

EXTENSIONS OF REMARKS

CLINTON AFFAIR WITH LEWINSKY NOT SUBJECT TO IMPEACHMENT

HON. CHAKA FATTAH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Mr. FATTAH. Mr. Speaker, I submit the following speech for the RECORD.

CLINTON AFFAIR WITH LEWINSKY NOT SUBJECT TO IMPEACHMENT

(By Burton Caine)¹

Debate on the meaning of impeachable offenses must start with the wording of Article II, Section 4 of the Constitution, which provides:

"The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

The word "other" before "high Crimes and Misdemeanors"—often overlooked—is important, for it serves to define impeachable offenses: first, by listing treason and bribery as primary illustrations. Secondly, by demonstrating that only serious derelictions of comparable gravity in the performance of the duties of office are grounds for impeachment. Treason, obviously, is the ultimate betrayal of official duty. And bribery has been condemned as least as far back as the Biblical injunction against judicial bribe-taking in Deuteronomy, Chapter 16:19.

Article I, Section 3, of the Constitution provides that upon conviction, removal from office is the sole remedy, and there is no immunity from subsequent criminal punishment. Reading the two impeachment clauses together, it is clear that their only purpose is to protect the nation, not to punish the offender.

For this reason, articles of impeachment against President Nixon all related to grave and corrupt misuse of the powers of government, including conspiracies to deprive individuals of their civil rights guaranteed under the Constitution. In contrast, the House Judiciary Committee refused to impeach Nixon for fraudulent evasion of \$576,000 in income taxes, unlawfully using government funds to renovate private residences, and even lying to Congress about bombing Cambodia.

The assertion of then Representative Gerald Ford, and now Senator Trent Lott, that an impeachable offense is whatever the House of Representatives says it is, is contradicted by the debates at the Constitutional Convention which made clear that Congressional disapproval of the President could not serve as the basis for impeachment. Ford and Lott seem to be confusing the standard for impeachment with the lesser standard of "disorderly Behaviour" for which a member of Congress may be expelled, as provided in Article I, Sec. 5. There is no trial and a two-thirds vote is required. The House attempted to exclude Adam Clayton Powell on grounds of misconduct but the Supreme Court reversed on grounds that he met the qualifications of age and residency, the Constitutional criteria. One wonders

whether the result would be the same had the House admitted Powell, then expelled him for "disorderly Behaviour."

Kenneth Starr's view of impeachment also contradicts the language of the Constitution. In arguing before the Supreme Court in the impeachment of federal Judge Walter Nixon, Starr told the justices that one could even be impeached for poisoning the neighbor's cat, advice the Supreme Court ignored.

From Starr's chamber also came the preposterous claim that the President could be impeached for asserting executive privilege later rejected by lower courts. On that basis, Starr himself could be impeached for asserting in court that the lawyer-client privilege of Vincent Foster expired upon the death of the client. That claim was rejected by the Supreme Court. More serious grounds of impeachment against Starr arise from his official conduct as so-called Independent Counsel, a badly disguised campaign to remove President Clinton and reverse the process of election by the people in two national elections. Most egregiously, perhaps, is his wiring Linda Tripp to record Monica Lewinsky in violation of the law of Maryland. This was precisely what Justice Louis Brandeis condemned in his historic rebuke of the overzealous prosecutor:

"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the government becomes a lawbreaker, it breeds contempt for law, it invites every man to become a law unto himself; it invites anarchy."

At best, the notion that anything can be an impeachable offense and that Congress can act as outrageously as politics permits, is idle talk based upon the prediction that the Supreme Court could never review a Congressional impeachment or conviction. Since the issue has never come up, one is free to wonder. The only President who was impeached was Andrew Johnson. Since he was not convicted, there could be no judicial ruling on whether it was an impeachable offense to disobey a law of Congress the President believed was unconstitutional. Judges have been convicted upon impeachment, but never for personal misconduct unrelated to the conduct of their offices.

The last impeachment case to come before the Supreme Court involved Judge Walter Nixon who complained that the Senate did not "try" him, as required by the Constitution, because it delegated the gathering of evidence to a committee of senators, upon which the Senate convicted him. He lost on the ground that that was all the trial the Constitution required. Some cite the case for the proposition that the Senate is free to conduct any type of trial it wants. That is doubtful because the Court considered the trial fair. Justice Souter made it clear that the Senate had no right to decide "upon a coin-toss" or a summary determination that defendant "was simply 'a bad guy'"

Those who would rely upon the Walter Nixon Case for the proposition that Congress can impeach for any reason at all are really contending that Congress may totally and blatantly ignore their sworn oath to obey the Constitution.

Never in the history of the republic, has Congress ever dared to take that route. In the case of President Richard Nixon, all articles of impeachment related to substantial

and corrupt misuse of the powers of government, including conspiracies to deprive individuals of their rights guaranteed under the Constitution. The House Judiciary Committee refused to impeach Nixon for evading \$576,000 in federal income taxes, unlawfully using government funds to renovate private residences and even lying to Congress about the bombing of Cambodia.

