempt to pass what is basically an animal rights question. We have had this discussion many times. It is interesting listening to the debate on this, because as a cosponsor of this base legislation today, I am opposed to frivolous lawsuits. But we make a mistake when we leave the impression with our colleagues that there is a connection between a downed animal and a diseased animal. That in itself is grounds for a frivolous lawsuit, because a downed animal is not necessarily a sick animal. And a downed animal is not necessarily a BSE animal. That is what, if this amendment shall pass, is intended to do, is to make a tie between the two.

Now, I am sure the gentleman knows that a lot has transpired since we had this discussion on the floor last summer. USDA has already banned all downer cattle from the human food supply, period. His amendment, though, includes all livestock; and this would provide the grounds for a lawsuit under the general argument I have heard from too many of my colleagues over here today, that any firm that could be accused of slaughtering a hog that could not walk, and if you have ever raised hogs you know that many times something happens to their body physique that will cause them to just drop and you cannot get them up for any other reason other than just pick them up and carry them. Now, what that would have to do with adulterated food, I do not know; but if this legislation should pass with this amendment in it, that would be grounds for a lawsuit.

It is not fair or just to exclude some manufacturers from these legal protections who are processing food legally and in accordance with USDA regulations simply because some folks have an unrelated animal welfare concern about downer animals. That needs to be thoroughly understood by my colleagues on the floor. There is no connection whatsoever between a downed animal and a food safety concern, it is only after examination of a downed animal that shows that it is, in fact, a sick animal and should and must be excluded.

And as I said this last summer, any firm that puts a diseased animal knowingly into our food chain should be hung to the nearest tree. That, as the chairman has explained, is what this legislation is all about. It does not take away the right to sue for those things that are so clear.

I conclude by again saying, please, please do not continue to attempt on this bill or any other bill to associate downed animals with diseased animals with BSE. That is not a fair comparison. It is not. There is plenty of attention being given to the issue of animal health and welfare in other arenas. The House Committee on Agriculture has held one hearing on BSE, a field hearing on animal identification was held last Friday in Houston; and we will be holding more hearings on these issues in the months ahead.

No one is more interested in seeing that our food supply remain as safe as it is today. We are making progress. We will continue to make progress. But it is not in the best interest of anyone to continue to make the tie between downers and food safety.

Mr. KING of Iowa. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I stand here on the floor of this Congress, and I sometimes think I have passed through the looking glass. I wonder what our Founding Fathers would think if 200-some years later we would be standing here with a piece of legislation on the floor debating about someone ordering a supersized order of french fries and not being able to push themselves away from the table soon enough so that that personal responsibility, so ingrained in the American character, is being pushed off across the entire American society. We might have to add on to every order of french fries if we are not able to protect these food suppliers.

I declined to sign onto this bill, although I support it, for that reason, that if we have to go down the path of protecting individuals and individual professions, we will never get done. I would like to see some blanket reform. But I stand in opposition to the Ackerman amendment.

A couple of points I would make. The Department of Agriculture, on balance, even though they have been more aggressive on downer livestock than I would have cared for, has done an excellent job in response to the BSE. The beef supply in the United States of America is the safest in the world, and the credibility that is there with our producers and the quality of that beef has been established by the confidence, as has been demonstrated by our consumers. That is what has held this market up.

The system we have in place does not need to be shaken up, nor does it need to have the safety of our food supply challenged on the floor of Congress when it has got such an outstanding record. I urge my colleagues to vote ''no'' on the Ackerman amendment. The purpose of H.R. 339 is to protect the food industry from having to defend themselves from frivolous lawsuits. Baseless lawsuits drain away our economic productivity and interfere with economic growth.

It is important to point out that this bill does not change the fact that anyone legitimately injured by substandard food can sue. However, the Ackerman amendment would open the door for countless groundless suits that could potentially bankrupt our agra businesses and our farmers.

I believe this amendment is a schematic way to gut the purpose of the entire bill, allowing Americans to continue to avoid taking responsibility for food choices.

With that said, I am opposed to the amendment that defines a downer animal. I am from western Iowa. In my State, we raise about 25 percent of the pork. This amendment would put market hogs in the same category as older cows that are to be tested for BSE; but as clearly stated by the gentleman from Texas, there is no linkage there between a downer animal and a diseased animal.

Market hogs can suffer unintended injuries on the way to market that cause walking problems and thus subject them to this amendment. But these injuries have nothing to do with the safety and quality of the meat we eat. It is also important to note that hogs are not subject to neurological diseases like BSE. So I urge the body to oppose the Ackerman amendment.

Mr. ANDREWS. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. ANDREWS. I yield to the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I just want to respond to one thing that the gentleman just said who just debated. I, obviously, did not know any of our Founding Fathers personally, so it is hard for me to imagine what would make them turn over in their grave or whatever, as he indicated. But I think they would be a lot more distressed that we were here in this body today saying that State legislators are incompetent to handle these issues in our Federalist form of government than they would likely be incensed with us dealing with this mundane issue having to do with french fries and hamburgers. I think that is what would distress our Founding Fathers. And I regret that the gentleman missed that part of the debate earlier here. I think that is the distressing thing about this debate.

Mr. ANDREWS. Reclaiming my time, Mr. Chairman, I would agree with my friend from North Carolina. I think the

Founding Fathers would be appalled that we were invading the 10th amendment purview of the States to determine these questions and imposing this standard for reasons that are lost on me.

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

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

Mr. ACKERMAN. Mr. Chairman, I thank the gentleman from New Jersey for yielding to me.

The gentleman from Iowa took it upon himself to speak for the Founding Fathers, which gives me the initiative to speak for the founding mothers. I think they would be aghast to see that this Congress is looking to protect rather prurient corporate interests at the expense of the health and safety of the American people.

It is not about protecting pigs, my colleague. It is about protecting people. And I say to the gentleman from Iowa, as well as the gentleman from Texas, my good friend, who has had many discussions with me on this issue, that the Ackerman amendment does not take away anybody's right to sue. It does not give anybody, as the gentleman asserted, the right to sue. People have a right to sue now. That is the status quo under the American system of jurisprudence. You can bring a lawsuit.

What the Ackerman amendment attempts to do is to prevent what the opposition is trying to do, and that is to provide an escape clause for those corporations who say it is a regulation, not a law; and, therefore, we are exempt from lawsuits.

The bill before us protects those people who knowingly and willfully sell bad meat to good people and says the public cannot sue them. The government can bring action for violating the FDA law, but people cannot sue under this provision.

It is appalling to think of who we are protecting here. I would have thought that those who represent the States that have cattle and pigs, and so many people make an important living from livestock, would understand the magnitude of the damage that they are doing to their own industry and their own constituencies. The world does not believe what they are saying, that the American food is the safest food in the world. You have lost billions of dollars.

The Japanese will not eat American hamburgers, and they are the ones who have been buying it all over the world. Europeans test every cow before they put it on the market. America, with all our wealth, cannot do that to protect our own people, and my colleagues' constituents are paying the price. Billions of dollars you have cost them. Wake up.

The American people do not want to eat this meat. And it is not because they are just a bunch of animal lovers. They will eat meat if they know that it is safe. And it is your job to protect that industry as well as the public. And the way to do that is to keep the deck honest; to allow people to bring a lawsuit if they think harm was done to them and do not exclude the industry and those who knowingly and willfully sell products that are tainted to the public.

How can one exercise personal responsibility if you do not know the facts? There is no label on your hamburger that says that this hamburger came from a diseased or downed cow. People would not eat it, and you know that. It is a charade that we are playing here. This has nothing to do with trial lawyers. This is a simple amendment that closes an escape clause that I believe, with all due respect, was inadvertently created by an oversight, regardless of your feeling on trial lawyers or anything else.

And I should make it clear, talking about pigs, that my amendment does apply to all livestock, not just cattle.

□ 1515

The gentleman from Texas is right because all livestock, cattle, sheep and pigs can bear the animal form of mad cow that can be passed on.

The CHAIRMAN pro tempore (Mr. BASS). The time of the gentleman from New Jersey (Mr. ANDREWS) has expired.

(On request of Mr. WATT, and by unanimous consent, Mr. ANDREWS was allowed to proceed for 2 additional minutes.)

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

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

Mr. ACKERMAN. Mr. Chairman, the USDA, which is selectively cited by the gentleman from Texas giving it such great authority, happens to be the authority that says that downed animals are 49 times more likely to have mad cow disease than ambulatory animals. There is the connection. It is not that there is no connection, it is not just that a cow fell and cannot get up and does not have a button to press.

If it is a downed animal, regardless of why it is a downed animal, it is 49 percent more likely to have mad cow disease. Do Members want to play that game of Russian roulette with their children? I do not. I think others really do not, either. If Members want to protect the American people, guarantee that we are playing straight with the American people. It is their interest that we are trying to protect. For the sake of trying to make a few more pennies on the pound, you are jeopardizing the entire industry, as well as the safety of the American public.

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

Mr. ANDREWS. I yield to the gentleman from Texas.

Mr. STENHOLM. Mr. Chairman, with all due respect, the gentleman from New York keeps talking about BSE and mad cows and downers in the same breath. We are not arguing that today. With all due respect, the argument that the gentleman has just made, we have stock shows going on all over the country. A young boy or girl has raised this calf. They have shown it. Unfortunately, it breaks its leg. Under the gentleman's thinking, that calf immediately goes to the dump. It is unfit for human consumption no matter what because it is a downer and it cannot walk.

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

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

Mr. ACKERMAN. Under this gentleman's thinking, that beloved animal of that little boy who has shown him all around, if he falls and breaks his leg, that animal should be treated humanely and humanely slaughtered which would prevent it from being sold to the public.

The CHAIRMAN pro tempore. The time of the gentleman from New Jersey (Mr. ANDREWS) has expired.

Mr. ANDREWS. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

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

The CHAIRMAN pro tempore. Objection is heard from the gentleman from North Carolina (Mr. HAYES).

