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No. 17

## House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. CULBERSON).

### DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Washington:

WASHINGTON, DC,  
February 16, 2005.

I hereby appoint the Honorable JOHN ABNEY CULBERSON to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,  
*Speaker of the House of Representatives.*

### PRAYER

The Reverend John H. Parker, Pastor, Central Baptist Church, Washington, D.C., offered the following prayer:

Eternal God, we thank You for the blessings that You have given us this day. We pray, Lord, that the things that are done today will be done pleasing in Your sight, that they will be a blessing unto Your people and edifying unto You.

We pray O Lord, that You continue to bless the President of these United States of America, lead him in every level of his life and all leadership that has been given to and staff to help him. We pray for the protection of our Armed Forces, especially those who are serving in Afghanistan and in Iraq. We pray for their families who are left back here. We ask that You comfort them. I know when the phone rings at night it gets lonely, but be with them.

Guide us and keep us throughout the day and let everything that be done in this institution be done for Your glory and for the benefit of Your people. In Jesus' name we pray, our hearts say, Amen.

### THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

### PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from North Carolina, (Mr. MCHENRY) come forward and lead the House in the Pledge of Allegiance.

Mr. MCHENRY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has agreed to a concurrent resolution of the following title:

S. Con. Res. 13. Concurrent resolution congratulating ASME on their 125th anniversary, celebrating the achievements of ASME members, and expressing the gratitude of the American people for ASME's contributions.

### INTRODUCTION OF THE REVEREND PARKER

(Mr. RUSH asked and was given permission to address the House for 1 minute.

Mr. RUSH. Mr. Speaker, it is with great honor and privilege that I rise today to introduce our guest chaplain, the Reverend John H. Parker, the pastor of the Central Baptist Church, located right here in Washington, D.C.

Reverend Parker was born and raised in Monroeville, Alabama. He is married to the former Diane Elois Harvey, and they are the proud parents of two lovely daughters, Chandra and Lynne.

After serving in the U.S. Army for 20 years, Reverend Parker moved to

Washington, D.C. in 1980 where he became a member of the Central Baptist Church. In 1984 Reverend Parker received his calling into the ministry to preach the Gospel. He was licensed and later ordained as the Pastor of Central Baptist Church in 1988, where he has become the source of much pride and admiration, not only in his church, but also in his surrounding community.

Reverend Parker graduated from the Washington Bible College in 1996, with a Bachelor of Arts Degree in biblical studies and urban ministries. Respected for his dynamic leadership, Reverend Parker thanks God for his guidance and support and he is deeply grateful to the Almighty for saving him so that he might become an instrument for spreading God's word.

Mr. Speaker, again it is an honor for me to introduce and welcome to the U.S. House of Representatives the Reverend John H. Parker, pastor of the Central Baptist Church in Washington, D.C., to deliver our opening prayer.

### FRIVOLOUS LAWSUITS HURT AMERICANS

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, frivolous lawsuits bankrupt individuals, ruin reputations, drive up insurance premiums, increase health care costs and put a drag on the economy.

For example, the chief executive officer of San Antonio's Methodist Children's Hospital was sued after he stepped into a patient's room and simply asked how he was doing.

Of course, a jury cleared him of any wrongdoing. Today, almost any party can bring any suit in almost any jurisdiction. But there is a remedy: The Lawsuit Abuse Reduction Act. It requires judges to issue sanctions, including reimbursement of attorney's

This symbol represents the time of day during the House proceedings, e.g.,  1407 is 2:07 p.m.

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



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fees when an attorney files a frivolous claim. This will make a lawyer think twice before filing a frivolous lawsuit.

Also this legislation prevents forum shopping. It requires that personal injury claims be filed only where the plaintiff resides, where the injury occurred, or in the State or county where the defendant's principal place of business is located.

The Lawsuit Abuse Reduction Act is sensible reform that will help restore confidence in America's justice system.

#### URGING ACTION ON THE HEALTH CARE CRISIS

(Mr. EMANUEL asked and was given permission to address the House for 1 minute.)

Mr. EMANUEL. Mr. Speaker, the administration has told us Social Security is in a crisis, headed for an iceberg, going broke, yet last week's revelation that the Medicare drug bill will cost nearly three times more than its original price tag, for a total of \$900 billion, known in the real world as a \$500 billion overcharge, calls into question the notion of privatizing Social Security.

Apparently the leaders here in Washington are content to ignore the 900-pound gorilla in the room. I would like to remind everyone that it was none other than the Fed Chairman, Alan Greenspan, who told the House Budget Committee in February of 2004, the concern is not so much about Social Security, the outlook for Medicare is much more difficult to assess. We really do not have a clue about the outlook for Medicare and never have.

The distinguished Fed Chairman is an expert on the challenges facing Social Security. He is undoubtedly getting tremendous pressure today to change his story.

Mr. Chairman, Federal Chairman Greenspan, do not get weak in the knees today, or ever. This is no time to change your judgment. Your integrity is a precious asset. I was there at the Budget Committee hearing when you said Medicare is a more serious problem.

Mr. Speaker, we have a health care crisis in this country. Privatizing Social Security is not an ideological solution in search of a crisis.

#### EXTREME RHETORIC FROM THE LEFT

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, the rhetoric of the left these days is becoming outrageous. Democrats in Virginia's legislature took this to new levels last week. Several compared a measure defining marriage as the union of a man and a woman to the Holocaust. Last week, the mayor of Baltimore compared President Bush's budget impact on cities to the murder of 3,000 civil-

ians on 9/11 killed by terrorists. A Colorado professor similarly disparaged 9/11 victims, calling them Nazis, little Eichmanns, working to sustain the Fascist capitalist system.

This demagoguery is an affront to our sense of decency and justice. It blames the victims, not those who murder them, for the most terrible injustices of our time. The Holocaust is incomparable to anything we have ever seen. Fourteen million people were murdered because of their race, ideology, nationality, or disability. Mr. Speaker, 9/11 was perpetrated not by capitalism, but by terrorists. That is the truth of history.

The left would do well to consider what their words really mean when leveling accusations at opponents, not sacrifice decency and truth at the altar of political expediency.

#### WOMEN AND SOCIAL SECURITY

(Ms. SOLIS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SOLIS. Mr. Speaker, today I rise to denounce the so-called Social Security crisis that President Bush is trying to sell the American public.

As the Democratic chair of the Women's Caucus, I am especially concerned about the impact of privatization on women. The President is proposing drastic cuts in Social Security survivor benefits. Nationally, 50 percent of Social Security beneficiaries receive all or part of their benefit either as a widow or widower, spouse or child of a worker or a disabled worker. Over 80 percent of the beneficiaries are women and children. Right now the typical widow receives a Social Security benefit of \$865 a month. If the 45 percent cut projected by the Congressional Budget Office were to take effect currently, they will only receive \$476 per month.

In my own family, I have a relative who is a widow whose family receives Social Security survivor benefits for her last child. She had three. If it was not for that amount of money, she would be living in poverty.

Democrats believe that all American workers should get the benefits they paid for. We will fight to improve the Social Security system and not dismantle it.

#### AGGRESSION AGAINST TAIWAN

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, in 1979, Congress passed the Taiwan Relations Act to ensure our friends on the island of Formosa would not be isolated because of our Nation's "One China" policy. The Taiwan Relations Act sent a strong message to Communist leaders on mainland China, saying we will conduct business with their country but

will not tolerate Communist aggression against a sovereign people.

It is important to emphasize our commitment to the democratically represented citizens in the Republic of China, because recent reports indicate mainland China is about to enact an anti-secession law with the purpose of reuniting China under Communist dictatorship. This action will not only destroy the goodwill between the peoples of Taiwan and China, it will also provoke unnecessary tension in the Taiwan Strait.

By unilaterally changing the status quo, Communist China is also challenging America's will to stand behind the Taiwan Relations Act. After diplomatic improvements in recent years, I believe the anti-secession law is wrong for the region's stability and is a potential misstep that needs to be addressed.

#### PRESIDENT'S PRIVATE RETIREMENT ACCOUNTS SUBJECT TO HIGHEST LEVEL OF TAXATION

(Mr. GEORGE MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, one of the most interesting things about the President's plan to privatize Social Security is that for those individuals who decide to take out a private account, not only will that lead to benefit cuts into the future, very substantial benefit cuts for the recipients, up to 40 percent, but those who decide to take out the private accounts will find out at the time of their retirement that unless their accounts have earned inflation plus 3 percent, that they will be taxed up to 70 percent or higher of their benefits that they risked and put into that private account.

It is rather interesting that Republicans who so often make "no tax" pledges will subject those retirees to the highest level of taxation of anybody else in the country. Most people pay 20, 15, 20, 25 percent of their income, but those retirees on that benefit, on those accounts, the government will take back up to 70 percent of that unless they achieve some remarkable rate of return that is beyond the historical rates of return guaranteed by the marketplace.

Mr. Speaker, it is a rather interesting proposal that that is where they would decide to levy taxes, on those retirees who open those private accounts, to increase savings in this country.

#### CLASS ACTION REFORM

(Mr. PRICE of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PRICE of Georgia. Mr. Speaker, not too long ago, our Nation's courts were a place where Americans were able to seek justice. Today, however,

the system has become a playground for personal injury trial lawyers as they file sham, abusive cases in lawsuit-friendly counties. And all too often the attorneys collect multi-million-dollar settlements for themselves, while their clients, the real victims, get left with nothing more than a coupon, often worth nothing more than the paper upon which it is printed.

Recently, a large national video rental chain, after being named in 23 class-action lawsuits, agreed to provide consumers in the lawsuit with dollar coupons, and attorneys in this case received over \$9 million.

Even more outrageous is the case where consumers were awarded 33 cents each in a settlement with a well-known national bank, not even enough to buy a stamp, while attorneys in the case walked away with \$4 million.

Mr. Speaker, this amount of money distorts the incentives for personal injury lawyers. They no longer represent their clients; they become coplaintiffs. It is past time we did something about it. That is why we should return commonsense justice to the American people by passing S.5, The Class Action Fairness Act.

#### EDUCATION BUDGET CUTS

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, 3 years ago, President Bush promised that no child would be left behind when he signed education reform legislation into law. But last week the President unveiled a budget with education cuts that breaks his promise to America's children.

The President's budget calls for the elimination of 41 education programs. Just some examples: The President eliminates vocational educational grants that help our States teach high school vocational skills to students in the hope that they will use these skills to find jobs. He eliminates educational technology grants to States, despite the fact that studies show technology can substantially raise student achievement. The President's budget eliminates a promotional effort to create ways to best educate disabled students.

Mr. Speaker, the President broke his promise to millions of children with this budget. We should reject this budget because of the education cuts alone and live up to our promises to see that no child is left behind.

□ 1015

#### MIDDLE EAST PEACE PROCESS

(Mr. CHOCOLA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHOCOLA. Mr. Speaker, the recent assassination of the former Leba-

nese Prime Minister reminds us once again how fragile life can be in this part of the world. That is why we must remain resolute in our mission to support efforts in the Middle East that promote stability and promote peace.

In Iraq, we are witnessing an emerging democracy that is bringing new hope and sovereignty to once-vanquished peoples. The recent Israeli-Palestinian truce is the crucial step towards reestablishing the confidence that has so often eluded its leaders. This is a necessary ingredient to advance the cause of peace in a region inflicted by terror and violence.

Mr. Speaker, the historic developments of the past few months are a ray of hope in a region that is often clouded by darkness and give us reason to believe that a new era has begun, one which will eventually lead to peace.

#### TRADE DEFICIT

(Mrs. MALONEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MALONEY. Mr. Speaker, this administration has repeatedly set records for debts and deficits and the latest is for our enormous trade deficit. We have raised the debt ceiling three times to cover their deficit spending, over \$470 billion. That comes out to over \$26,000 owed by every man, woman, and child in America.

Their newest record is an all-time high in a trade deficit, nearly \$618 billion, the highest in our history. This is a huge burden for our economy because we are borrowing from foreign countries to pay for our imports. We should never build our economic system on a foundation of debts, deficit, and foreign loans. Any day that foundation could become a house of cards.

#### ENDING FRIVOLOUS LAWSUITS

(Mr. MCHENRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCHENRY. Mr. Speaker, frivolous lawsuits are hurting our economy, and they must be stopped. Lawsuit abuse affects everyone. Frivolous lawsuits and junk lawsuits jam our judicial system. Frivolous lawsuits increase the cost of medicine and medical treatment. They hurt our health care, hurt the American economy, and they hurt American jobs.

Mr. Speaker, it is because jury awards in civil trials have become blank checks for plaintiff lawyers. Increased numbers of cases and the absurd rewards they yield have resulted in the highest per-person cost of litigation of any country in the world. They cost small businesses the most and many have closed their doors.

It is Congress's duty to ensure that this type of legislation is not abused. President Bush's plan for tort reform

lays a strong groundwork to address medical liability reform, class action lawsuit reform, asbestos litigation reform. It is clear that too many of these lawsuits are being abused. Congress must act today to ensure that we have a healthy economy tomorrow.

#### STRENGTHENING SOCIAL SECURITY

(Mr. SAM JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, I salute President Bush's leadership on the need to strengthen Social Security with personal retirement accounts. I am hearing a lot of haranguing on the other side, most of it untrue. This debate begins and ends with our pledge that nothing will change for people 55 and older.

This current debate must focus on the future of younger Americans. Social Security was created for a much different America. Created in 1935, current taxes more than covered current opinions. The average working male lived to age 60, when people retired at age 65. When Social Security started, 42 people supported one retiree. Now 3.3 workers support one retiree, and it is on a downward trend too.

We have got to do better for our children and our grandchildren. We must strengthen Social Security for our children and for America's future.

#### PROVIDING FOR CONSIDERATION OF H.R. 310, BROADCAST DECENTENCY ENFORCEMENT ACT OF 2005

Mrs. CAPITO. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 95 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 95

*Resolved*, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 310) to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes. The bill shall be considered as read. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; (2) an amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Upton of Michigan or his designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for 20 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. CULBERSON). The gentlewoman from

West Virginia (Mrs. CAPITO) is recognized for 1 hour.

Mrs. CAPITO. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

On Tuesday, the Committee on Rules met and granted a structured rule for H.R. 310, the Broadcast Decency Enforcement Act of 2005. This is a fair rule that I believe all Members of the House should be able to support.

This bipartisan bill brings penalties for network television programming to modern standards. The legislation also enhances the Federal Communications Commission's ability to reprimand networks and individuals who violate indecency standards.

In the last few years, there have been several instances that have prompted the need for this legislation. Two immediately come to mind. During the 2003 Golden Globe Awards, pop star Bono of the band U2 used offensive language while accepting an award on live television; and, of course, there is the infamous debacle that was the 2004 Super Bowl half-time show which I, by the way, was watching with my own family.

Each incident occurred during prime time hours and both programs were widely viewed by families across the Nation. Parents should not have to be unwillingly subjected to vulgar behavior and blatant disregard for what is appropriate for prime time viewing hours.

Provisions in H.R. 310 will increase the FCC fines for indecent broadcasts from \$32,000 per incident to \$500,000 per incident which will be applied to the network and other parties who knowingly participated and approved of the broadcast. There is also a 3-strikes provision that will give the FCC the option of revoking broadcast licenses of frequent offenders. This legislation protects local networks and broadcast companies from fines if they did not have prior knowledge, if they did not give approval or were unable to prevent the indecent broadcast from the parent company or network from happening in the first place. This provision judiciously places responsibility where it truly lies by protecting innocent parties.

I am a strong supporter of this bipartisan legislation. We have made many strides in recent years providing parents with rating information they can use to determine what is appropriate for their children to view. We cannot tolerate instances where G-rated programming is intentionally and unknowingly to the audience turned into R-rated programming.

These are good changes to improve the quality of television available to our children and families. I urge my colleagues to support the Upton-Markey manager's amendment. It is a

strong bipartisan amendment that makes necessary clarifications and improvements to this legislation. To that end, I urge my colleagues to support the rule and the underlying bill.

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

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

Mr. Speaker, I thank my colleague from West Virginia and congratulate her on her first rule.

Mr. Speaker, I rise today in support of the underlying bill, but I am disappointed that the rule will not let us engage today in the debate that this House and our country desperately need to have, a debate about how the lack of standards in the broadcast media is threatening some of our most basic democratic values.

The underlying bill, which I supported last year and intend to support again today, addresses a very narrow part of the problem of decency within broadcasting. It increases the penalties on media companies who openly flaunt the FCC's rules against obscene broadcasts.

Mr. Speaker, when we give media companies the right to broadcast in our communities on our airwaves, one of the few things we ask in return is they refrain from broadcasting lewd, indecent programs during the hours that children may be listening or watching. That does not seem like a lot to ask, but many media companies seem to find it hard to comply even with the most basic rule, a rule most Americans practice every day in their lives.

Put simply, you do not say crude or offensive things when you are a guest in somebody's home and their children are in the room. This is an American value that we can all embrace, so I would ask why the standards are different for the media. The bottom line is that they should not be.

The FCC has fined a number of broadcast licensees over the past several years for lewd and inappropriate broadcasts, and I hope that the increased penalties in the bill will make these companies think twice before they do it again. But with all the money they make, I doubt that. But refraining from obscene broadcasts does not mean that our media companies are fulfilling their obligation to broadcasts in the public interest. In fact, I would submit that an even greater indecency is the declining standards of fairness, accountability and truth in America's broadcast media today. After all, should we not ensure that our broadcast media present a diversity of views about the most important issues that face the country? Issues upon which our democracy depends should at least be as important as regulating the words and images we allow broadcasters to use in sit-coms and Super Bowl half-time shows.

Sweeps Week stunts only underscore how these large, distant media compa-

nies routinely sweep important local news, balance, truth, and objectivity under the rug. I am talking here about core American values, values that most of us were taught as children and practice every day: be accountable for what you say and do; be truthful and fair in your dealings; balance your approach to life. But time and time again, we have failed to demand that mega-media corporations uphold these most basic American values. And all this despite the fact that the same companies use the public airwaves broadcasting into our homes every night and are the primary tool that most Americans use to learn about the world around them.

Ever since the Reagan administration rescinded the Fairness Doctrine in 1987 our broadcast standards have not only been in just a steep decline but they are fast approaching extinction.

When newspeople present political opinion as hard news with no accountability or fact for truth, I call that indecent. When it becomes common practice to pay members of the media to deceptively advocate a political agenda on public airwaves without disclosure to the public, I call that indecent. When a television broadcaster uses his license to present one-sided, factually erroneous documentaries designed to impact the outcome of a national election without equal time or standard for truth, I call that indecent and dangerous.

And what about the so-called reporter who gained access to the White House press room under dubious circumstances to ask loaded rhetorical questions without even his colleagues, much less his audience, knowing he is a fraud? I call that overwhelmingly indecent.

In a relatively short time, we have abandoned the high ethical standards of truth and objectivity demonstrated by such giants as Edward R. Murrow and Walter Cronkite in favor of the bias of pseudo-journalism demonstrated by Armstrong Williams, Jeff Gannon, and Bill O'Reilly. This is a sure recipe for the dumbing-down of America.

In fact, USA Today reported yesterday that despite the fact that 60 percent of Americans get their news from local television, those same companies have nearly given up covering local political races and issues in recent years. According to the article, in the month leading up to the last election, the one just passed, just 8 percent of the local evening newscasts in 11 of the Nation's largest TV markets devoted time to local races and issues.

□ 1030

Ninety-two of them paid no attention. That is 8 percent. In other words, for every minute of news that they show, they spend 4.8 seconds discussing the issues that shape our neighborhoods, our communities and our families, and for most Americans, that is the only news they will get.

Enough is enough. The public deserves better. The American people

know they are being deceived. They are fed up, and they are taking action to do something about it.

Look at the 2 million comments that ordinary Americans sent to the FCC to stop even more media consolidation from taking place last year. The public expects us to do more. They expect us to act in their interests. They expect us to defend and uphold their values, values we should all share: truth, honesty, objectivity and balance. We can do so much more than what we are just discussing here today.

When the committee met to report this rule last night, the gentleman from New York (Mr. HINCHEY) and I brought amendments to the committee that we thought would broaden this debate today into the one we really ought to be having.

The gentleman from New York's (Mr. HINCHEY) amendment would have rolled back broadcast media consolidation rules to their pre-2003 levels, and my amendment would restore the fairness doctrine and bring more accountability to the news, but we were rejected.

They only wanted to talk today about decency, and we were not germane to the bill. In a technical sense, they may be correct, but we all know that to have a real debate on what is happening to our culture today, the House would have to talk about the issues our amendments address. Sadly, that will not happen today.

Mr. Speaker, at the end of the debate, I intend to call for a no vote on the previous question so that I may modify the rule to allow for consideration of my amendment on fairness and accountability in broadcasting, and I hope that all Members of this House will join me in voting against the previous question to have this opportunity to restore fairness and accuracy in the media.

I only hope that in the 109th Congress we will have that discussion. Our democracy could very well depend on it.

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

Mrs. CAPITO. Mr. Speaker, I continue to reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. WATSON).

Ms. WATSON. Mr. Speaker, I also rise in strong opposition to the rule for H.R. 310. Yesterday, I too offered several amendments with my colleagues that would require broadcasters to perform minimum public-interest obligations and ask GAO to study the link between indecency and media ownership. I am very disappointed that they were not made in order, and I hope my colleagues will join me in opposing this rule and requesting an open rule.

Mr. Speaker, while we all believe in the need to reduce indecency in media, I do not believe increasing fines addresses the root causes of the problem, namely, the current trend of unfettered media conglomeration and its impact

on creative voices. This bill is a response to the anger felt by millions of parents and consumers regarding our dumbed-down media culture today.

The bottom line is, a consolidated media market controlled by profit-driven conglomerates is bound to produce indecent, shock-value programming for the sake of viewership. That is why I joined my colleague, the gentleman from New York (Mr. HINCHEY), in offering an amendment that would request a GAO study on the connection between media ownership and indecency. I am very disappointed that the amendment was rejected.

Furthermore, when big media gets bigger and the race for audiences turns to the lowest denominator in trash programming to appeal to the broadest possible audience, those conglomerates move further away from quality programming and the principles of diversity, localism and competition, crucial for the service of the public interest.

This was why I supported an amendment offered by my colleague, the gentlewoman from New York (Ms. SLAUGHTER), who has been a champion in restoring the fairness doctrine. The Slaughter-Watson amendment would have made basic public-interest obligations an element of the broadcast licenses' renewal requirement. That includes the coverage of diverse interests and viewpoints in the local community, the requirement of holding two public hearings each year to ascertain the needs and interests of the communities licensees are serving, and documentation requirements of such public interest coverage.

Mr. Speaker, the indecent media culture we are witnessing today cannot be simply modified by increased fines. It needs to be transformed through less media consolidation and greater requirements on broadcasters to serve the public interest. I strongly urge my colleagues to oppose the rule. Vote against the bill.

Mrs. CAPITO. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. COLE), my distinguished colleague and new member of the Committee on Rules with me.

(Mr. COLE of Oklahoma asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. COLE of Oklahoma. Mr. Speaker, I rise today in support of the rule for H.R. 301, the Broadcast Decency Enforcement Act of 2005. I believe this is a fair rule and one that accords both sides of the aisle a good opportunity to explore the issues surrounding this legislation.

Just last year, the House took a strong step forward on this issue when it passed H.R. 3717 by a vote of 391 to 22. Unfortunately, the other body was unable to schedule this legislation for consideration before the close of the 108th Congress.

Mr. Speaker, we have a real opportunity today. As a father and a husband, over the years I have had genuine concerns about the suitability of some of the programming that is now aired

on television. As my colleagues know, the law holds that indecent material is not appropriate for television. Unfortunately, over the last several years, some in the media have concluded that they are willing to pay fines for the privilege of airing the very material that they know millions of Americans will find offensive.

Mr. Speaker, it is time that we as the people's elected Representatives address the issues surrounding the airing of indecent material. This legislation is a good first step. It will restore some teeth to the law and begin to better protect America's children immediately.

I know that my colleagues agree with me, Mr. Speaker, when I say that no family should be exposed to some of the content that is now regularly aired on television. This legislation does not address just the infamous incident such as the supposed wardrobe malfunction at last year's Super Bowl. While it does not discriminate, it will help to restore a measure of decency to the airwaves.

Again, Mr. Speaker, I urge my colleagues to support the rule. It is a fair rule, one that will allow us to fully explore the issues surrounding the Broadcast Decency Act of 2005.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, our discussion of the media's responsibility is incomplete without consideration of fairness and without consideration of the fairness doctrine. The public's airwaves are not just a forum for entertainment that might step beyond the bounds of decency but also a home to the marketplace of ideas on which our democracy depends.

In other words, it is not good enough to hold broadcasters accountable for inappropriate wardrobe malfunctions. They must live up to the public good if they want to continue to use the public's airwaves.

Our constituents depend on broadcasters for essential information about issues that affect their families, their lives. Too often, they are unknowingly relying on incomplete, inaccurate, or biased reports.

This happens because we do not hold broadcasters accountable to the public. Under the current rules, corporate conglomerates are free to set the news agenda based on what they think sells or entertains, not what the public needs to know.

Undercover government spokespersons are free to speak their opinions as trustworthy pundits, and media monopolies are free to use their power to provide only one part of the story. Broadcasters are failing the public when the airwaves are used this way.

Mr. Speaker, there is another challenge and threat to our most cherished free speech values: the consolidation of

media ownership. There is a movement that is reshaping the marketplace of ideas and eliminating the diversity of opinion critical to a vibrant democracy.

No newspaper, radio station or TV network is perfect, but allowing single corporations to monopolize the information that average Americans receive gives media corporations and individuals like Rupert Murdoch too much power.

In America ideas are not just another commodity like butter, steel, or cloth. Ideas are the lifeblood of our Nation. The FCC should be defending the free exchange of ideas, not giving a few corporations and their executives power to shut off the flow of ideas to American citizens.

Mr. Speaker, I suggest that we do not vote for this rule until we have everything in it.

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

I would like to remind the Members that the issue that we are speaking about today in this bill is the raising of the fines for indecency, caused by several incidents, I think over a million, the gentlewoman from New York (Ms. SLAUGHTER) quoted last night in our Committee on Rules meeting, instances of inappropriate viewing on our television and our airwaves and on our radios.

So I think to keep the focus of this bill and this rule is important for the Members to realize that this is something that goes right to the crux of our families.

Mr. SANDERS. Mr. Speaker, will the gentlewoman yield?

Mrs. CAPITO. I yield to the gentleman from Vermont.

Mr. SANDERS. Mr. Speaker, will the gentlewoman help us define what inappropriate is? Does the gentlewoman think that the film "Saving Private Ryan," which depicted the incredible sacrifice by American troops on D-Day, is inappropriate and should have been kept off of ABC?

Mrs. CAPITO. Mr. Speaker, I think the standard for inappropriate on the airwaves has been established by the FCC, and they are the ones.

This bill does not speak to that. This bill speaks to raising of the fines.

Mr. SANDERS. Mr. Speaker, if the gentlewoman would continue to yield, but this bill leads to self-censorship. Small stations who are fined a half a million dollars are going to be very cautious. "Saving Private Ryan" was kept off of dozens of ABC affiliates because they were afraid of a fine.

Mrs. CAPITO. Mr. Speaker, reclaiming my time, in wrapping up my previous statement, I just want to realize what the focus of this bill and what the focus of the rule is on.

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

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

In response to my colleague, at the end I am going to amend this rule to

include what we are trying to do and what the speakers are speaking to. So that is perfectly legitimate for us to do that.

Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, the comments from the floor manager of the bill made clear one of the major goals of the Republican Party. It is to shorten the attention span of the American people.

Among the things they think are inappropriate are not just things we might see on television but things we might hear on the floor of the House. The gentlewoman apparently thinks it is inappropriate for us to discuss on the floor of the United States House of Representatives the issue of media concentration.

That is what we are talking about. The gentlewoman said no, no, no, you are off the subject. Well, many of us believe that excessive media concentration is a subject that ought to be addressed, and it is, of course, the intention of the majority party not to allow that to be discussed. Inappropriate to criticize those corporations that are increasing media ownership.

The gentleman from Oklahoma said this is a fair rule. Well it is fair if the scale is poor, fair, good and excellent. In that case, I guess it is a fair rule because my colleagues let in one amendment.

We will be debating, after this rule is adopted, the substance of this bill, probably the only bill that the majority will allow on our communications matter, for 1 hour and 20 minutes; 1 hour and 20 minutes. If the Provisional Assembly in Iraq gave only an hour and 20 minutes to a subject, we would be very critical of them.

Once again I have to say, with regard to the people in Iraq who have been elected to the Provisional Assembly and who we are urging to practice democracy and respect minority rights, if any of them happen to be watching this proceeding, please do not try this at home. Please show more respect for full discussion than these people are showing.

Now, I also want to talk about indecency. It may be one of my last chances to do it because the gentleman from Vermont is correct. What this has done, this furor, is to lead to censorship, self-censorship, but also censorship by the administration.

I regret things like the Janet Jackson incident and what happened with her and that guy, but I think we have a greater danger now. The greater danger is the censorship of the free and open debate of this country. I guess I have more confidence than the majority in the families of America and the parents to be the main protectors of their children, not the majority party; and instead what happens is we have the Secretary of Education criticizing PBS and pressuring them not to run a show because it showed two lesbians.

I guess maybe I am speaking out of self-interest. If these people keep this up, we just had some fool in the Department of Health and Human Services insist that a panel on youth suicide aimed at gay, lesbian, and transgendered teenagers not use the words gay, lesbian and transgendered, because those things are inappropriate; showing lesbians is inappropriate.

I guess, Mr. Speaker, if some of these people had their way, I would be bleeped. I guess there would be a blank screen when I appeared on here, lest some people be somehow corrupted by the very fact that a gay man takes the floor of the House to talk about a rule that is undemocratic and a furor that leads to "Saving Private Ryan" being shut off, that leads to PBS being pressured not to show young people that there is in this world such a thing as lesbians, because that might somehow corrupt them.

□ 1045

I voted for this bill last year, so I am grateful to the majority for one thing. I voted for it, and it resulted in a degree of pressure and a degree of intimidation and a degree of intolerance and a failure to understand the value of free debate that I regretted and felt a little guilty about. So I am glad I have a chance to vote against it, as I will do.

But I regret very much that the gentlewoman from West Virginia and those in the majority feel it is inappropriate to discuss media concentrations or any oppositions that might exist. And that is where we are today. We have a bill that will, I believe, result in more censorship, in more excessive attention to a fairly small problem while ignoring very large ones.

I should say, finally, Mr. Speaker, understand why we have to cut this debate so short: because of our workload. We might actually be here until 4 o'clock this Wednesday, today, and we may even begin tomorrow. Of course, we are getting ready for a 10-day recess, so we may need a little extra time to relax. This House has met very little, we have done very little, and so the refusal of the majority to allow a debate on the important topics that we are talking about here, the effort by the gentlewoman from West Virginia to chide us, to say do not bring up media concentration and all those unimportant irrelevancies, is an example of the majority's disrespect of democracy, which they unfortunately continue to manifest.

Mrs. CAPITO. Mr. Speaker, I yield myself such time as I may consume to make a couple of comments regarding the gentleman's observations.

I did not state it was inappropriate to debate this on the House floor, and I am only speaking about the indecency and the raising of fines in terms of a standard that is set by our Federal courts. So I take exception with that.

I also take exception with his ownership of democracy. This is what democracy is. We are debating democracy, we

are debating issues on the House floor, which we do every single day, and I am proud to be a part of that.

The other thing I would say in terms of the bill we are discussing, I think it is important to remember that over 2 years ago, I believe, we passed this bill in enormous bipartisan fashion. It was brought to the committee by both the chairman and the minority Chair of that committee in unison in terms of the manager's amendment and the intent of the bill. So I believe that Members will know this is a bill we have worked on before.

Personally, I was raised in the 1950s and 1960s, when I used to sit down and watch "Bonanza" and the "Wide World of Disney." My mother did not have to have the remote control in her hand, which they did not have at the time anyway, to make sure I did not see anything inappropriate. All we are trying to do here is to raise the level of fines for those who willfully and intentionally have indecent and inappropriate action on television.

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

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, I would say to the gentlewoman from West Virginia, and I regret she would not want to yield, I guess she did not want to respond to me, even though she has a lot of time left. She is going to turn back her time. But she said she was not saying we should not debate these. I will make a prediction: she and the majority will never allow a debate on concentration.

She says, oh no, we just do not want to debate it now. You do not want to debate it now, you do not want to debate it next month, you do not ever want to debate it. So the fact is this is not simply a case of, oh well, we are only on this one issue. It is the effort of the majority to suppress debate on the important question of media concentration. They will not bring it up now, and they will do everything they can to prevent it.

So, yes, I think I am on the right side of democracy when we talk about whether or not to discuss this issue. Democracy says you should discuss it.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Mr. Speaker, I rise in opposition to this rule. I am happy that we are having this discussion of decency on the public airwaves today, and I am happy to be here with the gentlewoman from New York (Ms. SLAUGHTER), who is one of the greatest champions in America for fair communication of ideas and artistic and creative thinking.

