

BESTOWING "AMERICAN SPIRIT AWARDS" UPON WESTERN NORTH CAROLINIANS FOR THEIR RESPONSE TO THE SEPTEMBER 11TH, 2001 ATTACK UPON AMERICA

HON. CHARLES H. TAYLOR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 9, 2002

Mr. TAYLOR. Mr. Speaker, I rise to honor these residents of the Eleventh Congressional District of North Carolina, whose actions in response to the September 11, 2001 terrorist attacks provided aid and relief to the victims, boosted morale and patriotism, and demonstrated the best of the American Spirit. Hundreds of their fellow citizens joined in honoring them at our annual Prayer and Patriotic Breakfast in Asheville on Saturday, March 16th, 2002. It was with a great deal of pride that I bestowed upon each of them the American Spirit Award for 2002.

Kermit Tolley, Jr.; Buncombe County; Battling liver failure, he helped load Hearts with Hands goods being shipped to NYC and inspired many others by his determination to help others in need.

Hendersonville High School Student Government, Henderson County; Brad Phillis and Lauren Rogers accepting on behalf of Hendersonville High School and 16 Henderson County Public Schools who raised money for victims; The Hendersonville High School Student Council raised \$8,555 for relief efforts.

Carolina First Mortgage; Henderson County; Elizabeth Plaisance accepted the award on behalf of the business, which raised \$37,500 on the street corners of Hendersonville for the Red Cross.

Manual Woodworkers and Weavers; Henderson County; The company donated \$355,000 from sale of a special 9-11 throw blanket which it designed, produced and marketed; Teresa Hutchinson and Molly Oates accepted the award on behalf of their coworkers.

Sandra Pitts; Henderson County; As the operator of a dry cleaning business, she showed America's gratitude to servicemen and veterans by dry cleaning thousands of military uniforms at no charge.

Mike West; Buncombe County; This Hearts With Hands Field Services Director was instrumental in collecting, packing and delivering supplies to New York and remained on station as a member of the Operation Heavy Heart team.

Sunshine Elementary School Fifth Grade; Rutherford County; Students organized a patriotic program, honored local firefighters, and raised \$250 for the Points of Light Foundation; Accepting the award on behalf of the school were Principal Wayne Litaker and Melanie Smith.

Jerry VeHaun, Buncombe County; Jerry worked at Ground Zero in NYC for 12 days on the 7PM to 7AM shift helping with the recover of bodies from the collapsed Twin Towers.

Madison High School Student Government; These students held a Spirit Chain fundraiser and raised \$600 for the Red Cross New York Relief Effort.; Sara Cooley, sponsor, and Josh Harder, president of the student council, accepted the award on behalf of the school.

Mars Hill Elementary School, Madison County; Mrs. Davis' class wrote support letters

to President Bush in the wake of the tragedy; student Cody Splain and teacher Caroline Davis accepted the recognition on behalf of the class.

Chuck Davis, Polk County; He initially helped in NYC with Red Cross kitchen, then helped set up a respite center at Ground Zero at which recovery workers could recuperate.

Tanner Companies Foundation, Rutherford County; The company matched employee relief contributions resulting in \$160,000 in gifts; David Owens accepted the award on behalf of the company.

Columbia Carolina Corporation, McDowell County; Employees sold tee shirts, which lifted spirits and raised \$2,400 for relief efforts; General Manager Jeff Tuckey and Human Resources Manager Steve Franklin accepted the award on behalf of their coworkers.

Pisgah Forest Rotary Club, Transylvania County; The club donated \$600 from proceeds of their Blues Concert to the relief efforts in NY, PA, and Washington, DC, and also contributed an additional \$347 to the Transylvania County Sheriff's Department; Club members Terrell West and Harry Hafer accepted the award on behalf of the club.

Lisa Waters and Ida Stafford, Clay County; Mountain Home Nursing Service spearheaded a fundraiser for the children of the victims of the 9-11 attacks on the World Trade Centers. They organized a "God Bless America" youth rally which raised \$600.