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to this amendment. This bill is a good bill and 89 percent of the American people support the concept that somebody should not be able to go to a restaurant, to a food processor or food distributor and be able to sue them because they became obese because of their bad eating habits. Let us get back to the subject at hand.

What is wrong with this amendment is that the gentleman from New York (Mr. ACKERMAN) would completely gut the purpose of the bill. He keeps talking about deliberately and willfully putting into the meat supply diseased animals. We have laws against doing that now. But the gentleman's amendment does not say what he talks about.

The amendment says manufactured or distributed for human consumption. It does not say anything about willfully. It says manufactures or distributes. That means the processing plant, it means the distribution company, it means somebody who imports from another country where we have no control over what their laws are on downed animals. It means the restaurant or cafeteria that distributes the food. It means the grocery store that distributes the food. It does not address the specific concern of one particular instance.

This bill completely covers somebody who may be specifically suing because they ate tainted meat. But all the gentleman from New York is saying is if we have one instance from here on out where meat was sold that came from any downed animal, then that company loses the protection for all time under

this bill. That is outrageous. It obviously completely guts the purpose of this legislation.

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

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

Mr. ACKERMAN. Mr. Chairman, it seems to me the gentleman would have it both ways. First the claim is that my amendment is redundant, the bill already does what it does. Now the gentleman is saying that it guts the bill. How can it be redundant and gut the bill?

Mr. GOODLATTE. Mr. Chairman, reclaiming my time, I never once said that this is redundant. What I said was there is language in the bill that protects an individual from being sued, a business from being sued by an individual, if they ate tainted meat. But the gentleman's amendment would prohibit a company from having the protection of this bill if at any time they ever sold one single downed animal or bought from a company that had processed one downed animal. That covers every single circumstance of every single company that is engaged in food processing in the country.

So obviously the gentleman's amendment, no matter what his underlying intent is, and his underlying intent has nothing to do with obesity, whatever the gentleman's underlying intent is, the effect of his amendment is to kill this bill because it would remove protection that is desired by 89 percent of the American people that we are coming forward with to do today from every single company in the food process because it does not require a willful and malicious intent; it just says all you had to do was distribute it once in the entire history of your company from this day forward, and you lose that protection under the law.

This is a foolish, ridiculous amendment, and I urge my colleagues to reject it. The purpose of the legislation before us is to protect the food industry from having to defend themselves from frivolous obesity-related lawsuits. No one has ever argued that downed animals caused obesity differently than non-downed animals.

This bill does not in any way relate to the issues of food safety, animal health or animal welfare. Products that do not meet the standards of our laws relating to food safety, animal health or animal welfare will not be protected by this legislation.

Mr. Chairman, the bill before us today is a very carefully thought out effort to address the growing problem of frivolous and costly lawsuits that do nothing but harm American consumers. These lawsuits have the consequence of adding unnecessary cost to the food industry and consumers to the sole benefit of trial lawyers.

The Ackerman amendment has nothing to do with this issue. It simply creates confusion about who should be afforded protection from obesity-related lawsuits. Because it is so loosely drafted, so carelessly drafted, not addressing anything to do with malicious or willful action, but anybody who manufactures or distributes, any restaurant, any grocery store, any wholesale business, any processor who has had any downed animal at any time, that business would, for all time, be denied the protection of this legislation. I urge my colleagues to oppose this outrageous amendment.

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

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

Mr. ACKERMAN. Mr. Chairman, I am trying not to be insulted by being accused of having a foolish and ridiculous amendment. I am sure the gentleman is insulting the amendment.

Mr. GOODLATTE. I am referring to a very foolish amendment, the gentleman is correct.

Mr. ACKERMAN. Let me suggest to your very sanctimonious self that it was the chairman of this very committee that said my amendment was redundant. The author of the bill, rather, who said that the amendment was redundant, that what I am trying to do is already in the bill.

Mr. GOODLATTE. Mr. Chairman, I reclaim my time.

The CHAIRMAN pro tempore. The time of the gentleman from Virginia (Mr. GOODLATTE) has expired.

The question is on the amendment offered by the gentleman from New York (Mr. ACKERMAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ACKERMAN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New York (Mr. ACKERMAN) will be postponed.

The point of no quorum is considered withdrawn.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 6 offered by the gentleman from Virginia (Mr. SCOTT); amendment No. 7 offered by the gentleman from North Carolina (Mr. WATT); amendment No. 2 offered by the gentleman from New Jersey (Mr. ANDREWS); and amendment No. 1 offered by the gentleman from New York (Mr. ACKERMAN).

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

AMENDMENT NO. 6 OFFERED BY MR. SCOTT OF VIRGINIA

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Virginia (Mr. SCOTT) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 177, noes 241, not voting 15, as follows:

[Roll No. 48]

AYES—177

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—241

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carter
Castle
Chabot

Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—15

Ballance
Bell
Berkley
Conyers
Davis (IL)
Fattah
Frank (MA)
Gephardt
Hinojosa
Kucinich
Miller (FL)
Rodriguez
Tauzin
Udall (CO)
Wicker

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. BASS) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1550

Messrs. FORBES, PEARCE, JENKINS, MICA, CANNON, PLATTS and RUPPERSBERGER, and Mrs. MILLER of Michigan and Mrs. BIGGERT changed their vote from ''aye'' to ''no.''

Messrs. NEAL of Massachusetts, STUPAK, EVANS, MEEK of Florida, DAVIS of Florida, and Ms. KAPTUR changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 7 OFFERED BY MR. WATT

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from North Carolina (Mr. WATT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 158, noes 261, not voting 14, as follows:

[Roll No. 49]

AYES—158

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Becerra
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Case
Chandler
Clay
Clyburn
Costello
Crowley
Cummings
Davis (CA)
Davis (FL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Hastings (FL)
Hill
Hinchey
Hoeffel
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Lampson
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Price (NC)
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Stark
Strickland
Stupak
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu

NOES—261

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berry
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hooley (OR)
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Michaud
Miller (MI)
Miller, Gary
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spratt
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NOT VOTING—14

Ballance
Bell
Berkley
Conyers
Davis (IL)
Frank (MA)
Gephardt
Hinojosa
Kucinich
Miller (FL)
Rodriguez
Tauzin
Udall (CO)
Wicker

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1557

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 2 OFFERED BY MR. ANDREWS

The CHAIRMAN pro tempore. The pending business is the demand for a

recorded vote on the amendment offered by the gentleman from New Jersey (Mr. ANDREWS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 129, noes 285, not voting 19, as follows:

[Roll No. 50]

AYES—129

Abercrombie
Ackerman
Allen
Andrews
Baldwin
Ballance
Becerra
Bishop (NY)
Blumenauer
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Carson (IN)
Case
Clyburn
Costello
Crowley
Cummings
Davis (CA)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frost
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hoeffel
Holt
Honda
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Lampson
Langevin
Lantos
Larson (CT)
Lee
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Millender-McDonald
Miller, George
Mollohan
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Rahall
Rangel
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Slaughter
Solis
Stark
Stupak
Thompson (CA)
Thompson (MS)
Tierney
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Weiner
Wexler
Wu

NOES—285

Aderholt
Akin
Alexander
Baca
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Castle
Chabot
Chandler
Chocola
Clay
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Holden
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Issa
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Meeks (NY)
Menendez
Mica
Michaud
Miller (MI)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Ortiz
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Spratt
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Towns
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NOT VOTING—19

Bell
Berkley
Conyers
Davis (IL)
Frank (MA)
Gephardt
Hinojosa
Istook
Jones (NC)
Kucinich
Miller (FL)
Radanovich
Rodriguez
Souder
Strickland
Tauzin
Udall (CO)
Wicker
Woolsey

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. BASS) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1604

Mrs. KELLY changed her vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 1 OFFERED BY MR. ACKERMAN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from New York (Mr. ACKERMAN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 141, noes 276, not voting 16, as follows:

[Roll No. 51]

AYES—141

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Becerra
Berman
Bishop (NY)
Blumenauer
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Case
Clay
Clyburn
Costello
Crowley
Cummings
Davis (CA)
Davis (FL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Engel
Eshoo
Evans
Farr
Fattah
Filner
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Lampson
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Michaud
Millender-McDonald
Miller, George
Mollohan
Moore
Murtha
Nadler
Napolitano
Neal (MA)
Olver
Owens
Pallone
Pascrell
Payne
Pelosi
Price (NC)
Rahall
Rangel
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Slaughter
Snyder
Solis
Stark
Stupak
Tancredo
Tauscher
Taylor (MS)
Thompson (CA)
Tierney
Towns
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu

NOES—276

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Ballance
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Castle
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (TN)
Davis, Jo Ann

Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Majette
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Menendez
Mica
Miller (MI)
Miller (NC)
Miller, Gary
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Ortiz
Osborne
Ose
Otter
Pastor
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Souder
Spratt
Stearns
Stenholm
Strickland
Sullivan
Sweeney
Tanner
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NOT VOTING—16

Bell
Berkley
Conyers
Davis (IL)
Frank (MA)
Gephardt
Hinojosa
Kucinich
Miller (FL)
Oxley
Rodriguez
Simpson
Smith (NJ)
Tauzin
Udall (CO)
Wicker

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1612

Mr. FORD changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 4 OFFERED BY MR. LAMPSON

Mr. LAMPSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. LAMPSON:

At the end of the bill (preceding the amendment to the long title), insert the following new section:

SEC. 5. ACTIONS BY YOUNG CHILDREN AGAINST SELLERS THAT MARKET TO YOUNG CHILDREN.

Notwithstanding any other provision of this Act, this Act shall not apply to an action brought by, or on behalf of, a person injured at or before the age of 8, against a seller that, as part of a chain of outlets at least 20 of which do business under the same trade name (regardless of form of ownership of any outlet), markets qualified products to minors at or under the age of 8.

Mr. LAMPSON. Mr. Chairman, today the House is continuing to consider H.R. 339, the Personal Responsibility in Food Consumption Act. I oppose the core of this bill because I believe that the constitutional right to seek redress in our courts as guaranteed by the seventh amendment is inviolate and the right to civil justice is a fundamental element of any stable and just society.