There was no move to impeach President Reagan for violating an act of Congress and then lying about it both to Congress and the public in the Iran-Contra affair. And no President—Thomas Jefferson, Franklin Roosevelt, Warren Harding, and John Kennedy, included—has been impeached for adultery in office. Nor was Alexander Hamilton, President George Washington's Secretary of the Treasury, impeached by the Founding Fathers themselves for carrying on an adulterous affair with the wife of a convicted securities swindler and making secret payments to cover it up. The matter was deemed private.

There is a mischievous irony in the zealous pursuit by Congressional leaders to impeach the President. Even under the relaxed standard of "disorderly Behaviour" for expelling members of Congress—far less demanding than "high Crimes and Misdemeanors"—admitted adulterers, including Rep. Henry J. Hyde, Chair of the Judiciary Committee, and fellow Republicans critical of the President's marital infidelity, have not been expelled, or rebuked, or punished in any way

And in the case of Newt Gingrich, Speaker of the House and third in line for the presidency, lying to Congress and the American people on matters of official duties, and ethical transgressions, did not prompt the House to expel, or even demote him from leadership. A fine with extended payment terms was considered enough. Nor does history record the expulsion of a single member of Congress for extra-marital sex, even with the prevarication that goes with concealment.

Kenneth Starr himself, as a "Civil Officer of the United States," is also subject to impeachment for numerous acts—in addition to illegal wiretapping. Under the Ford-Trent Lott standard of impeaching for whatever displeases Congress, why has not Starr been impeached, for example, for the many leaks of grand jury testimony for which he was admonished by the district court? Or issuing a subpoena to a book seller to ascertain what books Monica Lewinsky purchased. This evidences a contempt for First Amendment liberties of the people reminiscent of Richard Nixon, and for which that President faced impeachment.

The devastation that Starr has inflicted upon our Constitutional democracy is in marked contrast to Clinton's private sexual trysts with all the lying that marked the cover-up. None of our rights under the Charter of Liberty were eviscerated.

The Constitution, history, and common sense teach the same lesson. Impeachable offenses are limited to the serious corrupt misuse of the powers of government, that is, grave derelictions of official duty. That excludes private adulterous affairs even if the President lies about them and urges others to do likewise. Punishment for sin—and even crime—belongs elsewhere, and are not subject to impeachment under the Constitution of the United States.

¹ Professor of Law, Temple Law School, and Past President American Civil Liberties Union, Greater Philadelphia Chapter.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

INTRODUCTION OF BILL TO REINSTATE INCENTIVE AND CAPITAL PAYMENTS TO PPS-EXEMPT HOSPITALS

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Mr. NEAL of Massachusetts. Mr. Speaker, I rise today to introduce the Reinstatement of Medicare Bonus and Capital Payments for Rehabilitation Act of 1998. This bill would restore the full incentive payment percentages for PPS-exempt rehabilitation hospitals and units that were repealed in Section 4415 of the Balanced Budget Act of 1997 (BBA). The restored percentages would remain in effect only until the new prospective payment system (PPS) for inpatient rehabilitation services in fully phased in by October 1, 2002.

The bill would also change the provision in the BBA that reduced capital payments for PPS-exempt hospitals and units by 15 percent for FY 1999–2002.

Prior to the BBA, qualifying PPS-exempt hospitals were eligible to obtain an incentive payment for keeping their costs below their TEFRA limits. That payment was the lesser of 50 percent of the difference between their costs and the TEFRA limit, or 5 percent of the limit. This system encourages these facilities to incorporate efficiencies without compromising service or quality for their patients. The BBA reduced the applicable percentages to 15 percent and 2 percent, respectively. This modification for paying PPS-exempt (TERFA) hospitals dramatically reduces incentive payments that were designed to reward efficient facilities that are able to keep costs below their TEFRA limits.

The earlier formula actually worked as it was intended. It provided an incentive for PPS-exempt hospitals to keep costs below TEFRA limits while still retaining high quality care. This is evidenced by the fact that patient outcomes have remained the same, despite a decrease in average lengths of stay in PPS-exempt hospitals.

The BBA provision reduces incentive payments so significantly the payments are unlikely to motivate facilities to further reduce lengths of stay. And there could easily be additional negative ramifications to this misguided policy.

First, absent incentives to hold down costs, many facilities may increase lengths of stay if it is more economically feasible to do so. The end result will be increased costs to the Medicare program. In fact, a one-day increase in average Medicare length of stay in rehabilitation facilities would result in increase payments of about \$200 million. This is substantially more than the amount "saved" by the BBA's new formula.

Second, incentive payments should be retained to hold costs down and motivate efficiencies since payments under the new PPS system will be set to total 98 percent of what would have been paid absent the PPS system. That is why it is particularly important that Congress offer providers incentives to hold down costs in the interim. However, under the bill, the restored incentive payments would be retained only until the new PPS for inpatient rehabilitation services, also authorized by the BBA, is fully implemented.

Third, increased lengths of stay may negatively impact patient outcomes if providing necessary rehabilitation services is postponed to lengthen a patient's stay. This could lead to another negative—a shortage of beds. It follows that longer lengths of stay will also mean that fewer beds will be available for new patients who require access to rehabilitation services.