South Macon Elementary School 4th Grade, Macon County; Teacher Vickie Hubbs' class adopted the aircraft carrier USS Kitty Hawk and sent patriotic letters and pictures to the servicemen and women stationed on the ship, which is involved in Operation Enduring Freedom. Students Chelsea Powell and Mariah Cousineau accepted the award for the class.

Tim Radford and Shane Curtis; Cherokee County; Radford, of radio station WKRK in Murphy, in conjunction with Curtis, of Circuit World, raised money for World Trade Center victims, delivered the money personally to New York, and broadcast a live remote back to the citizens of Murphy.

Lew Aabye, Polk County; Lou helped as a Red Cross volunteer in NYC kitchens; Accepting for Lew Aabye is Elizabeth Daniel, Chapter Chairperson of the American Red Cross.

Muggs Corpening, Polk County; He served as a volunteer delivering meals in NYC after the 9-11 attacks.

Clyde Volunteer Fire Department, Haywood County; The department served as a collection site for relief goods donated to Hearts With Hands and helped raise over \$12,000 for that organization as well as for the 9-11 Relief Fund. Accepting on behalf of the department were Fire Chief Joey Webb, Sr., and Capt. Bennie Coleman.

Murphy Volunteer Fire Department, Cherokee County; These volunteers raised \$20,000 for the families of fallen New York City Fire Department firefighters; Chief Al Lovingood and assistant chiefs WC King and Mark Thigpen accepted the award on behalf of the department.

Patricia Pirog for "Operation Toasty Toes," Henderson County; Volunteers make knitted socks to warm the feet of servicemen and women stationed overseas. This past Thursday, the Henderson County Chapter shipped off a huge box of socks to the NC 211th and 210th MP Units now serving in Afghanistan.

Kelly Robertson and Beth McIntosh, Yancey County; These two ladies set up a drop-off

point for Yancey County at the Rescue Squad Building and collected and organized two weeks worth of donated goods.

East Rutherford Middle School, Rutherford County; The students at the school raised \$4,100 for relief efforts. Libby Sears and Judy Gettys accepted the award on behalf of the school.

PAYING TRIBUTE TO THE RICKENBAUGH FAMILY

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 9, 2002

Mr. McINNIS. Mr. Speaker, it is with profound sadness that I pay tribute today to an incredible family, whose lives were so tragically cut short, but whose spirit will remain with us for eternity. Kent Rickenbaugh, his wife Caroline and his son Bart, were not only successful in their business and philanthropic endeavors, but were also pillars of the Denver community who garnered the undying admiration and respect of so many through their unquestioned integrity and unparalleled morality. Each of them will be sorely missed by the multitudes of people whose lives they have touched, and as we mourn their loss, I believe it is appropriate to remember each of them and pay tribute to them for the extraordinary contributions they have made to their city, their state and their country.

Kent began working at his father's Cadillac dealership shortly after graduating from Dartmouth College at the age of 22. He rotated through each division of the dealership before being named assistant to his father, Ralph, who founded the Denver Better Business Bureau in 1951. Kent dedicated himself and his career to protecting commerce in downtown Denver. Even as other businesses and car dealerships fled downtown for the roomier suburbs, Kent vowed to remain in the same neighborhood where his father had started the dealership. He truly believed in supporting the socio-economic interests of downtown Denver, and argued that it was not good business to abandon downtown. While his business always remained downtown, Kent's love of the outdoors and of the West often allowed him to escape to his other life, as a rancher on his 1,100 acre ranch outside Gunnison. He truly loved everything about our great state—both the beauty and the commerce—and his passion for each will be greatly missed.

Caroline, Kent's wife of 40 years, was an exceptional woman in her own right. After the death in 1963 of their infant daughter Selby, who suffered from a heart defect and was cared for at Children's Hospital, Caroline devoted herself to the hospital, helping to raise millions of dollars for its betterment. In 1999, Caroline and Kent endowed a chair in cardiology in her name, and from 1995 to 1997, Caroline co-chaired the campaign to build a new wing for the hospital. The endeavor turned out to be the largest fundraising effort in the hospital's history, raising over \$15 million. In addition, she was instrumental in the effort to move the Children's Hospital to the University of Colorado's new health sciences center campus in Aurora. Caroline's deep love for children and for humanity touched the lives of innumerable families who, because of her

philanthropy, were able to receive top-notch medical care from one of the finest children's hospitals in the nation.