Time and time again, we see measures on the House floor designed to immunize special interests from the only means that citizens have to hold certain companies and corporations accountable. And today's bill is no exception.

So that is why I offer an amendment to the bill to protect children 8 years of age and younger. This very narrow amendment targets only those fast-food chain restaurants who aggressively market their products to the youngest segments of our society.

As the chair of the Missing and Exploited Children's Caucus and, more importantly, as a concerned grandparent, I have always fought to protect our children's interests. And as such, I want to make sure that children learn how to make informed nutritional choices. Part of that process requires us to hold those who treat children as an advertising demographic accountable, especially when children's health is at stake.

Mr. Chairman, today the younger age group faces a litany of health issues that generations before them did not face. Heart disease, high blood pressure, hypertension, joint problems, asthma, diabetes and cancer are on the increase with these children. And a steady diet of fast food is the absolute last thing that they need. Unfortunately, fast-food restaurants are bombarding our children with advertisements that encourage overconsumption of unhealthy eating choices.

The average child views 20,000 television commercials each year. That is about 55 commercials a day. And more disturbingly, the commercials for candies, snacks, sugared cereals and other foods with poor nutritional content far, far outnumber commercials for more healthy food choices.

Every working parent knows how aggressive these marketing campaigns can be, especially when they tie in incentives such as playgrounds and contests and clubs and games and free toys and movies and television and sports league-related merchandise. Well, how can we expect our children freely to say no to fast food when it is, no pun intended, pushed down their throats in this manner day in and day out?

Well, one child in my district who is 8 and who suffers from juvenile diabetes faces a far greater battle to maintain his fragile health than do most children. He already faces a lifetime of increased health and nutritional expenses. And I do not want him and other children like him to fall prey to the marketing practices of the fast-food industry.

□ 1615

Working families have enough to contend with through fighting to keep their jobs and providing a good education for their children, so they should not have to take any even more steps to protect their children from industry and advertizing practices that are running rampant pants. Should this unfortunate set of circumstances become reality our children, must be able to seek redress in our courts and in our justice system.

Mr. Chairman, studies indicate that at age 8 and under, children are more susceptible to such advertising, and even less likely to understand the purpose of this advertising. So that is why so much of this advertising is done during the cartoon hour, and it is no coincidence that major fast food chains routinely run their advertisements during this time. The tragic results of this marketing of fast food is a nation of overweight children who remain vulnerable to a host of medical conditions that they should not have to worry about during their formative years.

It is for these reasons that this amendment to H.R. 339 is necessary. If we totally foreclose any opportunity, any opportunity to hold this industry accountable, especially for our youngest children, we will only see an increase in childhood obesity and other related problems. It is time we demand responsibility on the part of the fast food industry, it is our responsibility as lawmakers to protect those who cannot protect themselves. My amendment offers that safety net for our children. And for these and many other reasons, we should support it today. I ask my colleagues to join me in supporting this amendment.

Mr. SENSENBRENNER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment will do exactly the opposite of what the gentleman from Texas (Mr. LAMPSON) says it will do, because what the amendment says is that it tells parents that if they are not responsible, they can become millionaires. The amendments exploit children and it discourages parents from exercising parental

responsibility at all times. It is the parents that buy the Happy Meals. It is the parents that take their kids to the fast food chain. And few kids under 8 either have their own money to buy the Happy Meals or can make it to the fast food outlet without their parents taking them down there.

So if this amendment is adopted and little Johnnie or little Mary become big Johnnie and real big Mary before the age of 8, then their parents can sue and hopefully break the bank, according to what their lawyers tell them.

The Los Angeles Times says this is wrong. And one of their editorials they said, in part, ''If kids are chowing down to excess on junk food, though, aren't their parents responsible for cracking down?''

The gentleman from Texas' (Mr. LAMPSON) amendment says, no, they are not. And as a matter of fact, we will give those parents the opportunity of monetary enrichment if they buy their kids far too many happy meals and do not just say no when Johnnie and Mary pull on their parents' shirt tails and say, let us go down to McDonalds or the Burger King or one of these other fast food outlets.

Now, even the best obesity doctors realize this amendment is another sad assault on the concept of parental responsibility. Dr. Jana Clauer, a fellow at the New York City Obesity Research Center of St. Luke's Roosevelt Hospital has said, ''I just wonder where were the parents when the kids were having those McDonalds breakfasts every morning. Were they incapable of pouring a bowl of cereal and some milk?''

Well, this amendment tells those parents that if they do not pour that bowl of cereal and put some milk on the top of it and ruin their kids health as a result, if those kids are under 8 they can go off to court because it was not their fault. Vote this amendment down.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield to the gentleman from Texas (Mr. LAMPSON).

Mr. LAMPSON. Mr. Chairman, the words that the gentleman of Wisconsin (Mr. SENSENBRENNER) just spoke indicate that we would give the opportunity for someone to become wealthy in the event that the child became fat. Well, we are only asking that if a person becomes injured from eating the foods that are not healthy for them, and I also know that studies reviewed in a task force report indicate that the product preferences can indeed affect children's product purchase requests and we are bombarded with television ads. I know that those children are not so much with their parents when they are making the decision to go to McDonalds or whatever else, these fast food chains, but they are sitting in front of their television sets and the parents are there with them.

Much like what happened, and I believe the gentleman would probably agree that he does not like what we saw during the Superbowl when part of Janet Jackson's costume came off. Just like the child who was sitting in front of that TV did not have a choice of what he or she saw then, what choice do they have when they are watching cartoons and repeatedly time after time after time after time the same commercial that puts sugar in front of them over and over again continues to happen. Does it have an effect on their requests when they go to a grocery store or to a fast food restaurant? You better believe it does, and that is what this amendment is attempting to do. It gives them the opportunity to protect themselves from those injuries only.

Mr. KELLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I ask my colleagues to vote no on the Lampson amendment for at least three reasons. First, one of the cases involving McDonalds was brought by a 400-pound child. And every single meal, breakfast, lunch and dinner, that parent would take the kid to McDonalds and then shockingly one day wakes up and says, oh, the kid is 400 pounds. I never encouraged him to get any exercise. I never encouraged him to step away from the video games. I never encouraged him to not watch TV all day. I never encouraged him to eat healthy food. I never encouraged him to exercise. Now I want a million dollars.

That is insane.

This amendment tells parents that they are not responsible. And if they are not responsible, they can even profit by becoming millionaires and sue for it.

Now, it was brought up that these companies market to kids as well as adults. I have two kids, 8 years old and younger. I can tell you who else markets to kids. Barney, Bear in the Big Blue House, Dora the Explorer, Blue's Clues, Nickelodeon, the Disney Channel. In fact, one could argue if you take this argument, that, in fact, those programs are so enticing and so addicting and so enjoyable to kids but they have no choice but to sit there and watch them every day, and as a result, they lead a stagnant life-style, so why not sue them for obesity since they are marketing to them?

It puts the incentives in the wrong place totally.

Third, I want to briefly point out that childhood obesity is certainly a serious problem. The childhood obesity rates have doubled in the last 30 years. I do not stand before you today and hold myself out as the world's leading expert on physical fitness, but I can tell you the world leading expert on physical fitness, Dr. Kenneth Cooper, the founder of the aerobics movement, testified before my Committee on Education and the Workforce on February 14 of this year and said to us that these lawsuits against the food industry are putting, or putting a tax on Twinkies is not going to make a single person any skinnier.

He said, 30 years ago did kids come home from school and eat potato chips and cupcakes and cookies? Absolutely, they did. The difference is then they went out and rode their bike and played.

Now, they spend 1,023 hours a year in front of a TV screen watching TV or playing video games versus only 900 at school. Where are the parents? If you are talking about a kid eating fast food 21 times a week, where are the parents?

This amendment says the parents have no responsibility whatsoever. It defies common sense however well meaning the author may be. I urge my colleagues to vote no.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, I am just confounded by the debate on the floor of the House as it relates to the Lampson amendment, and I rise to enthusiastically support it because all that I have been hearing from my colleagues in opposition is this is bash the parents day. The parents should have known. The parent needs to know. The parent ought to know.

The Lampson amendment is simple and it is without complexity. It simply tracks the tragedy that occurred some years ago when a young child was poisoned at one of our fast food locations in the northwestern part of America. I believe it was Whataburger and I believe it was in the State of Washington. All his amendment says is that if a child is injured, then you have a right to pursue the case on behalf of that child.

Now, as reason would have it, we already know that the Congress that we are under, over the last 10 years, has eliminated everyone's right to go into the courthouse for justice. So do not expect that there is going to be a rush to the courthouse with parents who are going to claim that all of their children have been injured because they are not going to be addressed. They will not have an opportunity to have their grievances addressed. All of the doors of the courthouses have been closed to individuals who have been aggrieved, if you will, and who have been injured.

This is a simple statement to provide the protection that the fast food chains want to have. How can we not, under the umbrella of equity, not accept the fairness of what the gentleman from Texas (Mr. LAMPSON) is offering today?

As the Chair of the Congressional Children's Caucus and the gentleman from Texas' (Mr. LAMPSON) leadership daily with exploited children, I cannot imagine that a simple amendment simply asking for fairness would not be accepted by this body. I ask my colleagues to look clearly and squarely at the simplicity of this amendment, and I ask them to vote for the Lampson amendment.

The CHAIRMAN pro tempore (Mr. BASS). The question is on the amendment offered by the gentleman from Texas (Mr. LAMPSON).

The amendment was rejected.

AMENDMENT NO. 9 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Ms. JACKSON-LEE of Texas:

Section 4(5), insert after ''or a trade association,'' the following: ''or a civil action brought by a manufacturer or seller of a qualified product, or a trade assocation, against any person,''.