I am surprised and disappointed, however, that this rule does not allow us to debate an issue that is just as important as public content, and that is diversity of viewpoints. The repeal of the Fairness Doctrine has hurt the ob-

jectivity of the media, and an amendment dealing with this was denied.

In recent months, we have seen the unfortunate result of media consolidation, lack of local programming control, balance of news and information. One broadcasting company tried to use the public airwaves to air an untruthful and damaging so-called documentary criticizing the war service of a Presidential candidate. We have discovered the administration is using taxpayer funds to pay broadcasters and unqualified journalists to advocate administration policies.

Reinstitution of the Fairness Doctrine would provide at least partial safeguard against such abuses. It would require broadcast licenses to cover both sides of issues or multiple sides of issues of public interest.

As we are considering decency in the public airwaves, we should also give due consideration to fairness, truth, and balance on those same airwaves.

Mrs. CAPITO. Mr. Speaker, may I inquire as to how much time is remaining.

The SPEAKER pro tempore (Mr. CULBERSON). The gentlewoman from West Virginia (Mrs. CAPITO) has 22 minutes remaining, and the gentlewoman from New York (Ms. SLAUGHTER) has 13½ minutes remaining.

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

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I rise in opposition to the rule and opposition to the underlying legislation.

As someone who voted in favor of similar legislation last year, I am increasingly alarmed by the culture of censorship that seems to be developing in this country, and I will not be voting for this bill today.

This censorship is being done by the corporate owners of our increasingly consolidated, less diverse media; but it is also significantly being done by the government, and that is what this bill is about today. What we are seeing is an increasing and insidious chill on free expression in the airwaves.

There are a lot of people in Congress on that side of the aisle, my conservative friends, who talk about freedom and freedom and freedom; but apparently they really do not believe that the American people should have the freedom to make the choices themselves about what programs they see on television or on the radio.

There are a lot of people in Congress, including Conservatives, who talk about the intrusive role of government regulators; but today they want government regulators to tell radio and TV stations what they can air. I disagree with that.

A vote for this bill today will make America a less free society. Mr. Speaker, I am not a Conservative. I am a proud Progressive. But on this issue, I

agree with some important conservative thinkers. Let me tell my colleagues what Mr. Adam D. Thierer, the director of telecommunications studies at the Cato Institute, extremely conservative think tank, says, and he has it right: "Those of us who are parents understand that raising a child in today's modern media marketplace is a daunting task at times, but that should not serve as an excuse for inviting Uncle Sam in to play the role of surrogate parent for us and the rest of the public without children. Even if lawmakers have the best interest of children in mind, I take great offense at the notion that government officials must do this job for me and every other American family. Censorship on an individual parental level is a fundamental part of being a good parent. But censorship at a government level is an entirely different matter because it means a small handful of individuals get to decide what the whole Nation is permitted to see, hear, or think."

That is and that should be the Conservative position. That should be the position of people who say get the government off our backs; we do not want government regulations.

Mr. Speaker, increasingly in this country we are seeing censorship on the airwaves. In January of 2004, CBS refused to air a political advertisement during the Super Bowl by MoveOn.org, and on and on it goes.

Let us vote "no." Let us vote against this bill and support freedom.

Mr. Speaker, I rise in opposition to this legislation.

Mr. Speaker, I think we can all agree that we do not want our children exposed to obscenity on the public airwaves. That goes without saying.

As someone who last year voted in favor of similar legislation, I am increasingly alarmed by the culture of censorship that seems to be developing in this country, and I will not be voting for this bill today. This censorship is being conducted by the corporate owners of our increasingly consolidated, less diverse media. And it is being done by the government. This result is an insidious chill on free expression on our airwaves.

There are a lot of people in Congress who talk about freedom, freedom and freedom but, apparently, they do not really believe that the American people should have the "freedom" to make the choice about what they listen to on radio or watch on TV. There are a lot of people in Congress who talk about the intrusive role of "government regulators," but today they want government regulators to tell radio and TV stations what they can air. I disagree with that. A vote for this bill today will make America a less free society.

Mr. Speaker, I am not a conservative. But on this issue I find myself in strong agreement with Mr. Adam D. Thierer, the Director of Telecommunications Studies at the Cato Institute—a very conservative think tank. And here is the very common sense, pro-freedom position that he brings forth:

Those of use who are parents understand that raising a child in today's modern media marketplace is a daunting task at times. But

that should not serve as an excuse for inviting Uncle Sam in to play the role of surrogate parent for us and the rest of the public without children.

Even if lawmakers have the best interest of children in mind, I take great offense at the notion that government officials must do this job for me and every other American family.

Censorship on an individual/parental level is a fundamental part of being a good parent. But censorship at a government level is an entirely different matter because it means a small handful of individuals get to decide what the whole nation is permitted to see, hear or think.

I've always been particularly troubled by the fact that so many conservatives, who rightly preach the gospel of personal and parental responsibility about most economic issues, seemingly give up on this notion when it comes to cultural issues.

Mr. Speaker, the specter of censorship is growing in America today, and we have got to stand firmly in opposition to it. What America is about is not necessarily liking what you have to say or agreeing with you, but it is your right to say it. Today, it is Janet Jackson's wardrobe malfunction or Howard Stern's vulgarity. What will it be tomorrow?

Let me give just a couple of examples of increased censorship on the airwaves. In January 2004, CBS refused to air a political advertisement during the Super Bowl by MoveOn.org that was critical of President Bush's role in cheating the Federal deficit. Last November, 66 ABC affiliates refused to air the brilliant World War II movie "Saving Private Ryan," starring Tom Hanks, for fear that they would be fined for airing programming containing profanity and graphic violence, even though ABC had aired the uncut movie in previous years. This ironically was a movie that showed the unbelievable sacrifices that American soldiers made on D-Day fighting for freedom against Hitler, but ABC affiliates around the country didn't feel free to show it. Last November, CBS and NBC refused to run a 30-second ad from the United Church of Christ because it suggested that gay couples were welcome to their Church. The networks felt that it was "too controversial" to air. And just last month, many PBS stations refused to air an episode of Postcards with Buster, a children's show, because Education Secretary Spellings objected to the show's content, which included Buster, an 8-year old bunny-rabbit, learning how to make maple syrup from a family with two mothers in Vermont.

Mr. Speaker, each of these examples represent a different aspect of the culture of censorship that is growing in America today. My fear is that the legislation we have before us today will only compound this problem and make a bad situation worse.

This legislation would impose vastly higher fines on broadcasters for so-called indecent material. But this legislation does not provide any relief from the vague standard of indecency that can be arbitrarily applied by the FCC. That means broadcasters, particularly small broadcasters, will have no choice but to engage in a very dangerous cycle of self-censorship to avoid a fine that could drive some of them into bankruptcy. Broadcasters are already doing it now. Imagine what will happen when a violation can bring a \$500,000 fine. If this legislation is enacted, the real victim will be free expression and Americans' First Amendment rights.

In the past week I have sought out the views of broadcasters in my own State of Vermont and I have heard from many of them. Without exception they are extremely concerned about the effect this legislation will have on programming decisions.

Mr. Speaker, I am enclosing a copy of a statement by Mr. John King, President and CEO of Vermont Public Television.

STATEMENT OF MR. JOHN KING, PRESIDENT AND CEO OF VERMONT PUBLIC TELEVISION ON H.R. 310

Vermont Public Television, like other local broadcasters, does its best to serve the needs and interests of its local community. It's a great privilege and a great responsibility to have a broadcast license. While we acknowledge that there must be sanctions for broadcasters who misuse the public airwaves, we believe the sanctions proposed in H.R. 310 are extreme.

The FCC's proposals for increased fines for obscenity, indecency and profanity have already had a chilling effect on broadcasters nationally and locally, including Vermont Public Television. The legislation also makes lodging a complaint easier and puts the burden of proof on the station. Codifying these proposals into law will make the situation worse.

While many people might assume the new sanctions are aimed at commercial broadcasters, public broadcasters are feeling the effects every day. Public television's educational programming for children has always provided a safe haven. The same public television stations that take such care of their young viewers also respect the intelligence and discretion of their adult viewers to make the best viewing choices for themselves.

Vermont Public Television has always operated responsibly in our programming for adults. At times, our programs included adult language and situations appropriate to the informational or artistic purpose of a program. While there have always been prohibitions against gratuitous indecency, the FCC always took context into account. Now, it seems that context is no longer considered.

Much as we might like to invoke our First Amendment rights, we dare not risk the large fine that could come with a single violation. The \$500,000 maximum fine could put a small station like VPT out of business.

Last year, when the FCC proposed increased fines and told broadcasters there was one word that would never be appropriate on the air, PBS and its member stations, including Vermont Public Television, began to make content choices so as not to run afoul of the new FCC restrictions.

PBS programmers began making edits to national programs being distributed to stations. An "American Experience" documentary on Emma Goldman was scrutinized for what might possibly look like a bare breast and edited, just to be sure. On "Antiques Roadshow," a nude poster was edited. This month, most PBS stations will air a drama from HBO called "Dirty War." In the story, a woman showers to remove radiation. When the program airs on PBS, that shower scene will be edited.

Our programming director, and no doubt most local programmers, have become very cautious. Once the FCC starts telling broadcasters they must not use certain words or situations, programmers tend to avoid producing and airing programs with words and situations that might even come close to content that could be subject to fines.

At VPT, we produce many live local programs with panelists representing many points of view. We take calls from viewers

live on the air. There has never been a problem with language, but the legislation's reference to using a "time delay blocking mechanism" makes us worry. We don't use a time delay. Are we subject to a fine if a panelist or a caller uses a word considered obscene, indecent or profane?

Our programming director says the FCC proposals have already made us rule out airing independent films on our "Reel Independent" program. Films by Vermont filmmakers that we would have aired in past years are not being accepted for broadcast now.

We cannot support H.R. 310 as it is written.

Mrs. CAPITO. Mr. Speaker, I continue to reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Speaker, this bill and the rule really missed the point. The point is that we are experiencing here in this House and across this country limitations on political debate, and that is the way this rule is structured, to limit political debate so that the American people do not understand what is going on.

For more than 2 decades now, the Republican Party has sought to consolidate the media in America across the board, and they have done so also to limit debate by eliminating the Fairness Doctrine. This bill makes no mention whatsoever of the link between media consolidation and the rising number of indecency complaints.

What do we have today as a result of the Republican Party's consolidation of the media in America? Five companies own the broadcast networks and 90 percent of the top 50 cable networks. They produce three-quarters of all prime time programming. They control 70 percent of the prime time television market share. These same companies that own the Nation's most popular newspapers and networks also own 85 percent of the top 20 Internet news sites.

Two-thirds of America's independent newspapers have been lost. According to the Department of Justice's "Merger Guidelines," every local newspaper market in the United States today is highly concentrated as a result of actions begun under President Reagan in 1987 and that continue today under President George W. Bush and the Republican leadership of this House.

One-third of America's independent TV stations have vanished. There has been a 34 percent decline in the number of radio station owners since the passage of the 1996 Telecommunications Act under the leadership of this House. There has also been a severe decline in minority-owned broadcasters.

As the major networks have been allowed greater vertical integration, the percentage of independently produced new programming on broadcast networks has declined from 87.5 percent in 1990 to 22.5 percent in 2002. It is barely one-fourth of what it was 15 years ago, independent programming, thanks to the leadership of this House and Republican Presidents.

Almost 60 years ago, the Supreme Court declared: "The widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public; that a free press is a condition of a free society."

We no longer have a free press or free media in our country, as a result of the conscious, intentional consolidation of the media that has been authorized and orchestrated by the Republican leadership in this House and successive Republican Presidents.

I have no doubt that every Member of this body would agree that the court sentiments that I mention here today should hold true, but it is also true that we are not allowed to debate this point and bring it up on the floor of the House.

We have a lot to do here, and our Republican colleagues are not allowing it to be done. Free press is essential to a free and open society.

□ 1100

Mrs. CAPITO. Mr. Speaker, I yield 2 minutes to my colleague, the gentleman from Georgia (Mr. GINGREY) and a new member of the Rules Committee.

Mr. GINGREY. Mr. Speaker, I want to remind my colleagues, especially for those on the other side of the aisle, that this Broadcast Decency Enforcement Act does not change the definition of decency, and it is not about censorship. It is about increasing the penalties and the fines for those entertainers and owners of radio and television stations that knowingly and willfully violate, and do it in a repeated manner, what we already know is a definition of decency.

So it is disingenuous to suggest that we are trying to impose censorship or redefine what has already been well defined in regard to decency. I want to give, Mr. Speaker, an example. The Member from the other side of the aisle, the gentleman from Virginia (Mr. MORAN) had an amendment, and I do not want to dwell on this too much because he is here and I think he may be speaking about that. But he brought an amendment to the Rules Committee concerning a certain ad that we see many times on prime-time hour on television. And he had great concerns about that. And many members of the Rules Committee on both sides of the aisle, both Republicans and Democrats, agreed that this advertisement was possibly a little on the tacky side, but that amendment was not approved by the Rules Committee because of that question of a redefinition of what is decent.

So I just want to remind my colleagues that this is not about censorship or redefining decency on the airwaves, it is making sure that those who continue to abuse their privilege of broadcasting on our public airwaves, that they pay a significant fine and one that hopefully will disincentivize them from continuing this activity.

Ms. SLAUGHTER. Mr. Speaker, I just wanted to comment that there is censorship because the Democrats are not allowed amendments.

Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from North Carolina (Mr. PRICE).

(Mr. PRICE of North Carolina asked and was given permission to revise and extend his remarks.)

Mr. PRICE of North Carolina. Mr. Speaker, a year ago I stood before this Chamber during debate of this same legislation and remarked that by increasing fines for indecency violations we were addressing the symptoms of a problem but not the underlying causes.

One year later, despite all of the public outcry, despite the millions of citizens who contacted the FCC and Congress advocating for localism and decency standards and unbiased news, despite all of the politicians bemoaning what is on our airwaves today, not much has really changed.

Last year we fought unsuccessfully for an amendment that would have addressed the true effect of media consolidation by commissioning a GAO study on the relationship between consolidation and indecency on the airwaves. This amendment was not made in order by the Republican majority.

It should come as no surprise that we will not get a vote on this amendment again this year. Once again, the leadership has shown us that the concerns of ordinary people are trumped by the interests of media conglomerates and of the Bush administration.

We should allow the GAO to study the consequences of media consolidation and we should turn these results into action, passing legislation to ensure that a handful of companies will not get to dominate our airwaves, be it with filth or foul language or political propaganda or anything else that viewers would opt not to see.

And I tell you, we Members who are involved in this are not going to rest until we put control of our airwaves back where it belongs, in our local communities and in the hands of the American people.

To this end, I have joined with a number of colleagues in forming a media reform caucus, which will be working to make sure that the voices of the communities we represent are present at the table as Congress revisits the issues of media ownership and telecommunications regulation.

And for those who share our concerns about the state of the media industry, I urge you to join in this fight. I assure you, Mr. Speaker, you have not heard the last from us; this fight is not over.

Let me just comment on this court decision which a number of people have cited. Last June the 4th Circuit echoed the concerns I have been addressing here today, when it stayed the implementation of the FCC's relaxed ownership rules. But we have no guarantee that the FCC will not pass a new version that would again make it easier for a few big conglomerates to control our airwaves.

In fact, it is quite likely that they will. We will have this fight all over again. So we should spare ourselves and the American people all of that trouble and do the right thing right now, and that is to commission this GAO study on the relationship between filth on the airwaves and consolidation, and in the meantime forbid any further action on putting the control of the airwaves in the hands of these big conglomerates.

I thank the gentlewoman for yielding the time.

Mrs. CAPITO. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. AKIN).

Mr. AKIN. Mr. Speaker, I rise today in support of the rule and the underlying bill, H.R. 310, the Broadcast Decency Enforcement Act. This is not about who is running the media, this is about the question of the shock jocks who have been pushing the moral envelope for all too long and the vulgar and indecent comments that come over the public airwaves.

I think that seems to be a very different subject than who happens to own how many shares of stock somewhere. And there was, of course, the Bono use of vulgarity during the Golden Globe Awards, and of course the infamous Janet Jackson wardrobe malfunction during last year's Super Bowl and the half-time show.

This was the last straw for many Americans, and families and parents and concerned viewers erupted in outrage, and rightly so. There is simply no excuse for that crudeness on the public airwaves. I want to emphasize that the anecdotes I just cited are only among the most well-known commercial media strident efforts to edge ever further into the terrain of immorality and debasement.

I commend outgoing Federal Communications Commissioner Michael Powell for showing leadership and for enforcing decency regulations. But at a time where a 30-second television ad costs \$2.4 million, is a \$32,500 cap on penalties, that seems almost absurd.

The legislation before us today would give the FCC true enforcement authority. It increases the cap to half a million dollars, which is a significant fine. It allows the fines to occur per violation instead of per broadcast, and it also permits the fines to be levied against individuals as well as broadcasters and establishes a three-strikes-and-you-are-out policy.

Each of those provisions strengthens the FCC's ability to enforce existing decency regulations and protect the airwaves, and thereby ordinary Americans, from offensive material.

So I would urge that we proceed on the subject before us, which is dealing with these offenses, and worry about the other questions about who owns stocks where at a different time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. I thank my friend and colleague from New York (Ms. SLAUGHTER) for yielding the time.

Mr. Speaker, I plan on voting for this bill because I think it is about doing the right thing for the public interest.

But I am going to vote against the rule, because we are missing an opportunity. We miss an opportunity to address the fairness issue, which is a very important one. I also think we miss an opportunity to strike a blow for family values over corporate profit.

It seems that too often when the two are in conflict, invariably this Congress lets corporate profit trump family values. What I am referring to is an amendment that I offered. It is a bill that the gentleman from Nebraska (Mr. OSBORNE), myself, and others have cosponsored, that I put in the form of an amendment because it seemed relevant. What it would do is to treat ED ads on television in the same way that we treat ads for tobacco and hard liquor. They cannot be shown until after 10 o'clock. The reason for doing this is that our airwaves are saturated with these ads for erectile dysfunction drugs. I think it has gotten out of hand and I do not think it is right.

When I bring this subject up, people giggle and it is awkward to talk about it, but it is wrong in prime-time viewing hours, such as the Super Bowl when you have got tens of millions of people watching, a lot of them young kids, to be saturating the American public's mind with these pitches for ED drugs. It is just wrong. Most of it is for the purpose of competing between brands.

It is a particularly relevant issue to the Congress and to the American taxpayer because next year this administration has decided to let Medicare cover these drugs. So here we have a finite amount of Medicare that needs to be used for cancer treatment and heart disease and any number of serious illnesses, and yet we are going to take a substantial amount of this taxpayers' money and use it to give to the drug companies to help them pay for advertising.

As my colleagues know, in the Medicare prescription drug bill, we forbid the Federal Government from negotiating for lower prices of these drugs. These drug companies are paying half a billion dollars a year for advertising these drugs. And now as of next year, the American taxpayer is going to be footing a substantial amount of that bill. It is wrong. These things should not be advertised during family viewing times.

It was one thing when Bob Dole and people of a certain age, which is pretty much my age as well, were the pitchmen. But these are younger actors today. It is disingenuous to be describing this drug as medically necessary. As is the way that they warn of side effects, be careful for a 4-hour experience and so on. We know how disingenuous that is. We can giggle about it, but the fact is it is wrong. It is not appropriate when young, impressionable, teenagers and children are watching. We have some responsibility for what goes across the airwaves. They are public

airwaves. This amendment should have been added to this bill for consideration today.

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

I urge Members to vote "no" on the previous question so I can change the rule to include my amendment to restore fairness and accountability in the media by requiring broadcast licensees to air programming that offers diverse views on issues important to the local communities in which they broadcast. This amendment was offered in the Rules Committee yesterday but was defeated on a party line vote. The majority may claim that the amendment is technically nongermane to the bill, but I think it is an integral part of this discussion.

Mr. Speaker, this issue is not a partisan one. Every Member of the House should be concerned by the direction that the broadcast media has taken, particularly in the last two decades since the rescission of the fairness doctrine. Ratings and sensationalism far too often replace responsible, non-biased, and comprehensive reporting of the news. News is meant to provide balanced and important information on the issues that impact the lives of our citizens. The media has a most important responsibility to its communities to deliver the type of programming that meets the unique needs of each broadcast audience. In fact, it is more than a responsibility, it is an obligation.

Vote "no" on the previous question so that we can include this important amendment. I want to make it very clear that a "no" vote will not stop us from considering the legislation. We will still be able to consider the broadcast decency enforcement bill in its entirety. We will still be able to consider and vote on the Upton-Markey manager's amendment. However, a "yes" vote will prevent us from having any opportunity this year, and probably this term, to debate and vote on the very serious matter of media fairness and responsibility.

Mr. Speaker, I ask unanimous consent to insert the text of the amendment immediately prior to the vote on the previous question. I urge a "no" vote on the previous question.

The SPEAKER pro tempore (Mr. CULBERSON). Is there objection to the request of the gentlewoman from New York?

There was no objection.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

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

Mr. Speaker, most of this debate has focused not on the issue before the House, whether we should raise fines on broadcasters and artists for violating the FCC standards for indecent conduct, but on the unrelated issue of media fairness. I want to point out to the Members that the amendment proposed by the gentlewoman from New York would violate House rules be-

cause it is not germane to the underlying bill. Simply, we have broad bipartisan agreement that we need to be tougher on broadcasters and artists to make sure that children and parents are not surprised by indecent conduct during prime time. We should defer to the committee of jurisdiction, I believe, to evaluate the issues raised by the gentlewoman's well-intentioned but nongermane amendment.

In closing, I would like to reiterate that the FCC has been looking at this issue of indecency and the fines related to it and it is through their efforts that this bipartisan bill has come to bear.

This is about the preservation of family time on our airwaves. It is about preserving the core values and ridding the airwaves during family time of indecency and it ups and makes much more stringent the penalties of those broadcasters and artists who engage in this indecent and inappropriate behavior on the airwaves.

One of the things my colleague from New York said in her opening statement is that viewers need to know what they will see, and I think that is the crux of this bill and this rule. Viewers need to know, families need to know that when they sit down with their families to watch television, they are not going to be exposed to inappropriate and indecent comments or actions on the airwaves.

This is a bipartisan bill. It passed overwhelmingly in the last Congress. I believe it will pass overwhelmingly again here. I urge my colleagues to not only support the rule but to support the underlying bill.

The material previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION FOR H. RES. 95—RULE ON H.R. 310, BROADCAST DECENCY ENFORCEMENT ACT OF 2005

#### TEXT

"In the resolution strike "and (3)" and insert the following:

"(3) the amendment printed in Section 2 of this resolution if offered by Representative Slaughter of New York or a designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for 60 minutes equally divided and controlled by the proponent and an opponent; and (4)".

Sec. 2. The amendment by Representative Slaughter referred to in Section 1 is as follows:

AMENDMENT TO H.R. 310, AS REPORTED OFFERED BY MS. SLAUGHTER OF NEW YORK  
**Public interest standard enforcement**

After section 9, insert the following new section (and redesignate the succeeding sections accordingly):

#### SEC. 10. IMPLEMENTATION OF PUBLIC INTEREST STANDARDS.

(a) IMPLEMENTATION IN LICENSE ISSUANCE AND RENEWAL.—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by adding at the end the following new subsection:

"(I) IMPLEMENTATION OF PUBLIC INTEREST STANDARD.—

"(1) PURPOSE.—The purposes of this subsection are—

"(A) to restore fairness in broadcasting;  
"(B) to ensure that broadcasters meet their public interest obligations;

“(C) to promote diversity, localism, and competition in American media; and

“(D) to ensure that all radio and television broadcasters—

“(i) are accountable to the local communities they are licensed to serve;

“(ii) offer diverse views on issues of public importance, including local issues; and

“(iii) provide regular opportunities for meaningful public dialogue among listeners, viewers, station personnel, and licensees.

“(2) STANDARDS FOR PUBLIC INTEREST DETERMINATIONS.—The Commission may not issue or renew any license for a broadcasting station based upon a finding that the issuance or renewal serves the public interest, convenience, and necessity unless such station is in compliance with the requirements of this subsection.

“(3) COVERAGE OF ISSUES OF PUBLIC IMPORTANCE.—Each broadcast station licensee shall, consistent with the purposes of this subsection, cover issues of importance to their local communities in a fair manner, taking into account the diverse interests and viewpoints in the local community.

“(4) HEARINGS ON NEEDS AND INTERESTS OF THE COMMUNITY.—Each broadcast station licensee shall hold two public hearings each year in its community of license during the term of each license to ascertain the needs and interests of the communities they are licensed to serve. One hearing shall take place two months prior to the date of application for license issuance or renewal. The licensee shall, on a timely basis, place transcripts of these hearings in the station's public file, make such transcripts available via the Internet or other electronic means, and submit such transcripts to the Commission as a part of any license renewal application. All interested individuals shall be afforded the opportunity to participate in such hearings.

“(5) DOCUMENTATION OF ISSUE COVERAGE.—Each broadcast station licensee shall document and report in writing, on a biannual basis, to the Commission, the programming that is broadcast to cover the issues of public importance ascertained by the licensee under paragraph (4) or otherwise, and on how such coverage reflects the diverse interests and viewpoints in the local community of such station. Such documents shall also be placed, on a timely basis, in the station's public file and made available via the Internet or other electronic means.

“(6) CONSEQUENCES OF FAILURE.—

“(A) PETITIONS TO DENY.—Any interested person may file a petition to deny a license renewal on the grounds of—

“(i) the applicant's failure to afford reasonable opportunities for presentation of opposing points of view on issues of public importance in its overall programming, or the applicant's non-compliance with the Commission's programming rules and policies relating to news staging and sponsorship identification;

“(ii) the failure to hold hearings as required by paragraph (4);

“(iii) the failure to ascertain the needs and interests of the community; or

“(iv) the failure to document and report on the manner in which fairness and diversity have been addressed in local programming.

“(B) COMMISSION REVIEW.—Any petition to deny filed under subparagraph (A) shall be reviewed by the Commission. If the Commission finds that the petition provides prima facie evidence of a violation, the Commission shall conduct a hearing in the local community of license to further investigate the charges prior to renewing the license that is the subject of such petition.

“(C) OTHER REMEDIES.—Nothing in this subsection shall preclude the Commission from imposing on a station licensee any other sanction available under this Act or in

law for a failure to comply with the requirements of this subsection.

“(7) ANNUAL REPORT.—The Commission shall report annually to the Congress on petitions to deny received under this subsection, and on the Commission's decisions regarding those petitions.”.

(b) TERM OF LICENSE.—

(1) AMENDMENT.—Section 307(c)(1) of the Communications Act of 1934 (47 U.S.C. 307(c)(1)) is amended by striking “8 years” each place it appears and inserting “4 years”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective with respect to any license granted by the Federal Communications Commission after the date of enactment of this Act.

Ms. CAPITO. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

□ 1115

The SPEAKER pro tempore (Mr. CULBERSON). The question is on ordering the previous question.

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

Ms. SLAUGHTER. 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.

#### PROVIDING FOR CONSIDERATION OF S. 5, CLASS ACTION FAIRNESS ACT OF 2005

Mr. GINGREY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 96 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 96

*Resolved*, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (S. 5) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes. The bill shall be considered as read. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) 90 minutes of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Conyers of Michigan or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for 40 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to commit with or without instructions.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. GINGREY) is recognized for 1 hour.

Mr. GINGREY. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman

from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 96 is a structured rule providing 90 minutes of debate for consideration of S. 5, the Class Action Fairness Act of 2005. The rule waives all points of order against consideration of the bill, makes in order one amendment in the nature of a substitute, it waives all points of order against this amendment, and it provides one motion to recommit with or without instructions.

Mr. Speaker, I urge support for the rule because we have before us a fair rule. I could say an excellent rule. The previous gentleman from Massachusetts was rating these rules. But this is fair in both senses of that term, a fair rule that gives Members on both sides of the aisle a chance to discuss their ideas on class action reform. I believe there is a general consensus that our system for class action litigation is flawed.

As demonstrated by the other body, there is bipartisan support for the measure that will be coming before us. In fact, the other body passed this measure by a vote of 72 to 26 with strong bipartisan support. Even with that bipartisan support, however, there are differences of opinion on how to reform our class action system. This bill through granting consideration of a substitute amendment will allow us to openly discuss these opinions and ideas.

Mr. Speaker, our general tort system costs American businesses \$129 billion each and every year. Even our smallest companies pay collectively about \$33 billion a year, or 26 percent of the overall tort costs to businesses borne by our smallest companies. Class action reform is a first step in litigation reform aimed at providing relief for these small businesses. I am pleased that we are finally seeing the light at the end of the tunnel. This Chamber has passed class action litigation reform on four previous occasions. It is about time that we sent a reform package to the President's desk for his signature.

The underlying bill will make several key reforms including expanding Federal jurisdiction over large interstate class actions as originally intended by our Founding Fathers, create exceptions that keep truly local disputes in State courts, provide an end to the harassment of local businesses as part of this forum shopping game, and create a consumer class action bill of rights.

Mr. Speaker, I would like to again urge my colleagues to support this rule which passed out of the Committee on Rules without objection and to vote in favor of the underlying bill which will provide this much needed reform.

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

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

and I thank the gentleman from Georgia (Mr. GINGREY) for yielding me the customary 30 minutes.

Mr. Speaker, for years the Republican majority proposed so-called "reforms" to class action lawsuits. Time after time, the House would pass legislation limiting class action plaintiffs only to see their attempts to dismantle the class action system die either with Senate inaction or in conference.

Mr. Speaker, it looks as though the Republican leadership has finally gamed the system to the point where it appears that they will succeed in severely limiting the rights of many of the most vulnerable citizens in this country.

Dismantling the class action lawsuit system has long been a big priority for big business groups. Last year, for instance, the Chamber spent \$50 million in lobbying. Now they are getting what they paid for, because this bill obliterating the class action system is one of the first bills to be considered in this Congress.

Mr. Speaker, it is clear to me that despite the McCain-Feingold Campaign Finance Reform law, we still have a pay-to-play system. The other body considered this bill first. The plan was that the House take up the Senate bill if the other body could pass a clean bill without any amendments. The Senate succeeded in passing a bad bill and the House is now following suit.

Let me be clear. Despite the rhetoric on the other side, this is still a bad bill. Today, the other side will tell scary stories about greedy trial lawyers and how awful and unfair their practices are, but the Republican leadership will not talk about how this bill limits the rights of low-wage workers to seek justice from employers who have cheated them out of their wages or have discriminated against them. They will not talk about how they are limiting workers' rights and, with the passage of this bill, are encouraging the bad apples in the big business community to continue cheating their employees out of their hard-earned wages and rights.

In most cases, State laws provide greater civil rights protections than Federal law. Every State has passed a law prohibiting discrimination on the basis of disability. Some States have laws that go beyond the Federal Americans with Disabilities Act.

The same is true with age discrimination. There are also States that provide protections that are not covered by Federal law. These Federal laws are intended to be floors, not ceilings. We should commend States that extend further rights to their citizens, not punish them.

This bill federalizes class action and mass torts, moving these cases from State to Federal courts. If the bill is signed into law, hard-working Americans will be denied the right to use their own State courts to bring class actions against corporations that violate laws that are unique to their State.

Consider, for example, a class action lawsuit brought against a national corporation by employees of a store in Massachusetts because that store discriminates on the basis of ancestry, place of birth, or citizenship status. Massachusetts provides protections afforded by State law, but not by Federal law. Under this bill, except in very rare instances, that case would be sent to a Federal court instead of State court, even though the case is based on a violation of State law.

A class action lawsuit against Wal-Mart was recently filed in Massachusetts. The suit alleges that Wal-Mart failed to pay employees for the time worked and did not give them proper meal and rest breaks. These are serious charges. If the Class Action Fairness Act is signed into law, future cases like this would not be tried in Massachusetts court, but instead would be transferred to Federal court.

Mr. Speaker, we know that the Federal courts are already overburdened, but we also know that the Federal courts are less likely to certify classes or provide relief for violations of State law. In effect, this bill is rigging the system on behalf of the corporations and against the interests of workers.

We often hear a lot of lofty rhetoric on the other side about States rights. Apparently the other side only supports the rights of States if they agree with the laws of those States.

Mr. Speaker, this bill is opposed by the Leadership Conference of Civil Rights; the Alliance for Justice; the National Conference of State Legislatures; 14 State Attorneys General; AFSCME; and environmental groups like Friends of the Earth, Greenpeace, the Sierra Club, and the National Environmental Trust. These are just a few of the groups who oppose this bill, and none of them represent the trial lawyers. They oppose this bill because it will limit fairness, it will limit justice, and it will ultimately hurt everyday Americans.