Bart Rickenbaugh, the only son of Caroline and Kent, followed in his parents footsteps as a caring and selfless man, who enriched the lives of everyone around him. As a husband, father and son, his deep love of family was the hallmark of his life. He was an avid sportsman and outdoorsman who loved to play hockey, ski, hunt and run. He was a four-year rugby player at Dartmouth College, and a former saddle bronc rider with the Professional Rodeo Cowboys Association. He moved from Denver to Bozeman two years ago, where he became a real estate lawyer. Bart is survived by his wife, Lisa, and children, Sam and Lila.

The Rickenbaughs are survived by their two daughters, Anne Rickenbaugh of Aspen and Katherine Rich of Carbondale, who will undoubtedly carry on the traditions of selflessness and love that have long been the hallmark of this extraordinary family.

Mr. Speaker, we are all terribly saddened by the loss of Kent, Caroline and Bart Rickenbaugh, but take comfort in the knowledge that our grief is overshadowed only by the legacy of courage, success and love that each of them left with all of us. Their lives are the very embodiment of all that makes this country great, and I am deeply honored to be able to bring each of them to the attention of this body of Congress. The memories and manifestations of the Rickenbaugh family's many contributions to the people of Denver will never fade, and I, along with each and every person whose lives were touched by this extraordinary family, will forever appreciate all that they have done for our great State.

INTRODUCTION OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 9, 2002

Mr. CONYERS. Mr. Speaker, today I am introducing the "Corporate and Criminal Fraud Accountability, Act of 2002," legislation that imposes tough criminal and civil penalties on corporate wrongdoers and helps protect employees and shareholders against future acts of corporate fraud. I am joined by Minority Leader GEPHARDT along with Representatives FRANK, JACKSON LEE, BERMAN, WATERS, LAFALCE, ENGEL, DINGELL, JACKSON, Jr. (IL), CHRISTENSEN, DAVIS (IL), CUMMINGS, SANDERS, SOLIS, CLAYTON, BROWN (FL), LYNCH, HOFFEL, GUTIERREZ, and SCHAKOWSKY.

As you know, the past several months have revealed widespread incidences of corporate fraud and abuse committed by Enron and its advisers. With each passing day, a new revelation concerning the dissemination of misinformation, evidence shredding, obstruction of justice, and insider trading has been unveiled. And, as more companies file for bankruptcy, I am convinced that we may very well learn of additional instances of fraud occurring across corporate America.

One step we can take to prevent corporate wrongdoers from preying on innocent investors and employees is to enact legislation that

increases the penalties that companies face for engaging in such rapacious acts. The bill that I am introducing, the "Corporate and Criminal Fraud Accountability Act of 2002", does just that. Among other things, it creates a new 10-year felony for defrauding shareholders of publicly-traded companies; clarifies current criminal laws relating to the destruction or fabrication of evidence, including the shredding of financial and audit records; provides whistleblower protection to employees of publicly-traded companies, similar to those currently available to many government employees; and establishes a new bureau within the Department of Justice to prosecute crimes involving securities and pension fraud.

In the wake of the Enron debacle, I believe the time is now ripe to protect American investors once again. The Enron case has established beyond a shadow of a doubt that white collar fraud can be incredibly damaging, in many cases wiping away life savings and costing innocent Americans billions of dollars of their hard earned money. There can be no conceivable justification for shielding corporate wrongdoers from criminal prosecution for their outrageous behavior. I am hopeful that Congress can move quickly to enact this worthwhile and timely legislation.

The following is a section-by-section analysis of the bill:

Section 1. Title. "Corporate and Criminal Fraud Accountability Act."