Fourth, a shortage of rehabilitation beds could also negatively effect hospitals' costs. Hospitals could end up keeping patients, who otherwise would have been discharged, for longer periods. This would increase their costs.

Finally, many facilities have used incentive payments in the past to help fund building programs for persons with disabilities. These programs also will likely suffer under the revised BBA incentive payment scheme.

My bill would also change the provision in the BBA which imposed a 15-percent reduction in capital payments for PPA-exempt hospitals and units for FY 1999–2002. This provision is very problematic.

Rehabilitation facilities and others are paid on a cost basis, not on a prospective payment basis as other hospitals and providers. They were exempted from capital cuts in the past because of this difference.

The argument for full reimbursement of capital is that a provider under cost reimbursement has no opportunity to make up the loss of capital payments through operating efficiencies. If operating costs go down, so does reimbursement, and the provider is stuck with payment below cost. The provider does not have any incentives to become more efficient, thus the rationale for the incentive bonus payment. This argument is still valid. However, the incentive payment has also been seriously reduced.

A 15-percent cut in capital reimbursement will cost PPS-exempt providers at least \$79 million. Total incentive payments are likely to be far less than the aggregate loss from the 15-percent cut in capital reimbursement. Few rehabilitation providers can cover capital cuts with incentive payments. This means that almost all rehabilitation providers will be paid below cost.

Compounding this situation is the fact that a rehabilitation provider does not have the same opportunity as other providers to shift costs to other payers. Because rehabilitation hospitals are heavily dependent on Medicare, they have few non-Medicare patients on whom they can shift costs. That is because 70 percent of admissions and 65 percent of days in rehabilitation are covered by Medicare fee for service. This rate of Medicare utilization is unique among provider groups.

Until the PPS system authorized by the BBA is fully implemented, capital cuts should not be imposed on PPS-exempt rehabilitation hospitals and units. Full payment of capital should continue under the cost-based system because, unlike providers in a PPS system, PPS-exempt providers have no opportunity to make up the loss of capital payments through operating efficiencies. If operating costs go down, so do reimbursements.

For the rehabilitation entities, that leaves the only other way to generate revenue from Medicare—cover the shortfall on capital reimbursement through incentive payments—which the BBA also reduced. For this reason, almost all rehabilitation providers will be paid below cost under the BBA.

That is why I am introducing my bill today. We need to enact this legislation which will repeal Section 4415 and restore the former 50/50 incentive payment formula until a PPS for inpatient rehabilitation services is fully implemented. It also removes the provision that reduces capital reimbursement for rehabilitation hospitals and units for FY 1999–2002. I appreciate your support and look forward to working with all of you on this very important issue.

DANTE B. FASCELL NORTH-SOUTH CENTER ACT OF 1991

SPEECH OF

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, October 12, 1998

Mr. SMITH of New Jersey. Mr. Speaker, I rise in support of H.R. 4757, legislation renaming the North/South Center at the University of Miami after our former House colleague, the former Chairman of the Foreign Affairs Committee, the Honorable Dante B. Fascell.

Dante Fascell served in the House of Representatives, from 1954–1992; I was privileged to serve with him on the Foreign Affairs Committee and witness, first-hand, his tireless efforts on behalf of the North/South Center. Given his commitment and his role as a driving force behind the creation and development of the North/South Center, H.R. 4757 is a fitting and long-overdue tribute for Dante Fascell's great work in this regard.

Mr. Speaker, most of us know that the North/South Center is an independent research and educational organization that promotes policy initiatives aimed at resolving the most critical issues facing the nations of the Western Hemisphere. The Center's research, publications, and training efforts have focused on furthering freedom and democracy, and economic development. To date, the Center's programs have benefited citizens of the Western Hemisphere by supplying significant knowledge and expertise relevant to an inter-American agenda which has grown more complex and more critical each year.

In its first eight years, the North/South Center has embraced and fostered the ideals that Dante Fascell outlined when he first envisioned the program, especially the importance of offering academic interchanges—the free exchange of views to promote understanding and cooperation—as a means to promote democracy. The Center has also proven that it is uniquely capable of assessing the increasing interdependence of the two hemispheres, the North and the South, and developing cross border policies that stress the similarities and also bridge the gaps of the countries of the Western Hemisphere. The academic and intellectual dialogues promoted by the Center have helped advance democratic ideals especially in those Western Hemisphere countries where democracy has not yet taken hold.

The North/South Center at the University of Miami has lived up to Dante's hopes and dreams, becoming a major player in helping to determine the conduct of the U.S. in our public policy for the two hemispheres. It is well respected and provides an invaluable source of research, public outreach, cooperative study, and programs of education and training on a large variety of Western Hemisphere issues.

Mr. Speaker, in 1990 the gentleman from Florida, Chairman Dante Fascell, put forth a democracy-promoting concept that today stands as a great tribute to his foresight, commitment and leadership. I am pleased to have had the privilege of serving with Mr. Fascell in this chamber and delighted to participate in honoring his accomplishments in this way. His alma mater, the University of Miami, is to be congratulated for its continued contributions through the North/South Center and for the recommendation to rename the North/South Center in Dante's behalf. It is a well-deserved recognition, and one which will make him, and all of us who served with him here in the House, very proud.

