

they put in the extra effort to make sure they keep track of the guns in their inventory. But why should any small businessperson put in the effort to comply with their responsibilities if the Federal government cannot shut down the guy across the street who acts irresponsibly? Why would anyone take the time and expense to do the right thing if they are going to be run out of business by the few bad apples doing the wrong thing?

This is the danger we face if H.R. 5092 becomes law. This law will not protect law-abiding gun dealers. In fact, it will make them victims of the lawbreakers, by tying the hands of the hard-working Federal agents who work to keep illegal guns off our streets. I urge my colleagues to vote "no" on H.R. 5092, and protect small businesspeople and the general public from those few gun dealers who are too irresponsible to comply with the law.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I appreciate this opportunity to explain my concerns with the bill, H.R. 5092. My primary concern with the bill is that it hampers the ability of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) to put corrupt gun dealers out of business, and thus help reduce the carnage taking place in many of the Nation's major urban centers.

H.R. 5092 was introduced by Mr. COBLE and Mr. SCOTT as a bipartisan attempt to address enforcement issues raised during ATF oversight hearings conducted by the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. Specifically, those hearings focused on ATF's Richmond gun show enforcement program and generally on ATF's licensing and revocation authority over Federal Firearms Licensees.

The bill addresses a number of issues relating to ATF's enforcement authority, including authorization of civil penalties (e.g., fines and suspensions); creation of independent Administrative Law Judges to hear enforcement cases; definition of serious and non-serious violations; DOJ Inspector General investigation of ATF gun show enforcement program; limitation on ATF authorities; clarification of several enforcement regulations; and, most significantly, modification of the requisite intent for violations.

The bill provides in Sec. 4, entitled "Definition of Willfully," that "willfully" is defined as: "intentionally, purposely, and with the intent to act in violation of a known legal duty."

My concern with this provision of the bill is that it defines "willfully" to impose a much higher standard of proof upon law enforcement officials than currently. There does not appear to be any compelling reason for increasing the government's evidentiary burden at this time. The definition of willfulness is well-settled in the law and means that defendant knew his conduct was unlawful; not that he knew of the specific statute he is accused of violating or had the specific intent to violate that precise provision.

Mr. Speaker, changing the evidentiary standards governing elements of penal offenses should be done sparingly and with the utmost care. This is particularly true where, as here, we do not have the benefit of the considered views of thoughtful criminal law scholars, experienced prosecutors and police officers with front-line experience, or the Department of Justice.

The redefinition of "willfully" contained in the bill illustrates my concern. As I noted, the bill

defines willfully as "intentionally, purposely, and with the intent to act in violation of a known legal duty." This definition, however, has been repeatedly rejected by the Federal courts. *Bryan v. U.S.*, 524 U.S. 184 (1998); *U.S. v. Andrade*, 135 F.3d 104 (1st Cir. 1998); *U.S. v. Allah*, 130 F.3d 33 (2d Cir. 1997); *U.S. v. Collins*, 957 F.2d 72 (2d. 1992)

In the Bryan case, the defendant was convicted of willfully dealing in firearms without a Federal license. Specifically, the defendant did not have a Federal firearms license; he used "so-called "straw purchasers" in Ohio to acquire pistols he could not have bought himself; that he knew the straw purchasers made false statements when purchasing the guns; that defendant assured the straw purchasers that he would file off the serial numbers; and that defendant resold the guns on Brooklyn street corners known for drug dealing. Despite this conduct, defendant claimed that he could not be convicted under the Federal firearms laws unless the government proved he knew of the Federal licensing requirement. The Supreme Court rejected this claim, stating:

"the willfulness requirement . . . does not carve out an exception to the traditional rule that ignorance of the law is no excuse; knowledge that the conduct is unlawful is all that is required." 524 U.S. at 193.

Similarly, in another case, *U.S. v. Collins*, the Second Circuit rejected the argument that willfully requires proof that defendant had specific knowledge of the Federal firearms license requirements, stating:

"[T]he element of willfulness not contained in §922(a)(1) was meant to be read broadly to require only that the government prove that defendant's conduct was knowing and purposeful and that the defendant intended to commit an act which the law forbids." 957 F.2d at 76.

According to the court, the government was not required to prove more than just the defendant's general knowledge that he or she is violating the law." *Id.* at 75.

Other courts have reached similar conclusions and I list them in my statement. The point, Mr. Speaker, is that the Federal firearms license statute is and has been an important tool for law enforcement to crack down on the illegal trafficking in firearms and the wanton violence this conduct exacerbates. I do not believe that a compelling case has been made on this record to take this tool away from law enforcement. Neither does the American Bar Association nor several former directors of the ATF. Therefore, I would urge my colleagues to vote against the bill.

Mr. VAN HOLLEN. 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. 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. 5092, as amended.

The question was taken.

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

Mr. VAN HOLLEN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the

Chair's prior announcement, further proceedings on this question will be postponed.

AUTHORIZING SALARY ADJUSTMENTS FOR JUSTICES AND JUDGES OF THE UNITED STATES

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5454) to authorize salary adjustments for Justices and judges of the United States for fiscal year 2007.

The Clerk read as follows:

H.R. 5454

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

SECTION 1. AUTHORIZATION OF SALARY ADJUSTMENTS FOR FEDERAL JUSTICES AND JUDGES.

Pursuant to section 140 of Public Law 97-72, Justices and judges of the United States are authorized during fiscal year 2007 to receive a salary adjustment in accordance with section 461 of title 28, United States Code.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Maryland (Mr. VAN HOLLEN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

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 materials on H.R. 5454 currently under consideration.

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

There was no objection.

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

Mr. Speaker, I rise in support of H.R. 5454, to provide a cost-of-living adjustment for Federal judges in fiscal year 2007.