Mr. Speaker, this is not about trial lawyers; it is about average citizens. The opponents of this bill are committed to fairness. We are committed to justice. And this bill robs the American people of their rights to fairness and justice in the judicial system. It closes the courthouse door in the face of people who need and deserve help.

I oppose this bill, and I urge my colleagues to support the Conyers substitute.

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

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), my colleague on the Committee on Rules.

Mrs. CAPITO. Mr. Speaker, I rise in support of the Class Action Fairness Act because we cannot act fast enough. We have been trying to act to address the dire needs of our Nation's judicial system.

Today, predatory lawyers take advantage of class action law by shopping

for venues where they can find sympathetic judges and juries. Each time a lawyer goes venue shopping, it costs taxpayers and it costs our economy by bogging down job creators with frivolous and excessive litigation.

National Review magazine has called my home State of West Virginia one of the worst States because of its cruel legal climate. Data and statistics indicate that since 1978, legal costs in West Virginia have risen more than 10 times faster than the State economy as a whole. As a result, our economy has not grown as fast as the rest of the Nation, and the jobs that West Virginians seek to support their families are not as readily available as they are in other parts of our country.

West Virginia's civil justice system has been ranked as one of the worst when it comes to the treatment of class actions. As a result of West Virginia's relaxation and less vigorous application of procedural rules, courts are generally viewed by lawyers as more favorable and advantageous to plaintiffs, and accordingly West Virginia has become a magnet of mass tort litigation. What is very alarming is when a victim receives little or no compensation.

The Class Action Fairness Act aims to curb class settlements that provide significant fees to a lawyer with marginal benefits to victims. The Class Action Fairness Act takes strong steps to ensure injured consumers recoup real awards from victorious verdicts, rather than settlements that involve coupons, which largely benefit the lawyers.

□ 1130

The Class Action Fairness Act creates important reforms that will reduce lawsuit abuse and protect individuals. It is as simple as that. I urge support for this legislation, and for the fair and balanced rule before us.

Mr. MCGOVERN. Mr. Speaker, I include for the RECORD a letter signed by 14 Attorneys General, including Darrell McGraw, the Attorney General of the State of West Virginia, in opposition to this bill.

STATE OF NEW YORK,  
OFFICE OF THE ATTORNEY GENERAL,  
Albany, NY, February 7, 2005.

Hon. BILL FRIST,  
Majority Leader, U.S. Senate, Dirksen Senate  
Office Building, Washington, DC.

Hon. HARRY REID,  
Minority Leader, U.S. Senate, Hart Senate Of-  
fice Building, Washington, DC.

DEAR MR. MAJORITY LEADER AND MR. MINORITY LEADER: On behalf of the Attorneys General of California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont and West Virginia, we are writing in opposition to S. 5, the so-called "Class Action Fairness Act," which will be debated today and is scheduled to be voted on this week. Despite improvements over similar legislation considered in prior years, we believe S. 5 still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 5, almost all class actions brought by private individuals in state court based on state law claims would be removed to federal court, and, as explained below, many of these cases may not be able to continue as class actions. We are concerned with such a limitation on the availability of the class action device because, particularly in these times of tightening state budgets, class actions provide an important "private attorney general" supplement to the efforts of state Attorneys General to prosecute violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in both state and federal courts have resulted in only minimal benefits to class members, despite the award of substantial attorneys' fees. While we support targeted efforts to prevent such abuses and preserve the integrity of the class action mechanism, we believe S. 5 goes too far. By fundamentally altering the basic principles of federalism, S. 5, if enacted in its present form, would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL-CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

#### 1. CLASS ACTIONS SHOULD NOT BE "FEDERALIZED"

S. 5 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need or empirical support for such a sweeping change in our long-established system for adjudicating state law issues. In fact, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. Moreover, S. 5 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a "citizen" of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state.

#### 2. CLARIFICATION IS NEEDED THAT S. 5 DOES NOT APPLY TO STATE ATTORNEY GENERAL ACTIONS

State Attorneys General frequently investigate and bring actions against defendants who have caused harm to our citizens, usually pursuant to the Attorney General's parens patriae authority under our respective state consumer protection and antitrust statutes. In some instances, such actions have been brought with the Attorney General acting as the class representative for the consumers of the state. We are concerned that certain provisions of S. 5 might be misinterpreted to impede the ability of the Attorneys General to bring such actions, thereby interfering with one means of protecting our citizens from unlawful activity and its resulting harm. That Attorney General enforcement actions should proceed unimpeded is important to all our constituents, but most significantly to our senior citizens living on fixed incomes and the working poor. S. 5 therefore should be amended to clarify that it does not apply to actions brought by any State Attorney General on behalf of his or her respective state or its citizens. We understand that Senator Pryor will be offering an amendment on this issue, and we urge that it be adopted.

#### 3. MANY MULTI-STATE CLASS ACTIONS CANNOT BE BROUGHT IN FEDERAL COURT

Another significant problem with S. 5 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the laws of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits will be brought on behalf of the residents of many smaller states. This problem should be addressed by allowing federal courts to certify nationwide class actions to the full extent of their constitutional power—either by applying one state's law with sufficient ties to the underlying claims in the case, or by ensuring that a federal judge does not deny certification on the sole ground that the laws of more than one state would apply to the action. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

#### 4. CIVIL RIGHTS AND LABOR CASES SHOULD BE EXEMPTED

Proponents of S. 5 point to allegedly "collusive" consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received "coupons" towards the purchase of other goods sold by defendants. Accordingly, this "reform" should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

#### 5. THE NOTIFICATION PROVISIONS ARE MISGUIDED

S. 5 requires that federal and state regulators, and in many cases state Attorneys General, be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against "collusive" settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. Without clear authority in the legislation to more closely examine defendants on issues bearing on the fairness of the proposed settlement (particularly out-of-state defendants over whom subpoena authority may in some circumstances be limited), the notification provision lacks meaning. Class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States, State Attorneys General and other federal and state regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 5 would effect a sweeping reordering of our nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede ef-

forts against egregious corporate wrongdoing. Although we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms, we are likewise committed to maintaining our federal system of justice and safeguarding the interests of the public. For these reasons, we oppose S. 5 in its present form.

Sincerely,

Eliot Spitzer, Attorney General of the State of New York; W.A. Drew Edmondson, Attorney General of the State of Oklahoma; Bill Lockyer, Attorney General of the State of California; Lisa Madigan, Attorney General of the State of Illinois; Tom Miller, Attorney General of the State of Iowa; Gregory D. Stumbo, Attorney General of the State of Kentucky; G. Steven Rowe, Attorney General of the State of Maine; J. Joseph Curran, Attorney General of the State of Maryland; Tom Reilly, Attorney General of the State of Massachusetts; Mike Hatch, Attorney General of the State of Minnesota; Patricia A. Madrid, Attorney General of the State of New Mexico; Hardy Myers, Attorney General of the State of Oregon; William H. Sorrell, Attorney General of the State of Vermont; Darrell McGraw, Attorney General of the State of West Virginia.

Mr. MCGOVERN. Mr. Speaker, I yield 7 minutes to the gentleman from Massachusetts (Mr. MARKEY), the dean of our delegation.

Mr. MARKEY. Mr. Speaker, I thank the gentleman for his excellent work on this very important piece of legislation. I rise in opposition to this rule and I rise in opposition to the underlying legislation.

In the 1960s, President Kennedy used to say, "Ask not what your country can do for you, but what you can do for your country." Today, Republican leaders in Washington have issued a new challenge: "Ask not what your country can do for you, but what you can do for the country club."

That is what this bill is all about. It is protecting the country club members from the responsibility for the harm which they potentially inflict from their corporate perspectives on ordinary citizens within our society.

The class-action bill is part of an overall strategy which the Republican Party has put in place in order to harm consumers all across our country, to repeal the protections that have been placed upon the books for two generations that ensure that the individual in our society is given the protection which they need. Here is their strategy. It is a simple, four-part strategy.

Number one, first is the "borrow and spend" strategy. That is all part of this idea that Paul O'Neill mentioned, the former Secretary of Treasury for George Bush, when he said that DICK CHENEY said to him, "Reagan proved that deficits don't matter."

Of course, the reason they do not matter is that, as Grover Norquist has pointed out quite clearly, the architect of this Republican strategy, the key goal has to be to starve the beast; the beast, of course, being the Federal Government's ability to help ordinary people, to help ordinary citizens, to help

ordinary consumers in our country when they are being harmed.

So this idea that there is less and less money then starves the Federal agencies given the responsibility for protecting the public, the Federal Drug Administration, the Consumer Product Safety Commission; agency after agency left with not enough resources to protect the consumer, which they were intended to do.

Secondly, there is the grim reaper of regulatory relief, where the Office of Management and Budget inside of the Bush administration ensures that any regulation that is meant to protect the consumer is tied up in endless rounds of peer review and cost-benefit analysis, weighing the lives of ordinary consumers against the money that corporations might have to spend in order to make sure that their products are not defective, that they do not harm ordinary citizens across our country.

Then there is stage three, the fox in the hen house. This is where the Bush administration then appoints somebody from the industry that is meant to be regulated as the head of the agency, knowing that that individual has no likelihood of actually putting on the books the kinds of protections which are needed.

Then, finally, after the Federal Government is not capable of really protecting ordinary citizens, their safety, their health, then what they say to the citizen is, by the way, now we are going to make it almost impossible for you to go to court to protect yourself, to bring a case.

That is what this bill is all about, that final step. You cannot even as an individual partner with other people to go to court. And here is what it says. It says that all of these cases are going to Federal Court, unless a significant defendant is in fact a citizen of the State.

Well, think about this. Let us go to New Hampshire. New Hampshire is a perfect example. New Hampshire has a suit which it has brought against 22 oil and chemical companies because of the pollution in the State's waterways with MTBE, a deadly, dangerous material which has harmed people all across our country, but New Hampshire is the best example.

Under this new law, because the principal defendant in the case is Amerada Hess and because it is headquartered in New York and it is the principal defendant, not only Amerada Hess but the other 22 companies, not only is Amerada Hess, this big company, and the other 22 companies who have arrived in New Hampshire, polluting the State, given the relief of not having the case be held in the State of New Hampshire, with New Hampshire judges and New Hampshire citizens, instead it is removed to the Federal Court, so the Republicans can name judges who they know are going to be sympathetic to the companies, not the State of New Hampshire, not their judges, not their people.

That is what this is all about. It is making sure that ordinary citizens in

New Hampshire, whose families have been harmed, whose health is permanently ruined, cannot bring a case against large corporations.

Who gets the benefit of this? The defendant. The defendant. They come in from out-of-state, they pollute, they harm, they ruin the lives of people, and then the defendant says, "I don't want to be tried in New Hampshire. I don't want to be tried in Texas. I don't want to be tried in that State. I want to go some other place."

What about the plaintiffs? What about the people who have been harmed? What about the mothers? What about the children? What about the people who have lost their health?

This is the final nail that the Republicans are putting in the coffin of the rights of ordinary citizens to be able to protect themselves. All of these cases should be brought in the State courts where the large corporation caused the harm, not in a Federal Court away from the closest people who know what is right and wrong inside of that State.

Mr. Speaker, vote no on this critical bill. Vote no on the rule. Vote to protect the consumers, the families, the children, the seniors in our country who the Republicans are going to allow to be jeopardized by moving the cases from where they live to places where the defendants, the largest corporations, will be able to protect their own selfish self-interests.

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

Mr. Speaker, in response to some of the comments that were made by the gentleman from Massachusetts, I want to share with my colleagues some facts.

The Class Action Fairness Act contains several provisions specifically designed to ensure that class members, not their attorneys, class members, not their attorneys, are the primary beneficiaries of the class-action process.

For example, the act, number one, requires that judges carefully review all coupon settlements and limit attorney's fees paid in such settlements to the value actually received by the class members.

Second, it requires careful scrutiny of "net loss" settlements in which the class members end up losing money.

Thirdly, it bans settlements that award some class members a larger recovery just because they live closer to the court.

Lastly, it allows Federal courts to maximize the benefits of class-action settlements by requiring that unclaimed coupons or settlement funds be donated to charitable organizations.

In addition, the bill would require that notice of proposed settlements be provided to appropriate State and Federal officials, such as State Attorneys General.

Let me also address one other issue raised, and I think this is very important.

This myth is being circulated that the Class Action Fairness Act would

move all or virtually all class actions to Federal courts, overwhelming Federal judges and denying State courts the ability to resolve local disputes. Well, a recent study examined class actions in the State courts of Connecticut, Delaware, Maine, Massachusetts, New York and Rhode Island, to determine what effect the bill would have on the class actions filed in those respective States.

Here is what they found in regard to the State of Massachusetts. Sixty-one percent, 30 out of 49 of the reported class actions, would have presumably remained in State court. At least 10 of the 19 Massachusetts cases that would be affected by this bill, the Class Action Fairness Act, involved nationwide classes, cases primarily involving citizens living in other states.

Mr. Speaker, I am proud to yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN) a former member of the Committee on the Judiciary and an original cosponsor of this bill in the 108th Congress.

Mrs. BLACKBURN. Mr. Speaker, I thank the gentleman from Georgia for providing some of that information. It seems that our colleagues probably are so wrong on this bill they cannot even talk about it. They want to come down here and talk about all sorts of other things that are not involved in class action.

They are talking about protection. Well, I would like the American people to know and our colleagues to know we are talking about protection. We are talking about protecting Americans' pockets books, because our constituents know somebody is going to pay, and if greedy lawyers are getting big settlements, they are going to be paying more at the cash register every single time they go buy something.

An entire industry has grown up over attorneys seeking cash in these class-action lawsuits. Our courts are to be designed for fairness, a forum of fairness and justice, but they have become a virtual ATM for greedy lawyers when it comes to class-action lawsuits. Lawyers go file a class-action lawsuit and collect millions of dollars, just as the gentleman from Georgia was saying; and the clients, who they barely know, most times they have never even met most of these folks, those clients are receiving pennies.

Mr. Speaker, my colleague spoke saying this would not help the victims. I would like people to know the Class Action Fairness Act does not restrict true victims from filing class-action lawsuits. It will prevent attorneys from choosing which State to file in, because we know sometimes they choose where they think they can get the biggest monetary award. We are putting the focus back on justice, back on justice in this bill.

In addition, the reform provides greater consumer protection by allowing our courts to scrutinize those settlements that provide victims with

coupons while those attorneys are getting millions and millions and millions of dollars.

Mr. Speaker, this is an overdue reform. We have worked tirelessly on this in the House, and I urge everyone to support it.

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

Mr. Speaker, my colleague from Georgia had kind of quoted from a study implying that most of these class-action cases would remain in States, that the whole purpose of this bill is to try to move them to Federal courts.

Let me quote from a CBO cost estimate which says that under this bill, most class-action lawsuits would be heard in Federal District Court, rather than in the State court.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am always amazed to hear the remarks of my colleagues, and I welcome those remarks, because it is well-known that free and open debate lies at the very heart of the democratic process. But I wonder if we rephrased the terminology "greedy lawyers" and made the American people truly understand what the give and take of the judicial process is all about.

□ 1145

I wonder, if we said the lawyers that represented the 9/11 families could be considered greedy lawyers, thousands who lost loved ones, and their engagement in seeking to have redress of their grievances done in a class-action manner, is that evidence of greedy lawyers? Or maybe the thalidomide families, babies who were born deformed in the 1950s and class actions were utilized, is that a signal of greedy lawyers?

Frankly, Mr. Speaker, what we have here is a complete abuse of the democratic process. Why do we not think about a situation where you are a college student enrolled in a world history class, you enter the first day and the professor says, welcome, it is now time to take the final exam. No discussion, no notes, no teaching, no nothing. This is what this rule represents. It is to walk on this floor and take the final exam. It is to close the door of the opportunity for the American people to go into the courthouse and to have a jury of their peers decide whether or not, as a collective class, they have been injured.

If my friends would tell the truth, they would know that plaintiffs prevail in such a small percentage of times all over America that this is ridiculous and ludicrous legislation. They would also refer you to the Cato Institute in 1983 when they talked about attacking liberal legal opportunities, or liberal bills. They said, this is guerilla war-

fare. We are going after tort litigation, we are going after Social Security, we are going after Medicare. Guerilla warfare.

The reason why this is guerilla warfare is because we have a process, Mr. Speaker. These actions come to our committee, the Committee on the Judiciary and a number of other committees; we have opportunity for amendment, give and take, hearings. This legislation has seen no light of day in any committee. It did not see the light of day on the Senate side, no hearings, no markup; it did not see the light of day on the House side, no hearings, no markup. So the American people are being fooled by the fact that they think we are doing business as the Constitution would want us to do, that we are open to the rules of this House, that we understand that we must have the oversight of this House. And frankly, Mr. Speaker, shame on us, for we are shaming the process, and the American people should rightly be ashamed of this and of us.

I ask my Republicans, we know you have the overwhelming majority, you have the two-thirds, in essence, you have the bully pulpit, and you use it. But the bad thing about it is that you are using it to overwhelm the rules of this House. Mr. Speaker, you are literally ignoring the Rules of the House. And some people would say to me, Congresswoman JACKSON-LEE, this is inside the ball game, inside the ballpark, inside the Beltway. The American people are not interested in process. I believe they are. Because the American people know about school boards and process, they know about the parent-teacher meetings and process, they know about their places of faith and process, and they know that process is to be respected. Here in this House we are not respecting process.

I argue that the one amendment that we have as the manager's amendment should be the amendment that should be accepted, and that is the one that includes the idea of protecting civil rights and wage-and-hour carve-outs and prohibits those companies that have formulated their companies in another country, United States companies incorporated elsewhere, in order to be able to participate in this abusive process.

Let me read what the New York Times said. "Instead of narrowly focusing on real abuses of the system, the measure that is before us today reconfigures the civil justice system to achieve a significant rollback of corporate accountability and people's rights. The main impact of the bill, which has a sort of propagandistic title normally assigned to such laws as the Class Action Fairness Act will be to funnel nearly all major class-action lawsuits out of State courts and into all overburdened Federal courts. That will inevitably make it harder for Americans to pursue legitimate claims successfully against companies that violate State consumer, health, civil

rights, and environmental protection laws."

Mr. and Mrs. America, let me tell you something. When this legislation passes on the Republican clock, I am going to tell you that the doors of the courthouse will be closed to you; and if you have Johnny Jones, the country lawyer, trying to bring justice to rural America, Johnny Jones will have to take his small-time practice and mortgage his house to get into the Federal court. And not only that, you might get there 50 years from the time that action occurs.

This is the greatest abomination and insult to justice that I have ever seen. It is an outrage, and I ask my colleagues to vote down the rule, vote for the Democratic substitute, and put this terrible bill where it needs to go, packing out of the door.

Mr. Speaker, free and open debate lies at the heart of the democratic process. Without it, true democracy will surely wither away to nothing. It is in this light that I rise to support H. Res. 96—only insofar as it allows consideration of the Democratic substitute that was ruled in order by the Committee on Rules and offered by the distinguished Ranking Member of the Judiciary Committee, Mr. CONYERS. We should have an open rule on this important issue, however.

For real and honest debate to take place on such an important issue as defining diversity jurisdiction in the Federal courts for class actions, we must have available an alternate option to S. 5, the legislation that is before the committee of the whole House. The Democratic substitute creates that option. I congratulate the Rules committee for their foresight in enabling this open debate.

This bill, despite its name, is *not* fair to all complainants who come to the courts for relief. In addition, it fails to render accountability to parties who are in the best financial position. One issue that I planned to address by way of amendment was that of punishing fraudulent parties to class action proceedings by preventing them from removing the matter to Federal court.

I am a co-sponsor of the amendment in nature of a substitute that will be offered by my colleagues. With the provisions that it contains, requirements for Federal diversity jurisdiction will not be watered down resulting in the removal of nearly all class actions to Federal court. A wholesale stripping of jurisdiction from the State courts should not be supported by this body. Therefore, it needs to be made more stringent as to all parties and it needs to contain provisions to protect all claimants and their right to bring suit.

Contained within the amendment in nature of a substitute is a section that I proposed in the context of the Terrorist Penalties Enhancement Act that was included in the bill passed into law. This section relates to holding "Benedict Arnold corporations" accountable for their terrorist acts. With respect to S. 5, the right to seek removal to Federal courts will be precluded for Benedict Arnold corporations.

The "Benedict Arnold corporation" refers to a company that, in bad faith, takes advantage of loopholes in our tax code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance. A tax-exempt group that monitors corporate influence called "Citizen Works" has compiled a list of 25 Fortune

500 Corporations that have the most offshore tax-haven subsidiaries. The percentage of increase in the number of tax havens held by these corporations since 1997 ranges between 85.7 percent and 9,650 percent.

This significant increase in the number of corporate tax havens is no coincidence when we look at the benefits that can be found in doing sham business transactions. Some of these corporations are "Benedict Arnolds" because they have given up their American citizenship; however, they still conduct a substantial amount of their business in the United States and enjoy tax deductions of domestic corporations.

The provision in the substitute amendment will preclude these corporations from enjoying the benefit of removing State class actions to Federal court. Forcing these corporate entities to defend themselves in State courts will ensure that these class action claims will be fairly and fully litigated.

I support the amendment in nature of a substitute.

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

I want to address the remarks of the gentlewoman from Texas. I want to remind her that the Committee on Rules voted unanimously in favor of this rule and granted an amendment in order in the form of a substitute that includes each and every one of the provisions that she just spoke of. I also would like to remind my colleagues that each and every one of those amendments were also proffered in the other body, and each and every one of those amendments were voted down in a strong bipartisan vote.

So to suggest, Mr. Speaker, that this is something that had not been looked at and we have not talked about, I would remind my colleague that it was addressed in the 105th Congress, in the 106th Congress, in the 107th Congress, in the 108th Congress, and finally we are here, and we are going to get this rule passed and this bill passed and on to the President for his signature.

Mr. Speaker, I yield 3 minutes to the gentleman from Oklahoma (Mr. COLE), my colleague on the Committee on Rules.

Mr. COLE of Oklahoma. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time and, frankly, for making that important point, that this matter is proceeding to this floor under a bipartisan unanimous vote by the Committee on Rules; and the suggestion that the process was unfair or defective is not borne out by both the nature of the debate in the Committee on Rules and by the unanimous vote that sent this rule to the floor.

Let me move now, Mr. Speaker, to my prepared remarks. I rise today in support of the rule for S. 5, the Class Action Fairness Act of 2005. I believe it to be a fair rule and one that allows us to fully explore the issues surrounding this legislation. Furthermore, it makes in order a substantive amendment in the nature of a substitute that the gentleman from Michigan (Mr. CONYERS) has worked hard to produce. I believe that this will allow a spirited debate

and one that will fully explore the many complex issues surrounding class-action reform while still enabling the House to act in an expeditious fashion.

Mr. Speaker, while I fully agree that class-action lawsuits are a legitimate tool in civil procedure, these lawsuits are a tool that has been frequently abused over the past years. There exist a certain small subset of attorneys who do not represent the best traditions of their colleagues in the legal profession and primarily are concerned with lining their pockets by abusing the class-action process. Often, this is done through the popular so-called coupon settlement process, where the class of plaintiffs only receive coupons to use from the very same companies they are suing, while the attorneys walk away from the table with millions in cash.

Mr. Speaker, this legislation is a necessary step to better ensure and protect our citizens' rights. The ongoing flood of meritless labor and employment litigation has often destroyed reputable companies and has resulted in thousands of layoffs and business restructurings that hurt innocent workers and shareholders alike.

This legislation would incentivize only those who have legitimate class-action claims to move forward in the legal process and, at the same time, it would disincentivize lawyers from filing meritless claims by increasing sanctions against those who do so.

Mr. Speaker, this legislation is a necessary first step and the rule that accompanies it is one that I believe all Members should support. Those who support another approach have the full opportunity to explore it in the minority's amendment in the nature of a substitute. Therefore, I urge all Members to support the rule and the underlying legislation.

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is interesting to hear the distinguished gentleman from Georgia mention the Committee on Rules, and I respect the power of the Committee on Rules. The Committee on Rules is not a jurisdictional committee. This bill did not go through the committee process on the Senate side or on the House side.

I might also say when we talk about coupons and the amount of dollars that lawyers may receive, might I remind the body that we are talking about thousands upon thousands of plaintiffs in a class action who would never have their grievances addressed and the corporate culprit would have never been punished had it not been for this class action. So to manipulate it to suggest that it is abused is manipulation, just that.

This did not go through the committee process. We are avoiding the committee process. Therefore, we are stamping on democracy and this rule and this bill should be voted down enthusiastically.

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

In response to the gentlewoman from Texas, the Committee on Rules has jurisdiction, and anybody that knows the history of this body knows and understands that the Committee on Rules certainly has jurisdiction.

Let me just give a little history for my colleagues and particularly for the gentlewoman from Texas in regard to this bill. Again, in the 105th Congress, Senate bill 2083, the Class Action Fairness Act, Senate held hearing, reported by subcommittee. House Resolution 3789, Class Action Jurisdiction Act of 1998, committee hearing and markup held, reported from the House Committee on the Judiciary, 17 to 12.

Mr. Speaker, in the 106th Congress, H.R. 1875, Interstate Class Action Jurisdiction Act of 1999, Committee hearing and markup held, passed floor 222 to 207.

In the 107th Congress, H.R. 2341, Class Action Fairness Act of 2001, Committee hearing and markup held; passed floor, 233 to 190.

In the 108th Congress, H.R. 1115, Class Action Fairness Act of 2003, committee hearing and markup held, passed floor, 253 to 170.

No hearings? Indeed.

Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time.

Mr. Speaker, I rise today in strong support of both the rule and the underlying class-action reform legislation.

Mr. Speaker, the bottom line is that class-action reform is badly needed. Currently, certain crafty lawyers are able to game the system by filing large, nationwide class-action suits in certain preferred State courts such as Madison County, Illinois, where judges are quick to certify classes and quick to approve settlements that give millions of dollars to attorneys and only worthless coupons to their clients.

Looking at this chart, for example, we can see the history of Madison County, Illinois, which has been called the number one judicial hellhole in the United States. There were 77 class-action filings in 2002, and 106 class-action lawsuits filed in 2003. Now, the movie *Bridges of Madison County* was a love story. "The Judges of Madison County" would be a horror flick.

Unfortunately, all too often, it is the lawyers who drive these class-action suits and not the individuals who allegedly have been injured. For example, in a suit against Blockbuster over late fees, the attorneys received \$9.25 million; their clients got a \$1 off coupon for their next video rental. Similarly, in a lawsuit against the company that makes Cheerios, the attorneys received \$2 million for themselves, while their clients received a coupon for a free box of Cheerios. In a nutshell, these out-of-control class-action lawsuits are killing jobs, they are hurting small business people who cannot afford to defend

themselves, and they are hurting consumers who have to pay a higher price for goods and services.

Fortunately, this legislation provides much-needed reform in 2 key areas. First, it eliminates much of the forum shopping by requiring that most of the nationwide class-action suits be filed in Federal court. Second, it cracks down on these coupon-based class-action settlements by requiring that attorney fee awards be based on either the value of the coupons actually redeemed, or by the hours actually billed by the attorney prosecuting the case.

Mr. Speaker, this legislation will and should comfortably pass the House of Representatives. Last week, this exact bill received 72 votes in the U.S. Senate, and last year we passed a similar bill with 253 votes. I urge my colleagues to vote yes on the bill and vote yes on the rule.

□ 1200

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

Mr. Speaker, I guess it is politically popular to attack lawyers and judges, but what I am concerned about is what this bill will do to average people who are seeking remedies for being mistreated.

I want to read an excerpt from the Leadership Conference on Civil Rights, AFL/CIO, and the Alliance for Justice statement. One of things they point out is that nowhere has a case been made that abuses exist in anti-discrimination and wage and hour class action litigation.

They point out by allowing dozens of employees to bring one lawsuit together, the class action device is frequently the only means for low-wage workers who have been denied mere dollars a day to recover their lost wages. Moreover, class actions are also often the only means to effectively change a policy of discrimination.

Wage and hour class actions are most often brought in States under the law of the State in which the claim arises. The reason is that State wage and hour laws typically provide more complete remedies for victims of wage and hour violations than the Federal wage and hour statute. For instance, the Federal Fair Labor Standards Act offers no protection, no protection for a worker who works 30 hours and is paid for 20, so long as the worker's total pay for the 30 hours worked exceeds the Federal minimum wage. However, many States have payment of wage laws that would require that the workers be fully paid for those additional 10 hours of work.

Also, Federal law provides no remedy for part-time workers who often work 10- to 16-hour days, yet earn no overtime because they work less than 40 hours per week. At least six States and territories, however, including California and Alaska, require payment of overtime after a prescribed number of hours of work in a single day. Likewise, State laws increasingly provide

greater civil rights protections than Federal laws. For example, every State has passed a law prohibiting discrimination on the basis of disability. Some of these State statutes provide a broader definition of disability and a greater range of protection in comparison to the Federal Americans with Disabilities Act, including California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia.

In addition, every State has enacted a law prohibiting age discrimination in employment. Some of these State laws, including those in California, Michigan, Ohio and the District of Columbia, contain provisions affording greater protection to older workers than comparable provisions of the Federal Age Discrimination and Employment Act. In addition, many State laws provide protections to classifications not covered by Federal law. For example, many States provide expanded benefits based on marital status, and I could go on and on and on.

The point of the matter here is that this legislation is basically denying people the rights and the protections that many of them have fought so hard to earn in their States, and it leads to more injustice and more unfairness.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS, ALLIANCE FOR JUSTICE, AFL-CIO,

*Washington, DC, February 2, 2005.*

EXEMPT CIVIL RIGHTS AND WAGE AND HOUR CASES FROM S. 5

DEAR SENATORS, On behalf of the undersigned civil rights and labor organizations, we write to urge you to support an amendment being offered by Senators Kennedy and Cantwell to the Class Action Fairness Act (S. 5), which would exempt civil rights and wage and hour state law cases. The amendment is necessary in order to ensure that S. 5 does not adversely impact the workplace and civil rights of ordinary Americans by making it extremely difficult to enforce civil rights and labor rights.

During Congress' extensive examination of the merits of class action lawsuits, nowhere has a case been made that abuses exist in anti-discrimination and wage and hour class-action litigation. By allowing dozens of employees to bring one lawsuit together, the class-action device is frequently the only means for low wage workers who have been denied mere dollars a day to recover their lost wages. Moreover, class actions also are often the only means to effectively change a policy of discrimination. These suits level the playing field between individuals and those with more power and resources, and permit courts to decide cases more efficiently.

Wage and hour class actions are most often brought in state courts under the law of the state in which the claims arise. The reason is that state wage and hour laws typically provide more complete remedies for victims of wage and hour violations than the federal wage and hour statute. For instance, the federal Fair Labor Standards Act (FLSA) offers no protection for a worker who works 30 hours and is paid for 20, so long as the worker's total pay for the 30 hours worked exceeds the federal minimum wage. However, many states have "payment of wage" laws that would require that the worker be fully paid for those additional 10 hours of work. Also, federal law provides no remedy for part-time workers who often work 10-16 hour

days, yet earn no overtime because they work less than 40 hours per week. At least six states and territories, however, including California and Alaska, require payment of overtime after a prescribed number of hours are worked in a single day.

Likewise, state laws increasingly provide greater civil rights protection than federal law. For example, every state has passed a law prohibiting discrimination on the basis of disability. Some of these states statutes provide a broader definition of disability and a greater range of protection in comparison to the federal Americans with Disabilities Act, including California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia. In addition, every state has enacted a law prohibiting age discrimination in employment, and some of these state laws—including those of California, Michigan, Ohio and the District of Columbia—contain provisions affording greater protection to older workers than comparable provisions of the federal Age Discrimination in Employment Act (ADEA).

In addition, many state laws provide protections to classifications not covered by federal law. For example, the following states provide protection for marital status: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maryland, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Virginia, Washington, and Wisconsin. Moreover, several states have expanded Title VII's ban on national origin discrimination to prohibit discrimination on the basis of ancestry, or place of birth, or citizenship status. These states include Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Kansas, Maine, Massachusetts, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, South Dakota, Vermont, West Virginia, Wisconsin, Wyoming, and the Virgin Islands.

Finally, 31 states have enacted legislation prohibiting genetic discrimination in the workplace—an important protection given the rapid increase in the ability to gather this type of information. The 31 states are Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin. In addition, Florida and Illinois have enacted more limited protections against genetic discrimination.

Under S. 5, citizens are denied the right to use their own state courts to bring class actions against corporations that violate these state wage and hour and state civil rights laws, even where that corporation has hundreds of employees in that state. Moving these state law cases into federal court will delay and likely deny justice for working men and women and victims of discrimination. The federal courts are already overburdened. Additionally, federal courts are less likely to certify classes or provide relief for violations of state law.

In light of the lack of any compelling need to sweep state wage and hour and civil rights claims into the scope of the bill, we urge you to support an amendment to exempt these claims from the provisions of S. 5. If you have any questions, or need further information, please call Nancy Zirkin, Deputy Director of the Leadership Conference on Civil Rights (202-263-2880); Sandy Brantley, Legislative Counsel, Alliance for Justice (202-822-6070); or Bill Samuel, Legislative Director, AFL-CIO (202-637-5320).

