leader in health care provision in our country. I urge my colleagues to join with me in supporting this legislation.

INTRODUCTION OF THE DISCOUNT PRICING CONSUMER PROTECTION ACT OF 2009

HON. HENRY C. "HANK" JOHNSON, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 13, 2009

Mr. JOHNSON of Georgia. Madam Speaker, today I am pleased to introduce the Discount Pricing Consumer Protection Act of 2009. I am joined in my efforts by the honorable Chairman of the Judiciary Committee, Representative JOHN CONYERS of Michigan.

The purpose of this bill is to undo the harm to consumers posed by the Supreme Court's 2007 decision in Leegin Creative Leather Products, Inc. v. PSKS, Inc. In Leegin, the Supreme Court overturned 95 years of antitrust jurisprudence by reversing its 1911 decision in Dr. Miles Med. Co. v. John D. Park & Sons, Co., which had expressly prohibited agreements between manufacturers and distributors on a minimum retail price for their products. Under the precedent set by Leegin, manufacturers are free to pursue this type of anticompetitive price fixing. This bill would negate the Leegin decision by making any such agreements a violation of Section 1 of the Sherman Act.

The philosophical foundation of our nation's antitrust policies is simple: competition benefits consumers. When competitors have no choice but to compete aggressively with one another, it is the customer who benefits from lower prices, better service, increased variety, etc.

The Leegin decision runs contrary to that philosophy. Consumers do not benefit from price fixing. In his dissent in Leegin, Justice Breyer writes that even if only 10 percent of manufacturers implement minimum price fixing policies, the average annual shopping bill for a family of four would increase by between $750 and $1000 annually. In this time of economic hardship, preserving competition and delivering value to consumers is as important as it has ever been.

Retail price competition is essential to promoting this country's culture of entrepreneurship. Small businesses often get their start by offering consumers something they're not getting from more established retailers. In the Internet space, this frequently involves selling goods available in retail locations at lower prices. Here again, where there is competition among retailers, the consumer wins.

The Leegin decision undermines retail competition by making it possible to set a floor price on goods sold in every conceivable outlet. Thus, the retailer who operates with lower overhead or a better cost structure is prevented from passing those cost savings on to consumers. The Supreme Court decision gives manufacturers the cover to strong-arm discount merchants into sustaining artificially high retail prices. True, the Leegin decision doesn't make every such agreement legal; it simply removes the prohibition that made any such agreement illegal on its face. But, as practicing antitrust attorneys will tell you, the enormous evidentiary burdens that a plaintiff faces post-Leegin makes litigating such cases cost-prohibitive. The real-world effect, then, of Leegin is to make such agreements legal.

The benefits of the Leegin decision are dubious. Supporters claim that the decision prevents the "free riding" problem, in which customers do their research at higher-priced bricks-and-mortar outlets but then purchase the product at a lower-priced online retailer. In this manner, the bricks-and-mortar outlet, which invested in the customer service, is denied the benefit of the sale; the online retailer thus "free rides" off of its competitor. But I question this presumption. My children will search out all of the information they can find on high-priced gadgets before going to a store to check them out. Sometimes they buy them on the spot if they don't want to wait for shipping. Which begs the question: who is free-riding off of whom?

A second argument that crops up frequently is that minimum retail prices benefit new entrants. This is so reasonable-sounding that even supporters of the Dr. Miles decision will acknowledge it somewhat apologetically as an exception. But for the 95 years that Dr. Miles controlled, we saw innovation and new entry in every industry. Supporters of Leegin say that minimum retail prices give big retailers the security they need to take a chance on promoting a new product. But many of these concerns can be addressed contractually, in the form of contracts for services, contracts for buybacks, etc. There is no need to overturn settled antitrust law to accomplish indirectly what may be contracted for directly.

The harms of minimum retail price fixing are real and proven. In 1937, Congress passed the Miller-Tydings Act to shield from the federal antitrust laws so-called state "fair trade" laws that permitted manufacturers to set minimum retail prices for their goods. The results were bad for competition and bad for consumers. Studies conducted by the DOJ found that minimum retail price fixing on average increased prices for the affected goods by between 18 and 27 percent, and that elimination of the practice would save consumers $1.2 billion. Congress responded by overturning Miller-Tydings with the passage of the Consumer Goods Pricing Act of 1975. In doing so, Congress examined and rejected various justifications for minimum retail price fixing, finding that the practice served little purpose other than to raise prices for consumers.

The bill I introduce today takes a stand for the consumer. It challenges manufacturers to remain innovative and aggressive, and not rely on side agreements with retailers to guarantee their own profits at the expense of a working family's paycheck. The federal antitrust laws are not an administrative inconvenience, to be done away with when threatened by the challenges of the free market. They are the greatest protection consumers have against the dangers that corporate greed, left unchecked, can pose.

AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009

SPEECH OF

HON. PHIL HARE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 26, 2009

Mr. HARE. Madam Speaker, I rise today in support of H.R. 2454, the American Clean Energy and Security (ACES) Act. While this bill is far from perfect, it truly is the result of multi-region and multi-industry compromise, and I believe it will go a long way toward reducing our nation's carbon footprint.

I commend Energy and Commerce Committee Chairman HENRY WAXMAN and Energy and Environment Subcommittee Chairman EDWARD MARKEY for their efforts in putting together this comprehensive, global climate change legislation. I also commend my friend from Virginia, Representative RICK BOUCHER, for working tirelessly to ensure that coal-producing and coal-consuming states, like my home state of Illinois, can transition to renewable resources in a realistic timeframe.

One of the strongest assets of the ACES Act is its potential to significantly expand the green jobs sector all across America, creating millions of good-paying jobs that cannot be outsourced. Through federal investment in the production of biofuels and manufacture of wind turbines, among other renewable energy technologies and equipment, it is estimated that 3,700 new jobs will be created as a result of this bill in my congressional district alone.

Additionally, the ACES Act protects consumers from steep hikes in utility rates. I am pleased to see that the revenue gained from the allowance process in the bill would partially go toward those Americans most vulnerable to increases in their electric bills. With five separate programs to protect ratepayers from rising costs for natural gas and heating oil, I have full confidence that the residents of West Central Illinois will not experience significant hikes in their utility bills as a result of this legislation. In fact, the non-partisan Congressional Budget Office estimates that for the average household, costs from the ACES legislation would only be about 39 cents per day—less than the cost of a postage stamp.

I also appreciate that the bill takes into consideration rural agricultural districts like mine. By broadening the definition of "renewable biomass," allowing the Department of Agriculture to oversee carbon-offset projects in rural areas, and not including carbon emissions from indirect-land use, this bill would allow the ethanol makers, food producers, and agricultural equipment manufacturers to continue doing what they do best, while reducing greenhouse gas emissions at the same time. While I would have preferred to have seen in the bill a portion of the pollution allowances go to the food-processing agri-business sector, in addition to allocating "early action credit" allowances to those companies who have already taken voluntary greening measures to reduce their greenhouse gas emissions, I will vote in favor of this bill with the hope that these concerns will be addressed by the Senate or during conference committee.

As a comprehensive energy bill, the ACES Act also provides for the expansion of new nuclear generating units, and gives bonus allowances to those fossil-fuel units taking advantage of on-site carbon capture and sequestration (CCS) technologies. I am pleased that the bill invests approximately $60 billion in CCS, the next generation of clean-coal technology which reduces harmful emissions by capturing and storing them, thereby preventing them from reaching the atmosphere.

Rural Electric Cooperatives provide much of the power to my constituents. As such, I am happy that the ACES legislation allocates a portion of the total free emission allowances to