TELECOMMUNICATIONS COMPE-
TITION AND CONSUMER PROTEC-
TION ACT OF 1998

SPEECH OF

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 12, 1998

Mr. GOODLATTE. Mr. Speaker, I rise today in strong support of this important legislation to address the growing problem of telephone slamming. As the sponsor of an earlier version of anti-slammings legislation with Congressman BASS of New Hampshire, I was pleased to work with the gentleman from Louisiana, Mr. TAUZIN, to move this bill through the Congress.

As we are all aware, the problem of slamming has become an epidemic that has affected millions of American consumers. According to the Federal Communications Commission, tens of thousands of Americans are slammed each year. Among telephone users, this is by far their number one complaint. For many folks, telephones and e-mail are more than just communications devices. They can be the only links between a parent and a child halfway across the globe, or a way for old friends separated by the miles to relive old times. Many of our nation's seniors also rely on the telephone as a window to the world around them. It can be a vital connection that enables them to celebrate life with family and friends.

Telephone slammers don't just rob these folks of their hard-earned dollars. They rob them of a source of happiness, a lifetime to family and friends, and replace it with a feeling of anger and frustration at being swindled. The unsavory characters who commit this crime deserve swift and strong punishment. Consumers are in need of stronger protections from these criminals. The passage of H.R. 3888 will help law enforcement put an end to the crime of long distance slamming and e-mail spamming.

Congress gave the FCC significant authority to eliminate slamming as part of the Telecommunications Act of 1996. Unfortunately, little action was taken by the FCC to exercise this new authority. The legislation we are considering today will remove a significant portion of the flexibility originally given to the FCC. Instead, the bill outlines a more detailed and instructive plan for eliminating the practice of slamming.

The bill gives telephone carriers two choices. The first option is for carriers to regulate themselves. The carriers have said that

they want to eliminate slamming, and we will see if they can live up to their word.

For those carriers that cannot responsibly regulate themselves, they will be subject to the heavy hand of FCC enforcement. I join my colleagues in expressing optimism that carriers will be able to agree on regulations for themselves and stop slamming on their own. I strongly support giving the industry an opportunity to lead on this issue, having long opposed the imposition of burdensome regulations that raise the cost of doing business and serve as a barrier for competition.

For those companies that choose to violate the law, H.R. 3888 provides for significant penalties, including fines as high as \$150,000 for repeat offenders. In addition, slammers will be forced to reimburse their victims for any extra charges incurred as a result of the slamming. This will achieve a balance between the need to give companies the ability to standardize their business practices and the need to allow State officials to enforce State statutes against consumer fraud.

The bill also addresses the growing problem of "spamming," which is the mass distribution of unsolicited commercial E-mail messages to private computers. This annoying practice, which has become more widely used as the use of E-mail grows, is not only disruptive but highly intrusive. H.R. 3888 expresses the sense of the Congress that the private sector should promptly adopt, implement, and enforce measures to deter and prevent the improper use of unsolicited commercial electronic mail.

The characters who commit the crime of telephone slamming are striking at one of our most basic human freedoms—communication. Our ability to communicate with others, free from interruption and through our choice of services, must be protected. H.R. 3888 gives law enforcement the ammunition they need to defend consumers against telephone slammers, and will help bring an end to this private pervasive crime. I want to thank the hard work of the Chairman of the Subcommittee on Telecommunications, the gentleman from Louisiana (Mr. TAUZIN), and also my colleague from New Hampshire (Mr. BASS), who has long taken an interest in this important issue. I urge my colleagues to support this important legislation.

STATEMENT ON K-12 EDUCATION
INITIATIVES

HON. MATT SALMON

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Mr. SALMON. Mr. Speaker, the results of the Third International Mathematics and Science Study (TIMSS) released earlier this year, which revealed that U.S. 12th graders scored next to last in advanced math and dead last in physics, are a stunning rebuke to the aggressive efforts of the U.S. Department of Education to centralize the American education system. The Department of Education, which promised that the United States would lead the world in math and science by the year 2000, can't even claim bragging rights over war-torn Slovenia. As to reading, which was not measured by TIMSS, 40 percent of fourth graders can't read. Yet, in response to

these epic failures, the education establishment in Washington has come back with demands for more power, more central control, more of the same—although with some new packaging. This is almost the equivalent of exhuming the Kremlin to institute democratic reforms in Russia.

The answer to our educational woes cannot be found in Washington. Washington has spent 30 years and untold billions on a top-down approach to education with little if any success. Spending for education has increased on an annual basis. In fact, according to a report that I commissioned the Congressional Research Service to prepare on a variety of comparative statistics on education in the United States versus other nations participating in the TIMSS assessment, the United States is on the upper end of countries in terms of expenditures per pupil, expenditures per capita, and for average salaries for elementary school teachers. Clearly, our education woes are not for a lack of funding. To improve the educational performance of our children, I believe that we must open the education monopoly at both the federal and state levels, spend education resources more wisely, and return power to parents and communities.