Ms. JACKSON-LEE of Texas. Mr. Chairman, it is interesting in listening to the debate on this legislation and seeing, of course, extensive coverage that this legislation is obtaining, it would appear that we are doing serious legislation, providing improvement to the Medicare bill, Medicaid bill, finding ways to quell the violence in Haiti, bring some resolution to the Iraq war, but to my colleagues, we are doing none of that.

We are now spending hours on the floor, and I certainly thank my colleagues for allowing this amendment to be made in order, trying to dash the hopes of those who have been severely injured and are seeking a redress of their grievances in a court of law.

Now, all of us come from constituency that are filled with fast food chains and restaurants. Many of us would disagree with recent statements of the administration that that equals to manufacturing; but we do know that people are employed by this industry.

In my own community, I have been a strong advocate of small businesses and the franchise owners who have received their economic income from this industry. But, Mr. Chairman, we have gone too far.

Now, we want to take up the cause of fast food chains with the likes of McDonalds and Jack in the Box as characters, give them the Constitution and the Bill of Rights and tell Americans where to go. My amendment is simple. You protect the fast food chains from lawsuits, and I simply want to be able to protect those like Oprah Winfrey and others who wish to make statements about the industry or the product and allow them to be immune from lawsuits.

My amendment ensures that what is good for the geese is good for the gander. Those advancing healthy diet by discouraging the consumption of certain food because of their adverse effects on a person's health and weight gain should not be subject to litigation from the food industry while it stands immune from any accountability under this bill.

□ 1630

Simple. There is no sinister, if you will, hide the ball behind this amendment. It simply says that you are protecting the industry; they cannot be sued; they are above reproach; they have the Constitution and are shredding it, so why cannot we?

I do not understand. When Oprah Winfrey was sued, I do not recall any hue and cry in this body during, or in the aftermath of the lawsuit against Ms. Winfrey, millions of dollars, moving her television program to Texas, in order to be able to press her case. The system worked. There was a trial and she was vindicated ultimately, but a long trial, and the industry had its day in court. But if we are to end the public's right to a jury trial on issues of food safety, we cannot end the public's right to freedom of speech by leaving food critics who play an important role in educating the public, stimulating positive change and promoting sound eating habits open to lawsuits from an immunized industry.

This amendment addresses this concern and ensures that every American can engage in or has access to an open and honest debate.

Mr. Chairman, I would simply say that the time we have spent on this bill, I know that our time could have been more well spent. I do not know whether we have documented how many lawsuits have gone against the industry. I do not know how much money we have documented, but I would certainly say to my colleagues that it seems ridiculous that we have legislation that closes the courthouse door. The judicial system has worked well for us in America, and I simply think we should allow it to continue its work.

This amendment simply tries to make this bill minimally slightly better for the poor consumers and the voices of reason that are now opposing some of the extreme in this industry. My support is for the food franchisees and all of those who work in the industry, but even they realize that fairness is something that cannot be eaten up.

I ask my colleagues to support the Jackson-Lee amendment.

Mr. Chairman, I offered an amendment, "WATT_019," in addition to "MJ_004." This amendment would prohibit the food industry—which enjoys broad immunity under this bill—from initiating lawsuits against any person for damages or other relief due to injury or potential injury based on a person's consumption of a qualified product and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity.

This amendment is necessary to insure that the public debate on the health and nutritious effects of mass marketed food products is not completely squelched by this bill.

In 1996, Oprah Winfrey was sued under my home state's "food disparagement" laws by the beef industry for comments she made following the first "Mad cow" scare this country witnessed. After years of litigation, transfer of her television show to Texas, and an expenditure of over one million dollars, Ms. Winfrey prevailed at trial and on appeal.

Proponents of this bill assert that the food industry will incur significant cost defending "frivolous" lawsuits by the trial lawyers, but neglect the staggering costs that may be borne by private citizens should they dare question the health effects of any "qualified food product" under this bill.

My amendment insures that what's good for the geese is good for the gander. Those advancing healthy diets by discouraging the consumption of certain foods because of their adverse effects on a person's health and weight gain should not be subject to litigation from the food industry while it stands immunized from any accountability under this bill.

I don't recall any hue and cry in this body during or in the aftermath of the lawsuit against Ms. Winfrey to ban food libel laws. The system worked. But if we are to end the public's right to a jury trial on issues of food safety, we cannot end the public's right to freedom of speech by leaving food critics who play an important role in educating the public, stimulating positive change, and promoting sound eating habits open to lawsuits from an immunized industry.

This amendment addresses this concern and insures that every American can engage in or has access to an open and honest debate on matters of public health.

Once again, Mr. Chairman, I urge my colleagues to support my amendment.

Mr. KELLER. Mr. Chairman, I move to strike the last word.

I ask my colleagues to vote ''no'' on the Jackson-Lee amendment. The Personal Responsibility in Food Consumption Act, the base bill, pertains to lawsuits people bring because they gained weight and are suing the company that served them the food, claiming it is their fault. This amendment would prevent manufacturers or sellers of food from suing individuals because, and I am not making this up, the company literally got fat. I would like to ask, how is it possible to determine what the body mass index of General Motors is? Did it gain weight over the holidays? This amendment should be defeated solely because it erroneously assumes companies can literally get fat.

The author of the amendment mentioned a little insight into where she was going when she talked about she does not want individuals like Oprah Winfrey getting sued. Well, if my colleagues recall, that did not have anything to do with this. Oprah Winfrey got sued by the Beef Cattlemen's Association because they claimed she allegedly defamed them. They did not, the Beef Cattlemen's Association, that because of her comments, this association got fat.

So this is an erroneously drafted bill, has no application here, however it is intended, and I would ask my colleagues to vote ''no.''

Mr. WATT. Mr. Chairman, I move to strike the requisite number of words.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. WATT. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman from North Carolina for yielding, and to my good friend from the great State of Florida, let me try to clarify that this is simply an equity amendment. It is a fairness amendment.

The example of Ms. Winfrey was only because she, as an individual, was sued

by a large conglomerate, the association dealing with the beef industry. I respect both of their points of view, in fact. I welcome the opportunity for both of them to press their causes in the courts of law.

What I am simply saying is that if we are going to spend time protecting the fast food industry, using the time of this House, then I would challenge my colleagues to give me a reason, a legitimate explanation for not protecting individual rights, and that means that if an industry is to be protected from suits that are considered frivolous, then individuals for their actions should be as well protected.

I do not understand why we are coming to the floor of the House with a simply one-sided, single-focused bill. No one has described the crisis. Usually this body is conceded to be a problem solver. No one has said that we are overrun with lawsuits. There is no documentation of the amount of money that has been expended, no suggestion that the GNP has been impacted, and so if it is fair to protect the industry, fast foods in particular, if it is fair to bash parents about whether or not their own children, if injured, have a right to go into court because of the food that they are eating, not knowing the particular conditions that the parents operate in, and I would imagine that the court will determine whether those lawsuits are frivolous, if it is all right to come to the floor to do that, then I cannot imagine a simple modifying of this legislation to equalize the rights of both individuals and associations to me seems to be, if you will, hypocritical.

Again, I would ask my colleagues to consider this amendment as an amendment of equity and equality and fairness. It is not necessarily the Oprah Winfrey amendment, but I think if Ms. Winfrey was here, she would acknowledge the pain, as well as the burden, that was put upon her to go as an individual and defend her case in another jurisdiction. At least she was allowed to go into court. In this legislation, the door is slammed shut on the basis of the fact that maybe hamburgers have now taken a greater standard in this country than someone's individual rights. I would like to find the constitution that says all hamburgers are created equal.

Let me ask my colleagues to support this amendment on the basis of fairness.

Mr. SENSENBRENNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, unfortunately, the gentlewoman from Texas' argument has nothing to do with her amendment and the examples that she has used has nothing to do with this bill.

First, what the amendment does is exactly what the gentleman from Florida (Mr. KELLER) has indicated, and that is to say, that a company could sue for getting too fat. Well, a company is a piece of paper that is signed by the Secretary of State of the State of corporation, and has the State seal affixed to it. Companies do not get fat, at least in the physical way that this bill is designed to address.

Secondly, the gentlewoman from Texas brings up the case of the lawsuit that was filed against Oprah Winfrey. That was a defamation suit. This bill has nothing to do with allegations of defamation. Anybody who claims to have a cause of action for defamation is perfectly able to go to court and file their case.

So I do not understand what relevance the gentlewoman's amendment has to the issues that are presented to this bill, and that is why it should be defeated.

Mr. UDALL of New Mexico. Mr. Chairman, I move to strike the requisite number of words.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. UDALL of New Mexico. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I will not take the full 5 minutes, but I am struck by the comments of my distinguished chairman and colleague from Wisconsin, because his interpretation, I believe, is not correct, because someone could claim that a fast food chain, and let me be fair in the calling of them, there are so many, whether it is Whataburger or McDonald's or Jack-In-The-Box or Burger King, that their hamburgers, as I said, it must be the constitutional protection of all hamburgers are created equal, but their hamburger makes one fat, just a simple statement.

Well, on page 5 of this bill, under the qualified civil liability action, it clearly suggests that that person would be apt to be sued, and so what I am saying is if we can put legislation on the floor of the House to protect the entities, the institutions, the businesses from frivolous lawsuits, then we should be able to protect those who are offering their opinion. By way of documentation, by way of research, they have equal rights.

This is an equity amendment, and it seems to me to be quite unusual that my colleagues would not welcome the opportunity to equalize lawsuits, equalize the ban on lawsuits because it is clear that it is in this bill, and I would ask my colleagues to consider the fairness of this because it is going directly to the point that is made in this bill, and I would ask my colleagues to support the Jackson-Lee amendment.

The CHAIRMAN pro tempore (Mr. BASS). The question is the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The amendment was rejected.

AMENDMENT NO. 10 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Ms. JACKSON-LEE of Texas:

At the end of the bill (preceding the amendment to the long title), insert the following new section:

SEC. 5. ACTIONS INVOLVING WEIGHT-LOSS PRODUCTS.