Section 2. Criminal Penalties for Altering, Destroying, or Failing to Maintain Documents—provides two new criminal statutes which would clarify and plug holes in the current criminal laws relating to the destruction or fabrication of evidence, including the shredding of financial and audit records. Currently, those provisions are a patchwork which have been interpreted in often limited ways in federal court. For instance, certain of the current provisions make it a crime to persuade another person to destroy documents, but not a crime to actually destroy the same documents yourself. Other provisions have been narrowly interpreted by courts, including the Supreme Court in *United States v. Aquillar*, 115 S. Ct. 593 (1995), to apply only to situations where the obstruction of justice can be closely tied to a pending judicial proceeding.

First, this section would create a new 5 year felony which could be effectively used in a wide array of cases where a person destroys or creates evidence with the specific intent to obstruct a federal agency or a criminal investigation. Second, the section creates another 5 year felony which applies specifically to the willful failure to preserve audit papers of companies that issue securities.

Section 3. Criminal Penalties for Defrauding Shareholders of Publicly Traded Companies—creates a new 10 year felony for defrauding shareholders of publicly traded companies. The provision would supplement the patchwork of existing technical securities law violations with a more general and less technical provision, comparable to the bank fraud and health care fraud statutes. The provision would be more accessible to investigators and prosecutors and would provide needed enforcement flexibility and, in the context of publicly traded companies, protection against all the types schemes and frauds which inventive criminals may devise in the future.

Section 4. Review of Federal Sentencing Guidelines for Obstruction of Justice and Extensive Criminal Fraud—requires the United States Sentencing Commission ("Commission") to consider enhancing criminal pen-

alties in cases involving the actual destruction or fabrication of evidence or in fraud cases in which a large number of victims are injured or when the injury to the victims is particularly grave—i.e. they face financial ruin.

This provision first requires the Commission to consider sentencing enhancements in obstruction of justice cases where physical evidence was actually destroyed. The provision, in subsections (3) and (4), also requires the Commission to consider sentencing enhancements for fraud cases which are particularly extensive or serious. Specifically, once there are more than 50 victims, the current guidelines do not require any further enhancement of the sentence, so that a case with 51 victims may be treated the same as a case with 5,000 victims. In addition, current guidelines allow only very limited consideration of the extent of financial devastation that a fraud offense causes to private victims. This section corrects both these problems.

Section 5. Debts Non-dischargeable if Incurred in Violation of Securities Fraud Laws—amends the federal bankruptcy code to make judgments and settlements arising from state and federal securities law violations brought by state or federal regulators and private individuals non dischargeable. Current bankruptcy law may permit wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and securities law violations. This loophole in the law should be closed to help defrauded investors recoup their losses and to hold accountable those who perpetrate securities fraud.

Section 6. Increased Protection of Employees' Wages Under Chapter 11 Proceedings—increases the amount in unsecured claims (wages, commissions, etc.) an individual could claim in bankruptcy proceedings from \$4,300 to \$10,000. This change would aid employees who are usually only paid their priority wage claims early in the case. The rest of the employee's wage claim is a general unsecured debt and may not be paid except on a pro rata basis at the end of the case, which could be several years later. In the Enron case, employees were paid only their priority wage claims while certain individuals were given generous "retention bonuses." This change would make it possible for the court in similar cases to provide a more realistic buffer to employees who have been laid off or who have not been paid in the period leading up to the bankruptcy.

Section 7. Statute of Limitations for Securities Fraud—sets the statute of limitations in private securities fraud cases to the earlier of 5 years after the date of the fraud or three years after the fraud was discovered. The current statute of limitations for private securities fraud cases is the earlier of three years from the date of the fraud or one year from the date of discovery. In the Enron state pension fund litigation, the current short statute of limitations has forced some states to forgo claims against Enron based on securities fraud in 1997 and 1998. Victims of securities fraud should have a reasonable time to discover the facts underlying the fraud.

The Supreme Court, in *Lampf v. Gilbertson*, 501 U.S. 350 (1991), endorsed the current short statute of limitations for securities fraud in a 5-4 decision. Justices O'Connor and Kennedy wrote in their dissent in the *Lampf* decision: "By adopting a 3-year period of repose, the Court makes a §10(b) action all but a dead letter for injured investors who by no conceivable standard of fairness or practicality can be expected to file suit within three years after the violation occurred. In so doing, the Court also turns its back on the almost uniform rule rejecting short periods of repose for fraud-based actions."