When it comes to returning power to parents and injecting competition and accountability into the public school system, Arizona is at the front of the class. Charter schools—innovative public schools financed by tax dollars but free of most regulations—have flourished. Arizona, which has two percent of the nation's population, is home to one-quarter of the charter schools in existence. (Congress just passed a bill that is designed to increase the number of charter schools.) These schools have fundamentally altered the Arizona education system; traditional public schools now compete with charters for students. The charter school movement has begun the process of having education dollars literally follow the student from school to school. The Arizona legislature also enacted education tax credits last year, which can be used by parents to cover a wide array of education expenses associated with primary and secondary education. The Arizona legislature also enacted education tax credits last year, which can be used by parents to cover a wide array of education expenses associated with primary and secondary education. The education reforms enacted in Arizona are designed to increase parental choice over their children's education and improve education quality. In Arizona, education reform is no longer a spectator sport.

I have introduced two bills with Senator JON KYL that will compliment the new reforms in place in my state and should provide other states with similar opportunities for innovation. One bill, the "K-12 Community Participation Education Act," was inspired by the new Arizona education tax credit and would encourage Americans to get involved personally and to participate in efforts to improve K-12 education. The other proposal, the "Dollars Follow the Student Education Block Grant Act" would block grant certain federal education dollars and permit states to distribute the funds in such a way that money would literally "follow the child" from school to school, which is the manner in which charter schools are funded in Arizona.

K-12 COMMUNITY PARTICIPATION EDUCATION ACT

The "K-12 Community Participation Act" calls on parents, other members of the community, and businesses to invest in education. Phased in over four years, the legislation offers every family and business a tax credit of up to \$500 for any K-12 education-related expense or activity.

The tax credit could be used for expenses incurred at any public (including charter), private, or parochial institution. The credit could also be applied for home schooling. Permissible expenses include: books, tuition, fees, supplies, computers, tutors, or equipment required for courses of instruction. Additionally, the credit would be available for extracurricular activities. Moreover, the tax credit could be contributed to "school tuition organizations"—charitable organizations that allocate at least ninety percent of their annual revenue for educational scholarships or tuition grants to children to allow them to attend any qualified school of their parents' choice.

Imagine the possibilities. For example, concerned businesses in a particular community could band together, and direct tax credit contributions to a school tuition organization that provides scholarships to low income children in malfunctioning school districts. Rather than wait for governmental assistance, individuals and businesses would be deputized to act immediately to save children in dangerous or academically under-achieving schools.

Unlike the big government proposals being pushed by the President, under the K-12 tax credit bill families control the expenditure of education dollars, not centralized bureaucrats. Additionally, the community participation tax credit would direct immediate assistance to our faltering K-12 system.

DOLLARS FOLLOW THE STUDENT EDUCATION BLOCK GRANT ACT

According to a report released by the Heritage Foundation, at least 20 percent of education tax dollars spent from Washington are lost to administrative costs. Moreover, the House Committee on Education and the Workforce report, *Education at the Crossroads*, disclosed this staggering statistic: The federal government accounts for only seven percent of the funding for K-12 education, but 50 percent of the paperwork burden for schools. Several important initiatives have been introduced in this Congress to ensure that more federal education dollars reach the classroom, without the staggering administrative burdens that currently accompany these funds.

The Dollars Follow the Student Education Block Grant Act would give states the opportunity to have nearly all of a \$13 billion pot of federal education dollars go directly to parents of children. The block grant is modeled after a proposal that has already passed in the House and Senate, but was stripped from an appropriations bill last year at the President's insistence. That proposal would have consolidated most federally funded K through 12 education programs, except for special education, and would have given states the ability to have federal funds sent directly to local school districts or to the state education authority minus federal regulations. States also would have been allowed to reject the block grant approach if they preferred to maintain the current system of allocating funds directly into specific programs, with very little flexibility.

The bill I have introduced would permit each state opting to have a block grant to have the

money "follow the child." The states would be permitted to decide to allow parents of children in public schools (including charter), private schools, and parents of "home schooled" kids, to receive their "per capita" amount directly, rather than indirectly through the school district and school, thus creating an incentive for schools to provide quality education by competing for children. All schools would have an incentive to improve its overall performance, since if parents weren't satisfied, they could move their child to another school—along with the dollars that accompany their children.

The proposal provides that if federal funding falls below the levels agreed to in the 1997 budget agreement, it will revert back to the current system of funding under federally-designated categories. My bill also requires that states adjust block grants to ensure that poorer districts receive an adequate level of funding.

In a recent article, "First, Do No Harm: The Federal Role in Education Reform," featured in *American Outlook*, former U.S. Assistant Secretary of Education Chester E. Finn identified as part of a new paradigm for education, child-centered funding:

"[U]ncle Sam should replace today's hundreds of separate "categorical" programs with a couple of block grants or voucher-style programs. When a child is deemed eligible for federal aid, for whatever reason, that aid should follow him to the school (or other vendor) of his and his family's choice. . . . Washington should also quit subsidizing state and local education bureaucracies."

Under a child-centered approach, Dr. Finn argued that: "No school will be guaranteed its budget (or jobs). No school will own its students. It will have to 'earn' its revenue by doing what it is supposed to."