Notwithstanding any other provision of this Act, this Act shall not apply to an action alleging that a product claiming to assist in weight loss caused heart disease, heart damage, primary pulmonary hypertension, neuropsychologocal damage, or any other complication which may also be generally associated with a person's weight gain or obesity.

Ms. JACKSON-LEE of Texas. Mr. Chairman, when we looked at that bill, we tried to find some redeeming value to it because it does say Personal Responsibility in Food Consumption Act, and clearly there are none of us that want to be on the wrong side of personal responsibility, but I want to focus on what the bill actually does.

I think if my colleagues would listen, as the American people will have to fall victim to this particular legislation, they would know that this is going just too far because what H.R. 339 does is it bans suits for harm caused by dietary supplements and mislabeling which have nothing to do with excess food consumption and would prevent State law enforcement officials from bringing legal actions to enforce their own consumer protection law.

Beyond the idea of obesity, and I am going to get fat on whatever food one might be eating, including the very tasty French fries, this goes to the very heart of some tragic incidences that we have had dealing with food and nutritional supplements.

I am aghast, Mr. Chairman, that this bill deals with banning any opportunity to protect ourselves against ephedra and fen-phen and any other thing that has to do with these kinds of supplements.

Already we have seen the pain of various individuals who have lost their loved ones. This is nothing to simplify and/or to make light of. Even in this current year or the last year we have seen terrible tragedies occur because of a utilization of these particular drugs, and now my friends want to have a broad, legislatively written bill, H.R. 339, that slaps the face of those who lost their loved ones, who have been injured by the utilization of these supplements.

So my amendment is very simple. It provides, if you will, the protection against that. Hidden in this convoluted definition of the civil action that relates to a person's consumption of a qualified product and any health condition that is associated with a person's weight gain is the fact that a person is banned from bringing a lawsuit on these kinds of products and that this bill will shield the producer of dietary supplements from all liability.

I offer this amendment to ensure that makers of these highly dangerous and highly unregulated drugs are held

accountable for their action. Let me give my colleagues an example, Mr. Chairman.

Under the Food, Drug and Cosmetic Act, all laws that apply to food apply to dietary supplements unless they explicitly exempt them. That means that this bill limits the liability of dietary supplementing manufacturers because it does not specifically exempt. Unlike hamburgers and French fries, dietary supplements often have hidden side effects that often have immediate and dire consequences, but yet we have a bill that is broad based with a broad sweep and no limitation, and unlike drugs, these supplements neither have to test for side effects nor report them to the Federal Government.

Let me tell my colleagues what is worse. This bill is retroactive. So ongoing lawsuits of people already punished, already injured, all suffering, already damaged, already dead are going to be voided by the passage of this lawsuit. How incredulous.

I cannot imagine that my colleagues would have such intent because I would never attribute sinister intent to the drafters of this legislation, and I would only ask my colleagues, let us fix it today on the floor of the House. Let us show America that there is no intent to go back into the courtroom of ongoing litigation where family members are gathered in great, if you will, disadvantage because of what has happened to them or a loved one and ask them to give up a legitimate claim, and then let us not go forward with a bill that takes a broad brush and denies one's right to get into the court on these dietary supplements and nutritional supplements.

□ 1645

The current system is not sufficient to deal with this threat. Consider ephedra, for example, which the FDA started investigating in 1997. It is now 7 years, 18,000 adverse reactions, and at least 155 deaths later; and it is just now being pulled off the shelves. So it is important to note, Mr. Chairman, that this amendment is simply to clarify this bill.

I would ask my colleagues to support this amendment and to recognize that this can help us together clarify the rights of those who are already in court and the rights of those going forward on the nutritional supplements that have brought great damage to many Americans.

Mr. KELLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I will ask my colleagues to vote ''no'' on the Jackson-Lee amendment dealing with diet pills on a couple of grounds:

First, the Personal Responsibility in Food Consumption Act applies to weight gain, obesity, or any health condition that is associated with a person's weight gain, such as diabetes, high cholesterol, cardiovascular disease. It has nothing to do with weight loss and nothing to do with diet pills, and this amendment confusingly implies weight loss can be weight gain, which does not make sense.

The second part of the amendment, which is somewhat odd, is the amendment would bizarrely require Members to vote for a provision that states that being fat is ''generally associated'' with brain dysfunction and neurological disorders. Specifically, it says, ''neurological damage or any other complication which may be generally associated with a person's weight gain or obesity.''

Not all people who might be overweight are suffering from neurological problems. I can tell you that it is possible to be both fat and happy. So I do not understand the reason for this amendment.

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

Mr. KELLER. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I would ask the gentleman if Santa Claus is both fat and happy?

Mr. KELLER. Reclaiming my time, Mr. Chairman, I believe he is.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. WATT. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished ranking member very much for yielding to me. I know we can come to a meeting of the minds on this.

Mr. Chairman, I want to take my good friend from Florida somewhat to task because it is inaccurate what he has just represented to this body. It is totally inaccurate. These supplements claim to help prevent weight gain or they claim to help or to prevent obesity. This legislation does apply. Clear and simply, it does apply.

What is going to happen is that we are hiding the ball. This legislation will pass and thousands will be thrown out of the courthouse. I have already cited for my colleagues that there have been 18,000 adverse reactions from ephedra, with 155 deaths.

Let me advise how this bill impacts the problem that I am citing by way of my amendment and why it needs to be fixed. First of all, section 3(a) of the bill bans qualified civil liability action. That already goes to those who have had an adverse reaction or those who are dead and their family members are trying to go into court. Section 4(5) of the bill defines qualified civil liability actions as actions involving a qualified product. Section 4(4) of the bill defines a qualified product as a food under the Food, Drug and Cosmetic Act. Section 32(f)(f) of the Food, Drug and Cosmetic Act says a dietary supplement shall be deemed to be a food within the meaning of this chapter.

This bill is a direct correlation to the Food, Drug and Cosmetic Act; and ephedra, as a dietary supplement, is, therefore, a food, with 18,000 adverse reactions and 155 deaths. You can equate it to those who are allergic to dairy products, for example.

Again, these attempts are not to condemn the food industry globally. We all enjoy and need the nutrients produced by the agricultural industry as well as the food industry, the processing food industry, the fast-food industry that produces meals that sometimes may be the only meals that people have. But what we are saying, Mr. Chairman, and what we are saying to this body, you cannot hide the ball.

We hope that this is not a sinister intent, a back-door intent to have tort reform and to close the courthouse door. If it is not, you cannot argue with the fact that this is a food supplement covered by this bill. And I would say to my colleagues, when they do not want to accept any amendment, we may have a disagreement on this bill; but, frankly, we do not have a disagreement on the fact that people's rights may be denied. They think it is the food industry; I think it is individuals.

If my colleague thinks that the bill does not apply to dietary supplements, then why does he not accept the amendment? It does no harm anyhow. The language of the bill is ambiguous at best, dangerous at worst. But more importantly, I have just run through an explanation why food supplements are included. So I do not think we should take a chance. I think we should protect the American public and provide support for this amendment so in fact we have the opportunity to clarify it.

I do not see where this bill clarifies a distinction between food and the food supplement and the fact as to whether or not someone would make a claim that would subject them to a lawsuit. I am concerned, and I would think my colleagues should be concerned. This does not have to be time spent in frivolity. It can be a serious attempt at legislation. All we have to do is balance it.

If there is some substance to this idea that fast-food chains are being subjected unmercifully to lawsuits, then just imagine those without the kinds of resources that you might think a business would have and individually are sued by this industry. That is unfair. And those who are now in the process of suing because they have actually been harmed.

The very language of this bill that I think is overreaching anyhow, which is clearly retroactive, to me, suggests that we have a real problem. In fact, I would ask the question whether this bill will withstand any sort of court review; and if I can stretch it, whether it will withstand any kind of constitutional muster. Because I know hidden somewhere somebody's rights have been denied.

I would ask my colleagues to again support this equitable amendment that allows for the bill to be modified to protect individual rights and the ideas of food supplements being included.

Mr. SENSENBRENNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all, this bill has nothing to do with weight loss products, whether they are food supplements or drugs that require a prescription or drugs that are sold over the counter. It only deals with food that makes people increase their weight so that they become obese and have all of the medical problems related to obesity.

Now, on page 5 of the bill, ''Qualified Product'' is defined in section 201(f) of the Federal Food, Drug and Cosmetic Act; and this section of the Food, Drug and Cosmetic Act reads as follows: ''The term food means when an article is used for food or drink for man or other animals, chewing gum and articles used for components of any such article.''

So all of what the gentlewoman from Texas complains about is not covered in this bill because it is not a qualified product as defined by the bill.

And I will not yield to the gentlewoman. She has been up twice to try to explain what she is trying to do. She is just plain wrong.

And, secondly, there is one other thing that I think is very relevant, and this comes from the black and white provisions of her own amendment as in the CONGRESSIONAL RECORD. It talks about neuropsychological damage or other complications which may generally be associated with a person's weight gain or obesity.

Now, to say that someone who is obese has got psychological damage, I think, gets to the point of the gentleman from Florida saying that there are a lot of people who can be both fat and happy.

If the gentlewoman from Texas wants to draft an amendment to aim at the target, this was not it because the gun is shooting in the wrong direction.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I ask unanimous consent to make an inquiry.

The CHAIRMAN pro tempore (Mr. BASS). Is there objection to the request of the gentlewoman from Texas?

Mr. KELLER. Objection.

The CHAIRMAN pro tempore. Objection is heard.

The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

AMENDMENT NO. 8 OFFERED BY MR. WATT

Mr. WATT. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. WATT:

Strike section 3(b).

Mr. WATT. Mr. Chairman, I will try to be brief, because we have been here for a long time. I do want to compliment all of my colleagues who have really explored the issues related to this bill vigorously, and I think it has been a good discussion.

This final amendment, and I do think it is the final amendment, would strike section 3(b) of the bill. Section 3(b) provides that a qualified civil liability action that is pending on the date of the enactment of this act shall be dismissed immediately by the court in which the action was brought or is currently pending.