In 1975, Congress enacted the Executive Salary Cost of Living Adjustment Act to give judges and Members of Congress and high-ranking executive branch officials automatic COLAs accorded other Federal employees unless rejected by Congress. In 1981, Congress amended the statute by enacting section 140 of Public Law 97-92, which requires specific congressional authorization to grant judges a COLA. The legislation we consider today is substantially similar to other cost-of-living increases for Federal judges approved in previous fiscal years.

Mr. Speaker, I believe in fairness, which is why I introduced this bill to ensure that Federal judges receive a COLA when other civil servants, including Members of Congress, receive theirs. I urge Members to support this legislation.

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

Mr. CONYERS. Mr. Speaker, I ask unanimous consent to control the remainder of the legislation under suspension.

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

There was no objection.

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

I rise in support of the legislation. It is a collection of a number of bills, a majority of which have passed favorably through the Subcommittee on Courts with little or no controversy.

There are five titles: the Pay Adjustment for Federal Judges; the Courts and Intellectual Property Legislation; the Jurisdiction of Federal Circuit over Patent Cases; the Diversity Jurisdiction of Federal Courts; and, finally, the Multidistrict Litigation in the Lexecon case before the Supreme Court.

The most important is the pay adjustment for Federal judges, because we provide a cost-of-living pay adjustment for 2007. The Federal judges do not receive such COLAs unless Congress provides specific statutory authorization each year. It is my hope that some day we will make it automatic. Members of the Federal judiciary deserve this raise. We have a number of Federal judges who are forced to turn back their appointment because the salary is inadequate to their basic needs.

We appreciate the hardworking men and women who serve; and to me, this is an important part of the constitutional democracy that we have formed here, and we must do everything to ensure that we attract and retain the highest quality of judges.

Now, these members of the judiciary are called to duty by a sense of honor, and the judges already make far less than most of them could earn in private firms. And while this pay disparity will exist, Congress should at least ensure that judicial pay does not effectively shrink. And so the failure to give judges a COLA would constitute in effect such a reduction in pay.

Title II contains a number of measures. We respond in part to the devastation caused by Hurricane Katrina by permitting the Patent and Trademark Office director to extend deadlines during emergencies.

Section 202 is a resolution honoring the 25th anniversary of the Bayh-Dole Act, and that is Senator Bayh, Sr., who formerly served from the great State of Indiana. And this measure enhanced public and private partnerships for the commercialization of inventions.

Section 203 of the bill requires that each Federal or State court recognize out-of-state notarial acts that meet the following two conditions that are indicated in the measure.

Title III of the bill clarifies the Federal Circuit Court of Appeals has exclusive jurisdiction to hear patent appeals, and that I think is extremely important. The goal of title III is to maintain the integrity of the patent system.

Title IV amends the laws governing diversity jurisdiction. And this is an important and critical area.

And then finally we have the Multidistrict Litigation, which has been passed several times, but never acted on by the other body.

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This title would overturn the Supreme Court case called the Lexecon decision. While I have supported this legislation in the past, I have consistently noted several concerns that I hope will be able to be addressed in our discussions that I anticipate with the Senate. I urge my colleagues to support this measure before the House on the suspension calendar.

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

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

I want to clarify the record. The only thing that is in H.R. 5454 is the judges' COLA. I think it is relatively noncontroversial, but it is a housekeeping thing that we have to do before the session adjourns.

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

The SPEAKER pro tempore (Mr. CAMPBELL of California). 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. 5454.

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

A motion to reconsider was laid on the table.

COPYRIGHT ROYALTY JUDGES PROGRAM TECHNICAL CORRECTIONS ACT

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1036) to amend title 17, United States Code, to make technical corrections relating to Copyright Royalty Judges, and for other purposes.

The Clerk read as follows:

Senate amendment:

On page 16, line 4 through 7, strike and insert the following:

SEC. 5. PARTIAL DISTRIBUTION OF ROYALTY FEES.

Section 801(b)(3)(C) of title 17, United States Code, is amended—

(1) by striking all that precedes clause (i) and inserting the following:

“(C) Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants—”; and

(2) in clause (i), by striking “such” and inserting “the”.

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided under subsection (b), this Act and the amendments

made by this Act shall be effective as if included in the Copyright Royalty and Distribution Reform Act of 2004.

(b) PARTIAL DISTRIBUTION OF ROYALTY FEES.—Section 5 shall take effect on the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

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. 1036, the bill under consideration.

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

There was no objection.

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

Mr. Speaker, I rise in support of H.R. 1036, the Copyright Royalty Judges Program Technical Corrections Act. This legislation amends certain technical aspects of the copyright act that were substantively amended by Congress' enactment of the Copyright Royalty and Distribution Reform Act of 2004.

At the outset, it should be noted that H.R. 1036 was considered by the House under suspension of the rules last November and passed by a voice vote. The other body took up the bill in July and amended it to incorporate related noncontroversial language from the text of H.R. 5593, the Royalty Distribution Clarification Act of 2006.

Copyright Royalty Judges are responsible for distributing hundreds of millions of dollars in royalty payments to rightful copyright holders to make partial distributions of any noncontested royalties prior to the end of a distribution proceeding. The purpose of H.R. 5593 and the Senate amendment now before us is to provide the judges the ability to more efficiently administer their fiduciary duties and enable copyright holders whose works are used under the various compulsory licenses contained in title 17 of the United States Code to have greater access to their own funds.

Like the earlier version approved by the House, this iteration of H.R. 1036 makes only noncontroversial changes in the copyright royalty and distribution system.

The enactment of this bill will assist the CRJs and the Library of Congress in administering the copyright royalty and distribution system and help to resolve disputes in a more efficient, predictable, and rational manner.

I urge my colleagues to support this bill and send it to the President for his signature.

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