CONCLUSION

We need the courage to stand up to the powerful education bureaucrats and say you have failed our children and we will tolerate it no longer. No more five or ten year plans to nowhere. It's time to give the fabric of America, our families and communities, new tools to improve student performance. My hope is that Congress has the wisdom to follow the lead of the Arizona legislature, and pass a K-12 education tax credit bill, and the Dollars Follow the Student Education Block Grant Act.

INTRODUCTION OF H.R. 4852

HON. BILL ARCHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Mr. ARCHER. Mr. Speaker, today, in coordination with the Treasury Department, I am introducing H.R. 4852, a bill to clarify the tax treatment of certain transfers of assets and liabilities to a corporation.

In general, when a shareholder transfers assets to a corporation it controls and receives stock in return, the shareholder does not have gain from the exchange. The shareholder may have gain, however, if the corporation assumes a liability of the shareholder, or receives assets from the shareholder that secure a liability. If the shareholder has gain, the corporation's basis in the assets is received is increased by the gain.

The tax treatment under present law is unclear in situations involving the transfer of liabilities, and some taxpayers are structuring transactions to take advantage of the uncertainty. For example, where more than one asset secures a single liability, some taxpayers take the position that, on a transfer of the assets to different subsidiaries, each subsidiary counts the liability in determining the basis of the asset. This interpretation arguably could result in assets having a tax basis in excess of their value and excessive depreciation deductions—results that are clearly inconsistent with fundamental tax policy.

The legislation I am introducing today is intended to eliminate the uncertainty and to focus on the underlying economics of these corporate transfers. Under the legislation, a corporation is treated as assuming a liability if, based on the facts and circumstances, the corporation has agreed and is expected to satisfy the liability. In addition, in determining the corporation's basis in property it receives as part of these transfers, the corporation's basis cannot exceed the fair market value of the property. Special rules apply with respect to nonrecourse liabilities.

The House of Representatives and the Senate passed substantially identical legislation earlier this year which did not become law at the time originally anticipated. To discourage continued use of corporate transaction structuring that the Congress and the Administration believe is inappropriate, I am introducing the legislation today, and it applies to transfers on or after today. I anticipate including this proposal in tax legislation next year.

A Joint Committee on Taxation explanation of the bill follows.

TECHNICAL EXPLANATION

Under the bill, the distinction between the assumption of a liability and the acquisition of an asset subject to a liability is generally eliminated. First, except as provided in regulations, a recourse liability or any portion thereof is treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed and is expected to satisfy the liability or portion thereof (whether or not the transferor has been relieved of the liability). Thus, where more than one person agrees to satisfy a liability or portion thereof, only one will be treated as expected to satisfy such liability or portion thereof. Second, except as provided in regulations, a nonrecourse liability is treated as having been assumed by the transferee of any asset subject to the liability with a limitation. The amount treated as assumed shall be reduced by the amount of the liability which an owner of other assets not transferred to the transferee and also subject to such liability has agreed with the transferee to, and is expected to satisfy, up to the fair market value of such other assets (determined without regard to section 7701(g)).

In determining whether any person has agreed to and is expected to satisfy a liability, all facts and circumstances are to be considered. In any case where the transferee does agree to satisfy a liability, the transferee will be treated as expected to satisfy the liability in the absence of facts indicating the contrary.

In determining any increase to the basis of property transferred to the transferee as a result of gain recognized because of the assumption of liabilities under section 357, the increase cannot cause the basis to exceed the fair market value of the property (determined without regard to sec. 7701(g)). In addition, if gain is recognized to the transferor

as the result of an assumption by a corporation of a nonrecourse liability that is also secured by property not transferred to the corporation, and if no person is subject to tax under the Internal Revenue Code on such gain, then for purposes of determining the basis of assets transferred, the amount of gain so treated as recognized shall be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of the liability, based on the relative fair market values (determined without regard to sec. 7701(g)) of all assets subject to such nonrecourse liability.

The Treasury Department has authority to prescribe any regulations which may be necessary to carry out the purposes of the provision. Where appropriate, the Treasury Department may also prescribe regulations which provide that the manner in which a liability is treated as assumed under the provision is applied elsewhere in the Code.

The bill would be effective for transfers on or after October 19, 1998. No inference regarding the tax treatment under present law is intended.

TRIBUTE TO RICHARD W. NUTTER

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Mr. FARR of California. Mr. Speaker, I rise today to honor a man who has, by his record of service to the agriculture industry, raised the standard for the profession. On July 27, 1998, Richard W. Nutter retired from 28 years of unparalleled service as Monterey County's Agricultural Commissioner and I wish to respectfully honor his deeds.

Under Mr. Nutter's leadership, the Monterey County Agriculture Commissioner's Office has developed into one of the highest quality work performance organizations in the Nation. The "Salad Bowl of the Nation" harvests eighty percent of all head lettuce during peak months and leads the Nation in the production of several other vegetables and strawberries. Recent statistics show that the county grows well over two billion dollars of crops annually including exports.

Through Mr. Nutter's vision he lead the vanguard for farm worker safety, raised standards of quality for fruits and vegetables, and developed superior pesticide control programs that are recognized world-wide as innovative and effective. He fully assisted in the development of the California Organic Food Act, the registration of farm labor contractors, agricultural chemical recycling, field safety posting requirements and the functional equivalent of an Environmental Impact Report for pesticide application to protect applicators and the public alike.