Sincerely,  
AARP.

AFL-CIO.  
 Alliance for Justice.  
 American-Arab Anti-Discrimination Committee.  
 American Association of People with Disabilities.  
 American Association of University Women.  
 American Civil Liberties Union.  
 American Federation for the Blind.  
 American Federation of Government Employees.  
 American Federation of School Administrators.  
 American Federation of State, County & Municipal Employees.  
 American Federation of Teachers.  
 American Jewish Committee.  
 Americans for Democratic Action.  
 The Arc of the United States.  
 Association of Flight Attendants.  
 Bazelon Center for Mental Health Law.  
 Center for Justice and Democracy.  
 Coalition of Black Trade Unionists.  
 Communications Workers of America.  
 Consortium for Citizens with Disabilities Civil Rights Task Force.  
 Department for Professional Employees, AFL-CIO.  
 Disability Rights Education and Defense Fund.  
 Epilepsy Foundation.  
 Federally Employed Women.  
 Federally Employed Women's Legal & Education Fund, Inc.  
 Food & Allied Service Trades Department, AFL-CIO.  
 Human Rights Campaign.  
 International Association of Machinists and Aerospace Workers.  
 International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.  
 International Brotherhood of Electrical Workers.  
 International Brotherhood of Teamsters.  
 International Federation of Professional & Technical Engineers.  
 International Union of Bricklayers and Allied Craftworkers.  
 International Union of Painters and Allied Trades of the United States and Canada.  
 International Union, United Automobile, Aerospace & Agricultural Workers of America.  
 Jewish Labor Committee.  
 Lawyers' Committee for Civil Rights Under Law.  
 Leadership Conference on Civil Rights.  
 Legal Momentum.  
 Mexican American Legal Defense and Educational Fund.  
 NAACP.  
 NAACP Legal Defense & Educational Fund, Inc.  
 National Alliance of Postal and Federal Employees.  
 National Asian Pacific American Legal Consortium.  
 National Association for Equal Opportunity in Higher Education.  
 National Association of Protection and Advocacy Systems.  
 National Association of Social Workers.  
 National Employment Lawyers Association.  
 National Fair Housing Alliance.  
 National Organization for Women.  
 National Partnership for Women and Families.  
 National Women's Law Center.  
 Paper, Allied-Industrial, Chemical and Energy Workers International Union.  
 Paralyzed Veterans of America.  
 People For the American Way.  
 Pride At Work, AFL-CIO.  
 Service Employees International Union.  
 Transport Workers Union of America.

Transportation Communications International Union.

UAW.  
 Unitarian Universalist Association of Congregations.

UNITE!  
 United Cerebral Palsy.  
 United Food and Commercial Workers International Union.

United Steelworkers of America.  
 Utility Worker Union of America.  
 Women Employed.

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

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. WESTMORELAND), the former minority leader of the Georgia House of Representatives.

Mr. WESTMORELAND. Mr. Speaker, I rise today to support the rule and the underlying legislation; and I want to thank my colleague from Georgia for yielding me time.

Mr. Speaker, we have all received the class action settlement notices in our mail boxes, I know I have, not even realizing we were part of a class action lawsuit nor ever asking to be part of the lawsuit. And not only that, but you never get to meet this attorney who will represent you.

As consumers, we need to know that we will eventually bear the cost of these companies that have to settle large class actions because it is easier to settle than to try to litigate against the trial lawyers.

Earlier this week, the Georgia General Assembly moved forward with major legislation to reform the legal system, something I fought for during my time there. This legislation continues that effort and takes a huge step forward to protect consumers by limiting these huge interstate class action lawsuits.

Mr. Speaker, Federal courts have had jurisdiction over substantial cases between citizens of different States since the founding of this Nation. But due to the interpretations of the laws, State courts have had to bear the brunt of class action lawsuits in this country.

This legislation is a fantastic bipartisan effort to reform the legal system and is a good first step toward addressing the costs of litigation on small businesses, large businesses, and all Americans. I encourage my colleagues to support this effort; and I appreciate the leadership shown by the Speaker, the majority leader, and the chairman of the Committee on the Judiciary towards getting this legislation passed through the Senate and on the desk of the President.

I urge my colleagues to support this measure, the rule and the legislation.

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

Mr. Speaker, I would like to read a couple of cases here.

Mrs. Higgins of Tennessee was a 39-year-old woman who died of a sudden heart attack after taking Vioxx. She was the mother of a 9-year-old son. When she was diagnosed with the early onset of rheumatoid arthritis, Vioxx

was prescribed. She had no former cardiac problems or family history. According to her medical records, Mrs. Higgins was in otherwise excellent health; but on September 25, 2004, she died of a sudden heart attack, less than a month after she started taking Vioxx. She was buried on the very day in September that Merck took Vioxx off the market.

On October 28, 2004, her husband, Monty, filed a claim against Merck in the Superior Court of New Jersey, Atlantic City Division.

Why New Jersey? This couple is from Tennessee. Because that is the State where Merck is headquartered. In an interview on "60 Minutes," Mr. Higgins said, "I believe my wife would be here if Merck had decided to take Vioxx off the market just 1 month earlier."

Then there is Richard "Dickie" Irvin of Florida who was a 53-year-old former football coach and president of the Athletic Booster Association. He had received his college football scholarship and was inducted into the school's football hall of fame. He went on to play in Canadian league football until suffering a career-ending injury. In addition to coaching, he worked at a family-owned seafood shop where he was constantly moving crates of seafood. He rarely went to see a doctor and had no major medical problems.

In April of 2001, Mr. Irvin was prescribed Vioxx for his football knee injury from years ago. Approximately 23 days after he began taking Vioxx, Mr. Irvin died from a sudden, unexpected heart attack. An autopsy revealed that his heart attack was caused by a sudden blood clot. This is the exact type of injury that has been associated with Vioxx use. Mr. Irvin and his wife of 31 years had four children and three grandchildren.

I could read more cases involving Vioxx, but most people in this House, Mr. Speaker, probably agree with me that Merck should be held accountable if they knew about the harmful effects of Vioxx.

The class action section of this bill, however, would allow Merck and other corporate defendants to delay their day of reckoning for years and years and years; and justice for these individuals' families would be delayed; and justice delayed is justice denied. Again, this bill should be defeated.

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

Mr. GINGREY. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman from Georgia (Mr. GINGREY) has 10 minutes remaining.

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

Mr. Speaker, the gentleman from Massachusetts (Mr. MCGOVERN) presented that case; and I want to present the real crux of this problem, and let me read a suit, Shields, et al v. Bridgestone/Firestone, Incorporated in Texas, a suit in Texas.

This suit involves customers who had Firestone tires that were among those that the National Highway Traffic Safety Administration investigated or recalled but who did not suffer any personal injury or property damage. After a Federal appeals court rejected class certification, plaintiffs' counsel and Firestone negotiated a settlement which has now been approved by a Texas State court. Under the settlement, the company has agreed to redesign certain tires, a move that was already underway irrespective of the suit, and to develop a 3-year consumer education and awareness campaign, but the members of the class received nothing. The lawyers, they got \$19 million.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a former member for 4 years of the Committee on the Judiciary and an original co-sponsor of H.R. 1115.

(Ms. HART asked and was given permission to revise and extend her remarks.)

Ms. HART. Mr. Speaker, I would like to thank the gentleman for the opportunity to speak on this bill today. He has been leading a very important discussion and one that I am very pleased has finally come to fruition.

Mr. Speaker, there has been a lot of discussion today about class actions and what they do to the economy; class actions, what they have done to law, because State courts are making national law. But I think the most important point about a class action is that a class action's purpose is to award the plaintiffs who have been injured. The intent of these suits is to allow large groups who were similarly harmed by something to recover damages.

Unfortunately, it is the attorneys who have been recovering more money. The injured plaintiffs in many cases are recovering basically nothing. First, they are denied real relief, and then the attorneys pocket huge amounts of money. Examples, Bank of Boston case, the lawyers got 8.5 million. The plaintiffs actually lost money. In the Blockbuster case, the lawyers, 9.25 million. The plaintiffs got \$1 off their next movie. The Coca-Cola case, the lawyers got 1.5 million; the plaintiffs, a 50-cent coupon.

Obviously, these lawsuits are not helping their intended beneficiaries. This act will create a consumer class action bill of rights. It will protect consumers from the egregious abuses of the class action practice today. The plan will require the judges carefully review the settlement and limit the attorneys fees when the value of the settlement received by those class members is minor in comparison or when there is a net loss in the settlement, such as this example where the class members could end up losing money.

It also will ban settlements that award some class members a large recovery because they live closer to the court. It will also allow Federal courts to maximize the benefit of class action

settlements by requiring that unclaimed settlement funds be donated to charitable organizations.

Mr. Speaker, it is just obvious to me that this is a long-overdue bill. I encourage my colleagues to support it. I encourage my colleagues to ensure that the plaintiffs actually receive their due in these cases.

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

Let me close by saying, this bill is not about lawyers. It is about people, and it is about State governments and attorney generals being able to pass laws in their own States to better protect their people. And it is ironic and it is almost kind of laughable that the majority, which has made it a point to argue on behalf of States right, is basically turning its back on what States have done to protect their people.

The previous speaker talked about making sure that the plaintiffs got what they deserved. Well, we are concerned about making sure that the plaintiffs get their day in court. And under this bill it makes it more difficult, especially for low-wage workers, for people who are battling discrimination to be able to have their day in court.

The system clearly can be improved. Nobody is arguing that. What I am saying here is that the bill before us does not provide the justice and the fairness that I think is appropriate. So I would urge my colleagues to oppose this bill.

NATIONAL CONFERENCE  
OF STATE LEGISLATURES,  
February 2, 2005.

U.S. SENATE,  
Washington, DC.

DEAR SENATOR: On behalf of the National Conference of State Legislatures (NCSL), I am urging you to oppose passage of S. 5, the "Class Action Fairness Act of 2005." This legislation will federalize class actions involving only state law claims. S. 5 undermines our system of federalism, disrespects our state court system, and clearly preempts carefully crafted state judicial processes which have been in place for decades regarding the treatment of class action lawsuits. The overall tenor of S. 5 sends a disturbing message to the American people that state court systems are somehow inferior or untrustworthy.

S. 5 amends the Federal Rules of Civil Procedure to grant federal district courts original diversity jurisdiction over any class action lawsuit where the amount in controversy exceeds \$5,000,000 or where any plaintiff is a citizen of a different state than any defendant, or in other words, any class action lawsuit. The effect of S. 5 on state legislatures is that state laws in the areas of consumer protection and antitrust which were passed to protect the citizens of a particular state against fraudulent or illegal activities will almost never be heard in state courts. Ironically, state courts, whose sole purpose is to interpret state laws, will be bypassed and the federal judiciary will be asked to render judgment in these cases. The impact of S. 5 is that state processes will be preempted by federal ones which aren't necessarily better.

NCSL opposes the passage of federal legislation, such as S. 5 which preempts established state authority. State courts have traditionally and correctly been the repository for most class action lawsuits because state

laws, not federal ones, are at issue. Congress should proceed cautiously before permitting the federal government to interfere with the authority of states to set their own laws and procedures in their own courts.

NCSL urges Congress to remember that state policy choices should not be overridden without a showing of compelling national need. We should await evidence demonstrating that states have broadly overreached or are unable to address the problems themselves. There must be evidence of harm to interests of national scope that require a federal response, and even with such evidence, federal preemption should be limited to remedying specific problems with tailored solutions, something that S. 5 does not do.

I urge you to oppose this legislation. Please contact Susan Parnas Frederick at the National Conference of State Legislatures at 202-624-3566 or [susan.frederick@ncsl.org](mailto:susan.frederick@ncsl.org) for further information.

Sincerely,

MICHAEL BLABONI,  
New York State Senator; and Chair,  
NCSL Law and Criminal Justice Committee.

Re environmental harm cases do not belong in class action bill.

FEBRUARY 7, 2005.

DEAR SENATOR: Our organizations are opposed to the sweepingly drawn and misleadingly named "Class Action Fairness Act of 2005." This bill is patently unfair to citizens harmed by toxic spills, contaminated drinking water, polluted air and other environmental hazards involved in class action cases based on state environmental or public health laws. S. 5 would allow corporate defendants in many pollution class actions and "mass tort" environmental cases to remove these kinds of state environmental matters from state court to federal court, placing the cases in a forum that could be more costly, more time-consuming, and disadvantageous to your constituents harmed by toxic pollution. State law environmental harm cases do not belong in this legislation and we urge you to exclude such pollution cases from the class action bill.

Class actions protect the public's health and the environment by allowing people with similar injuries to join together for more efficient and cost-effective adjudication of their cases. All too often, hazardous spills, water pollution, or other toxic contamination from a single source affects large numbers of people, not all of whom may be citizens or residents of the same state as that of the defendants who caused the harm. In such cases, a class action lawsuit in state court based on state common law doctrines of negligence, nuisance or trespass, or upon rights and duties created by state statutes in the state where the injuries occur, is often the best way of fairly resolving these claims.

For example, thousands of families around the country are now suffering because of widespread groundwater contamination caused by the gasoline additive MTBE, which the U.S. government considers a potential human carcinogen. According to a May, 2002 GAO report, 35 states reported that they find MTBE in groundwater at least 20 percent of the time they sample for it, and 24 states said that they find it at least 60 percent of the time. Some communities and individuals have brought or soon will bring suits to recover damages for MTBE contamination and hold the polluters accountable, but under this bill, MTBE class actions or "mass actions" based on state law could be removed to federal court by the oil and gas companies in many of these cases.

This could not only make these cases more expensive, more time-consuming and more difficult for injured parties, but could also result in the dismissal of legitimate cases by federal judges who are unfamiliar with, or less respectful of, state-law claims. For example, in at least one MTBE class action, a federal court dismissed the case based on oil companies' claims that the action was barred by the federal Clean Air Act (even though that law contains no tort liability waiver for MTBE). Yet a California state court rejected a similar federal preemption argument and let the case go to a jury, which found oil refineries, fuel distributors, and others liable for damages. These cases highlight how a state court may be more willing to uphold legitimate state law claims. Other examples of state-law cases that would be weakened by this bill include lead contamination cases, mercury contamination, perchlorate pollution and other "toxic tort" cases.

In a letter to the Senate last year, the U.S. Judicial Conference expressed their continued opposition to such broadly written class action removal legislation. Notably, their letter states that, even if Congress determines that some "significant multi-state class actions" should be brought within the removal jurisdiction of the federal courts, Congress should include certain limitations and exceptions, including for class actions "in which plaintiff class members suffered personal injury or personal property damage within the state, as in the case of a serious environmental disaster." The Judicial Conference's letter explains that this "environmental harm" exception should apply "to all individuals who suffered personal injuries or losses to physical property, whether or not they were citizens of the state in question."

We agree with the Judicial Conference that cases involving environmental harm are not even close to the type of cases that proponents of S. 5 cite when they call for reforms to the class action system. Including such cases in the bill penalizes injured parties in those cases for no reason other than to benefit the polluters. No rationale has been offered by the bill's supporters for including environmental cases in S. 5's provisions. We are unaware of any examples offered by bill supporters of environmental harm cases that represent alleged abuses of the state class actions.

More proof of the overreaching of this bill is that the so-called "Class Action Fairness Act" is not even limited to class action cases. The bill contains a provision that would allow defendants to remove to federal court all environmental "mass action" cases involving more than 100 people—even though these cases are not even filed as class actions. For example, the bill would apply to cases similar to the recently concluded state-court trial in Anniston, Alabama, where a jury awarded damages to be paid by Monsanto and Solutia for injuring more than 3,500 people that the jury found had been exposed over many years—with the companies' knowledge—to cancer-causing PCBs.

There is little doubt in the Anniston case that, had S. 5 been law, the defendants would have tried to remove the case from the state court that serves the community that suffered this devastating harm. Even in the best-case scenario, S. 5 would put plaintiffs like those in Anniston in the position of having to fight costly and time-consuming court battles in order to preserve their chosen forum for litigating their claims. In any case, it would reward the kind of reckless corporate misbehavior demonstrated by Monsanto and Solutia by giving defendants in such cases the right to remove state-law cases to federal court over the objections of those they have injured.

The so-called "Class Action Fairness Act" would allow corporate polluters who harm the public's health and welfare to exploit the availability of a federal forum whenever they perceive an advantage to doing so. It is nothing more than an attempt to take legitimate state-court claims by injured parties out of state court at the whim of those who have committed the injury.

Cases involving environmental harm and injury to the public from toxic exposure should not be subject to the bill's provisions; if these environmental harm cases are not excluded, we strongly urge you to vote against S. 5.

Sincerely,

S. Elizabeth Birnbaum, Vice President for Government Affairs, American Rivers.

Doug Kendall, Executive Director, Community Rights Counsel.

Mary Beth Beetham, Director of Legislative Affairs, Defenders of Wildlife.

Sara Zdeb, Legislative Director, Friends of the Earth.

Anne Georges, Acting Director of Public Policy, National Audubon Society.

Karen Wayland, Legislative Director, Natural Resources Defense Council.

Tom Z. Collina, Executive Director, 20/20 Vision.

Linda Lance, Vice President for Public Policy, The Wilderness Society.

Paul Schwartz, National Campaigns Director, Clean Water Action.

James Cox, Legislative Counsel, Earthjustice.

Ken Cook, Executive Director, Environmental Working Group.

Rick Hind, Legislative Director, Toxics Campaign, Greenpeace U.S.

Kevin S. Curtis, Vice President, National Environmental Trust.

Ed Hopkins, Director, Environmental Quality Programs, Sierra Club.

Julia Hathaway, Legislative Director, The Ocean Conservancy.

Anna Aurilio, Legislative Director, U.S. Public Interest Research Group.

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

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

Mr. Speaker, this is a fair rule for legislation that will help restore fairness and common sense to the current class action system.

Like H.R. 1115, which overwhelmingly passed the House last Congress, S. 5 expands Federal diversity jurisdiction over interstate class actions in a manner consistent with the framers' constitutional intent that Federal court preside over controversies between citizens of different States. S. 5 also protects consumers from these bogus coupon settlements that reward trial lawyers with millions in windfall fees while clients who never hired them get coupons in the mail.

Mr. Speaker, I want to call attention to this slide before me. This is from the Washington Post, November of 2002. The Washington Post is not exactly the most conservative newspaper in the country: "The clients get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix."

□ 1215

The Senate's overwhelming passage of S. 5 by a vote of 72 to 26 just last

week reflects a strong bipartisan consensus in favor of reforming a class-action system that is prone to systematic abuse. Of those 26, 18 were Democrats, and each one of those provisions in that amendment in the nature of a substitute were offered in the Senate, and each one of them were voted down in a bipartisan fashion.

I think we all, in both the Senate and the House, and both Republicans and Democrats, we want to do the right thing here, and we want to make sure that, as the Washington Post says, that we eliminate this extortion racket and bring some fairness to this class-action system. After all, it is the injured person, it is the plaintiff that deserves a fair and just settlement, and it should not be just a lottery windfall for lawyers who venue shop, looking for places like, and we have heard it during this hour's discussion, Madison County, Illinois, the epicenter of this class-action lawsuit abuse. What happens in Madison County, Illinois, affects the whole country.

So I encourage my colleagues to vote for the rule, vote for S. 5 tomorrow.

Mr. Speaker, I yield back the remaining portion of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### BROADCAST DECENCY ENFORCEMENT ACT OF 2005

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the pending business is the vote on ordering the previous question on House Resolution 95, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 230, nays 198, not voting 5, as follows:

[Roll No. 34]

YEAS—230

Aderholt	Boehert	Calvert
Akin	Boehner	Camp
Alexander	Bonilla	Cannon
Bachus	Bonner	Cantor
Baker	Bono	Capito
Barrett (SC)	Boozman	Carter
Bartlett (MD)	Boustany	Castle
Barton (TX)	Bradley (NH)	Chabot
Bass	Brady (TX)	Chocola
Beauprez	Brown (SC)	Coble
Biggert	Brown-Waite,	Cole (OK)
Bilirakis	Ginny	Conaway
Bishop (UT)	Burgess	Cox
Blackburn	Burton (IN)	Crenshaw
Blunt	Buyer	Cubin

Culberson Jindal  
 Cunningham Johnson (CT)  
 Davis (KY) Johnson (IL)  
 Davis, Jo Ann Johnson, Sam  
 Davis, Tom Jones (NC)  
 Deal (GA) Keller  
 DeLay Kelly  
 Dent Kennedy (MN)  
 Diaz-Balart, L. King (IA)  
 Diaz-Balart, M. King (NY)  
 Dingell Kingston  
 Doolittle Kirk  
 Drake Kline  
 Dreier Knollenberg  
 Duncan Kolbe  
 Ehlers Kuhl (NY)  
 Emerson LaHood  
 English (PA) Latham  
 Everett LaTourette  
 Feeney Leach  
 Ferguson Lewis (CA)  
 Fitzpatrick (PA) Lewis (KY)  
 Flake Linder  
 Foley LoBiondo  
 Forbes Lucas  
 Fortenberry Lungren, Daniel  
 Fossella E.  
 Foxx Mack  
 Franks (AZ) Manzullo  
 Frelinghuysen Marchant  
 Gallegly McCaul (TX)  
 Garrett (NJ) McCotter  
 Gerlach McCrery  
 Gibbons McHenry  
 Gilchrest McHugh  
 Gillmor McKeon  
 Gingrey McMorris  
 Gohmert Mica  
 Goode Miller (FL)  
 Goodlatte Miller (MI)  
 Granger Miller, Gary  
 Graves Moran (KS)  
 Green (WI) Murphy  
 Gutknecht Musgrave  
 Hall Myrick  
 Harris Neugebauer  
 Hart Ney  
 Hastings (WA) Northup  
 Hayes Norwood  
 Hayworth Nunes  
 Hefley Nussle  
 Hensarling Osborne  
 Herger Otter  
 Hobson Paul  
 Hoekstra Pearce  
 Hostettler Pence  
 Hulshof Peterson (PA)  
 Hunter Petri  
 Hyde Pickering  
 Inglis (SC) Pitts  
 Issa Platts  
 Istook Poe  
 Jenkins Pombo

NAYS—198

Abercrombie Clyburn  
 Ackerman Conyers  
 Allen Cooper  
 Andrews Costa  
 Baca Costello  
 Baird Cramer  
 Baldwin Crowley  
 Barrow Cuellar  
 Bean Cummings  
 Becerra Davis (AL)  
 Berkeley Davis (CA)  
 Berman Davis (FL)  
 Berry Davis (IL)  
 Bishop (GA) Davis (TN)  
 Bishop (NY) DeFazio  
 Blumenauer DeGette  
 Boren Delahunt  
 Boswell DeLauro  
 Boucher Dicks  
 Boyd Doggett  
 Brady (PA) Doyle  
 Brown (OH) Edwards  
 Brown, Corrine Emanuel  
 Butterfield Engel  
 Capps Etheridge  
 Capuano Evans  
 Cardin Farr  
 Cardoza Fattah  
 Carnahan Filner  
 Carson Ford  
 Case Frank (MA)  
 Chandler Gonzalez  
 Clay Gordon  
 Cleaver Green, Al

Porter Levin  
 Portman Lewis (GA)  
 Price (GA) Lipinski  
 Pryce (OH) Lofgren, Zoe  
 Putnam Lowey  
 Radanovich Lynch  
 Ramstad Maloney  
 Regula Markey  
 Rehberg Marshall  
 Renzi Matheson  
 Reynolds McCarthy  
 Rogers (AL) McCollum (MN)  
 Rogers (KY) McDermott  
 Rogers (MI) McGovern  
 Rohrabacher McIntyre  
 Ros-Lehtinen McKinney  
 Royce McNulty  
 Ryan (WI) Meehan  
 Ryun (KS) Meek (FL)  
 Saxton Meeks (NY)  
 Schwarz (MI) Melancon  
 Sensenbrenner Menendez  
 Sessions Michaud  
 Shadegg Millender-  
 Shaw McDonald  
 Shays Miller (NC)  
 Sherwood Miller, George  
 Shimkus Mollohan  
 Shuster Moore (KS)  
 Simmons Moore (WI)  
 Simpson Moran (VA)  
 Smith (NJ) Murtha  
 Smith (TX) Nadler  
 Sodrel Napolitano

NOT VOTING—5

Eshoo Reichert Wynne  
 Oxley Stupak

□ 1242

Ms. VELÁZQUEZ and Mr. BOYD changed their vote from “yea” to “nay.”

Mr. BURTON of Indiana changed his vote from “nay” to “yea.”

So the previous question was ordered. The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LATOURETTE.) The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. BARTON of Texas. Mr. Speaker, pursuant to House Resolution 95, I call up the bill (H.R. 310) to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 95, the bill is considered read.

The text of H.R. 310 is as follows:

H.R. 310

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Broadcast Decency Enforcement Act of 2005”.

**SEC. 2. INCREASE IN PENALTIES FOR OBSCENE, INDECENT, AND PROFANE BROADCASTS.**

Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

(2) by inserting after subparagraph (B) the following new subparagraph:

“(C) Notwithstanding subparagraph (A), if the violator is (i) a broadcast station licensee or permittee, or (ii) an applicant for

any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission, and the violator is determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane material, the amount of any forfeiture penalty determined under this section shall not exceed \$500,000 for each violation.”; and

(3) in subparagraph (D), as redesignated by paragraph (1) of this subsection—

(A) by striking “subparagraph (A) or (B)” and inserting “subparagraph (A), (B), or (C)”; and

(B) by adding at the end the following: “Notwithstanding the preceding sentence, if the violator is determined by the Commission under paragraph (1) to have uttered obscene, indecent, or profane material (and the case is not covered by subparagraph (A), (B), or (C)), the amount of any forfeiture penalty determined under this section shall not exceed \$500,000 for each violation.”.

**SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES; EXCEPTION.**

Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is further amended by adding at the end (after subparagraph (E) as redesignated by section 2(1) of this Act) the following new subparagraphs:

“(F) In the case of a violation in which the violator is determined by the Commission under paragraph (1) to have uttered obscene, indecent, or profane material, the Commission shall take into account, in addition to the matters described in subparagraph (E), the following factors:

“(i) With respect to the degree of culpability of the violator, the following:

“(I) whether the material uttered by the violator was live or recorded, scripted or unscripted;

“(II) whether the violator had a reasonable opportunity to review recorded or scripted programming or had a reasonable basis to believe live or unscripted programming may contain obscene, indecent, or profane material;

“(III) if the violator originated live or unscripted programming, whether a time delay blocking mechanism was implemented for the programming;

“(IV) the size of the viewing or listening audience of the programming; and

“(V) whether the programming was part of a children’s television program as described in the Commission’s children’s television programming policy (47 CFR 73.4050(c)).

“(ii) With respect to the violator’s ability to pay, the following:

“(I) whether the violator is a company or individual; and

“(II) if the violator is a company, the size of the company and the size of the market served.

“(G) A broadcast station licensee or permittee that receives programming from a network organization, but that is not owned or controlled, or under common ownership or control with, such network organization, shall not be subject to a forfeiture penalty under this subsection for broadcasting obscene, indecent, or profane material, if—

“(i) such material was within live or recorded programming provided by the network organization to the licensee or permittee; and

“(ii)(I) the programming was recorded or scripted, and the licensee or permittee was not given a reasonable opportunity to review the programming in advance; or—

“(II) the programming was live or unscripted, and the licensee or permittee had no reasonable basis to believe the programming would contain obscene, indecent, or profane material.

The Commission shall by rule define the term 'network organization' for purposes of this subparagraph."

**SEC. 4. INDECENCY PENALTIES FOR NON-LICENSEES.**

Section 503(b)(5) of the Communications Act of 1934 (47 U.S.C. 503(b)(5)) is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(2) by inserting "(A)" after "(5)";

(3) by redesignating the second sentence as subparagraph (B);

(4) in such subparagraph (B) as redesignated—

(A) by striking "The provisions of this paragraph shall not apply, however," and inserting "The provisions of subparagraph (A) shall not apply (i)";

(B) by striking "operator, if the person" and inserting "operator, (ii) if the person";

(C) by striking "or in the case of" and inserting "(iii) in the case of"; and

(D) by inserting after "that tower" the following: ", or (iv) in the case of a determination that a person uttered obscene, indecent, or profane material that was broadcast by a broadcast station licensee or permittee, if the person is determined to have willfully or intentionally made the utterance"; and

(5) by redesignating the last sentence as subparagraph (C).

**SEC. 5. DEADLINES FOR ACTION ON COMPLAINTS.**

Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended by adding at the end thereof the following new paragraph:

"(7) In the case of an allegation concerning the utterance of obscene, indecent, or profane material that is broadcast by a station licensee or permittee—

"(A) within 180 days after the date of the receipt of such allegation, the Commission shall—

"(i) issue the required notice under paragraph (3) to such licensee or permittee or the person making such utterance;

"(ii) issue a notice of apparent liability to such licensee or permittee or person in accordance with paragraph (4); or

"(iii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such notice; and

"(B) if the Commission issues such notice and such licensee, permittee, or person has not paid a penalty or entered into a settlement with the Commission, within 270 days after the date of the receipt of such allegation, the Commission shall—

"(i) issue an order imposing a forfeiture penalty; or

"(ii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such order."

**SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROADCAST.**

Section 503 of the Communications Act of 1934 (47 U.S.C. 503) is further amended by adding at the end the following new subsection:

"(c) **ADDITIONAL REMEDIES FOR INDECENT BROADCASTING.**—In any proceeding under this section in which the Commission determines that any broadcast station licensee or permittee has broadcast obscene, indecent, or profane material, the Commission may, in addition to imposing a penalty under this section, require the licensee or permittee to broadcast public service announcements that serve the educational and informational needs of children. Such announcements may be required to reach an audience that is up

to 5 times the size of the audience that is estimated to have been reached by the obscene, indecent, or profane material, as determined in accordance with regulations prescribed by the Commission."

**SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**

Section 503 of the Communications Act of 1934 (47 U.S.C. 503) is further amended by adding at the end (after subsection (c) as added by section 6) the following new subsection:

"(d) **CONSIDERATION OF LICENSE DISQUALIFICATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**—If the Commission issues a notice under paragraph (3) or (4) of subsection (b) to a broadcast station licensee or permittee looking toward the imposition of a forfeiture penalty under this Act based on an allegation that the licensee or permittee broadcast obscene, indecent, or profane material, and either—

"(1) such forfeiture penalty has been paid, or

"(2) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then the Commission shall, in any subsequent proceeding under section 308(b) or 310(d), take into consideration whether the broadcast of such material demonstrates a lack of character or other qualifications required to operate a station."

**SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLATIONS OF INDECENCY PROHIBITIONS.**

Section 309(k) of the Communications Act of 1934 (47 U.S.C. 309(k)) is amended by adding at the end the following new paragraph:

"(5) **LICENSE RENEWAL CONSIDERATION OF VIOLATIONS OF INDECENCY PROHIBITIONS.**—If the Commission has issued a notice under paragraph (3) or (4) of section 503(b) to a broadcast station licensee or permittee with respect to a broadcast station looking toward the imposition of a forfeiture penalty under this Act based on an allegation that such broadcast station broadcast obscene, indecent, or profane material, and—

"(A) such forfeiture penalty has been paid, or

"(B) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then such violation shall be treated as a serious violation for purposes of paragraph (1)(B) of this subsection with respect to the renewal of the license or permit for such station."

**SEC. 9. LICENSE REVOCATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**

Section 312 of the Communications Act of 1934 (47 U.S.C. 312) is amended by adding at the end the following new subsection:

"(h) **LICENSE REVOCATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**—

"(1) **CONSEQUENCES OF MULTIPLE VIOLATIONS.**—If, in each of 3 or more proceedings during the term of any broadcast license, the Commission issues a notice under paragraph (3) or (4) of section 503(b) to a broadcast station licensee or permittee with respect to a broadcast station looking toward the imposition of a forfeiture penalty under this Act based on an allegation that such broadcast station broadcast obscene, indecent, or profane material, and in each such proceeding either—

"(A) such forfeiture penalty has been paid, or

"(B) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then the Commission shall commence a proceeding under subsection (a) of this section to consider whether the Commission should

revoke the station license or construction permit of that licensee or permittee for such station.

"(2) **PRESERVATION OF AUTHORITY.**—Nothing in this subsection shall be construed to limit the authority of the Commission to commence a proceeding under subsection (a)."

**SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF THE COMMISSION.**

Each calendar year beginning after the date of enactment of this Act, the Federal Communications Commission shall submit to the Congress an annual report that includes the following:

(1) The number of complaints received by the Commission during the year covered by the report alleging that a broadcast contained obscene, indecent, or profane material, and the number of programs to which such complaints relate.

(2) The number of those complaints that have been dismissed or denied by the Commission.

(3) The number of complaints that have remained pending at the end of the year covered by the annual report.