The effect of that language is to make this bill retroactive in its application applied to pending lawsuits as of the date the law becomes effective. Now, there are not currently any pending lawsuits, because all of them have been dismissed, as I have indicated previously. But between now and the time that this legislation may be enacted, other lawsuits may be pending or may be filed; and so this amendment is aimed at protecting against retroactive application of this bill because I think it is just unfair and almost un-American to change the rules of a legal process in the middle of the action.

Under this bill, any banned lawsuit would be dismissed by a court whether it has just been filed, a judgment is imminent, or a judgment has been entered and post-judgment proceedings and appeal may even be in process. This requirement is inherently unfair to litigants who may have devoted countless time and resources based upon their legitimate reliance on the laws of the States at the time they initiated their lawsuits.

Whether or not there are pending cases that would be dismissed under the bill, the retroactivity of the bill is bad policy and bad precedent. Our Nation prides itself on a fair, impartial, and open judiciary. This provision, however, undermines the judiciary and erodes public confidence in the system. The American people cannot have faith that any of their rights are secure if we change the rules of the game midway through a legal process. The judicial system, State and Federal, is a vital part of our constitutional framework, and we should not be changing the rules in midstream.

As a litigator, I know how deeply our citizens feel about rights they advance in court. I know the personal stress and financial strain that lawsuits may impose on an entire family, and I know how contrary this provision is to fundamental notions of fairness and fair play. I urge my colleagues to support the amendment to eliminate the retroactivity of this bill.

□ 1700

Mr. SENSENBRENNER. Mr. Chairman, I rise in opposition to the amendment.

This amendment would prevent the application of H.R. 339 to pending lawsuits and must be defeated. The amendment would essentially gut the entire bill by preventing the dismissal of pending lawsuits. If such an amendment passed, all that would happen is that hundreds of additional cases would be filed right before the date of enactment. That is exactly what happened in Texas and Mississippi when those States recently enacted legal reforms that did not preclude pending cases.

Such an amendment, as offered by the gentleman from North Carolina, would therefore make the current situation much worse. The Supreme Court has held that Congress can impose rules that apply retroactively, if it does so, pursuant to an economic policy. Review of retroactive legislation under the due process clause is no more than a variety of judicial regulation of economic activity under the concept of substantive due process.

The general principles the Supreme Court has handed down regarding the constitutionality of retroactive legislation under due process principles were summarized by the court as follows: ''The strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively. Provided that the retroactive application of a statute is supported by a legitimate legislative purpose, furthered by rational means, judgment about the wisdom of such legislation remain within the legislative and exclusive branches. The retroactive legislation does not have to meet a burden not faced by legislation that has only future effects, but that burden is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose,'' and that is Pension Benefit Guaranty Corporation v. R.A. Gray & Company decided by the Supreme Court in 1984.

This bill aims to save the national food industry from bankruptcy due to pending lawsuits and is an enactment pursuant to a national economic policy. The Supreme Court also upheld the retroactive application of the liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 against the challenge that the withdrawal liability provisions violated the fifth amendment taking of property clause.

The provision of the Act that required an employer to fund its share of a pension plan was viewed by the court as a law regulating economic activity to promote the common good. Therefore, the law was not an invalid taking of property for which compensation was due. That is Connolly v. Pension Benefit Guaranty Corporation, 1986.

This amendment is a bad one. It is designed to gut the legislation and should be defeated.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I move to strike the last word.

I rise to support of the Watt amendment, and would offer to say to the

gentleman from Wisconsin (Mr. SENSENBRENNER), this is a vital amendment. This happens to seek to eliminate the retroactivity of the very point that I previously made regarding the ongoing and pending lawsuits, particularly on the Ephedra issue.

Let me cite an example to show how deadening and devastating this legislation would be passed with the anti or retroactive language in it that would then stop at the courthouse steps; more seriously, stop at the bench of the judge those ongoing litigation matters that are now pending.

I gave some comfort by suggesting that I would not attribute anything misdirected or mean-spirited to this legislation; I assume there is some purpose for it, but I cannot imagine why we would want to close the door on those who have suffered.

Let me cite an example. Earline Cook has filed a wrongful death claim in the United States District Court for Western Missouri against several companies after her husband passed away in July 2001 after taking a product containing Ephedra. Mr. Cook was a decorated military veteran who died after ingesting an Ephedra-based product while playing basketball on a military base. The autopsy and military investigation concluded that death was caused by the Ephedra-based product. The military base recently named the gymnasium after Mr. Cook in recognition of his dedication and service to the Army and his efforts to stay in top physical shape during his military career.

Her case is currently pending, and I will submit the actual lawsuit into the RECORD because, for some reason, my colleagues seem to think we are giving up smoke, and I would tend to think this is to the contrary.

This is so important because dietary supplements are covered by this legislation. Section 321(ff) of the Food, Drug and Cosmetic Act says ''a dietary supplement shall be deemed to be a food within the meaning of this chapter,'' and this language is referred to in this legislation.

So the Watt amendment is an excellent amendment because the gentleman is trying to protect the likes of Ms. Cook who is innocent, and while she has filed in a Federal court, unbeknownst to her, we are on the floor of the House undermining, cancelling her lawsuit. Might I just say, what a tragedy.

I imagine we could name a number of serious incidents that are ongoing that have resulted in lawsuits regarding Ephedra, and maybe we can list a number of other dietary supplements as food supplements as section 321(ff) suggests. It is the height of hypocrisy that the case that is pending is that of a decorated military veteran who was attempting to stay at full measure to serve his country and who was playing basketball on a military base. This lawsuit is ongoing, and I cannot understand why we would want to douse this widow's opportunity to petition in a court of law.

We have already said that the judicial system works, and I cannot imagine why we are here today playing with the lives and the ability to achieve justice of those who are here in this country, and particularly as this particular case suggests, those are willing to give the ultimate measure for this Nation.

This is a straightforward amendment which carries with it the weight of rightness, and that is that you cannot have retroactivity in this bill. That would deny people the right to access their rights in court.

My conclusion is that I beg to differ with anyone who would say that this is not covered, food supplements are not covered in this bill because they need to read section 321(ff). The Food, Drug and Cosmetic Act says ''a dietary supplement shall be deemed to be a food within the meaning of this chapter.'' It is covered, and this amendment should pass. I ask my colleagues to support the Watt amendment.

Mr. Chairman, I urge everyone to vote ''yes'' to the first of my two amendments, ''MJ_004'' to ensure that dietary supplement manufacturers don't get away with murder.

This bill bans not only so-called ''obesity-related suits,'' but any civil action that ''relate[s] to . . . a person's consumption of a qualified product . . . and any health condition that is associated with a person's weight gain.'' Note that the person with the health condition does not have to be obese, they only have to have a health condition that obese people also have. Heart disease and kidney problems would be some of those diseases, for example. Hidden in this convoluted definition is the fact that this bill will shield the producers of dietary supplements from all liability. I offer this amendment to ensure that makers of these highly dangerous—and highly unregulated—drugs are held accountable for their actions.

Under the Food, Drug and Cosmetic Act, all laws that apply to ''food'' apply to dietary supplements unless they explicitly exempt them. That means this bill also limits the liability of dietary supplement manufacturers. Unlike hamburgers and french fries, dietary supplements often have hidden side effects that have immediate and dire consequences. And unlike drugs, these supplements neither have to test for side effects nor report them to the Federal Government.

Our current system isn't sufficient to deal with this threat. Consider ephedra. The FDA started investigating ephedra in 1997. It's now 7 years, 18,000 adverse reactions, and at least 155 deaths later—and it's just now being pulled off the shelves. Despite the reports of strokes, seizures, heart attacks, and sudden death, ephedra was allowed to stay on the market.

Now that ephedra is gone, new diet drugs are already taking its place: bitter orange, aristolochic acid, and usnic acid. All three have been associated with kidney and liver problems. And while the FDA claims that it will look into the matter, we all saw what happened the last time the FDA began its cumbersome process. How many people will die this time? While the government works through its bureaucratic process, we have to let people have their day in court to stop these tragic events from happening again.

Vote ''aye'' for this amendment and make sure that this bill is limited to what it claims to stop—frivolous obesity cases, and not meritorious claims against dangerous drug manufacturers.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION

EARLINE COOK, surviving spouse of HENRY L. COOK, deceased, and administrator of the Estate of Henry L. Cook, deceased,

Plaintiff,

v.

CYTODYNE TECHNOLOGIES, INC., a New Jersey corporation, Serve: Robert Chinery, Jr., Cytodyne Technologies, Inc., 2231 Landmark Place, Manasquan, New Jersey 08736,

and

NUTRAQUEST, INC., a New Jersey corporation, Serve: Robert Chinery, Jr., Nutraquest, Inc., 2231 Landmark Place, Manasquan, New Jersey 08736,

and

ROBERT CHINERY, JR., individually,

and

PHOENIX LABORATORIES, INC., a New York corporation, Serve: Mel L. Rich, President and CEO, Phoenix Laboratories, Inc., 140 Lauman Lane, Hicksville, New York 11801,

and

GENERAL NUTRITION CENTER, INC., d/b/a GNC, a Pennsylvania corporation, Serve: General Nutrition Center, Inc., c/o United States Corporation Company, 221 Bolivar, Jefferson City, MO 65101,

and

GENERAL NUTRITION CORPORATION, d/b/a GNC, a Pennsylvania corporation, Serve: Michael K. Meyers, President & CEO, General Nutrition Corporation, Inc., 921 Penn Avenue, Pittsburgh, PA 15222,

and

FICTITIOUS DEFENDANTS A,B,C, and D,

Defendants.