He initiated projects during his service to protect and promote agriculture, the environment, and the public welfare which is meant to assure consumer and business confidence in the marketplace. Those endeavors involved food safety, water use and conservation, land use, voluntary agricultural land conservation, farm worker pesticide exposure monitoring and he established standards to maintain the quality of products intended for export and international trade.

By his record of accomplishments, Mr. Nutter has distinguished himself as a factual, logical, visionary resource to members of the ag-

riculture community and is a reference to local, state and federal legislators. His long-term record of volunteer service to the community enhances his professional role and enriches those who benefit from his commitment.

When I observe Mr. Nutter's accomplishments, I acknowledge a man of integrity and principle. He is an admirable public servant, and I am pleased to note, a personal friend. He is an ally of agriculture who never dodged his responsibility to those who nurture the corps that feed us and certainly not to those who depend on it's wholesomeness for sustenance.

It is not at his retirement alone that he is honored, but rather for his tireless service to assure that his responsibilities were discharged with informed authority and with the intelligent dignity of a man so well suited to this important position of public trust.

REGARDING STEEL IMPORTS

SPEECH OF

HON. MAC COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 15, 1998

Mr. COLLINS. Mr. Speaker, I strongly support H. Res. 598 introduced by the gentleman from Ohio. There are dramatic changes that are occurring in our domestic industries affected by increases in steel imports. That impact is affecting all levels of U.S. business and their employees—from the small scrap dealers all the way up the industry chain to the large manufacturers who have a high production demand for steel.

The steel market is extremely reactive to supply and demand. Consequently it is one of the strongest indicators of the economic strength of our domestic manufacturing industries. Even the chairman of the Federal Reserve has stated that he closely watches steel market indicators in evaluating the progress of our national economy.

While steel industry prices have grown relatively steadily over the past ten years in the last 10 months there has been a dramatic drop. The change indicates that something unusual is currently going on in the market place.

According to American Metal Market Weekly Steel Scrap Price Composites, between January and October of 1998, the price per gross ton for heavy melt steel scrap has dropped from \$140 to \$83.67.

In addition, the gross ton price for shredded scrap metal has dropped from approximately \$146 in January of this year to the current price of \$94.84.

Mr. Speaker, opponents of H. Res. 598 argue that this is a consumer issue—that a higher presence of foreign steel makes end-stage manufacturing cheaper and ultimately the final price to consumers lower. However, it is more than simply cheaper steel prices because final manufacturing is not the only line of business affected by an increase in steel imports. There are broader implications for our economy. The failure to enforce the terms of existing trade laws, which essentially sanctions the dumping of foreign products in this country, hurts U.S. businesses that supply scrap steel to end-stage manufacturers. Cutting off the demand for domestic steel means

the elimination of their business and ultimately a reduction in U.S. jobs.

I have small business scrap metal suppliers in my district who sell their scrap metal to U.S. manufacturers. They have told me that there is so much foreign metal pouring into this country through southern ports it is having a real impact on their business. In fact there are at least 2 steel mills in the southeast who, as a result of the increase in imports, have not purchased any U.S.-sourced scrap metal in the past 2 months. That means U.S. suppliers are losing business—and that means another nail in the coffin for businesses that supply domestic manufacturers.

The resolution before us today simply states that the Administration should make studying the recent shift in the domestic market a priority. At minimum, the President should focus on whether violations of current trade laws and agreements are being committed to the detriment of U.S. business and the loss of U.S. jobs. Cheaper steel attributable to increased imports may mean cheaper prices for consumers, but in the end it may mean fewer jobs for Americans and that possibility is worthy of our attention. I urge support for H. Res. 598.

PERSONAL EXPLANATION

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, due to official business in the 30th Congressional District, I was unable to record my vote on S. 1733, a bill to "Require the Commissioner of Social Security and Food Stamp State Agencies to Take Certain Actions to Ensure that Food Stamp Coupons are Not Issued for Deceased Individuals." In addition, I was unable to record my vote on S. 2133, a "To Preserve the Cultural Resources of Route 66 Corridor and to Authorize the Secretary of the Interior to Provide Assistance," S. 1132, the "Bandelier National Monument Administrative Improvement and Watershed Protection Act" and H. Res. 598, regarding "Foreign Imports of Steel."

Had I been present, I would have voted "aye" on all these items.

SALUTING THE INNOVATION AND CREATIVITY OF JESSICA FERRETTI

HON. JAMES E. ROGAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 16, 1998

Mr. ROGAN. Mr. Speaker, every year, the National Women's Business Council sponsors the National Business Plan Competition. Drawing from a nationwide pool of contestants, the Women's Business Council honors a select group of young women from across the country. This year I am pleased to announce that one of my constituents has been chosen for this great honor. I am proud to salute the accomplishments of all the participants. Their efforts are a vote of confidence in our future.

Mr. Speaker, I would like to recognize a recipient from my hometown, Jessica Ferretti.