(4) The number of notices issued by the Commission under paragraph (3) or (4) of section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) during the year covered by the report to enforce the statutes, rules, and policies prohibiting the broadcasting of obscene, indecent, or profane material.

(5) For each such notice, a statement of—

(A) the amount of the proposed forfeiture;

(B) the program, station, and corporate parent to which the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding.

(6) The number of forfeiture orders issued pursuant to section 503(b) of such Act during the year covered by the report to enforce the statutes, rules, and policies prohibiting the broadcasting of obscene, indecent, or profane material.

(7) For each such forfeiture order, a statement of—

(A) the amount assessed by the final forfeiture order;

(B) the program, station, and corporate parent to which it was issued;

(C) whether the licensee has paid the forfeiture order; and

(D) the amount paid by the licensee.

(8) In instances where the licensee has refused to pay, whether the Commission referred such order to the Department of Justice to collect the penalty.

(9) In cases where the Commission referred such order to the Department of Justice—

(A) the number of days from the date the Commission issued such order to the date the Commission referred such order to the Department;

(B) whether the Department has commenced an action to collect the penalty, and if such action was commenced, the number of days from the date the Commission referred such order to the Department to the date the action by the Department commenced; and

(C) whether the collection action resulted in a payment, and if such action resulted in a payment, the amount of such payment.

**SEC. 11. GAO STUDY OF INDECENT BROADCASTING COMPLAINTS.**

(a) **INQUIRY AND REPORT REQUIRED.**—The General Accounting Office shall conduct a study examining—

(1) the number of complaints concerning the broadcasting of obscene, indecent, and profane material to the Federal Communications Commission;

(2) the number of such complaints that result in final agency actions by the Commission;

(3) the length of time taken by the Commission in responding to such complaints;

(4) what mechanisms the Commission has established to receive, investigate, and respond to such complaints; and

(5) whether complainants to the Commission are adequately informed by the Commission of the responses to their complaints.

(b) SUBMISSION OF REPORT.—The General Accounting Office shall submit a report on the results of such study within one year after the date of enactment of this Act to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

#### SEC. 12. SENSE OF THE CONGRESS.

(a) REINSTATEMENT OF POLICY.—It is the sense of the Congress that the broadcast television station licensees should reinstate a family viewing policy for broadcasters.

(b) DEFINITION.—For purposes of this section, a family viewing policy is a policy similar to the policy that existed in the United States from 1975 to 1983, as part of the National Association of Broadcasters' code of conduct for television, and that included the concept of a family viewing hour.

#### SEC. 13. IMPLEMENTATION.

(a) REGULATIONS.—The Commission shall prescribe regulations to implement the amendments made by this Act within 180 days after the date of enactment of this Act.

(b) PROSPECTIVE APPLICATION.—This Act and the amendments made by this Act shall not apply with respect to material broadcast before the date of enactment of this Act.

(c) SEPARABILITY.—Section 708 of the Communications Act of 1934 (47 U.S.C. 608) shall apply to this Act and the amendments made by this Act.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in order to consider an amendment without demand for division of the question printed in House Report 109-6 if offered by the gentleman from Michigan (Mr. UPTON), or his designee, which shall be considered read, and shall be debatable for 20 minutes, equally divided and controlled by the proponent and an opponent.

The gentleman from Texas (Mr. BARTON) and the gentleman from Massachusetts (Mr. MARKEY) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Texas (Mr. BARTON.)

#### GENERAL LEAVE

Mr. BARTON of Texas. 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. 310.

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

There was no objection.

Mr. BARTON of Texas. I yield myself such time as I may consume.

Mr. Speaker, today the Energy and Commerce Committee brings its first major bill of the 109th Congress to the floor, H.R. 310, the Broadcast Decency Enforcement Act of 2005.

This is a bill that we brought up in the last Congress and passed in the last Congress, but were not able to conference successfully with the Senate. We passed it in the last Congress with a vote of 391 to 22, so we are going to

bring this up as our first major bill this year.

This legislation makes great strides in making it safe for families to come back again into their living rooms. After the year-before-last Super Bowl half-time show, an unprecedented 500,000 citizens filed complaints with the FCC, 500,000. The level of disgust in the use of our public airwaves was then at an all-time high. The 2004 Super Bowl crystallized the notion that something needs to be done. Today, we are going to answer those calls.

H.R. 310 gives the FCC all of the tools necessary to encourage broadcasters to take these fines seriously. For too long, broadcasters have pushed the envelope. In light of the paltry fines under current law, broadcasters have been willing to take the risk that programming may be deemed indecent. Currently, the most the FCC may fine a broadcaster is \$32,500. It is a mere drop in the bucket, a slap on the wrist. This bill would raise the stakes by giving the FCC the ability to fine a maximum of \$500,000 for an indecent broadcast infraction. A \$500,000 penalty gets people's attention.

The bill also takes the additional step to address the performers who may exploit the airwaves to promote their own popularity. Under H.R. 310, if a performer, and I quote, "willfully and intentionally makes an indecent statement or action that he or she knows will be broadcast, that performer can be held personally liable for up to \$500,000." There is a clear need to hold a performer responsible for his or her own actions, and this bill does that in a reasonable manner.

The goal is not to bankrupt anyone, but rather make the penalties do what they are supposed to do, provide a disincentive to utter indecent material on broadcast television and radio.

Additionally, H.R. 310 would allow the FCC to use remedies other than fines. For instance, if a broadcaster is found liable for three separate indecency violations during an 8-year license term, the bill requires the FCC to hold a revocation hearing to consider revoking the broadcaster's license. It is not an automatic revocation, but the FCC would have to hold the hearing to consider revocation.

Today, the FCC has the power to hold a license revocation hearing only after one indecency offense, but rarely uses it. H.R. 310 would make it clear that after three such offenses, it is time to examine the license. Again, this is a penalty that will make the broadcasters sit up and take notice.

□ 1245

I would like to thank the gentleman from Michigan (Mr. UPTON), chairman of the Subcommittee on Telecommunications and the Internet; the gentleman from Michigan (Mr. DINGELL), the ranking member of the full committee; and the gentleman from Massachusetts (Mr. MARKEY), the ranking member of the subcommittee, for their

hard work on this bill. It is a good bill. It is firm, it is fair, and it is reasonable. Most importantly and unfortunately, it is necessary. I am an original cosponsor of H.R. 310. I would strongly urge my colleagues to support the bill.

Mr. Speaker, I yield the balance of my time to the gentleman from Michigan (Mr. UPTON), and I ask unanimous consent for him to control the floor debate on the majority time on this bill.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Texas?

There was no objection.

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

Mr. Speaker, I want to commend the gentleman from Michigan (Mr. UPTON) for this legislation and commend as well the gentleman from Texas (Mr. BARTON), the gentleman from Michigan (Mr. DINGELL) and members of the committee on both the Democrat and Republican side who have crafted this bill. It has been handled in a bipartisan fashion. This bill is brought to the floor today in that spirit.

Mr. Speaker, this legislation is essentially identical to the bill which overwhelmingly passed the House in the last Congress. Simply put, this bill raises the cap on possible fines that the FCC can levy for violations of its broadcast indecency rules from \$32,500 for licensees and \$11,000 for non-licensees to up to \$500,000 in both categories.

I would like to emphasize that this legislation does not make indecent broadcasts illegal, nor does the bill define what is or is not indecent material.

Indecent content aired over broadcast TV and radio is already illegal between the hours of 6 a.m. and 10 p.m., 7 days a week. What speech constitutes indecent material will be left to the Federal Communications Commission and to the courts of the United States of America.

Again, this legislation simply updates the statute with regard to the amount of money that the FCC can levy as a fine for violations of its rules and establishes procedures for considering broadcast license awards, renewal or revocation when repeated violations are found.

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

Mr. UPTON. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of this legislation. I want to particularly thank a number of Members. I want to thank the gentleman from Texas (Mr. BARTON). Without his dedicated effort, we would not have this bill through the fast track that we have it today, and his support means quite a bit. I also want to thank my friends on the other side of the aisle. I look at the gentleman from Massachusetts (Mr. MARKEY), my ranking member on the subcommittee; the gentleman from Michigan (Mr. DINGELL) who is on the floor, the ranking member of the full committee. This is a bipartisan effort.

I would remind my colleagues that last year this legislation passed 391–22. Out of our committee this last week, it passed 46–2. That is true bipartisan spirit and we are delighted that it is up on the floor as early as it is. A little bit more than a year ago, I introduced similar legislation that had all five FCC commissioners, Republican and Democrat, on board. Each of them had lamented in a very public way that the current level of fines was way too low, and with that we moved the legislation that we introduced a couple of weeks ago. We passed it, as I said, 391–22. The Senate passed similar legislation last year, 99–1. I would note that that one that voted against it wanted the bill to be tougher. In essence, unanimous support.

Currently, fines for indecency often go uncollected because the cost for the Department of Justice to collect the fines is often greater than the fines themselves. This is no longer going to be the case under H.R. 310. The current cap for fines is \$32,500. To put that into perspective, a 30-second ad during the Super Bowl just a couple of weeks ago cost \$80,000 a second, \$2.4 million for 30 seconds.

What we are talking about today is about the public airwaves which are, of course, owned by the U.S. taxpayer. Using the public airwaves comes with the responsibility to follow the FCC decency standards that apply to programming that airs during the family hours from 6 in the morning until 10 at night, the likeliest time that kids might be tuned in.

When broadcasters sign on the dotted line to receive their licenses, they agree to follow those decency standards, and I would note that the courts, including the highest in the land, ruled in support of that standard. There has to be a level of expectation when a parent turns on the TV or the radio between those family hours that the content will be suitable for children. A parent should not have to think twice about the content on public airwaves. Unfortunately, the situation is far from reality.

I would note very strongly that we do not change the standard in this legislation. We raise the fines. I have asked for the FCC to look for the transcripts of what they have fined. I am not going to put this in the RECORD under unanimous consent or any other, but I will tell any Member that is here or watching on the floor, if you want to see what the FCC has fined, I have got the transcript here and it is awful, it is vulgar, it has no place on the public airwaves, and I would defy anyone to come over and look at the reading of these transcripts and say that should not be banned. It should be. And broadcasters who violate the standard ought to be fined and it ought to be more than a slap on the wrist, and that is exactly what this legislation does.

By significantly increasing the fines for indecency, the fines will be at a level where they no longer are going to

be ignored and parents across the country can rest easy. With the passage of this legislation I am confident that broadcasters will think twice and, by the way, the talent themselves as well, the disk jockeys or anybody else, will think twice about pushing that envelope because they are going to be liable as well, and ultimately our kids are going to be better off for it.

Mr. Speaker, I rise in strong support of H.R. 310, the Broadcast Decency Enforcement Act of 2005. At the outset, I want to thank Chairman BARTON, Ranking Member DINGELL, and Mr. MARKEY for their tremendous bipartisan cooperation on this bill. I also want to thank those Members of the House who have co-sponsored the bill.

I would tell my colleagues that H.R. 310 mirrors the bill which, last year, the House passed by a vote of 391–22.

For the record, we introduced this bill last year weeks before the infamous Super Bowl halftime show featuring Janet Jackson and Justin Timberlake. I was motivated to introduce this bill in large part because I read the transcripts of those broadcasts which the FCC found to contain indecent content. When I read some of those transcripts, I was absolutely sickened and shocked by the filth which had passed over the public's airwaves. Today, I have with me every broadcast indecency Notice of Apparent Liability and Forfeiture Order issued by the FCC since 2000. Each order contains a transcript of the offending content. If any Member is uncertain about the merit of what we are doing here today, I would urge them to read these transcripts. I am confident that you will be as sickened as I am.

This legislation would significantly enhance the Federal Communications Commission's broadcast decency enforcement authority. As stewards of the public's airwaves, radio and television broadcasters have an obligation to abide by the decency laws which have been on the books for decades and have been upheld in the courts. Most of our local broadcasters act responsibly, but there are still too many who continue to push the envelope of indecency during the hours of 6 a.m. to 10 p.m., when children are most likely to be in the audience. I would note that some broadcasters have taken to heart the seriousness of this debate and, on their own, have adopted internal policies to better control what goes over the public's airwaves over which they have stewardship. Clear Channel's "zero tolerance" policy as part of its "Responsible Broadcast Initiative" is one such example of this good corporate citizenship.

But for those broadcasters who continue to act irresponsibly, the FCC needs adequate authority to enforce the law, and this bill would deliver that.

Currently, the maximum fine which the FCC can impose for violations of the decency laws is \$32,500 per violation, which, to some broadcasters, is merely the "cost of doing business" and, as such, is hardly a deterrent. H.R. 310 would increase the maximum fine to \$500,000 per violation.

In addition, under current law, the FCC may hold a license revocation hearing for any broadcaster who is found liable for an indecency violation. However, the FCC has never held such a license revocation hearing. H.R. 310, among other things, would require the FCC to hold a license revocation hearing for

any broadcaster who has been found liable for three indecency violations; this is the so-called "three strikes" provision. Importantly, in order for a "strike" to count toward the three strikes triggering a license revocation hearing under the bill, each finding of liability must have gone through an exhaustive legal process—all the way to final judgment. This is an important element to protect broadcasters' legitimate due process rights. Also, it is important to note that this provision does not require the FCC to revoke the license of a broadcaster after the third strike, it merely requires a hearing to consider the matter with no prejudice toward the outcome of such hearing. Of course, under current law, the FCC can hold a license revocation hearing after the first strike, second strike, or third strike, so all this provision does is require, at a minimum, that such a hearing is held after the third strike.

Other provisions in the bill would:

Ensure that the FCC, when setting penalties, takes into consideration the degree of culpability of the violator, whether the violator is a company or individual, and if it is a company, the size of the company and market served.

Permit the FCC to fine an individual on the first indecency offense.

Require the FCC to complete action on indecency complaints within 180 days.

Force the FCC to take indecency violations into account during license application, renewal and modifications, and

Compel the FCC to report to Congress annually regarding the agency's broadcast decency enforcement activities.

This bill significantly strengthens the FCC's enforcement authority, but does not change the underlying broadcast indecency standard which has withstood judicial scrutiny throughout the decades. Later in this debate, I, along with my colleague ED MARKEY, will be offering a bipartisan manager's amendment, which makes some non-controversial changes to the bill, in large part clarifying our intent in a number of areas. But for now, I will simply close by urging my colleagues to support the bill and the manager's amendment which will be offered to it.

Mr. Speaker, I include for printing in the CONGRESSIONAL RECORD the statement of administration policy from the administration in support of this legislation.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, February 16, 2005.

STATEMENT OF ADMINISTRATION POLICY

H.R. 310—BROADCAST DECENCY ENFORCEMENT ACT OF 2005 (REP. UPTON (R) MICHIGAN AND 56 COSPONSORS)

The Administration strongly supports House passage of H.R. 310. This will make broadcast television and radio more suitable for family viewing by giving the Federal Communications Commission (FCC) the authority to impose stiffer penalties on broadcasters that air obscene or indecent material over the public airwaves. In particular, the Administration applauds the inclusion in the bill of its proposal to require that the FCC consider whether inappropriate material has been aired during children's television programming in determining the fine to be imposed for violations of the law. The Administration looks forward to continuing to work with the Congress to make appropriate adjustments to the language of the bill as it moves through the legislative process.

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

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY), a member of the committee.

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in opposition to H.R. 310, the Broadcast Decency Act. While I acknowledge and appreciate that this is a bipartisan effort in bringing this bill, I believe that this attempt to address the quality of broadcasting is both overreaching and off the mark and I urge my colleagues to vote against this bill.

There is already a law on the books that addresses indecency, and my view is that we need to get a grip and not embrace a solution that could cause more harm than good. I believe that H.R. 310 is one of those solutions.

H.R. 310 would essentially in my view put Big Brother in charge of deciding what is art and what is free speech. If enacted, especially with the increased fines against individual artists, we will see self- and actual censorship reach new and undesirable heights. Even the threat of this legislation has already led to that kind of censorship.

For instance, on Veterans Day of 2001 and 2002, ABC aired "Saving Private Ryan," a movie about World War II, to honor those who served. In 2004, with the threat of almost identical legislation to the one we are considering hanging over their heads, 66 ABC affiliates refused to run the show. They were afraid that the award-winning salute to our veterans would be deemed indecent. They were concerned that it might trigger at least one incident, maybe three, of indecency because it is unclear whether saying one indecent word three times in the same broadcast might trigger license revocation proceedings.

As we can see, the threats to our Constitution and to artistic expression are all too real with H.R. 310. Do we not want to have sensational performances, sensational in the best sense of the word? Do we want a blanding down? Once we do this kind of censorship, can political speech be far behind?

I am concerned about the continual refusal to address what I believe is really behind the decline in broadcasting and that is the overconcentration of media ownership. Broadcasting content has been getting worse, not because of low fines and out-of-control talent, but because of the shift away from local control to ownership by media conglomerates that have no regard for the varying community standards.

Additionally, much of the furor over indecency has been explained by a desire to protect our children. And there are many programs on TV that I believe are inappropriate for my little grandchildren, particularly the many which depict graphic violence over and over and over again. But I do not want

H.R. 310 or Big Brother making that decision for me or their parents.

If I could just say that I happen to be much more concerned about the first amendment than I am about my grandchildren seeing Janet Jackson's nipple. I would say, let us get a grip and we can do without this legislation. I urge a "no" vote.

Mr. UPTON. Mr. Speaker, I yield 2¼ minutes to the gentleman from Florida (Mr. STEARNS), a member of the subcommittee and a cosponsor of the legislation.

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

Mr. STEARNS. Mr. Speaker, I thank the distinguished chairman of the subcommittee for yielding me this time. I think it is appropriate that I speak after the gentlewoman from Illinois (Ms. SCHAKOWSKY) spoke in opposing the bill, because I support the bill. There is going to be opposition from a few people. They are going to complain that this bill is arbitrary; that the fine on individuals, which is \$500,000, is too much, too expensive.

But I think the gentleman from Texas (Mr. BARTON) and the gentleman from Michigan (Mr. UPTON) have reached the right balance on this bill, so let us talk a little bit about it. It is not arbitrary. There is a lot of flexibility involved. It is not unfair or excessive.

We establish a separate standard for individuals above and beyond how we deal with licensees so that we can go that extra mile to protect their first amendment rights.

We should note that the penalty is up to \$500,000. That means that the FCC has the discretion to fine much lower if it needs to. We all know that Janet Jackson is a person who can afford these fines, but if a local small-time entertainer violates our decency laws, the FCC can take into consideration that fact and that these individuals cannot afford \$500,000. So maybe they will issue something like \$5,000 or \$10,000 or \$25,000, still stiff enough to punish them for violating our laws and maybe enough to dissuade them from doing it again. In fact, the FCC has the discretion to fine them \$1 if they see fit. So there is a lot of flexibility.

In order to be penalized under this legislation, the individual must have a willful and intentional profanity in order to be penalized. This means that individuals have to act deliberately and consciously knowing that their indecent comments will be broadcast. In other words, if an entertainer is unaware that they are on camera and that they are profane, they would not be held responsible for this.

The FCC can also check the list of aggravating factors that were established and then in turn determine the fine accordingly. The FCC will have to look at whether the comments were scripted or unscripted or live or recorded.

Mr. Speaker, this is a reasonably balanced bill that backs our decency

standards, I think, with force. For too long, the penalties associated with our decency laws were considered just a cost of doing business. That is simply what they were. We will now have the potential to have individuals put their money where their mouth is. I urge my colleagues to support this language, support this bill and pass it.

Mr. MARKEY. Mr. Speaker, I yield 4 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. I thank the gentleman for yielding me this time.

Mr. Speaker, this is a bad bill. It is a dangerous bill. I get a little bit tired of people in Congress talking about freedom, freedom, freedom. But apparently they do not want to give the American people the freedom to make the decisions with regard to what radio and television programs they can watch or hear.

I am not a conservative, but let me quote from an honest conservative who does not want government regulating what the American people see and hear. This is a gentleman from the Cato Institute, Mr. Adam Thierer:

"Those of us who are parents understand that raising a child in today's modern media marketplace is a daunting task at times. But that should not serve as an excuse for inviting Uncle Sam in to play the role of surrogate parent for us and the rest of the public without children.

□ 1300

"Even if lawmakers have the best interest of children in mind, I take great offense at the notion that government officials must this job for me and every other American family.

"Censorship on an individual/parental level is a fundamental part of being a good parent. But censorship at a government level is an entirely different matter because it means a small handful of individuals get to decide what the whole Nation is permitted to see, hear, or think." Cato Institute. Honest conservatives.

Mr. Speaker, the specter of censorship is growing in America today, and we have got to stand firmly in opposition to it. What America is about is not my agreeing to what one says; it is my agreeing that they have the right to say it. That is what we fought for.

I am particularly outraged when I read in Reuters on December 13, "Sixty-six ABC affiliates refused to air the uncut movie on Veterans Day last month" of "Saving Private Ryan," "citing concerns they could face fines for profanity and graphic violence from the FCC."

The men who fought in World War II against Hitler, who gave their lives on D-Day, we cannot see that film because ABC is afraid to show us, and that is under the old rules.

In addition to the self-censorship imposed by ABC on "Saving Private Ryan," there is more. In January of 2004, CBS refused to air a political advertisement, paid political advertisement, during the Super Bowl by

MoveOn.org that was critical of President Bush's role in creating the Federal deficit. They could not pay to get an ad on because CBS was nervous. Last November, CBS and NBC refused to run a 30-second ad from the United Church of Christ because it suggested that gay couples were welcome into their church. They were afraid to run that. And just last month many PBS stations refused to air an episode of "Postcards with Buster" because they showed a lesbian couple.

In other words, this legislation cannot be taken out of context with the overall move towards censorship which is taking place in this country. And I would hope that my conservative friends who get up here every day talking about government regulators, get those government regulators off the backs of the people, I hope they will remember their rhetoric today. Let us not have a handful of government bureaucrats telling radio and TV stations and the American people what they can see and hear.

Mr. UPTON. Mr. Speaker, I yield myself 15 seconds.

I would just remind my friend in the well that the FCC specifically dismissed complaints against "Saving Private Ryan," and with regards to the ad that was trying to be run by United Church of Christ, that was a first amendment right that the station made themselves. I do not think anyone thought that the FCC would fine them for the airing of that commercial.

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

Mr. MARKEY. Mr. Speaker, I yield 30 seconds to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, my friend from Michigan raises an important point about ABC, not a small company. They self-censored themselves. He is right. He is absolutely right. The FCC said that they would not fine them, and yet 66 affiliates said, We are still nervous. ABC, not a small station. In my State we have got small stations who are very nervous. The issue here, and the gentleman just really said it, is self-censorship.

Is he happy about the fact that affiliates are afraid of showing "Saving Private Ryan"?

Mr. UPTON. Mr. Speaker, will the gentleman yield?

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

Mr. UPTON. Mr. Speaker, I would just say that the FCC said they were not going to fine them.

Mr. SANDERS. But they did not, Mr. Speaker. ABC affiliates took it off the air. Is the gentleman happy? Does he think that is good?

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman from Vermont's (Mr. SANDERS) time has expired.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS), a member of the subcommittee, who is very active on this issue, a co-sponsor.

Mr. PITTS. Mr. Speaker, I thank the gentleman from Texas (Mr. BARTON) and the gentleman from Michigan (Mr. UPTON) for moving this important legislation so early in the session.

This is not a new issue. But parents have been pleading with us to take action on this for years.

Mr. Speaker, studies show that children are impacted by what they watch on television. A study last year released by Rand shows that children pick up sexual attitudes and behaviors from television programs, and we know that children are very impressionable; and to allow broadcasters to circumvent the role of parents in teaching their children right from wrong when it comes to sexuality, violence, and profanity is wrong; and not to act is to do just that.

Our decency laws are based on our view that society is partly responsible for making sure public airwaves are filled with safe material, and programs depicting profanity, sexuality, and violence influence how kids act and see the world; and that is why we have adopted decency standards that have withstood legal challenge and the test of time.

This bill updates the penalties for violating those standards. For too long government has allowed broadcasters to profit from the use of public airwaves with little or no public accountability. We have in effect abandoned American families in doing that. H.R. 310 sends a clear message to the entertainment industry that we are no longer going to idly stand by and force our parents to put up with this unacceptable programming. H.R. 310 reaffirms our commitment to ensure safe programming for children.

Mr. Speaker, families are tired of worrying about what their children may hear and see every time they turn on television. They are frustrated that the media industry has seemingly been able to broadcast any type of behavior or speech that they feel will bring in advertising dollars. Meanwhile, they feel that the Federal Government has sided with the media elites and turned a blind eye to the concerns of ordinary moms and dads. So finally Congress has heard. We are acting for American families. We are not going to stand idly by on this topic.

I urge support for the bill.

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I rise in opposition to this so-called Broadcast Decency Enforcement Act. It increases the power of government to censor programming that some might consider indecent and others might not. We are already seeing the corrosive effect of this legislation on free speech as broadcasters anticipate its enactment. Faced with the potentially ruinous fines and the loss of their licenses, broadcasters have begun to self-censor even permissible speech.

Last Veterans Day, 65 ABC affiliates declined to air "Saving Private Ryan"

in response to an organization's campaign against it even though the movie had aired two previous years without any indecency complaints from the public. And the Federal Communications Commission has provided no constructive guidance to broadcasters. It is creating greater confusion by applying an already-vague indecency standard in an inconsistent and arbitrary manner.

No one knows when one person's creative work will become a violation of another person's definition of decency. Creative works that tackle challenging themes that are controversial but important are threatened by this legislation. Everything is objectionable to someone. A few years ago one of our colleagues took to the House floor to condemn the broadcast of the Oscar award-winning film "Schindler's List." He was outraged that scenes portraying Holocaust victims contained some nudity. Legislation such as this can lead us to these kinds of absurd results. Let us trust parents to know better than government officials what material they want their children to be exposed to. And let us have adults be able to watch television programming that is not so watered down, that the only thing we will see on television is suitable for a 5-year-old whose parents are prudes.

I reject this legislation. I plan to vote against it, and I urge my colleagues to join me.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. SHIMKUS), again a cosponsor of the legislation, very active in pursuing its goal today.

Mr. SHIMKUS. Mr. Speaker, I am a parent of a 5-year-old and I am a prude; so I guess I meet the gentleman from California's (Mr. WAXMAN) definition.

Willfully and intentionally, the use of public airwaves for indecent material or conduct, that is what we are addressing today. And I want to congratulate the committee, the gentleman from Texas (Chairman BARTON); the gentleman from Michigan (Mr. DINGELL), ranking member; the gentleman from Massachusetts (Mr. MARKEY), ranking member; and the gentleman from Michigan (Mr. UPTON), for their good work. It is not easy, because we hear the debate, but it is very important.

The outcry of the Nation has been finally heard. This was the number one issue that my office was contacted on in the whole last Congress. Nothing raised the ire of the people in my district more than the indecent use of the public airwaves, and finally we are doing something about it.

But I do not want to lull the public into a false sense of security, because this is addressing only one venue, the public airwaves, the people of the broadcast communities free over-the-air TV, which is now a minority of the use of how people receive TV shows in their home. By far most people receive it through cable, direct satellite, we

are going to have cellular, it is over broadband. And do my colleagues know what this does to those venues? Nothing. Maybe it will exclude those broadcasters in their ability, but these other venues are still going to be held free, and I think that creates an unfair playing field, and I am concerned.

The local broadcasters in most of our districts do a fair and upright job. They understand the problem that the big broadcasters have imposed upon them. They are willing to accept these stringent standards and tighten their belts for the good of the public. But they are not going to be able to compete with billions of channels, with other types of broadcasters who are going to get away scot-free.

So I applaud the bill. I am excited about it. I lament the fact that it does not go far enough.

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

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. FERGUSON), a member of the subcommittee.

Mr. FERGUSON. Mr. Speaker, I appreciate the gentleman's leadership on this issue. I thank the gentleman from Massachusetts (Mr. MARKEY) for his work on this important legislation. It is a pleasure to serve on the subcommittee, and I look forward to continued work in this Congress.

As a father of four young children, I am glad to see that the Broadcast Decency Enforcement Act has once again come to the House floor and it is on its way to passage and signature by President Bush. While I ultimately believe that it is parents' responsibility to closely monitor what their children watch on television, it is difficult even for conscientious parents when programs that feature explicit language or other subject matter are shown during times when children are commonly watching television.

Often, parents are in the position of having to be reactive, hoping that children will not fall victim to offensive images and words on their TVs. Congress must act to ensure that the FCC has the tools that it needs to prevent offensive images in our living rooms, and I believe we have done so with this bill and this legislation.

It has been fueled by bipartisan desire to ensure that broadcasters take responsibility for what is transmitted over their airwaves. It is timely and it is completely appropriate considering what the American public and our families have witnessed recently over our airwaves. We have seen the public airwaves turned into a race to the bottom. Who can be more offensive? Who can be more vulgar? Who can push the envelope a little further than the next guy? Who can do whatever they can to create a stir and to draw increased ratings by creating a buzz in our society?

Do we not have something better to offer to American families and American children? It is difficult to argue that our society and our culture has

not become more coarsened over the course of the last few decades. Let us try to stop the coarsening of our culture. Let us try to offer our families and our children something better, something more healthy, something more wholesome.

Can we not do better? I think we can. And I think it can begin by passing this legislation.

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

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Mr. UPTON. Mr. Speaker, I just want to remind my colleagues we are not changing the standard; we are simply raising the fines on the existing standard. This is not about "Saving Private Ryan." Those charges were dismissed some time ago. It has aired a number of times.

But it is about what some Members have looked at, the transcripts from broadcasts that have been fined, and I would dare to say that there is not a Member of this body who wants some of this filth to ever be said or broadcast again. That is what this legislation is intended to stop, so that when we are listening to the radio or watching TV, particularly with our kids, that they are not going to be exposed to stuff that has been on the books for decades and the courts have affirmed.

Mr. NEUGEBAUER. Mr. Speaker, I rise today to express my strong support for H.R. 310, the Broadcasting Decency Enforcement Act. While the House passed this bill last year by an overwhelming majority, unfortunately it did not become law. As a result, the House must reconsider this issue.

During my service in Congress, this is one of the top two issues my constituents have mentioned in their e-mails, phone calls and letters. My constituents are telling me that enough is enough. When broadcasters violate indecency rules and a complaint is filed, my constituents want it to be taken seriously by the Federal Communications Commission, FCC. They want meaningful penalties that will make broadcasters think twice before airing objectionable programs. They want broadcasters to be held accountable.

Above all, they want to be able to watch an entertainment program with their families without having them exposed to content unsuitable for children. When supposedly family-friendly programming such as the Super Bowl becomes a program many families don't want their children to see, we have a problem. As a grandfather, I worry about being able to turn on the TV and watch a program or sports event with my 3- and 5-year-old grandsons.

The bill before us today increases penalties for broadcasters and performers who violate decency standards over the airwaves. Raising the cap on fines to \$500,000 for broadcasts that violate the rules helps show that Congress and the FCC are serious about punishing offenses. The current cap is only \$27,000 per violation, a drop in the bucket for most broadcasters. When broadcasters know that indecency violations will be taken into consideration when they ask the FCC to renew their broadcast licenses, they are going to take additional precautions to prevent instances of indecency. If a broadcaster accu-

mulates three violations, a hearing will be triggered to review revoking that station's license.

This legislation sends a strong signal that Congress is serious about enforcement of broadcast indecency regulations. If all Members, constituents care about this issue as much as mine do, then this should be an easy bill for us to support.

Mr. Speaker, in closing, I urge my colleagues to support this legislation.

Mr. HOLT. Mr. Speaker, I rise in support of the Broadcast Decency Enforcement Act (H.R. 310).

Like many Americans, I have been personally offended by the crudeness and licentiousness of some material that has made its way on the public airwaves. Television and radio networks that benefit from free use of the public airwaves have a responsibility to refrain from airing obscene material. Likewise, licensees must refrain from airing programming that is indecent or profane during normal family viewing hours. Parents should not be forced to dive for the remote control in order to protect their children from material that they are too young to see or hear.

Since 1978, the Federal Communications Commission has had the authority to "impose sanctions on licensees who engage in obscene, indecent, or profane broadcasting." Under current law, the maximum amount that a network can be fined for airing such content is \$27,500. For huge broadcasting companies that reap billions in advertising revenue each year, this sum is an insufficient deterrent from breaking the law.

I am happy to see that this legislation does not change existing law regarding the standards by which television or radio programming is judged to be indecent, profane, or obscene. I am wary of the Federal Government overstepping its boundaries by becoming a kind of moral police. This legislation merely bolsters the ability of the FCC to levy appropriate punitive actions against networks that flagrantly violate the law.

I am disappointed that Congress has declined to use this occasion to address an equally important issue in broadcasting—diversity of viewpoints. Until 1985, broadcasters benefiting from use of the public airwaves had a responsibility to demonstrate that their programming presented multiple viewpoints on issues of public interest. The repeal of the Fairness Doctrine by the Reagan administration has hurt the objectivity of the media and the breadth of opinions that the public gets to hear. Americans deserve better than propaganda masquerading as news journalism.