COMPLAINT

COMES NOW, Plaintiff, individually, on behalf of the class of claimants entitled to recover for the wrongful death of Henry L. Cook and as Administrator of the Estate of Henry L. Cook, and for her Complaint states and alleges as follows:

Type of Case

1. This is a wrongful death action brought against Defendants under Missouri law, §537.080 RSMo. for the wrongful death of Henry L. Cook on or about July 17, 2001. This action is brought by Plaintiff, Earline Cook, both individually as the surviving spouse of Henry L. Cook, as representative for the class claimants under §537.080 RSMo. and as the duly appointed administrator of the Estate of Henry L. Cook. Decedent Henry L. Cook used Defendants', Cytodyne Technologies, Inc. (hereinafter ''Cytodyne'')/Nutraquest, Inc. (hereinafter ''Nutraquest'') product—Xenadrine RFA–1—preceding his death on or about July 17, 2001. As a direct and proximate result of taking this product decedent Henry L. Cook was caused to suffer physical injury and death by sudden cardiopulmonary arrest. The Xenadrine RFA–1 product is manufactured by Cytodyne/Nutraquest and Defendant Phoenix Laboratories, Inc. (hereinafter ''Phoenix''), and was sold and marketed through General Nutrition Center, Inc. and/or Defendant General Nutrition Corporation (hereinafter jointly referred to as ''GNC'') retail outlets. The events giving rise to Henry L. Cook's death occurred in St. Joseph, Missouri. This action seeks monetary damages for the personal injuries and wrongful death caused by

the Xenadrine RFA–1 product, and for Earline Cook's loss of the consortium of her husband and for all the damages allowed by law.

Parties

2. Plaintiff, Earline Cook, is an adult resident of St. Joseph, Buchanan County, Missouri.

3. Defendant, Cytodyne Technologies, Inc. (''Cytodyne'') is a corporation organized and existing under the laws of New Jersey. Cytodyne's principal place of business is located at 2231 Landmark Place, Manasquan, New Jersey, 08736. At all times relevant hereto, Cytodyne was in the business of manufacturing, marketing, selling and distributing Xenadrine RFA–1.

4. Defendant Cytodyne is a foreign corporation that is not registered or qualified to do business in the State of Missouri. Cytodyne does not have a registered agent for service of process in Missouri. Cytodyne Technologies may be served through any of its officers at its principal place of business at 2231 Landmark Place, Manasquan, New Jersey, 08736.

5. Defendant, Nutraquest, Inc. (''Nutraquest'') is a corporation organized and existing under the laws of New Jersey. Nutraquest's principal place of business is located at 2231 Landmark Place, Manasquan, New Jerseys, 08736. Nutraquest, Inc. was formerly known as Cytodyne Technologies, Inc. At all times relevant hereto, Nutraquest was in the business of manufacturing, marketing, selling and distributing Xenadrine RFA–1.

6. Defendant Nutraquest is a foreign corporation that is not registered or qualified to do business in the State of Missouri. Nutraquest does not have a registered agent for service of process in Missouri. Nutraquest may be served through any of its officers at its principal place of business at 2231 Landmark Place, Manasquan, New Jersey, 08736.

7. Defendant Robert Chinery, Jr. (''Chinery'') is an individual residing in New Jersey. At all times relevant hereto, Chinery was the founder, sole shareholder and a corporate officer of Cytodyne/Nutraquest. On information and belief, prior to the formation of Cytodyne/Nutraquest, Chinery created, developed, tested, manufactured, distributed and/or sold Xenadrine RFA–1 (under that name or a different name) individually. Chinery personally had knowledge of and knowingly participated in the actions of Cytodyne/Nutraquest giving rise to liability as set forth within this Complaint. Additionally, upon information and belief, Chinery owns 100% of Cytodyne/Nutraquest's stock and Cytodyne/Nutraquest is so dominated by Chinery that to avoid injustice the corporate form of Cytodyne/Nutraquest should be disregarded and Chinery should be held personally and individually responsible for the actions of Cytodyne/Nutraquest.

8. Defendant, Phoenix Laboratories, Inc. (''Phoenix'') is a corporation organized and existing under the laws of the State of New York. Phoenix's principal place of business is located at 140 Lauman Lane, Hicksville, New York, 11801. At all times relevant hereto, Phoenix was in the business of manufacturing, formulating, producing, marketing, selling and distributing Xenadrine RFA–1.

9. Defendant Phoenix is a foreign corporation that is not registered or qualified to do business in the State of Missouri. Phoenix does not have a registered agent for service of process within the State of Missouri. Defendant Phoenix may be served through Mel L. Rich, its President and Chief Executive Officer, at its principal place of business, 140 Lauman Lane, Hicksville, New York 11801.

10. Defendant General Nutrition Center, Inc. d/b/a GNC is a corporation organized and existing under the laws of the State of Pennsylvania. Defendant General Nutrition Center, Inc. is not registered or qualified to do business in the State of Missouri with its principal place of business at 921 Penn Avenue, Pittsburgh, Pennsylvania. Defendant General Nutrition Center, Inc. may be served through its registered agent in Missouri, the United States Corporation Company, 221 Bolivar, Jefferson City, Missouri 65101.

11. Defendant General Nutrition Corporation d/b/a/ GNC is a corporation organized and existing under the laws of the State of Pennsylvania. Defendant General Nutrition Corporation is not registered or qualified to do business in the State of Missouri. Defendant General Nutrition Corporation does not have a registered agent for service of process within the State of Missouri. Defendant General Nutrition Center, Inc. may be served through Mr. Michael K. Meyers, its President and Chief Executive Officer at its principal place of business, 921 Penn Avenue, Pittsburgh, Pennsylvania 15222.

12. Defendant General Nutrition Center, Inc. and Defendant General Nutrition Corporation are both names under which the same business and/or corporation has operated and may be jointly referred to within this Complaint as GNC.

13. Fictitious Defendants, A, B, C, and D, are those persons, franchisees, sales representatives, district managers, firms or corporations whose actions, inactions, fraud, scheme to defraud, and/or other wrongful conduct caused or contributed to the injuries sustained by Plaintiff and Decedent, whose true and correct names are unknown to Plaintiff at this time, but will be substituted by Amendment when ascertained. At all times relevant hereto, the fictitious defendants were in the business of marketing, formulating, producing, selling and distributing Xenadrine RFA–1.

14. At all times relevant hereto, Defendants were in the business of manufacturing, marketing, producing, formulating, selling and distributing Xenadrine RFA–1.

Jurisdiction and Venue

15. The matter in controversy significantly exceeds, exclusive of interest and costs, the sum of $75,000 and is properly before this Court.

16. This Court has personal jurisdiction over Cytodyne/Nutraquest pursuant to §506.500 RSMo. because this cause of action accrued in Missouri and arises our of (1) the transaction of business within the State of Missouri by Cytodyne/Nutraquest and its employees; and (2) the commission of tortious acts by Cytodyne/Nutraquest and its employees within the State of Missouri.

17. This Court has personal jurisdiction over Chinery pursuant to §506.500 RSMo. because this cause of action accrued in Missouri and arises out of (1) the transaction of business within the State of Missouri by Chinery through his alter ego—Cytodyne/Nutraquest; and (2) the commission of tortuous acts by Chinery through his alter ego—Cytodyne/Nutraquest within the State of Missouri. Additionally, Chinery, as a corporate officer of Cytodyne/Nutraquest, knowingly participated in the actions and conduct of Cytodyne/Nutraquest giving rise to the liability set forth herein and therefore (1) transacted business within the State of Missouri; and (2) committed tortuous acts within the State of Missouri.

18. This Court has personal jurisdiction over Phoenix pursuant to §506.500 RSMo. because this cause of action accrued in Missouri and arises out of (1) the transaction of business within the State of Missouri by Phoenix and its employees; and (2) the commission of tortious acts by Phoenix and its employees within the State of Missouri.

19. This Court has personal jurisdiction over GNC pursuant to §506.500 RSMo. because this cause of action accrued in Missouri and arises out of (1) the transaction of business within the State of Missouri by GNC and its employees; and (2) the commission of tortious acts by GNC and its employees within the State of Missouri.

20. This Court has personal jurisdiction over Fictitious Defendants A, B, C and D pursuant to §506.500 RSMo. because this cause of action accrued in Missouri and arises out of (1) the transaction of business within the State of Missouri by Fictitious Defendants A, B, C and D and their employees; and (2) the commission of tortious acts by Fictitious Defendants A, B, C and D and their employees within the State of Missouri.

21. Plaintiff's claim for wrongful death accrued in Missouri. On information and belief, the Xenadrine RFA–1 was purchased and ingested by decedent in Missouri—specifically in St. Joseph, Missouri within the Western District of Missouri. Decedent resided in St. Joseph, Missouri within the Western District of Missouri at the time of his death. Plaintiff currently resides in St. Joseph, Missouri within the Western District of Missouri. Defendants include an individual non-resident and foreign corporations, one or more of which has been and are currently engaged in business, directly or by authorized agent, in Missouri. Defendants GNC's registered agent is specifically located within this division of the Western District of Missouri in Jefferson City, Missouri.

22. Venue is appropriate before this Court pursuant to §508.010 RSMo as defendants include both individuals and corporations and all defendants are non-residents of Missouri. Furthermore, Defendant GNC's registered agent is located in Jefferson City, Missouri.

General Allegations

23. Decedent Henry Lee Cook was born on June 16, 1953 in Yazoo City, Mississippi. Decedent Henry L. Cook and Plaintiff Earline Cook were married on January 21, 1985.

24. At the time of his death, decedent Henry L. Cook was employed with the United States Army as a military police officer, having attained the rank of Sergeant Major.

25. Prior to his death, decedent Henry L. Cook was in good health and physical condition and regularly engaged in physical activities such as running, playing basketball and other exercise. Mr. Cook regularly worked out at the gym at work approximately four times a week and regularly engaged in physical activities.

26. Upon information and belief, at a point in time relatively shortly before his death, decedent Henry L. Cook purchased Xenadrine RFA–1 from Defendant GNC's store located in St. Joseph, Missouri. Thereafter, up to and including on the date of his death, decedent Henry L. Cook regularly took the Xenadrine RFA–1 product in accordance with the recommended dosages contained on the Xenadrine RFA–1 bottle.