Jessica has proven that the key to success is hard work, determination, and innovation. As a contestant in the National Business Plan Competition, she developed a business plan for a company that would serve the needs of the community and the needs of her family. After watching her mother hunt endlessly for day care facilities for a family friend, Jessica notices a market niche and developed a plan to fill this void.

Every family has different day care needs. And finding a facility that meets these needs can be a full time job in itself. Jessica hopes to capitalize on this growing need by proposing a company to locate day care facilities for families. Her proposal also includes an aggressive marketing campaign teaming her firm with local newspaper and Internet advertisers.

Mr. Speaker, our nation was founded by confident individuals following their hearts and making their dreams a reality. That tradition is alive with America's youth today. Jessica Ferretti developed an innovative business plan that will meet her financial needs and also those of her community. For her innovative spirit and her desire to benefit her community, I ask my colleagues to join me here today in saluting the commitment and dedication of Jessica Ferretti.

TRIBUTE TO MRS. MILDRED BOND

HON. GLENN POSHARD

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Mr. POSHARD. Mr. Speaker, I rise today to proudly recognize Mrs. Mildred Bond on her nomination for the Teacher of Excellence Award in the Decatur Public Schools, District 61. As a former teacher, I understand the challenges and rewards associated with this most noble profession and I have the deepest admiration for Mildred's accomplishments. She is a strong proponent of education as demonstrated by her dedicated work within the school system, with the students, and among her community and church. Her efforts to ensure the future of our nation by educating our children are an inspiration and model for the entire country.

Mildred Bond has been an educator for 35 years with a majority of them being at Roosevelt Middle School in Decatur. She served

as the mathematics department chair at Roosevelt for ten years, and is active in district task forces. Mildred takes a genuine interest in her students both inside and outside the classroom. Through her work in Student Council, The Alternative II program for troubled youths, the School Store, and cheerleading she encourages her students to participate and to succeed. Mildred also reaches out to her community and is active in the Trinity CME Church as the director of Christian Education and Sunday school teacher. She also devotes countless hours as an advisor for Peer Counselors for Future Collegians.

Mr. Speaker, we have spent a great deal of time in this Congress discussing the importance of education. I have worked toward the goals of reducing class size and modernizing aging school buildings, for at the heart of this effort is the premise that the education of our children is the most important investment we can make for our country. It is imperative that we recognize and celebrate our educators and constantly strive to improve the quality of education in this nation. Mildred has made education her life's work, which has earned her the respect of parents and colleagues and made her beloved by students. She has received other outstanding educator awards for her achievements and dedication to teaching, such as the Golden Apple Award from Springfield and the Talented Tenth Award as a role model for African American youth. Mildred Bond is a source of motivation and inspiration to those around her. I commend her commitment to education and young people. It has been an honor to represent her in the 105th Congress.

BUST CREATED TO HONOR THE
MEMORY OF THE LATE REPRESENTATIVE
BILL EMERSON

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 19, 1998

Mr. WOLF. Mr. Speaker, on June 24, 1998, Members of Congress, friends, colleagues, and family came together to witness the unveiling of a bust created in loving memory of the late Representative Bill Emerson of Missouri. The event was attended by over 300 people who crowded into the Capitol's Statuary Hall to be part of this tribute.

This extremely generous effort was made possible due to the dedication and loyalty of the many friends of Bill Emerson. However, one individual stands out as giving his unlimited personal time and determination to make this project a reality. Former staff member and close friend Bill Coffield set up the Bill Emerson Memorial Foundation in 1997 with its sole charter being to build a lasting memorial to the late Congressman. Once established, Mr. Coffield, with the help of others, set out to solicit private donations and corporate contributions to fund the creation of the bust. Thanks in large part to the significant generosity of The Doe Run Company, Sabreliner Corporation, The Pillsbury Company, TRW Inc., Hill International, Inc., SBC Communications, American Sugar Alliance, ASARCO, National Mining Association, Noranda Aluminum, Inc., The Jefferson Group, Inc., and Sharp and Lankford, the Foundation had the financial support to move forward in commissioning a sculptor. Renowned sculptor Michael Curtis of Alexandria, Virginia, was commissioned and began by reviewing numerous photographs spanning several years of Bill's life.

I was honored to take part in this event, which began with an invocation by the House Chaplain, followed by personal tributes from several Members including the Speaker of the House NEWT GINGRICH, Senator PAT ROBERTS and other distinguished colleagues from the House including Reps. KANJORSKI and SKELTON, and Bill's widow, Rep. JO ANN EMERSON, Mr. Curtis unveiled the bust for all to see.

The finished product is truly a work of art. A remarkable and life-like bust of our colleague and friend will now reside at the entrance of the Page School in the Library of Congress. The location could not be more fitting—appropriately named Emerson Hall—since Bill's political career started in the 1950's as a page himself, and he was past chairman of the House Page Board. We can all be proud knowing that the likeness of our beloved late friend, Bill Emerson, will forever smile upon the enthusiastic young men and women who come to Washington as pages—like Bill did—to invest in themselves and of themselves in the service of their country. I know in my heart that Bill will watch over these fine young men and women with the love and respect he shared for his family, friends, colleagues and the proud people of southern Missouri he so capably represented.