Though I intend to vote in favor of this legislation, the situation in which Congress finds itself is hardly ideal. Any time the Federal Government is forced by circumstances to strengthen limitations on the media, it must act with extreme caution at the risk of violating this country's most essential freedoms. It would be best if broadcasters would voluntarily adhere to high standards of decency with regard to the public airwaves. If broadcasters demonstrated the willingness and capacity to regulate themselves, this legislation would not be necessary. Unfortunately, some television and radio broadcasters have chosen to violate decency standards, judging that the ratings boon would be worth any fines that a violation would inevitably generate.

It is my hope that the FCC will not be forced to use the authority that this legislation grants.

I hope that passage of this legislation will provide an adequate deterrent to ensure that television and radio programming on public airwaves reflects public values. I support H.R. 310, imperfect though it may be.

Mrs. BONO. Mr. Speaker, it has been over a year since the infamous Super Bowl incident where a supposed "wardrobe malfunction" set this Nation spinning backwards wondering why our children were exposed to a misogynistic display of public nudity during a football game. The provocative dancing, and sexual lyrics were a far cry from an afternoon watching a football game. While I have the utmost respect for artists and their artistic expressions, I am also a mother of two children and last year the line between acceptable and unacceptable was crossed on national television.

Hollywood has long been about us pushing the borders of artistic expression and pushing the limits. I was married to an entertainer and I have a family, an extended family, who are still in this business and we know that this is about pushing the envelope. The American people have finally said "enough" you've pushed too far—and the truth is, corporate profit is increasingly becoming the bottom line. This is what this is about at the end of the day. Janet Jackson, as I understand, came out with a new album shortly after this tasteless stunt—surprise, surprise.

I have always supported artists, and want to protect their ability to express themselves and protect them against unfair legislation. Recently, I entered into a colloquy with Chairman BARTON and he assured me that artists have a means test where their intent and ability to pay a fine is taken into consideration under the current Communications Act. Also, the chairman assured me that the \$500,000 fine is merely a cap and that there is discretion based upon certain factors so a violation is not automatically going to cost an artist that amount of money. Furthermore, an artist is not likely to be fined for a broadcaster placing their recorded performance on the air unless they had knowledge that it would be played or that they intended for that performance to be played on the public airwaves. Such an example demonstrates that an artist would have to be involved in the process with a broadcaster in order to be found in violation of this bill. Lastly, this bill implements the ability to pay test so that both licensees and nonlicensees ability to pay fines will be taken into consideration.

I would like to personally thank the Creative Coalition and the Grammy Foundation for their attention to these issues and bringing them to the forefront. I hope that their specific concerns with these provisions have been addressed and that they feel comfortable with the intentions of this bill. I look forward to working with both groups in the future and will continue to support artist's rights as they pertain to these issues. There is a difference between protecting artists and upholding laws and standards on our public airwaves and I believe this bill strikes the right balance.

While there has been an outcry from some members of the public suggesting that this was not a big deal, the vote on this bill last year tells a different story. This bill was voted out of the House of Representatives last year by a vote of 399–22. That type of bipartisan support demonstrates the outrage that each Member felt and what each Member heard from their constituents. Entertainers, producers

and the corporate giants pushing profits have pushed the envelope too far and are seeing the backlash from Congress, public officials, and concerned parents and constituents. Something had to be done to scale back this type of behavior and this bill accomplishes that goal.

Mrs. CUBIN. Mr. Speaker, it's been about a year since we last debated broadcast indecency before the House. I was pleased to have supported the passage of the Broadcast Decency Enforcement Act then, and I look forward to its passage again this year.

Sometimes it takes a couple of swings of the bat before we can get a hit and enact a bill into law. That's why I want to recognize Chairman UPTON and Chairman BARTON for sticking to their guns on this bill and bringing it before the House so promptly this year. Hopefully this time, the other body will choose to debate and pass this bill, so it can become the law of the land.

Many have come to the floor to explain what the Broadcast Decency Enforcement Act will do. But, instead of rehashing the nuts and bolts of this bill, I would rather discuss how it will improve the airwaves. No one questions that there is an increasing coarseness in broadcast media. And by increasing fines so they will actually act as a deterrent, instead of a slap on the wrist, I am confident we will see real results. In fact, since this bill was first introduced in the last Congress, people have actually been more conscientious about what they send over the airwaves, and the FCC has been more active in penalizing those who have violated the standard. Passing this bill will lock that in, and serve as a benchmark in an improving broadcast medium.

I also want to urge passage of the manager's amendment that incorporates an amendment that I proposed to the bill. My amendment will ensure that the FCC regularly updates its Industry Guidance Regarding Broadcast Decency document, which was last updated April 6, 2001. This document helps illustrate precedents to FCC licensees, and I imagine it is required reading for anyone who is affected by the increase in indecency fines. Since we are increasing the fines in this bill, it only seems right to ensure there are clear guidelines.

My amendment will make certain these guidelines are contemporary, and I want to thank Chairman UPTON for working with me to incorporate the Cuban language into his amendment.

I urge passage of H.R. 310, and the manager's amendment.

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, like many of my colleagues, last year, I received hundreds of calls from angered constituents after the obscene display at the Super Bowl.

What was most frustrating was that I had to explain that the FCC's hands were tied; the FCC wanted to punish the broadcasters who allowed this material to be displayed before our children during prime time, but they could not.

A \$27,500 fine does nothing to deter networks that generate billions of dollars in revenue.

Today, however, I can tell my constituents that I voted in favor of the Broadcast Decency Act.

Introduced by my colleague, Representative UPTON, this bill increases the slap on the wrist

in penalties to a fair punishment of \$500,000 for broadcasters who break the rules.

Freedom of speech should be protected but not at the cost of our children who simply want to catch a football game.

I look forward to voting in favor of this bill and thank Representative UPTON for his efforts.

Mr. BACA. Mr. Speaker, I rise in full support of H.R. 310, a bill that would increase the fines the Federal Communications Commission can impose for the broadcast of obscene, indecent, or profane material.

The level of violent and sexual content in all forms of media has reached a point where Congress has no choice but to act.

The proliferation of indecent content in the media continues not only through television and movies but also through video games and the Internet—mediums that our children now have easier access to. A growing body of evidence suggests that these messages can be harmful to a child's development.

As Democrats and Republicans we must continue to work together to address these issues. That is the only way we will be able prevent our children from being needlessly exposed to violent and sexual content.

The failure of the FCC to adequately scrutinize Spanish-language radio broadcasts for indecent content has been particularly troubling. In the last decade alone, the number of Spanish-language outlets in television and radio nationwide has nearly doubled. With this growth comes an increasing necessity to improve the FCC's ability to enforce its decency standards in an increasingly diverse market place. The Spanish-speaking community is no less deserving of protection from blatant indecency than other audiences.

As the co-chair of the Congressional Sex and Violence in the Media Caucus with my friend and colleague, Congressman TOM OSBORNE, I believe that we must prevent violence by and against children through legislation, education, outreach and advocacy.

I hope that other Members of Congress and the public will continue to work to protect our children from obscene and inappropriate media.

I commend Congressman UPTON and Congressman MARKEY for their sponsorship of this bill and support its passage.

Mr. DINGELL. Mr. Speaker, I rise in support of H.R. 310, the Broadcast Decency Enforcement Act of 2005.

I commend my full committee and subcommittee chairmen, Representatives BARTON and UPTON, and Subcommittee Ranking Member MARKEY for their work and efforts to bring this ever-improving bill to the House floor so quickly. H.R. 310 is strong, bipartisan legislation worthy of support. This legislation is nearly identical to the bill passed by the House almost 1 year ago by a vote of 391 to 22. That bill failed to become law.

The need for this legislation, however, has not diminished in the past year. For too long, the Federal Communications Commission, FCC, has been asleep at the wheel when it came to incidents of public broadcast indecency and the ensuing complaints. Congress's attention to the issue of broadcast indecency last year awakened the commission from its years of slumber. We finally saw an FCC that more properly understood the need to enforce laws against indecency over the public airwaves.

Unfortunately, consumer complaints continue to receive haphazard treatment at the commission. Moreover, there continues to be a betrayal of the public trust. Some broadcasters persist in crossing the line, putting their own drive for ratings and profits ahead of their responsibilities to the public. This is regrettable behavior. Most broadcasters are decent and proper stewards of the public airwaves, but the poor judgment of a select few casts a dark shadow on the entire industry. Perhaps these wayward broadcasters mistakenly thought that the kickoff of a new Super Bowl would see this issue recede and lawmakers would "let it be." Let me be clear, the need to enforce the indecency laws is greater than any one malfunction.

It is important for Congress to ensure that the FCC not only maintains its newfound alertness, but that it also has the right tools to ensure proper enforcement against indecency over the public airwaves.

H.R. 310 will ensure that the FCC has such tools. First, the bill responds to the overriding need to raise the maximum indecency fine to a level that will deter even the largest companies. Second, the bill compels the FCC to use the license renewal and revocation processes to examine more closely the fitness of certain licensees, particularly broadcasters that repeatedly violate the FCC's rules. Third, needed attention is also paid to the consumer complaint process by compelling the FCC to act on complaints within a specific time-frame. Fourth, this bill will make the FCC more accountable by requiring regular reports to Congress on its enforcement activities. This reporting requirement should encourage any new FCC chairman to carry on the moral virtue that came rather late to the outgoing chairman.

Our constituents have made it clear that they are fed up with the level of sex and violence on television and radio. They deserve to be able to turn on their television or radio at appropriate times without being bombarded by filth and smut. The increased oversight and penalties contained in H.R. 310 should provide the proper incentive to broadcasters to keep it clean. Accordingly, I urge my colleagues to support this sensible bill.

Mr. PAUL. Mr. Speaker, Americans are right to be outraged at much of the content of broadcast television and radio today. Too many television and radio programs regularly mock the values of millions of Americans and feature lewd, inappropriate conduct. It is totally legitimate and even praiseworthy for people to use market forces, such as boycotts of the sponsors of the offensive programs, to pressure networks to remove objectionable programming. However, it is not legitimate for Congress to censor broadcast programs.

The First Amendment says, "Congress shall make no law . . . abridging the freedom of speech. . . ." It does not make an expectation for broadcast television. Some argue that broadcast speech is different because broadcasters are using the "people's airwaves." Of course, the people do not really control the airwaves any more than the people control the government in the People's Republic of China. Instead, the people's airwaves is a euphemism for government control of the airwaves. Of course, government exceeded its Constitutional authority when it nationalized the broadcast industry.

Furthermore, there was no economic justification for Congress determining who is, and

is not, allowed to access the broadcast spectrum. Instead of nationalizing the spectrum, the Federal Government should have allowed private parties to homestead parts of the broadcast spectrum and settle disputes over ownership and use through market processes, contracts, and, if necessary, application of the common law of contracts and torts. Such a market-based solution would have provided a more efficient allocation of the broadcast spectrum than has government regulation.

Congress used its unconstitutional and unjustified power-grab over the allocation of broadcast spectrum to justify imposing Federal regulations on broadcasters. Thus, the Federal Government used one unconstitutional action to justify another seizing of regulatory control over the content of a means of communication in direct violation of the first amendment.

Congress should reject H.R. 310, the Broadcast Decency Enforcement Act, because, by increasing fines and making it easier for governments to revoke the licenses of broadcasters who violate Federal standards, H.R. 310 expands an unconstitutional exercise of Federal power. H.R. 310 also establishes new frontiers in censorship by levying fines on individual artists for violating FCC regulations.

Congress should also reject H.R. 310 because the new powers granted to the FCC may be abused by a future administration to crack down on political speech. The bill applies to speech the agency has determined is "obscene" or "indecent." While this may not appear to include political speech, I would remind my colleagues that there is a serious political movement that believes that the expression of certain political opinions should be censored by the government because it is "hate speech." Proponents of these views would not hesitate to redefine indecency to include hate speech. Ironically, many of the strongest proponents of H.R. 310 also hold views that would likely be classified as "indecent hate speech."

The new FCC powers contained in H.R. 310 could even be used to censor religious speech. Last year, a group filed a petition with the United States Department of Justice asking the agency to use Federal hate crimes laws against the directors, producers, and screenwriters of the popular movie, "The Passion of the Christ." Can anyone doubt that, if H.R. 310 passes, any broadcaster who dares show "The Passion" or similar material will risk facing indecency charges? Our founders recognized the interdependence of free speech and religious liberty; this is why they are protected together in the first amendment. The more the Federal Government restricts free speech, the more our religious liberties are endangered.

The reason we are considering H.R. 310 is not unrelated to questions regarding state censorship of political speech. Many of this bill's supporters are motivated by the attacks on a Member of Congress, and other statements critical of the current administration and violating the standards of political correctness, by "shock jock" Howard Stern. I have heard descriptions of Stern's radio program that suggest this is a despicable program. However, I find even more troubling the idea that the Federal Government should censor anyone because of his comments about a Member of Congress. Such behavior is more suited for members of a Soviet politburo than members of a representative body in a constitutional republic.

The Nation's leading conservative radio broadcaster, Rush Limbaugh, has expressed opposition to a Federal crackdown on radio broadcast speech that offends politicians and bureaucrats:

If the government is going to "censor" what they think is right and wrong. . . what happens if a whole bunch of John Kerrys . . . start running this country. And decide conservative views are leading to violence?

I am in the free speech business. It's one thing for a company to determine if they are going to be party to it. It's another thing for the government to do it.

Mr. Speaker, I am also concerned that the new powers H.R. 310 creates will be applied in a manner that gives an unfair advantage to large media conglomerates. While the FCC will occasionally go after one of the major media conglomerates when it does something especially outrageous, the agency will likely spend most of its energies going after smaller outlets such as college and independent radio stations. Because college and independent stations lack the political clout of the large media companies, the FCC can prosecute them without incurring the wrath of powerful politicians. In addition, because these stations often cater to a small, niche audience, FCC actions against them would not incur the public opposition it would if the agency tried to kick "Desperate Housewives" off the air. Most significantly, college and independent stations lack the financial and technical resources to absolutely guarantee that no violations of ambiguous FCC regulations occur and to defend themselves adequately if the FCC attempts to revoke their licenses. Thus, college and independent radio stations make tempting targets for the FCC. My colleagues who are concerned about media concentration should consider how giving the FCC extended power to revoke licenses might increase media concentration.

H.R. 310 should also be rejected because it is unnecessary. Major broadcasters' profits depend on their ability to please their audiences and thus attract advertisers. Advertisers are oftentimes "risk adverse," that is, afraid to sponsor anything that might offend a substantial portion of the viewing audience, who they hope to turn into customers. Therefore, networks have a market incentive to avoid offending the audience. It was fear of alienating the audience, and thus losing advertising revenue, that led to CBS's quick attempt at "damage control" after the last year's Super Bowl. Shortly before the 2004 Super Bowl, we witnessed a remarkable demonstration of the power of private citizens when public pressure convinced CBS to change plans to air the movie "The Reagans," which outraged conservatives concerned about its distortion of the life of Ronald Reagan.

Clearly, the American people do not need the government to protect them from "indecent" broadcasts. In fact, the unacknowledged root of the problem is that a large segment of the American people has chosen to watch material that fellow citizens find indecent. Once again, I sympathize with those who are offended by the choices of their fellow citizens. I do not watch or listen to the lewd material that predominates on the airwaves today, and I am puzzled that anyone could find that sort of thing entertaining. However, my colleagues should remember that government action cannot improve the people's morals; it can only reduce liberty.

Mr. Speaker, H.R. 310 is the latest in an increasing number of attacks on free speech. For years, those who wanted to regulate and restrict speech in the commercial marketplace relied on the commercial speech doctrine that provides a lower level of protection to speech designed to provide a profit to the speaker. However, this doctrine has no constitutional authority because the plain language of the first amendment does not make any exceptions for commercial speech.

Even the proponents of the commercial speech doctrine agreed that the Federal Government should never restrict political speech. Yet, this Congress, this administration, and this Supreme Court have restricted political speech with the campaign finance reform law. Meanwhile, the Department of Justice has indicated it will use the war against terrorism to monitor critics of the administration's foreign policy, thus chilling anti-war political speech. Of course, on many college campuses students have to watch what they say lest they run afoul of the rules of "political correctness." Even telling a "politically incorrect" joke can bring a student up on charges before the thought police. Now, self-proclaimed opponents of political correctness want to use Federal power to punish colleges that allow the expression of views they consider "unpatriotic" and/or punish colleges when the composition of the facility does not meet their definition of diversity.

These assaults on speech show a trend away from allowing the free and open expression of all ideas and points of view toward censoring those ideas that may offend some politically powerful group or upset those currently holding government power. Since censorship of speech invariably leads to censorship of ideas, this trend does not bode well for the future of personal liberty in America.

In conclusion, Mr. Speaker, because H.R. 310 is the latest assault in a disturbing pattern of attacks on the first amendment, I must vote against it and urge my colleagues to do the same.

Mr. STARK. Mr. Speaker, I rise in opposition to H.R. 310, the so-called Broadcast Decency bill.

I am as concerned as any parent about the content on television. I do not want my young children or grandchildren exposed to programming that is unsuitable for them. Yet, nowhere in this bill is there a definition of indecent material. All this bill does is increase fines over tenfold for what the Bush administration deems to be indecent.

Our laws are only as good as the people enforcing them and I do not trust this administration to exercise the appropriate judgment without clear standards. I'm concerned they'll use this new enforcement authority as a Trojan horse to arbitrarily target programming they deem unacceptable.

I could not possibly give this administration more leeway to choke free speech. We have reached the point in this country where questioning our leaders is called unpatriotic and characterized as aiding the terrorists; columnists are paid our tax dollars by the Federal Government to spout the Bush administration's official propaganda; the very agency charged with maintaining a diversity of ideas on the airwaves wants to give free rein to a handful of corporations to control information; and where stations refuse to air the movie "Saving Private Ryan" lest the Chairman of

the Federal Communications Commission might be ordered to find a sacrificial lamb to appease the religious right.

I do not support the rush to media conglomeration and I do not trust religious zealots to decide for every American what they can and can not watch. Since that is who this administration is serving, I vote "no" on giving them more authority to undermine freedom of speech.

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

The SPEAKER pro tempore (Mr. LATOURETTE). All time for debate on the bill has expired.

AMENDMENT OFFERED BY MR. UPTON

Mr. UPTON. Mr. Speaker, I offer an amendment.

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

The text of the amendment is as follows:

Amendment offered by Mr. UPTON:

In section 503(b)(2)(F)(ii) of the Communications Act of 1934 as amended by section 3 of the bill, strike "and" at the end of subclause (I), strike the period at the end of subclause (II) and insert "; and", and after subclause (II) insert the following new subclause:

(III) if the violator is an individual, the financial impact of a forfeiture penalty on that individual.

In section 503(b)(5)(B)(iv) of the Communications Act of 1934 as amended by section 4(4)(D) of the bill, strike "willfully or intentionally made the utterance" and insert "willfully and intentionally made the utterance, knowing or having reason to know that the utterance would be broadcast".

In paragraphs (1), (3), (4), and (6) of section 10, strike "year covered" and insert "years covered".

In section 10, by strike "Each calendar" and insert the following:

(a) REQUIRED CONTENTS.—Each calendar Add at the end of section 10 the following new subsection:

(b) YEARS COVERED.—For purposes of this section, the "years covered" by the report required under this section shall be the years beginning with calendar year 2000 through the calendar year preceding the year in which the report is submitted.

In section 11 of the bill, strike "General Accounting Office" each place it appears and insert "Government Accountability Office".

In section 11(a) of the bill, after "study examining" insert the following: "with respect to calendar year 2000 through the calendar year preceding the year in which the report is submitted".

After section 10, insert the following new section (and redesignate the succeeding sections accordingly):

**SEC. 11. UPDATING GUIDANCE TO THE BROADCAST INDUSTRY REGARDING INDECENCY.**

Within 9 months after the date of enactment of this Act, and at least once every 3 years thereafter, the Federal Communications Commission shall revise, on the basis of recent developments in the Commission indecency case law, the Commission's policy statement to provide industry guidance on the Commission's interpretation of, and enforcement policies regarding, the laws and regulations concerning broadcast indecency, as contained in the policy statement adopted March 14, 2001, and released April 6, 2001 (FCC 01-90).

The SPEAKER pro tempore. Pursuant to House Resolution 95, the gentleman from Michigan (Mr. UPTON) and

a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, I rise in support of this manager's amendment offered by me and the gentleman from Massachusetts (Mr. MARKEY). I want to again thank the gentleman from Massachusetts (Mr. MARKEY), the gentleman from Texas (Chairman BARTON), and the gentleman from Michigan (Mr. DINGELL) for their bipartisan cooperation on this amendment, as well as the entire legislation.

What this amendment does is it makes seven noncontroversial changes to the underlying bill.

First, the amendment clarifies that the liability standard for non-licensees is willful and intentional.

Second, the amendment clarifies that for individual non-licensees to be found liable, their indecent statements must have made knowing or having reason to know that the statements would be broadcast.

Third, the amendment requires the FCC to look at the impact of a forfeiture penalty on an individual.

I want to pay a special tribute to the gentlewoman from California (Mrs. BONO) for her work on these three issues during the committee consideration of this bill. These three changes simply clarify our intent to ensure that performers as non-licensees are treated fairly.

During the committee consideration, there were some concerns expressed that the individual-performer liability provisions in H.R. 310 could be used to fine artists that use offensive language when their recordings are played on the radio. The phrase "willfully and intentionally" in this amendment is meant to include those situations where an individual intentionally utters material consciously and deliberately which he or she knows or has reason to know will be broadcast. For instance, a live interview of a player at a basketball game or Janet Jackson's performance at the Super Bowl are clear examples where the performer intentionally said or did something knowing it would be broadcast.

Alternatively, when an artist records a song in a studio, he or she perhaps has a hope that the song will be broadcast, but does not sing the lyrics with the intent to broadcast at that moment or even knowing that it will be broadcast in the future.

Similarly, if an athlete or a coach in the heat of a sporting event, such a baseball player being hit by a pitch, reflexively yells out an obscene, indecent, profane utterance caught by a field microphone, the situation would also not be captured by the willful and intentional standard, as his or her actions were not intentionally done and knowing that they would be broadcast.

In addition, the manager's amendment underscores the FCC's requirement that when setting penalties for

individual performers, it must look at the ability of that individual to pay, as required by existing law, and the FCC must take into consideration the impact of the forfeiture penalties on that individual.

Clearly, not all individuals who may run afoul of the law have the same ability to pay. A pro athlete or a blockbuster recording artist may have significantly greater worth than a struggling artist or college athlete. That is why we require the FCC to factor this in when setting such penalties, and underscore that in this amendment.

Fourth, the amendment changes the General Accounting Office to its new name of Government Accountability Office.

Fifth, the amendment requires the FCC's annual indecency enforcement report to include data going back to 2000.

Sixth, it requires the GAO's indecency enforcement report to include data going back to 2000.

Lastly, the amendment requires the FCC to update its broadcast indecency enforcement guidelines at least every 3 years.

I want to thank the gentlewoman from Wyoming (Mrs. CUBIN) for her work on that issue, I want to thank the gentleman from Massachusetts (Mr. MARKEY) for his bipartisan cooperation and cosponsoring this amendment with me, and thank the Committee on Rules for making it in order. I would urge all of my colleagues to support it.

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

Mr. MARKEY. Mr. Speaker, although not opposed to the amendment, I ask unanimous consent to claim the time in opposition.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MARKEY) is recognized for 10 minutes.

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

Mr. Speaker, I fully support this amendment, which incorporates a number of changes to the bill. We have worked together in a bipartisan fashion to develop this package of refinements to the legislation. These are non-controversial changes, and I urge Members to support the amendment.

The first change further clarifies that we intend for the FCC when levying a fine on a non-licensee to take into account the financial impact of a particular fine on an individual when considering an individual's ability to pay.

The second change merely adjusts the standard for an utterance of an indecency so that it reads "willfully and intentionally uttered," so that there is no confusion.

As the gentleman from Michigan has pointed out, it is not the intention of either the majority or the minority to have an act which is not intentional to

be penalized by this legislation. The gentleman from Michigan did outline a good example of how such an occurrence could be wrongly interpreted unless the language "intentionally" was added to the legislation.

We thank the majority for accommodating the concern which the minority had on that issue. We think that it definitely strengthens the legislation, and it ensures that it will be used only for the purpose for which the legislation is intended and not to reach unintentional behavior which may have incidentally been uttered.

Thirdly, the GAO study in the bill will be limited to looking back and analyzing indecency issues at the FCC only to the year 2000.

Finally, the amendment includes a provision offered by our colleague, the gentlewoman from Wyoming (Mrs. CUBIN), which tasks the FCC with updating its guidance for broadcast licensees with regard to these issues.

Again, these are noncontroversial changes, and I thank the gentleman from Michigan (Chairman UPTON) for his assistance on these clarifications, and I urge Members to support the amendment. Again, I thank all of the Members for their cooperation in this legislative process.

Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I do not oppose this amendment, but I do oppose this bill. Like many Americans, I exercise my right not to view programming I find offensive by using that miracle of modern technology, the remote control. It lets you change the channel or even turn off the TV entirely. I recommend everyone buy one and learn how to use it. If you want to protect your children, there is the V-chip for that purpose. People ought to use that too.

But the Puritans of this House and elsewhere in government are not satisfied with free choice and the free market. Instead, they want the government to decide what is or is not appropriate for the public to watch or listen to.

Just recently, for example, the Secretary of Education on his second day on the job snapped into action and threatened public broadcasting funding if they dared air a show in which real live families with real live same-sex parents would appear. It was actually a show about making maple syrup, not an advocacy piece about family arrangements. But it was too much for the Secretary of Education.

"Many parents would not want their young children exposed to the lifestyles portrayed in this episode," Spellings wrote in her threatening letter to the CEO of PBS. Who asked her?

Then there was the strange case of SpongeBob Square Pants, a cartoon character who appeared in a video promoting tolerance entitled "We Are Family." Who were the purveyors of this objectionable material? Well, among others, the Anti-Defamation League's

successful "World of Difference" program and Sesame Street's "Sesame Foundation." It seems some self-appointed guardians of our morals are fine with the idea of tolerance, unless it includes people they don't like. "We see the video as an insidious means by which the organization is manipulating and potentially brainwashing kids," Paul Batura, a spokesman for Focus on the Family, told the New York Times. "It is a classic bait and switch."

A former Member of this House condemned NBC for airing "Schindler's List," saying that the Holocaust film took network television "to an all time low, with full-frontal nudity, violence and profanity" during family viewing time. He said that NBC's decision to air the movie on Sunday evening should outrage parents and decent-minded individuals everywhere.

Then-Senator Alfonse D'Amato properly replied that "to equate the nudity of Holocaust victims in the concentration camps with any sexual connotation is outrageous and offensive." But with this bill, where would we be if that former Member of the House were a member of the FCC?

So what next? We are already seeing a great deal of self-censorship as the self-appointed guardians of public decency go after anything that offends them personally. We saw recently many affiliates of ABC refuse to show "Saving Private Ryan" because they were afraid of the fines that the FCC might, might, levy. So there is self-censorship because of the chilling effect.

Evidently, the Members of this House do not trust Americans to make up their own minds and the large corporations that own media conglomerates are not about to risk profits by running afoul of the people with power and their own agenda.

I would suggest that if my colleagues are looking for obscene and indecent material, they can turn off their televisions and log on to WWW.Congress.Gov. On the Committee on the Judiciary Web site you can find sexually graphic material, including graphic sexual accounts in the Starr Report of several years ago. Children doing their homework everywhere can read this.

In this last Congress, a Member of this House introduced legislation containing eight words that would probably draw half a million dollar fines under this legislation. Our Legislative Information System still has this up for anyone to read.

Mr. Speaker, Congress and the FCC have no business telling people what they can or cannot watch, what sorts of tolerance it will or will not tolerate, or what values parents may or may not desire to instill in their children. You do not have to love indecency to oppose this bill. You merely have to have faith in and respect for the judgment of the American people, and a distrust in the omnipotent judgment of government bureaucrats. I urge the defeat of this bill.

Mr. UPTON. Mr. Speaker, I yield 1 minute to the gentleman from Alabama (Mr. ADERHOLT).

Mr. ADERHOLT. Mr. Speaker, I rise today in strong support of H.R. 310. Passage of this bill will mark a very important step, in my opinion, toward protecting American children.

I especially do want to thank the committee for their work on this bill, and the gentleman from Texas (Chairman BARTON) and the gentleman from Michigan (Chairman Upton) for their work on this legislation.

The purpose, of course, of the legislation that we are discussing today is to return decent, family-friendly broadcast television and radio to families across America. I should note that this legislation in no way changes the FCC's current definition of obscenity, indecency, or profanity. Rather, it enables the agency to enforce the existing rules.

As has been stated here already on the floor today, it would allow the FCC to impose a fine of half a million dollars against broadcasters for every violation of obscene, indecent, and profane material. Of course, additionally the bill will allow the FCC to fine networks and entertainers for up to half a million dollars if they willfully or intentionally violate indecency standards by airing obscene, indecent, or profane material.

Mr. Speaker, I would urge the passage of H.R. 310 today and would urge my colleagues to wholeheartedly support this legislation.

Mr. MARKEY. Mr. Speaker, I have no further speakers, so I yield back the balance of my time, with thanks to the chairman of the committee for his great work.

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

Mr. Speaker, I just want to thank the staff, Kelly Cole, Will Nordwind and Howard Waltzman. They have been terrific working with staffs on both sides.

I remind my colleagues this passed overwhelmingly in not only the committee, but last year as well, and also in the Senate. I urge my colleagues to support it.

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

The SPEAKER pro tempore. Pursuant to House Resolution 95, the previous question is ordered on the bill and the amendment offered by the gentleman from Michigan (Mr. UPTON).

The question is on the amendment offered by the gentleman from Michigan (Mr. UPTON).