27. On July 17, 2001, decedent Henry L. Cook ingested the recommended dosage of Xenadrine RFA–1 product in St. Joseph, Missouri.

28. At approximately 11:30–11:45 a.m. on July 17, 2001, decedent Henry L. Cook—while playing basketball at Ft. Leavenworth, Kansas—collapsed and was non-responsive. Military personnel on the scene immediately attempted to administer cardio pulmonary resuscitation until emergency personnel arrived. Emergency personnel attempted electronic shock treatment but were unable to revive decedent Henry L. Cook. Henry L. Cook was immediately transported via ambulance to the local hospital where he was pronounced dead at 12:50 p.m.

29. Because of the sudden and unexpected nature of decedent Henry L. Cook's death,

the United States Army conducted an investigation into decedent Henry L. Cook's cause of death.

30. During the investigation, military investigators seized a bottle of Xenadrine RFA–1. At the time of decedent Henry L. Cook's death, the bottle of Xenadrine RFA–1 had 52 of the original 120 pills remaining in the bottle.

31. An autopsy was performed on decedent Henry L. Cook on July 18, 2001.

32. Toxicology reports from the autopsy revealed ephedrine and pseudoephedrine in the heart blood (respectively 140 ng/ml and 47.1 ng/ml).

33. Toxicology reports from the autopsy also revealed ephedrine and pseudoephedrine in the femoral blood (respectively 46.6 ng/ml and 18.5 ng/ml).

34. The autopsy results support the conclusion that the ephedrine contained in the Xenadrine RFA–1 ingested by decedent Henry L. Cook prior to his death caused or contributed to cause decedent Henry L. Cook's death.

35. As a direct and proximate result of defendants' acts and omissions, plaintiff's decedent Henry L. Cook was caused to suffer injuries and death. Plaintiff has been caused to suffer damages in the past from the loss of her husband, and will continue to experience this loss in the future. Upon the trial of this case, Plaintiff will request the Jury to determine fair compensation for the amount of loss which Plaintiff and others have incurred in the past and will likely incur in the future as a result of the wrongful death of Henry L. Cook.

Xenadrine RFA–1 and Defendants' Knowledge Concerning its Dangerous Propensities

36. Xenadrine RFA–1 is an ephedra-containing dietary supplement/herbal product.

37. In addition to ephedra, Xenadrine RFA–1 contains other constituent ''herbal'' products that increase and potentiate the effects of ephedrine. Likewise, Xenadrine RFA–1 contains ephedrine alkaloids other than ephedine.

38. Defendants did manufacture, design, formulate, produce, package, market, sell and/or distribute Xenadrine RFA–1.

Mr. KELLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am asking my colleagues to vote no on the Watt amendment dealing with the pending lawsuits.

This amendment was raised at the Committee on the Judiciary. The gentleman made similar, consistent arguments, and it was shot down at the time.

I would like to give three reasons why my colleagues should vote no. First of all, there is a good policy reason to vote no. Second, the Supreme Court will uphold this; and third, we have done similar language before in other bipartisan bills.

First, with respect to the reason of policy, if such an amendment were passed, all that would happen is we would have hundreds if not more cases filed before the date of enactment, and we know that after this bill passes today, it has to pass the other body where we have Senator MCCONNELL as the chief sponsor, so there would be a time frame where there would be an incentive to find the right jury and the right judge.

We have an idea that is sort of their game plan because the one witness the Democrats called at the Committee on the Judiciary hearing was a man named John Banzhaf who said, ''Somewhere there is going to be a judge and a jury that will buy this, and once we get the first verdict, as we did with tobacco, it will open the floodgates.'' So it does away with that incentive that clearly they want.

Second, the Supreme Court has held that Congress can impose rules retroactively if it does so pursuant to an economic policy. The Pension Benefit Guaranty Corporation v. R.A. Gray is one example. Clearly a bill that aims to save the food industry from potentially bankrupting litigation like that of the tobacco industry is pursuant to a national economic policy, especially since it is the largest private sector employer in the country.

Third, this exact same language appeared in H.R. 1036, the Protection of Lawful Commerce and Arms Act, which enjoyed wide bipartisan support in this House and received 285 votes. I know the gentleman from North Carolina (Mr. WATT) is going to say yes, but that bill was defeated in the Senate. Fair enough, it was defeated in the Senate, but it was because gun control measures were added to it. There were no changes to this particular provision. It has enjoyed broad bipartisan support in the past. I urge my colleagues to vote no on the Watt amendment.

Mr. SCOTT of Virginia. Mr. Speaker, I move to strike the requisite number of words.

Mr. Chairman, just because we made something retroactive in the past does not make it a good idea. It is a bad idea to pass legislation that retroactively affects pending lawsuits.

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

Mr. SCOTT of Virginia. I yield to the gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I just want to briefly make it clear that my colleagues are trying to make it appear that this is a customary practice of ours. It really is a rare thing to make a piece of legislation retroactive, and even rarer to make it retroactive to pending lawsuits that have already been filed.

I have got a whole list of things that we have filed that one could argue might be better candidates for retroactive application than this particular piece of legislation that our own committee has passed out. And to hang our hats on something that the Senate did not even think was worthy of passing on to the President is a real stretch.

I am going to resist the temptation to start reading the bills that the Committee on the Judiciary has passed without retroactivity but things like the Bill Emerson Good Samaritan Food Donation Act, which limited the liability of those who donate food to a charity, we did not even make that retroactive in its application.

There are a bunch of things that we passed, and I am the first to concede, as the chairman acknowledged in his statement, I am not arguing this is unconstitutional or even unprecedented, I think it is unfair and unnecessary in this case.

The CHAIRMAN pro tempore (Mr. BASS). The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

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

Mr. WATT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from North Carolina (Mr. WATT) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 10 offered by the gentlewoman from Texas (Ms. JACKSON-LEE); and amendment No. 8 offered by the gentleman from North Carolina (Mr. WATT).

The first electronic vote will be conducted as a 15-minute vote. The remaining electronic vote will be conducted as a 5-minute vote.

AMENDMENT NO. 10 OFFERED BY MS. JACKSON-LEE of texas

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 166, noes 250, not voting 17, as follows:

[Roll No. 52]

AYES—166

Abercrombie	Conyers	Grijalva
Ackerman	Crowley	Gutierrez
Allen	Cummings	Hastings (FL)
Andrews	Davis (AL)	Hill
Baca	Davis (CA)	Hinchey
Baldwin	DeFazio	Hoeffel
Ballance	DeGette	Holt
Becerra	Delahunt	Honda
Berman	DeLauro	Hooley (OR)
Berry	Deutsch	Hoyer
Bishop (GA)	Dicks	Inslee
Bishop (NY)	Dingell	Israel
Blumenauer	Doggett	Jackson (IL)
Boswell	Dooley (CA)	Jackson-Lee (TX)
Brady (PA)	Doyle	Jefferson
Brown (OH)	Emanuel	Johnson, E. B.
Brown, Corrine	Engel	Jones (OH)
Capps	Eshoo	Kanjorski
Capuano	Etheridge	Kaptur
Cardin	Evans	Kennedy (RI)
Carson (IN)	Farr	Kildee
Carson (OK)	Fattah	Kilpatrick
Case	Filner	Kind
Chandler	Frost	Kleczka
Clay	Gonzalez	Lampson
Clyburn	Green (TX)	

Langevin
Lantos
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—250

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Menendez
Mica
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—17

Bell
Berkley
Cardoza
Davis (IL)
Frank (MA)
Gephardt
Gibbons
Goss
Harman
Hinojosa
Kucinich
Miller (FL)
Pelosi
Rodriguez
Tauzin
Udall (CO)
Wicker

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. BASS) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1738

Mr. YOUNG of Alaska and Mr. BLUNT changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. WATT

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from North Carolina (Mr. WATT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 164, noes 249, not voting 20, as follows:

[Roll No. 53]

AYES—164

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Ballance
Becerra
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Coble
Conyers
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Hastings (FL)
Hill
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Lampson
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey

NOES—249

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hyde
Isakson
Issa
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Langevin
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Michaud
Miller (MI)
Miller, Gary
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)

Rohrabacher
Ros-Lehtinen
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—20

Bell
Berkley
Bono
Cardoza
Davis (IL)
Frank (MA)
Gephardt
Gibbons
Goss
Harman
Hinojosa
Hunter
Istook
Kucinich
Miller (FL)
Pelosi
Rodriguez
Tauzin
Udall (CO)
Wicker

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1745

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SIMPSON) having assumed the chair, Mr. BASS, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 339) to prevent frivolous lawsuits against the manufacturers, distributors, or sellers of food or non-alcoholic beverage products that comply with applicable statutory and regulatory requirements, pursuant to House Resolution 552, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 15-minute vote.

The vote was taken by electronic device, and there were—yeas 276, nays 139, not voting 18, as follows:

[Roll No. 54]

YEAS—276

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Holden
Hooley (OR)
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Menendez
Mica
Michaud
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spratt
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NAYS—139

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Ballance
Becerra
Berman
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Case
Chandler
Clay
Clyburn
Conyers
Costello
Crowley
Cummings
Davis (CA)
Davis (FL)
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frost
Gonzalez
Grijalva
Gutierrez
Hastings (FL)
Hinchey
Hoeffel
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Lantos
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Price (NC)
Rahall
Rangel
Reyes
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Slaughter
Snyder
Solis
Stark
Strickland
Stupak
Thompson (MS)
Tierney
Towns
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey

NOT VOTING—18

Bell
Berkley
Cardoza
Carson (IN)
Davis (IL)
Frank (MA)
Gephardt
Gibbons
Goss
Harman
Hinojosa
Kucinich
Miller (FL)
Pelosi
Rodriguez
Tauzin
Udall (CO)
Wicker

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1803

So the bill was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: ''A bill to prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for claims of injury relating to a person's weight gain, obesity, or any health condition associated with weight gain or obesity.''.

A motion to reconsider was laid on the table.