The amendment was agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

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

The yeas and nays were ordered.  
The vote was taken by electronic device, and there were—yeas 389, nays 38, not voting 6, as follows:

[Roll No. 35]

YEAS—389

Aderholt	Deal (GA)	Johnson (IL)
Akin	DeFazio	Johnson, E. B.
Alexander	DeGette	Johnson, Sam
Allen	DeLauro	Jones (NC)
Andrews	DeLay	Jones (OH)
Baca	Dent	Kanjorski
Bachus	Diaz-Balart, L.	Keller
Baker	Diaz-Balart, M.	Kelly
Baldwin	Dicks	Kennedy (MN)
Barrett (SC)	Dingell	Kennedy (RI)
Barrow	Doggett	Kildee
Bartlett (MD)	Doolittle	Kilpatrick (MI)
Barton (TX)	Doyle	Kind
Bass	Drake	King (IA)
Bean	Dreier	King (NY)
Beauprez	Duncan	Kingston
Becerra	Edwards	Kirk
Berkley	Ehlers	Kline
Berry	Emanuel	Knollenberg
Biggett	Emerson	Kolbe
Bilirakis	Engel	Kuhl (NY)
Bishop (GA)	English (PA)	LaHood
Bishop (NY)	Etheridge	Langevin
Bishop (UT)	Evans	Lantos
Blackburn	Everett	Larsen (WA)
Blumenauer	Feeney	Larson (CT)
Blunt	Ferguson	Latham
Boehlert	Filner	LaTourette
Boehner	Fitzpatrick (PA)	Leach
Bonilla	Flake	Levin
Bonner	Foley	Lewis (CA)
Bono	Forbes	Lewis (KY)
Boozman	Ford	Linder
Boren	Fortenberry	Lipinski
Boswell	Fossella	LoBiondo
Boucher	Fox	Lowe
Boustany	Franks (AZ)	Lucas
Boyd	Frelinghuysen	Lungren, Daniel
Bradley (NH)	Gallegly	E.
Brady (PA)	Garrett (NJ)	Lynch
Brady (TX)	Gerlach	Mack
Brown (OH)	Gibbons	Maloney
Brown (SC)	Gilchrest	Manzullo
Brown (Corrine)	Gillmor	Marchant
Brown-Waite,	Gingrey	Markey
Ginny	Gohmert	Marshall
Burgess	Gonzalez	Matheson
Burton (IN)	Goode	McCarthy
Butterfield	Goodlatte	McCaul (TX)
Buyer	Gordon	McCollum (MN)
Calvert	Granger	McCotter
Camp	Graves	McCrery
Cannon	Green (WI)	McGovern
Cantor	Green, Al	McHenry
Capito	Green, Gene	McHugh
Capps	Gutierrez	McIntyre
Capuano	Gutknecht	McKeon
Cardin	Hall	McKinney
Cardoza	Harris	McMorris
Carnahan	Hart	McNulty
Carson	Hastings (WA)	Meehan
Carter	Hayes	Meek (FL)
Case	Hayworth	Meeks (NY)
Castle	Hefley	Melancon
Chabot	Hensarling	Menendez
Chandler	Herger	Mica
Chocola	Herseth	Michaud
Cleaver	Higgins	Millender-
Clyburn	Hinojosa	McDonald
Coble	Hobson	Miller (FL)
Conaway	Hoekstra	Miller (MI)
Cooper	Holden	Miller (NC)
Costa	Holt	Miller, Gary
Costello	Hooley	Miller, George
Cox	Hostettler	Mollohan
Cramer	Hoyer	Moore (KS)
Crenshaw	Hulshof	Moore (WI)
Crowley	Hunter	Moran (KS)
Cubin	Hyde	Moran (VA)
Cuellar	Inglis (SC)	Moran
Culberson	Inslee	Murphy
Cummings	Israel	Murtha
Cunningham	Issa	Musgrave
Davis (AL)	Istook	Myrick
Davis (CA)	Jackson (IL)	Napolitano
Davis (FL)	Jackson-Lee	Neal (MA)
Davis (IL)	(TX)	Neugebauer
Davis (KY)	Jefferson	Ney
Davis (TN)	Jenkins	Northup
Davis, Jo Ann	Jindal	Norwood
Davis, Tom	Johnson (CT)	Nunes
		Nussle

Oberstar	Rohrabacher	Sullivan
Obey	Ros-Lehtinen	Sweeney
Olver	Ross	Tancredo
Ortiz	Rothman	Tanner
Osborne	Roybal-Allard	Tauscher
Otter	Royce	Taylor (MS)
Oxley	Ruppersberger	Taylor (NC)
Pallone	Rush	Terry
Pascrell	Ryan (OH)	Thomas
Pastor	Ryan (WI)	Thompson (CA)
Pearce	Ryun (KS)	Thompson (MS)
Pelosi	Salazar	Thornberry
Pence	Sanchez, Loretta	Tiahrt
Peterson (MN)	Saxton	Tiberi
Peterson (PA)	Schiff	Tierney
Petri	Schwartz (PA)	Towns
Pickering	Schwarz (MI)	Turner
Pitts	Scott (GA)	Udall (CO)
Platts	Sensenbrenner	Udall (NM)
Poe	Sessions	Upton
Pombo	Shadegg	Van Hollen
Pomeroy	Shaw	Visclosky
Porter	Shays	Walden (OR)
Portman	Sherwood	Walsh
Price (GA)	Shimkus	Wamp
Price (NC)	Shuster	Watt
Pryce (OH)	Simmons	Weiner
Putnam	Simpson	Weldon (FL)
Radanovich	Skelton	Weldon (PA)
Rahall	Slaughter	Weller
Ramstad	Smith (NJ)	Westmoreland
Rangel	Smith (TX)	Wexler
Regula	Smith (WA)	Whitfield
Rehberg	Snyder	Wicker
Renzi	Sodrel	Wilson (NM)
Reyes	Solis	Wilson (SC)
Reynolds	Souder	Wolf
Rogers (AL)	Spratt	Wu
Rogers (KY)	Stearns	Young (AK)
Rogers (MI)	Strickland	Young (FL)

NAYS—38

Abercrombie	Honda	Schakowsky
Ackerman	Kucinich	Scott (VA)
Baird	Lee	Serrano
Berman	Lewis (GA)	Sherman
Clay	Lofgren, Zoe	Stark
Conyers	McDermott	Velázquez
Delahunt	Nadler	Wasserman
Farr	Owens	Schultz
Fattah	Paul	Waters
Frank (MA)	Payne	Watson
Grijalva	Sabo	Waxman
Harman	Sánchez, Linda	Woolsey
Hastings (FL)	T.	
Hinchey	Sanders	

NOT VOTING—6

Cole (OK)	Kaptur	Stupak
Eshoo	Reichert	Wynn

□ 1400

Mr. HASTINGS of Florida changed his vote from "yea" to "nay."

Mr. ISRAEL and Ms. BERKLEY changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

The motion to reconsider is laid upon the table.

Stated for:

Mr. COLE of Oklahoma. Mr. Speaker, on Wednesday, February 16, 2005, I was unavoidably detained due to a prior obligation.

Had I been present and voting, I would have voted as follows: (1) Rollcall No. 35: "Yes" (Final Passage of H.R. 310).

#### RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Science:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, February 15, 2005.  
Hon. DENNIS HASTERT,  
Speaker, U.S. House of Representatives, Wash-  
ington, DC.

DEAR SPEAKER HASTERT: I respectfully re-  
quest that you permit me to vacate my seat  
on the House Science Committee as soon as  
possible. I am hopeful that I would be able to  
retain my seniority position on this com-  
mittee should I seek to return in a future  
Congress. I have greatly enjoyed my service  
on the House Science Committee.

Thank you for your kind consideration of  
this request.

Sincerely,

ZOE LOFGREN,  
Member of Congress.

The SPEAKER pro tempore (Mr.  
LATOURETTE). Without objection, the  
resignation is accepted.

There was no objection.

#### ELECTION OF MEMBERS TO CER- TAIN STANDING COMMITTEES OF THE HOUSE

Mr. MENENDEZ. Mr. Speaker, by di-  
rection of the Democratic Caucus, I  
offer a privileged resolution (H. Res.  
111) and ask for its immediate consider-  
ation.

The Clerk read the resolution, as fol-  
lows:

H. RES. 111

*Resolved*, That the following named Mem-  
bers be and are hereby elected to the fol-  
lowing standing committees of the House of  
Representatives:

(1) COMMITTEE ON HOUSE ADMINISTRATION.—  
Ms. Zoe Lofgren of California.

(2) COMMITTEE ON SMALL BUSINESS.—Ms.  
Moore of Wisconsin.

Mr. MENENDEZ (during the read-  
ing.) Mr. Speaker, I ask unanimous  
consent that the resolution be consid-  
ered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there  
objection to the request of the gen-  
tleman from New Jersey?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on  
the table.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursu-  
ant to the provisions of clause 8 of rule  
XX, the Chair announces that he will  
postpone further proceedings today on  
each motion to suspend the rules on  
which a recorded vote or the yeas and  
nays are ordered, or on which the vote  
is objected to under clause 6 of rule  
XX.

Such record votes, if postponed, will  
be taken on tomorrow.

#### RECOGNIZING THE COMMITMENT OF THE UNITED STATES TO THE RECOVERY AND ACCOUNTING FOR AMERICANS WHO ARE PRIS- ONERS OF WAR OR MISSING

Mr. FRANKS of Arizona. Mr. Speak-  
er, I move to suspend the rules and  
pass the joint resolution (H.J. Res. 18)

recognizing the historic commitment  
of the United States to the recovery of  
and full accounting for Americans who  
are prisoners of war or in a missing  
status.

The Clerk read as follows:

H.J. RES. 18

Whereas the surrender during World War II  
on the Bataan Peninsula, in the Philippines,  
in April 1942 led to the capture of more than  
75,000 American and Filipino military pris-  
oners of war;

Whereas American, Filipino, and Allied  
prisoners of war endured the 65-mile Bataan  
Death March through the jungles of the Phil-  
ippines and were subjected to brutal abuse  
from which many hundreds of Americans and  
many thousands of Filipinos died;

Whereas thousands more American and  
Filipino civilians were interned across the  
region;

Whereas General Douglas MacArthur, the  
Allied commander for the Southwest Pacific  
area, including the Philippine Islands, com-  
mitted forces under his command to make  
every effort, as quickly as possible, to lib-  
erate prisoner of war camps and internment  
camps as Allied forces began retaking terri-  
tory;

Whereas in the fulfillment of that commit-  
ment, United States Army units, together  
with various Filipino guerilla groups, suc-  
cessfully conducted several operations that  
liberated thousands of innocent civilians,  
prisoners of war, and Filipino citizens;

Whereas in February 1945, elements of the  
11th Airborne Division, particularly the  
511th Parachute Infantry Regiment of that  
division, and the 672nd Amphibious Tractor  
Battalion conducted a particularly brave and  
daring mission behind enemy lines to rescue  
over 2,000 people at Los Banos internment  
camp; and

Whereas the United States has an historic  
commitment to the recovery of and full ac-  
counting for Americans who are prisoners of  
war or in a missing status: Now, therefore,  
be it

*Resolved by the Senate and House of Rep-  
resentatives of the United States of America in  
Congress assembled*, That Congress—

(1) recognizes the rescue missions carried  
out by units of the United States Army, in-  
cluding the 11th Airborne Division, 60 years  
ago in the Philippines during World War II as  
sterling examples of that commitment; and

(2) recognizes the bravery and courage of  
the soldiers and the Filipino guerillas who  
participated in those rescue missions.

The SPEAKER pro tempore. Pursu-  
ant to the rule, the gentleman from Ar-  
izona (Mr. FRANKS) and the gentleman  
from North Carolina (Mr.  
BUTTERFIELD) each will control 20 min-  
utes.

The Chair recognizes the gentleman  
from Arizona (Mr. FRANKS).

□ 1400

GENERAL LEAVE

Mr. FRANKS of Arizona. Mr. Speak-  
er, I ask unanimous consent that all  
Members may have 5 legislative days  
within which to revise and extend their  
remarks on H.J. Res. 18, the legislation  
under consideration.

The SPEAKER pro tempore (Mr.  
LATOURETTE). Is there objection to the  
request of the gentleman from Ari-  
zona?

There was no objection.

Mr. FRANKS of Arizona. Mr. Speak-  
er, I yield myself such time as I may  
consume.

When the Philippines fell in April of  
1942, more than 75,000 American and  
Filipino servicemen and countless civ-  
ilians became prisoners of war. This  
number was decimated during the bru-  
tal Bataan Death March, which saw the  
death of over 16,000 POWs. Many sol-  
diers survived the march, only to find  
themselves facing murderous treat-  
ment in prisoner-of-war camps scat-  
tered throughout the island.

When General MacArthur began his  
campaign to retake the Philippines in  
1945, he made it a priority to liberate  
soldiers and civilians who were in-  
terned in these camps. This commit-  
ment was particularly important, since  
it was widely believed that captives  
would be killed by their retreating cap-  
tors if measures were not undertaken  
to liberate them in advance of the  
main campaign.

General MacArthur's commitment to  
the civilian internees and prisoners of  
war on the island manifested itself in a  
particularly heroic way in the Allied  
raid on the prison camp at Los Banos.  
It was here that Filipino guerrilla  
forces and the men of the 511th para-  
chute infantry regiment of the 11th  
Airborne division worked in concert to  
organize a multipronged assault with  
elements attacking from land, air and  
sea to liberate the prisoners of the  
camp.

The Allied forces took great risks to  
free their fellow soldiers and civilians  
who had fallen behind enemy lines.  
These truly heroic acts serve not only  
as examples of the humanitarian com-  
passion of American servicemen and  
-women but also as an example of our  
Nation's longstanding commitment to  
leave no fellow soldier, living or dead,  
in enemy hands.

Mr. Speaker, as we have military per-  
sonnel spread throughout the world  
today, many of whom are daily risking  
capture and torture at the hands of  
brutal terrorists, it is more important  
now than ever to recognize and honor  
the heroism and willing sacrifice of  
those soldiers who risked their own  
safety not to take a strategic objec-  
tive, but simply to bring a comrade  
home.

Our soldiers, marines, airmen and  
sailors must be able to take a small  
measure of comfort that whatever hap-  
pens to them in battle, that this Na-  
tion will always have the will and the  
resolve to find and repatriate all of  
those who were lost while on duty.

Mr. Speaker, evil has aggressively  
manifested itself in many forms  
throughout human history, and for the  
last 200 years, whether fighting totali-  
tarian evil of monarchial, fascist or fa-  
natical roots, American servicemen  
have made a habit of putting them-  
selves squarely in evil's way. They  
have done so, secure in the knowledge  
that if they fall into the hands of the  
enemy, they will not be forgotten. In-  
deed, every effort possible will be un-  
dertaken to bring them home.

Mr. Speaker, this is the 60th anniver-  
sary of the liberation of over 2,000 pris-  
oners from the camp at Los Banos, and

at a time when our military is deployed in harm's way around the globe, let us recognize those individuals who sacrificed to bring their brothers and sisters home, and let us honor the heroic actions of the past by officially reaffirming our Nation's commitment to leave no fighting man or woman in enemy hands at any time, now or in the future.

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

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

Mr. Speaker, I rise today in support of H.J. Resolution 18, introduced by the gentleman from Arizona (Mr. FRANKS), my friend and colleague on the House Committee on Armed Services.

This resolution today recognizes our Nation's commitment to the recovery and full accounting of Americans who are prisoners of war or who are in a missing status from current and previous conflicts, and in particular, it recognizes the actions of the 11th Airborne division and the Filipino guerrillas who participated in the liberation of an internment camp in the Philippines during World War II.

Following the United States surrender on the Bataan Peninsula in April of 1942, thousands of Americans and Filipinos and Europeans, both military and civilian, were taken as prisoners of war by the Japanese. In the town of Los Banos, on the island of Luzon, over 2,000 civilians, including men, women and children, and 12 American Navy nurses, were held as captives. From May 14, 1943, until they were freed by Angels on February 3, 1945, they were held captive at the former agricultural school of the University of the Philippines.

The 11th Airborne division, also known as the Angels, arrived at Leyte Beach in the Philippines on November 19, 1944. Their first objective was to clear a mountain pass from Burauen to Ormoc. After nearly 3 months of bitter fighting, the 11th Airborne had killed almost 6,000 enemy soldiers and had driven the Japanese from the pass and surrounding areas. On January 6, 1945, the Angels landed on the island of Luzon. Their mission was to clear enemy opposition on the major highway leading to Manila.

As American forces successfully regained territory that was lost to the Japanese at the beginning of the war, General Douglas MacArthur became concerned that many of the prisoners would be killed before they could be rescued. The 11th Airborne division was given the responsibility of liberating the prisoners at Los Banos. The Angels worked with the Filipino guerrilla groups in the area to gain valuable information as to the layout of the camp, the schedules of the guards and other details that were essential for a successful mission.

It is said that the rescue of the detainees at Los Banos was one of the most successful missions ever con-

ducted. Not one prisoner was killed or seriously injured in the assault, and not one paratrooper of the battalion that was directly involved was killed.

The historic rescue of Los Banos by the 11th Airborne and the Filipino guerrillas, and other efforts to recover prisoners of war and those missing in action are not forgotten. In fact, Mr. Speaker, they stand as testament to our Nation's strong commitment to ensure that no one will be left behind on the battlefield.

Today, the Department of Defense Prisoner of War/Missing in Action Office continues to coordinate recovery activities and investigate locations from past conflicts to ensure a full accounting, a full accounting of those who remain missing in action from past conflicts.

Mr. Speaker, I also wish to speak briefly in support of all POW/MIAs. Over the past 100 years, over 88,000 of our fighting men and women are still classified as missing in action, remains not recovered or remains unidentified. Every American who puts on the uniform of this Nation accepts the dangers that are entailed, and I am touched by the strong efforts to recover the remains of American servicemen and -women, and to find individuals who may still be alive. Every man or woman unaccounted for is a family who never knew the fate of a loved one, and it is fitting, Mr. Speaker, that our government never let a single American be left behind. It is important to the families of our fighting men and women, and it is the duty of this government to do so.

Mr. Speaker, I commend my colleague on this resolution.

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

Mr. FRANKS of Arizona. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. SAM JOHNSON), a true American hero.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I appreciate that remark and I appreciate the gentleman's remarks that just spoke. God bless you.

I stand here before you as a former prisoner of war in Vietnam. Despite 7 years in captivity, with 42 months straight in solitary confinement, I am one of the lucky ones because I came home. Some of the men I served with in Vietnam did not, and guys, say, oh, we really had it rough. I tell my colleagues, the guys in that Bataan Death March are the guys who had it rough. Those are the guys that gave their lives for this Nation, and we can never repay them in my view.

I firmly believe we need to send a strong, clear signal that we must account for Americans who are prisoners or classified as missing, and while I was in captivity, I made it my duty to memorize the names of my fellow POWs, committing about 374 names to memory just from tapping on a wall, never seeing them. We were trying to memorize them in case anybody got out because every one of us thought we

could escape. So we knew the names but we did not have any idea what they looked like.

Most of the time we never saw another American except occasionally through a crack in the door, but I knew they were there, and I know some did not come home, especially from Cambodia and Laos.

This just is not about Vietnam. It is about the Korean War, Desert Storm, Afghanistan, Iraq and World War II. I fought in Korea as well as Vietnam. I am on the U.S.-Russia Commission on POWs and MIAs. We have been looking for them, and we know some of them were taken to the Soviet Union. We are starting to hear about it in the press now. We know some of them are still alive, at least some are from the Korean War, and we know there may be some still alive today from Vietnam. We are still searching for them.

So help me, if they are alive and we do not get them out, we have not done our job. I truly appreciate what my colleagues are doing with this resolution. I think it is important that America know that we never leave anyone behind. We are Americans and we take care of our own.

I hope today's action is not just lip service but people continue to act, follow through on finding our fellow Americans. We owe it to our men and women in uniform and their families because, after all, we are the land of the free and the home of the brave.

God bless our military servicemen and the POWs and MIAs that are still out there. I salute each and every one of you.

Mr. BUTTERFIELD. Mr. Speaker, I yield 4 minutes to the gentleman from Hawaii (Mr. CASE).

(Mr. CASE asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. CASE. Mr. Speaker, I appreciate my colleague yielding me time, and it humbles me to follow the previous speaker in light of his service.

I rise in full support of this resolution and wish to fully associate myself with the comments of my colleagues with respect to the heroic rescue missions carried out 60 years ago by units of the U.S. Army in the Philippines. It allows us to follow anew not only their efforts but also the heroic effort of many, many members of the Filipino citizenry, including the Filipino scouts who rose up and fought alongside U.S. Armed Forces in the Philippines during the Second World War and allied themselves very much with the Allied effort.

I also want to take the opportunity in this resolution to highlight, as the previous speaker said, the work undone, on a broader scale, which includes almost 2,000 of our own still unaccounted for in the Vietnam War. In that spirit, I want to highlight the great commitment shown by our Joint POW/MIA Command, JPAC, which is operated by the Defense POW missing personnel office.

JPAC is headquartered in Hickam Air Force Base, Hawaii. It was activated in October of 2003, and its mission is to achieve the fullest possible accounting of all Americans missing, worldwide, as a result of our Nation's previous conflicts.

Of course, the highest priority of JPAC is return of any living American that remains a prisoner of war, but equally important is bringing resolution to the families who still await news of their loved ones.

JPAC was created from the merger of the Central Identification Laboratory-Hawaii and the Joint Task Force Full Accounting and contains almost 425 personnel. One-quarter are Navy civilians and the rest handpicked soldiers, sailors, airmen and marines. Every individual attached to JPAC is chosen through the specialized skills necessary for the command's unique mission.

Some brief facts about JPAC and the Central Identification Lab-Hawaii. Even today, they are still identifying roughly two individuals each week formerly listed as missing.

They have identified remains from World War I, World War II, the Korean War, the Vietnam War and the Cold War, and in each of those cases where it is possible, repatriation ceremonies, with a full honor guard, are held nearly every month at Hickam Air Force Base in Hawaii. As the remains are brought off the plane in flag-draped caskets and moved to ground transportation, a multiservice honor guard salutes the remains while family members, veterans and members of the Armed Forces offer their respects.

It is also true that JPAC's work extends well into the realm of diplomacy because especially with the countries of Asia, where we had former enemies, JPAC and its efforts have often meant the initial unifying factor, the item on which we can all agree, and they have definitely led in many cases to rapprochement between previous enemies.

In addition to its primary mission of identifying, recovering and repatriating the remains of the POWs and MIAs, JPAC personnel also support nontraditional and humanitarian missions as well. For example, in the recent tsunami effort in southeast Asia, JPAC deployed their two teams of eight people, including a forensic anthropologist, forensic dentist and other specialists to assist the Government of Thailand to identify and recover the bodies of more than 3,500 individuals who died there.

I have here for inclusion with my remarks at this point an article that recently appeared in the Honolulu Star-Bulletin entitled "Joint POW-MIA Accounting Group Using DNA Expertise," which acutely describes some of these humanitarian efforts and which contains this very poignant remark: "Everybody is given a name when you are born, and everybody should have a name when you die. That's what we do."

[From the Honolulu Star-Bulletin, Jan. 21, 2005]

JOINT POW-MIA ACCOUNTING GROUP USING DNA EXPERTISE  
(By Craig Gima)

PHUKET, THAILAND.—At the Tsunami Victims Assistance Center, unanswered questions hang in the air around the bulletin boards where family members have posted pictures of missing friends and relatives.

The photos—a haunting reminder of lives probably lost—mean there are lives in limbo, families holding on to hope, however faint, unwilling to accept death without proof.

The large crowds of family members that gathered here daily right after the tsunami are gone now. The people who show up are sometimes friends continuing the search or, as in the case of a visitor earlier in the day, a brother who believes his sister needs his help.

"If his sister is dead, he doesn't want to know now," said Verity Cattan-Poole, a volunteer at the center who speaks both Thai and English. "He wants to find her. He thinks possibly that she's somewhere and lost her memory, and he wants to be there to help her."

"In their heart of hearts, I think they know," Cattan-Poole said. But "if you have a loved one who has died, you need closure."

A little more than two hours north of the center, an international team of forensic scientists that includes members of the Hawaii-based Joint POW-MIA Accounting Command are trying to bring closure to families.

JPAC is best known for its work in recovering and identifying the remains of U.S. service members from Vietnam and other wars. But it has deployed teams before to disasters, including the Sept. 11, 2001, terrorist attack on the Pentagon, the Korean Air crash in Guam and the bombing of a Marine barracks in Beirut, Lebanon, in 1983.

Two teams of eight people, including a forensic anthropologist, a forensic dentist and mortuary affairs specialists, have been helping the Thai government identify and recover the bodies of more than 5,300 people who died in the tsunami.

Most of the work is done at Wat Yan Yao, a Buddhist temple about two hours north of Phuket. JPAC also helped coordinate the delivery of supplies and materials such as lights and tents from the U.S. military's relief effort and is helping to set up a temporary morgue, donated by Norway, near the Phuket airport.

On Wednesday, JPAC members joined thousands of Buddhist monks at a candle-light service at a stadium in Takua Pa, a city in the province north of Phuket where about 4,000 people died.

Organizers said the memorial service was multi-denominational, offering prayers to comfort survivors and to help those who died find happiness and peace in the afterlife.

Many of the team members are now returning to Hawaii. A smaller group will remain for an undetermined time.

At a briefing in Hawaii earlier this month, Gen. Montague Winfield, the commander of the unit, said his men and women were prepared to go when they saw the extent of the tsunami devastation.

Winfield said they had just finished a plan on how to deploy quickly in the event of mass casualties anywhere in the world.

Still, while the JPAC team members had planned what to take and to get their equipment there in the event of an emergency, "nobody can adequately or fully prepare for something of this magnitude," said Dr. Robert Mann, deputy scientific director at JPAC.

"In this situation here, you're going to be dealing with a lot of children, and a lot of people here have kids," he said.

Mann, who was at the same briefing as the general, said the forensic scientists in Hawaii are experts at extracting and using DNA to identify remains. They are also bone and teeth experts.

Bone structure, Mann explained, can show whether a person is of Caucasian or Asian descent, a man or a woman. Dental records also can help with identification when fingerprints are not available.

"Everybody is given a name when you are born, and everybody should have a name when you die," Mann said. "That's what we do."

JPAC is a vital part of our Nation's ongoing commitment to its service members, and we in Hawaii are proud and humbled by their commitment to their mission. This mission on behalf of all of us must continue until every last unaccounted American citizen is accounted for.

□ 1415

Mr. FRANKS of Arizona. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. ROHRBACHER).

Mr. ROHRBACHER. Mr. Speaker, I rise in strong support of H.J. Res. 18. Today, we recognize the heroism of America's POWs, and we recognize the heroism as well of those men and women of our military who rescued our POWs in various conflicts.

We are focusing mainly on the Philippines. And, of course, in the Philippines there were so many thousands of Americans that were captured by the Japanese and held and who were rescued by Filipino Americans, or Filipinos I should say, and by U.S. troops near the close of the war.

Let me note that the Filipinos who fought side by side with us, and there were many thousands of Filipinos who were also held as prisoners of war during the war with Japan. During those 4 years, those Filipinos who fought, those Filipinos as well as those Americans who fought with us to liberate the Philippines and rescued our POWs as the war ended, were shortchanged. Today, the Filipinos who fought alongside Americans, many of those were promised veterans status, and they never received the veterans status we promised them when they helped us liberate the Philippines. So they were shortchanged.

Our own POWs were shortchanged. Those Americans held in the Philippines have been prevented by our own government from suing the Japanese corporations that used them as slave labor during the war. This is a horrendous gift to give a POW, like the survivors of the Bataan Death March who then were used as slave labor by the Japanese. They cannot even be compensated by suing the Japanese.

And this is not something that happened just in history. American POWs from the last Iraq war, who were held prisoner and tortured by Iraq, are now being prevented by our government from suing the Iraqis who tortured them. We should be on the side, if nobody else, of our greatest heroes, America's POWs; but we have shortchanged them at every step.

And what do we say about those who fought in Vietnam, along with some of those Vietnamese, those Americans that were captured in Vietnam and were not returned after the war and that we abandoned? We know that is true. We know a number of them were taken to Russia. We do not even know their names. We have not even insisted on their names. As we expand our trade now and begin selling things in our stores, we are not even demanding that Vietnam please give us the full accounting we deserve.

They have not, for example, given us the records from the prisons in which our POWs were kept so we can check to see who was kept in those prisons. I have asked for that for 20 years and have never received it. Obviously, they are covering something up. But we are letting it slide. We are letting it slide.

We ended up turning against our POWs in the Bataan Death March and not letting them sue the Japanese, and we are turning against our POWs from the last Iraq war by not letting them sue their torturers. We need to start thinking about where our loyalties lie in this country of the American heroes. We have a lot to stand up for, because these men and these people, the men and women who sacrifice for us, including the Filipinos who fought with us in World War II, we owe them a debt of gratitude that can never be paid. At the very least, let us be faithful to them and give them the kind of recognition and honor they deserve.

Mr. BUTTERFIELD. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman from North Carolina for yielding me this time, and for his words, as well as those of the sponsor of the bill, the gentleman from Arizona. Again, this is, I think, a singular moment when there is no voice of dissent.

Might I pay special tribute, of course, to my colleague, the gentleman from Texas (Mr. SAM JOHNSON), who has always reminded us in this House, as have many others, but in particular, as he hails from my State of Texas, the debt of gratitude and the debt of commitment that we still continue to owe to those who are missing in action.

This resolution I want to acknowledge because of a very precise statement that it contains, which is very key to what we are doing here today. It states we are celebrating the historic commitment of the United States "to the recovery of and full accounting for Americans who are prisoners of war or in a missing status."

I think more than celebrate, I hope with the passage of this legislation that the American people will understand that no brave young man or woman, no brave person who has submitted themselves to the oath of office to fight for this country on foreign

shores, will ever become just a footnote in our minds and hearts, but that we will continue to press the envelope, we will continue to use all the resources, we will continue to wave the flags, we will continue to teach our children that they have given the ultimate sacrifice, maybe, but that their names still have not been described as having passed in battle and, therefore, it is our obligation to continue to search for them until we determine their status.

It gave me great pride to share with former council member Ben Reyes the first raising of a POW-MIA flag in front of the city hall in the City of Houston. We did that some many years ago. How proud we were to stand with veterans from Houston as they watched that flag recognizing and commemorating, in just the City of Houston in this Nation, on behalf of its children, on behalf of its soldiers that we would never stop searching or at least pushing for our MIAs.

Let me also appreciate the recognition of the 11th Airborne Division, particularly the 511th Parachute Infantry Regiment of that division, that were particularly brave as they went behind enemy lines to rescue over 2,000 people in an internment camp.

Let me also acknowledge my constituents who marched on that death march some many, many years ago, where they saw some lose their lives and some be carried off, not knowing where they might go. Let me acknowledge them as well, as this resolution does.

My final words this afternoon are simply to say that as we celebrate, let us make a personal commitment both in terms of resources, a large component of defense authorization and appropriations, that there should continue to be funding and focus on our POWs and, of course, our MIAs. We owe that to the families. We owe it to the American people.

Mr. Speaker, I support this resolution enthusiastically.

Mr. FRANKS of Arizona. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Speaker, I thank the gentleman from Arizona (Mr. FRANKS), and I thank the Members who have been out here this afternoon talking about this critical issue and recognizing this resolution.

I represent the Maupin family in Clermont County, Ohio. Their son, Keith Matthew "Matt" Maupin, Army Specialist, was captured in Iraq in April of last year. We are approaching, therefore, the 1-year anniversary. I rise today to pay special honor to Matt Maupin and to all our brave servicemen and women who are putting their lives on the line for us again on the sands of Iraq and Afghanistan and elsewhere.

Specialist Maupin has been missing, as I said, since April 9, 2004. His convoy came under attack. He was taken captive. He is still missing. He went to Iraq because he believed in the fight. He went to Iraq for the freedom of the

Iraqi people and to make America and our world a safer place. He is truly an American hero.

In our part of southern Ohio, there has been an outpouring of support for Matt; prayers, but also yellow ribbons have cropped up everywhere: on cars, on highway overpasses, and at places of business. His father is a veteran, Keith Maupin; his brother, Lance Corporal Micah Maupin, is a Marine stationed in Miramar, California, currently. Specialist Maupin comes from a family that strongly supports the military and strongly supports our military families.

In fact, Matt's family has taken it upon themselves to establish a Yellow Ribbon Support Network to support families throughout our part of Ohio and, indeed, throughout our country who have their sons and daughters in harm's way.

I again want to thank those who have brought this resolution to the floor today, the gentleman from Arizona (Mr. FRANKS) and others, for their strong support and those of our brave men and women who are missing in action. In the case of Matt Maupin, we remember the Army's "Soldier's Creed," which states: ". . . I always place the mission first. I will never accept defeat. I will never quit. I am a guardian of freedom and the American way of life. . . . I am an American soldier." This is Specialist Matt Maupin.

We take care of our soldiers. We leave no soldier behind.

Mr. BUTTERFIELD. Mr. Speaker, I yield myself such time as I may consume to thank once again the gentleman from Arizona for bringing forth this resolution today calling for a full accounting for Americans who are prisoners of war or for those who are missing in action. Our speakers, today, on both sides of the aisle, have spoken so eloquently, and I thank them so much for their comments. They are great Americans.

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

Mr. FRANKS of Arizona. Mr. Speaker, I yield myself such time as I may consume to simply say that I think all of us hold the commitment in our hearts and the understanding in our hearts that no greater love hath any man than this, than a man who lays down his life for his friends.

There are so many men and women who have laid down their lives for American causes and for the cause of human freedom. This is our day to recognize that, and I pray that we never forget them.

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

The SPEAKER pro tempore (Mr. LATOURETTE). The question is on the motion offered by the gentleman from Arizona (Mr. FRANKS) that the House suspend the rules and agree to the joint resolution, H.J. Res. 18.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was agreed to.

A motion to reconsider was laid on the table.

**HONORING THE LIFE AND LEGACY OF FORMER LEBANESE PRIME MINISTER RAFIK HARIRI**

Mr. ISSA. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 91) honoring the life and legacy of former Lebanese Prime Minister Rafik Hariri, as amended.

The Clerk read as follows:

**H. RES. 91**

Whereas on February 14, 2005, a bomb exploded in Beirut, Lebanon, killing at least 15 people, including Rafik Hariri, former Prime Minister of Lebanon, and wounding at least 100 people;

Whereas Rafik Hariri, a leader and public servant, was believed to be the target of the attack;

Whereas on June 14, 2003, the Future TV studio in Lebanon, which is owned by Rafik Hariri, was targeted by a rocket attack;

Whereas Rafik Hariri, born into a humble family in Sidon, Lebanon, on November 1, 1944, became a successful businessman and politician who served the people of Lebanon in numerous roles;

Whereas Rafik Hariri contributed to the mediation between Lebanese militias during the Lebanese civil war and was a primary architect of the 1989 Taif Accords, which put an end to the Lebanese civil war;

Whereas Rafik Hariri contributed to the economic development and post-war reconstruction of Lebanon, attracting foreign investments from throughout the world;

Whereas Rafik Hariri founded several philanthropic, humanitarian, and educational foundations to provide assistance to needy individuals;

Whereas Rafik Hariri was respected by the international community, as exemplified by the international community's support for the Paris II conference on relieving Lebanon's debt in November 2002;

Whereas the assassination of Rafik Hariri should not be allowed to discourage participation and open debate in Lebanon's upcoming parliamentary elections, which the United States expects to take place in the spring of 2005 as scheduled and be credible, democratic, and free of foreign interference;

Whereas in response to the terrorist bombing attack, President George W. Bush stated: "Mr. Hariri was a fervent supporter of Lebanese independence, and worked tirelessly to rebuild a free, independent, and prosperous Lebanon following its brutal civil war and despite its continued foreign occupation. His murder is an attempt to stifle these efforts to build an independent, sovereign Lebanon free of foreign domination."; and

Whereas President Bush further stated: "The people of Lebanon deserve the freedom to choose their leaders free of intimidation, terror, and foreign occupation, in accordance with UN Security Council Resolution 1559. The United States will consult with other governments in the region and on the Security Council today about measures that can be taken to punish those responsible for this terrorist attack, to end the use of violence and intimidation against the Lebanese people, and to restore Lebanon's independence, sovereignty, and democracy by freeing it from foreign occupation."; Now, therefore, be it

*Resolved*, That the House of Representatives—

(1) condemns, in the strongest possible terms, the terrorist bombing attack that occurred on February 14, 2005, in Beirut, Leb-

anon, that killed former Lebanese Prime Minister Rafik Hariri and killed and wounded others;

(2) extends its deepest sympathy and condolences to the families of all the victims in this terrorist attack and to the people of Lebanon in this moment of tragedy;

(3) recognizes the significant contributions made by Rafik Hariri during his lifetime;

(4) reaffirms the right of the people of Lebanon to choose their leaders in a manner that is free of intimidation, terror, and foreign occupation in accordance with United Nations Security Council Resolution 1559 (2004); and

(5) urges all members of the international community to facilitate any investigation into this terrorist attack and help bring the perpetrators to justice.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. ISSA) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. ISSA).

**GENERAL LEAVE**

Mr. ISSA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous materials on H. Res. 91, the resolution under consideration.

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

There was no objection.

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

□ 1430

Mr. Speaker, today I rise in support of House Resolution 91, introduced by the gentleman from West Virginia (Mr. RAHALL) on February 14, 2005, that condemns the terrorist bombing attack that occurred in Beirut, Lebanon, which killed former Lebanese Prime Minister Rafik Hariri and killed and wounded over 100 others. I and my co-sponsors had a hard time writing this resolution with the gentleman from West Virginia, not because there was not an abundance of material, not because the attack was not heinous, but because it is so hard to summarize in a few words on the House floor the devastating effect that his assassination has already had on the people of Lebanon and on this troubled region. As we speak, day after day, the people of Lebanon march in the streets and they chant, "Syria out. Syria out. Syria, who's next?"

There is no proof that Syria is directly responsible for this assassination, but there is no doubt that Syria has remained in Lebanon far longer either than their mandate or than the agreements under the Taif Accords of 1989. Syria has claimed to be the responsible party in Lebanon for security. Yet even after warnings of the possibility of an attack on these and other leaders who have voiced their opposition to the continued presence of Syria in Lebanon, this heinous attack was allowed to occur.

This resolution calls on all foreign forces in Lebanon to leave the country.

This resolution calls on many things. But for today, I would like all of us to remember it calls on a remembrance of the life of a man who had great personal wealth, who had great success, who had been granted even the citizenship of another country in which he had worked but returned to Lebanon, and, at his own expense and at his own peril, campaigned tirelessly for Lebanese citizenship, Lebanese nationality, Lebanon for the Lebanese.

There is little more that we can say. I would hope that all of us would not forget today, and that day after day and month after month we would return to this body and deal with his legacy until his dreams become a reality.

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

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

I rise in support of H. Res. 91, condemning the monstrous terrorist bombing in Beirut, Lebanon that killed the late Prime Minister of Lebanon, Rafik Hariri, and killed and wounded many others. I want to commend the gentleman from Illinois (Mr. HYDE) for bringing this matter to the floor in such a timely fashion, and I want to thank the gentleman from West Virginia (Mr. RAHALL) and all other colleagues who have worked on this resolution.

Mr. Speaker, I met the late Prime Minister Hariri on many occasions. Although I did not always agree with him, I held him in the highest regard because I recognized in him a man who was a true patriot, single-mindedly devoted to healing his nation after 15 years of a bloody civil war. He was a man not only of charm and drive but of vision. He worked a minor miracle in reviving downtown Beirut, and it was characteristically cynical that the murderers chose that particular area of the city as the site for their cruel crime.

I knew that part of Beirut very well. I first visited it in 1956 and it was one of the gems of the Middle East. The late Prime Minister Hariri returned that portion of Beirut to its former outstanding aesthetic qualities. Given his immense wealth, he could be alive right now, living the good life somewhere on the French Riviera with a mansion and a private beach. Instead, he threw himself into the treacherous world of Lebanese politics, Lebanese politics played out under a menacing Syrian shadow, and like so many before him, he paid the ultimate price.

Among Mr. Hariri's most impressive attributes was his capacity for growth. Over time, he evolved from a Lebanese leader who was close to the Syrians, into one who was wary of them, and finally, in his last days, into one who outright opposed them. Of course it is a near certainty that it was that evolution, particularly the final stage, that led to his demise. A long time ago in a private talk with the President of Egypt, Hosni Mubarak, he taught me a lesson. He said, "Every country has its

exports and Syria exports trouble." No wiser words were ever said in connection with this latest tragedy.

Mr. Speaker, as I stand here, I do not know for certain who murdered Rafik Hariri. I only know that this thuggish action bears all the hallmarks of infamous Syrian-inspired assassinations in Lebanon's past, going back to the then-shocking killing of Druze leader Kamal Jumblatt in 1977. I also know that Syria makes little effort to hide the fact that these assassinations are intended to intimidate other potential opponents.

Bashar al-Assad was supposed to represent a new, more humane Syria, but that unfortunately has not been the case at all, and certainly not in Lebanon. Just this past fall, a pro-Hariri cabinet minister who resigned his post over Syrian manipulation of Lebanese politics was the victim of a shooting widely believed to be inspired by Syria.

Mr. Speaker, Lebanese politics is highly complex, but I do know that when Rafik Hariri turned decisively against Syria, he cast his lot with the opposition in recent months. Damascus had plenty of reasons to be concerned. With international respect and domestic popularity, and with Lebanese parliamentary elections on the horizon for this spring, Hariri was just the sort of opponent who could make life very uncomfortable for the Syrian occupying overlords.

So is Syria guilty of the murder of Rafik Hariri? None of us is certain at this moment, Mr. Speaker, but I share the sentiments of the late Mr. Hariri's son, Saad Eddeen, who when asked why his father was killed replied simply, "It's obvious, isn't it?" I believe it is obvious, Mr. Speaker.

We do not yet know for certain who is responsible for the brutal assassination of former Prime Minister Hariri, but that brutal act is all too reminiscent of similar murders of Lebanese political leaders by Syrian henchmen over the past three decades, and we cannot ignore the similarities.

Our Department of State, Mr. Speaker, took exactly the right step yesterday in recalling our Ambassador from Damascus. And I find myself in the rare position of agreeing with the French, who said that there should be an international investigation of this crime, because I am certain that we cannot trust the Syrian-dominated Lebanese Government to conduct a thorough and impartial inquiry.

Whether through international investigation or through other means, Mr. Speaker, the culprits of this heinous crime and their sponsors and their masters must be found and brought to justice and the Lebanese people must now act decisively to truly take their future into their own hands.

Mr. Speaker, Syria has an international legal obligation to remove its troops and its security forces from Lebanon. When I met with the Syrian President some time ago, I reminded him of this obligation. So did former

Secretary of State Colin Powell. Removing the boot of Syria from the neck of Lebanon would unleash the talents and resources of this beautiful and potentially rich country which has suffered unspeakably under the Syrian yoke.

Mr. Speaker, I strongly support this resolution and I call on all my colleagues to support it as well.

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

Mr. ISSA. Mr. Speaker, it is an honor to yield 5 minutes to the gentleman from Illinois (Mr. LAHOOD), someone whose ancestry is from Lebanon, someone who has been a student of Lebanon, and someone who was in periodic communication directly and indirectly with the former Prime Minister.

Mr. LAHOOD. Mr. Speaker, I thank the gentleman from California for yielding me this time. I thank him for the resolution. I thank my friend from West Virginia who called me on Monday to talk with me about the terrible events that took place and the idea of quickly introducing a resolution so that we could honor the Prime Minister. I thank the gentleman from California (Mr. LANTOS) for his good words.

A few hours ago, the people of Lebanon laid to rest their former Prime Minister. They laid him to rest in a place in Lebanon that he rebuilt. Ten years ago I had the privilege of going to Lebanon for the first time and over the last 10 years I have been to Lebanon at least once a year. Every time I have been there I have been warmly welcomed by the Prime Minister.

Ten years ago when I visited Lebanon, it was a war-torn country and Beirut was a war-torn city, a lot of areas where you could see the remnants of a war that took place. Today it is a beautiful city. Today it has been rebuilt thanks almost in large part to the efforts of former Prime Minister Hariri. It was rebuilt with his own resources, rebuilt with his own ingenuity, rebuilt by his ability to bring people together.

Today he was laid to rest there in an area called Solidaire which he designed and built as the business center for Beirut, a magnificent area. The Prime Minister was able to make Beirut what it was once known as, the Paris of the Middle East. If you go there today, you will recognize that immediately.

When he would come to the United States and visit with our Presidents or our Secretaries of State or the Speaker of the House or the minority leader or Members of Congress, he would always talk about how do we get more people to come to Lebanon, how do we get more people from this country to go there and understand the complexities of the country?

He was a man who brought people together, whether it be in his own country or in our country. He was a uniter, not a divider. He certainly did not deserve what he got and what was delivered to him a few days ago when he was assassinated. He did not deserve that. I

hope that we are able to find those that perpetrated this terrible, terrible event against him that took his life and those of others that were in his entourage.

Rafik Hariri is a world leader. He was a peacemaker. He was one that was able to really bring people together. He was responsible for the Taif Agreement. He was the one that kept speaking out for people to really come together in his own country. He provided over 2,000 scholarships to students not only in Lebanon, but around the world, so they could go to school because he knew the importance of education.

He contributed so much to so many ordinary Lebanese citizens, contributed so much to rebuilding the country. I considered him a very, very dear friend. I had many opportunities to visit with him when he was in this country, to get to know his family, his children, his two sons, and they hopefully will be able to continue some of the work that he began a long time ago.

□ 1445

I am not going to take the time to try to lay blame. I think we should be here to honor this great man, this great leader, the great peacemaker, the uniter of people, the one that has brought people together around the idea that Lebanon is a country that deserves attention, a country that has not always gotten the attention that it deserved.

And so in urging Members to vote for this resolution, we say, job well done, good work, we thank those who have made this resolution possible today, and God speed to Rafik Hariri for his efforts to try to unite the Middle East to bring our fellow Lebanese people together as he has visited this country and to rebuild the beautiful city of Beirut. We have lost a great leader. We will remember him.

As Members vote for this resolution, I hope they will also remember him and his family in their thoughts and prayers.

Mr. LANTOS. Mr. Speaker, I yield such time as he may consume to the gentleman from West Virginia (Mr. RAHALL), the principal author of this resolution we are considering.

Mr. RAHALL. Mr. Speaker, I thank the gentleman from California for yielding me this time, and I thank him for his help on this resolution.

I thank as well the gentleman from Illinois (Mr. HYDE), the chairman of the full committee; the gentlewoman from Florida (Ms. ROS-LEHTINEN), subcommittee chairwoman; and especially the gentleman from California (Mr. ISSA) for his invaluable help in drafting this resolution. I thank the gentleman from Illinois (Mr. LAHOOD), the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. BOUSTANY), my initial co-sponsors, for their quick action as well following the events of Monday morning this week.

Mr. Speaker, both of my grandfathers were born in Lebanon. It is a heritage

of which I am proud. I am proud as well about the relationship between our two countries. I am proud of the Lebanese people. I am proud of the contributions that the Lebanese society has given to not only America but to the world and vice versa. We can look across all sectors of American life, cultural, educational, medical, and see examples of where our two people have worked closely for the betterment of humankind. And that relationship is strong. It has been strong over decades and decades, and it will continue to be strong.

I have traveled Beirut a number of times. I was there at the height of the Israeli bombardment in July/August of 1982. I have been in Lebanon at the height of the fighting, at the height of the hostage taking. I have been in Lebanon in peaceful times. Recently, I have seen the reconstruction and the beauty that has returned and the safety and security that has returned to that city and most all of the country. And that has made me proud of the land of my grandfathers. It has made me proud of the Lebanese people, the dedication they have.

They have been through a lot, there is no doubt about it. The civil war took its toll on the country. During that time, we saw Lebanon serve as the chessboard for many outside foreign forces to play their power games upon the land of Lebanon. The government was weak then. They could not control their borders. They could not control the outside forces that came into Lebanon to play their deadly, deadly games.

But in 1990 that civil war came to an end. It came to an end with the tremendous help of the former Lebanese prime minister, he was not prime minister at that time, Rafik Hariri. He was born in Lebanon but raised and made most of his fortune in Saudi Arabia. He represented that country as well as Lebanon in bringing the various militias together to end the civil war in the early 1990s time frame. He also used his personal wealth to rebuild that country, as has already been stated on the floor today.

Solidaire, the reconstruction company that rebuilt downtown Beirut, did it in a fashion that much of ancient history was preserved at the same time that Beirut looked forward to the future. And it was done in a way that had to reconcile many factions within Beirut itself. So Rafik Hariri spent not only his personal fortune in this rebuilding, but he put his life on the line for his native country of Lebanon.

The fate that he suffered this past Monday morning is a fate that no human being on the face of the Earth should suffer. It was a criminal act; it was a heinous act of terrorism from those who do not have the courage to work through the political systems or differences. I do not know who is to blame. Certainly there are enough outside forces in the region that once again are looking at Lebanon to play

their ugly, deadly games. It is well known Rafik Hariri's background with the Saudi royal family. They have enemies in the region. Certainly we know that al Qaeda would use every chance to strike at the Saudi royal family.

Much has been said about the Syrian influence. Syria is a neighborly Arab country, a brotherly country to Lebanon; and it certainly has its interest in that country, as two neighbors always will have.

But that is beside the point today. As the gentleman from Illinois (Mr. LAHOOD) said today, we honor the legacy and the presence of a man who was huge in Lebanon, but huge in the world as well. He was a friend to many in this country, including the current occupant of the White House. When Rafik Hariri would come to Washington, D.C., he was received with respect, and he was received with hospitality by many of my colleagues and by many around this country.

So today to his widow, to his sisters and brothers, to his children, we extend our deepest sympathy; and we know that his presence is big in Lebanon and around this world and is big in this Congress of the United States because he had many friends here, and we pay our respects to him today.

Mr. ISSA. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. Cox).

Mr. COX. Mr. Speaker, I thank the gentleman from California for yielding me this time. And I want to thank the gentleman from West Virginia (Mr. RAHALL) for bringing this resolution to the floor today.

The former prime minister of Lebanon, who died so tragically, was a visionary for his country, for the region, for the world. He was an entrepreneur who understood the importance of markets and a free economy to the future of Lebanon and the future of the Middle East. He was a philanthropist, who, from his personal fortune, personally paid for so many to be educated both in this country and around the world, with only one condition, that they come back to Lebanon and help build a free democratic society there.

His murder on Tuesday in Beirut was a loss for Lebanon to be sure, for the Middle East as well, but also for the international community, for everyone in the world who loves freedom and democracy. We are gathered today to honor his memory and to call for the swift pursuit and punishment of those responsible. More importantly, we are here to do justice to Mr. Hariri's dreams of a free, independent, and sovereign Lebanon.

I first met Rafik Hariri during a visit to Lebanon 12 years ago. He was impressive because, as someone from the private sector, he dedicated himself, at great risk in the midst of civil war, to bringing warring factions together. He was, as has been stated here, a principal architect of the Taif Accords. As prime minister, he put in place the kinds of initiatives that would make

Jack Kemp proud, recognizing the power of incentives, recognizing that if people could be given reason to share the Lebanese hope that reconstruction was possible to invest their money not just from Lebanon but from around the world, that even in those horrible ashes of war, we could see spring up new entrepreneurship, new hope, and new opportunity.

His tireless work on behalf of peace in a country that was wracked by a vicious civil war and his diligent pursuit of freedom and independence for his countrymen, all at great risk to himself and to his family, was always inspiring. His broader work to open the Middle East to enterprise and economic prosperity should serve as an example to people throughout the Middle East and around the world that the path to prosperity requires free minds and free markets. It is time that we help bring his dreams to fruition.

I had the opportunity to meet more recently, in December of 2003, with President Basheer Assad of Syria; and I shared with him our concerns, our American concerns, about the continued military occupation in Lebanon which Rafik Hariri worked diligently to bring to an end.

Mr. Hariri's funeral in part turned into a protest against the continued Syrian occupation. The 200,000 people participating in the procession make it clear to the rest of us around the world that those in Lebanon, just as we here in America and in nations around the world, deserve the right to self-determination. For 25 years Lebanon and its people have been denied this freedom.

This resolution honors a great leader of Lebanon whose principles are, first of all, fundamentally consonant with Lebanon and the Lebanese spirit and culture, but, second and equally importantly, completely consonant with what we every day in this United States Congress fight for for our fellow Americans and for people around the world.

I urge my colleagues to support this resolution to honor Mr. Hariri and to support the people of Lebanon.

Mr. LANTOS. Mr. Speaker, I yield 3½ minutes to the gentleman from New York (Mr. ENGEL), the distinguished senior member of the Committee on International Relations.

Mr. ENGEL. Mr. Speaker, I thank my very distinguished friend from California for yielding me this time.

Mr. Speaker, I rise in strong support of the resolution. I think that it is very important that we state that we will not tolerate this kind of violence and that the United States Congress is going to come out squarely in opposition to this kind of violence.

Mr. Speaker, I am the author of the Syria Accountability Act; and I think that it is clear to me, and all the evidence is being gathered, but I suspect that this assassination has some ties to Damascus, to the regime in Damascus. There have been all kinds of allegations, and one thing I know for sure is

that the Syrians have allowed Lebanon to destabilize, and this is part and parcel of the result.

Prime Minister Hariri in recent months had grown more and more critical of the Syrian occupation, and I say occupation because it is, of Lebanon. And in the past months, he objected to Syrian interference in the running of Lebanon's affairs. The bottom line here is that Lebanon needs to be free and independent and make its own decisions and not be held under the yoke of Syria. Syria needs to get out of Lebanon. I have many, many Lebanese American friends with whom I am very close, work with me, the Syria Accountability Act, and all feel strongly that they want their country, their former country and the country to which they have ties, to be free.

Syria now has 15,000 troops in Lebanon. I was pleased to see the United States and France collaborate on Security Council Resolution 1559, which pointedly calls for all foreign troops to leave Lebanon and which clearly says that the Lebanese ought to run their own show. Syria has allowed various terrorist militias to run free. Hezbollah, the southern border of Lebanon, northern border of Israel wreaks havoc with Damascus's blessing.

So at this time, when we pay tribute to Prime Minister Hariri, I also want to call on words of a former prime minister, General Michel Aoun, who came right here to Washington just a year ago, and said, "You know, in Lebanon Syria likes to play the game they are the arsonist and the fireman.

□ 1500

They start the fire and then they want accolades and credit for putting it out." Because General Aoun came here to Washington and testified before Congress, he was indicted in Lebanon and it is virtually impossible for him to go back to his country. This is what we are dealing with.

So in certifying and supporting this resolution today, we recall the life of Prime Minister Hariri, and nothing could be a more fitting tribute to Prime Minister Hariri than having the Syrians leave Lebanon. I will double my efforts to do all I can under the Syria Accountability Act, talking to the President and seeing what we in Congress can continue to do to put pressure on Syria to leave Lebanon.

Mr. LANTOS. Mr. Speaker, I urge all of my colleagues to join me in voting for this resolution, and I yield back the balance of my time.

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

Mr. Speaker, many people today have spoken and many more will insert into the RECORD their comments on the devastation to the Lebanese people of this assassination. I suspect all of us can only sit by in horror and imagine the effect if one of our heads of state running to regain, in this case equivalency of the Presidency in many ways, were to be assassinated by parties unknown

who opposed his politics, what a chilling effect that would have on elections.

Mr. Speaker, this spring there will be elections in Lebanon. If I may speak for a moment as best I can, as though I were Rafik Hariri, what would he say here today in order to protect the country he loved so well? I suspect that he would say, "To the people of the world, to the people of this country, make those elections this spring free and fair. Empower the Lebanese people and their candidates not to be chilled by this terrible event." And as the prime mover of the Tai'f Accord, a man who came as a Sunni Muslim to a troubled region and said it does not matter if you are Sunni, Shia, Kurd, Orthodox or Maronite, we must come together, we must put behind us the many sins of the past.

I believe that Prime Minister Hariri would not say "Do not find out who killed me," not for a moment. But I think what he would say is, "The best memory that you can have, the best way to eulogize me, is to make my country free. Have all foreign forces leave my country, including their secret police. Allow my country to be what it once was and would be again, given the opportunity to be free of foreign influence."

Mr. Speaker, I believe very strongly that those words, and more, would be from this great man, who cared more about freedom for his people and about peace than he cared about vengeance.

So as Americans we must demand to know who killed this great leader, this selfless servant of the people. But in his name we must also make sure that those elections go forward in a way that presently they will not. We must take the steps to make sure that we do that. I look forward to working on a bipartisan basis to craft such legislation or to urge the administration to bring such sanctions and such force to bear that will cause that to happen.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio (Ms. KAPTUR).

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from California for yielding me time, and rise with my colleagues to support this resolution recognizing the life of Prime Minister Rafik Hariri. We condemn in the strongest possible terms the terrorist bombing attack that occurred February 14, 2005, in Beirut, which took his life, killed so many others and wounded dozens and dozens of people.

Let me just say that Prime Minister Hariri, when he first took office in the early 1990s himself pledged to lead his country in what he called a quantum leap forward to resurrect it from the civil war that it had endured, a tragedy of over a decade. He said "I want to go down in the history books as the man who resurrected Beirut." And as a Member of this Congress who traveled to see part of that resurrection in Solidaire and the rebuilding of that war-torn country, it goes to show how one person's vision can literally transform a corner of the world.

When I think about our conversations with him, I would have to say he was a man who was very measured. He was someone who actually did not have to be doing what he was doing in the political realm because he was so financially wealthy. He did not need any of this. He did not have to give his life for the country he so deeply loved.

He founded the Hariri Foundation. Through that foundation he helped to support so many young people for their education, for their future, for health care, indeed all of the charitable works for which the Hariri Foundation has been responsible to pull the people of Lebanon forward.

The son of a grocer, someone with humble roots, he had an incredible career as a construction magnate in the Middle East. Really his power in the current Parliament in Lebanon was sufficient that he could have blocked actions by other leaders in that country, but he chose not to do so. He believed very much in peaceful evolution. He was the architect really of the re-birth of modern Lebanon.

I feel so sorry that this has happened, because truly he is someone who would not want to incite more violence in that very troubled part of our world. I understand that the gentleman from Illinois (Mr. LAHOOD) was down here a little bit earlier talking about the letter we signed to the Bush administration. It urges that in order to help to try to keep the calm in that region, to use our commodity programs through the U.S. Department of Agriculture more effectively, especially at this time, throughout that region, in order to turn food into development assistance. We should aim to keep the calm in a very tender and difficult moment in history.

I truly extend deepest sympathy and condolences to the family and to all the victims of this terrorist attack. I shall miss his counsel and his measured strength, as he came here to advise not just about Lebanon, but about many topics of concern to fair-minded people of the world.

I would hope that the world community would not be too quick to judge who is responsible for this murder. In fact there should be teams set up to actually investigate and to try to ascertain who might have been involved. Let us not be too quick to point fingers at who might have done this, because in fact Mr. Hariri himself would never have done that. He would have gotten to the bottom of any situation.

Again, I thank the gentleman for rising in support of this very important resolution to honor the life of former Prime Minister of Lebanon, Mr. Rafik Hariri.

Mr. DINGELL. Mr. Speaker, I rise today in strong support of H. Res. 91 honoring the life and legacy of former Lebanese Prime Minister Rafiq Hariri. Extremely well thought of by the international community, Mr. Hariri's tragic and untimely death is a great loss to us all.

Mr. Hariri was born in Southern Lebanon in 1944 to a family that was neither political nor

powerful. Mr. Hariri attended the Beirut Arab University where he was trained as a teacher. After leaving the University, however, Mr. Hariri went abroad to seek his fortune. He found that fortune in Saudi Arabia, where he established his own construction firm. Mr. Hariri became the personal contractor to Prince Fahd, who later became king of Saudi Arabia. Mr. Hariri's company, Oger, became one of the region's largest and most profitable construction companies. Mr. Hariri amassed a fortune that propelled him into Forbes richest 100 people in the world, with an estimated net worth of \$4 billion.

While Mr. Hariri's rags to riches story is noteworthy, it is not what he will be most remembered for. Mr. Speaker, Rafiq Hariri loved Lebanon. He genuinely wanted to give something back and to serve his country. During the civil war he mediated between rival militia groups. And in 1989, Mr. Hariri was a primary architect of the Taif Accords, which finally put an end to that war. In 1992, Mr. Hariri returned to Lebanon to serve as a Member of Parliament, and was appointed Prime Minister. The first order of business for Prime Minister Hariri was to restore the Lebanese economy and rebuild the country after the 15 year civil war. Mr. Hariri left office in 1998 and returned as Prime Minister again in 2000. During his tenure, he was successful in attracting foreign investment, rebuilding Beirut and reviving Lebanon's tourism industry.

I would be remiss, Mr. Speaker, if I did not mention Rafiq Hariri's humanitarian work. Over the course of his life he found several philanthropic, humanitarian and educational foundations which aided poor Lebanese with schools, healthcare and college tuition. In the midst of the civil war, during cease-fires, he sent Oger trucks into Beirut's streets to clear away the rubble.

Mr. Speaker, the death of Rafiq Hariri leaves a void in Lebanon, a void that will not be easily filled.

I would like to take this opportunity to urge the international community to fully investigate this act of terror. In addition, I advise the United States to offer forensic assistance to Lebanon. We have vast experience with bomb investigations, and I feel confident that our expertise could be used to help identify those responsible for this assassination, and bring them to justice.

I urge my colleagues to join me in celebrating the life and legacy of Rafiq Hariri, extending our deepest sorrow to the Lebanese people, both in Lebanon and around the world on their loss, and in condemning the heinous act that cut short this still promising life. I would also ask that my colleagues join me in offering our deepest condolences to the families of all those killed and our prayers for the swift recovery of the wounded.

Mr. BOUSTANY. Mr. Speaker, I rise today in order to extend my deepest sympathy for the untimely death of former Prime Minister Rafik Hariri. Mr. Hariri's death is a tremendous loss not only to Lebanon, but to the global community as well. His efforts to restore peace and prosperity to his homeland after emerging from brutal civil war have earned him the great esteem of both myself and many of my House colleagues.

Mr. Hariri began his career as a civil servant at a time when his country was in desperate

need of rehabilitation. In 1990 Lebanon had just emerged from a 15-year civil war an exhausted nation with an uncertain future. As Prime Minister, Mr. Hariri worked tirelessly to restore the nation's economic and political health. By establishing stable loan programs with various foreign powers, Mr. Hariri secured much needed reconstruction funds with which he rebuilt Lebanon's infrastructure. He oversaw the higher education of tens of thousands of Lebanese students and put forth a sizeable proportion of his own fortune toward social, education, and transportation projects. Mr. Hariri worked for a unified Lebanon, free from the social divisions of war and restored to its former state of health and stability.

As a descendent of Lebanese immigrants, I retain a deep personal interest in the welfare of my ancestral country. I followed Mr. Hariri's struggles as Prime Minister to put Lebanon back on firm footing and admired his determination. Now that Mr. Hariri has passed away, I can only hope that his cause will continue to be carried out by those who must now fill his place.

Mr. ISSA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. REHBERG). The question is on the motion offered by the gentleman from California (Mr. ISSA) that the House suspend the rules and agree to the resolution, H. Res. 91, 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. ISSA. 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 motion will be postponed.

#### MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

#### PROVIDING FOR AN ADJOURNMENT OR RECESS OF THE TWO HOUSES

Mr. POE. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 66) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 66

*Resolved by the House of Representatives (the Senate concurring),* That when the House adjourns on the legislative day of Thursday, February 17, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, March 1, 2005, or until the time of any reassembly pursuant to section 2 of this concurrent resolu-

tion, whichever occurs first; and that when the Senate recesses or adjourns on Thursday, February 17, 2005, or Friday, February 18, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, February 28, 2005, or at such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

#### ELECTION OF MEMBER TO COMMITTEE ON RESOURCES

Mr. POE. Mr. Speaker, I offer a resolution (H. Res. 112) and ask unanimous consent for its immediate consideration in the House.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 112

*Resolved,* That the following Member be and is hereby elected to the following standing committee of the House of Representatives:

Committee on Resources: Mrs. Musgrave.

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

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### CLARIFICATION OF CERTAIN EXECUTIVE ORDERS BLOCKING PROPERTY AND PROHIBITING CERTAIN TRANSACTIONS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109-10)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

*To the Congress of the United States:*

Pursuant to, inter alia, section 203(a) of the International Emergency Economic Powers Act (50 U.S.C. 1702(a)) (IEEPA) and section 201(a) of the National Emergencies Act (50 U.S.C. 1621(a)) (NEA), I exercised my statutory authority to declare national

emergencies in Executive Orders 13224 of September 23, 2001, as amended, and 12947 of January 23, 1995, as amended. I have issued a new Executive Order that clarifies certain measures taken to address those national emergencies. This new Executive Order relates to powers conferred to me by section 203(b)(2) of IEEPA and clarifies that the Executive Orders at issue prohibit a blocked United States person from making humanitarian donations.

The amendments made to those Executive Orders by the new Executive Order take effect as of the date of the new order, and specific licenses issued pursuant to the prior Executive Orders continue in effect, unless revoked or amended by the Secretary of the Treasury. General licenses, regulations, orders, and directives issued pursuant to the prior Executive Orders continue in effect, except to the extent inconsistent with this order or otherwise revoked or modified by the Secretary of the Treasury.

GEORGE W. BUSH.

THE WHITE HOUSE, February 16, 2005.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Without objection, the Chair will recognize Members for Special Order speeches without prejudice to possible resumption of legislative business.

#### SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. LEE) is recognized for 5 minutes.

(Ms. LEE addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

□ 1515

#### SMART SECURITY AND \$82 BILLION IRAQ SUPPLEMENTAL, PART 2

The SPEAKER pro tempore (Mr. REHBERG). Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, when it comes to our Nation's spending priorities, President Bush and his administration do not know which way is up.

Already the President has given Congress a 2006 budget that is all but certain to explode in the year 2009; a ticking time bomb set to detonate after President Bush leaves office. In a move that should surprise no one, this budget conspicuously omits funding for any and all military operations and reconstruction efforts in Iraq, leaving the funding to a supplemental spending bill that does not count against the President's deficit estimates.

These funds are not insignificant. To date Congress has funded a \$154 billion military operations and reconstruction budget in Iraq, and the Democratic staff on the House Committee on the Budget has estimated that the war in Iraq could cost the United States as much as \$650 billion by the year 2015. Adjusted for inflation, this amount rivals the combined costs of the Korean War, the Vietnam War, and the first Gulf War; the combined costs.

Let me be clear that my opposition to the President's reckless fiscal policies is not a condemnation of the service men and women who so bravely serve our country. I want everyone to know that I oppose the war, not the warriors. Hundred of thousands of selfless troops were uprooted from their families and their everyday lives to answer the call of duty for their country, and we owe them our absolute gratitude. Sadly, so far, 1,500 of these brave men and women will not return home alive. Another 11,000 will return home forever wounded as a result of injuries sustained in battle. These are the casualties of this ill-conceived war.

A lot of people talk about supporting our troops, but the call to support our troops is yet another reason to oppose President Bush's latest supplemental spending request. If the Bush administration really cared about our troops, they would take all measures to get them out of harm's way and bring them home as soon as possible. But the latest supplemental assumes that 150,000 American soldiers will stay in Iraq as sitting ducks for years to come. And this bill does not bring them home. It is wholly irresponsible for the Bush administration to fund an unending military operation without devising an exit strategy and without even considering the possibility that the military option is not working.

The supplemental spending bill that President Bush sent to Congress also fails to include any type of reporting mechanism, which means that these funds can be spent by military commanders without any accounting of how or where that money was spent. This is a woefully irresponsible way to spend American taxpayers' money.

This, on top of \$9 billion in reconstruction funds that cannot be accounted for by the Coalition Provisional Authority, the American governing body that was in charge of overseeing Iraq until 2004. This, on top of \$3 billion in reconstruction funds that had to be reprogrammed for military operations because the Bush adminis-

tration failed to account for an angry Iraqi insurgency.

What did the President think would happen when he invaded a country that never posed a threat to the United States and never wanted us there in the first place?

Instead of continuing down our current path, I believe we must pursue a national security strategy that I call SMART security, which is a sensible, multilateral American response to terrorism for the 21st century. I have also introduced legislation, H. Con. Res. 35, that would help us pursue a smarter strategy for rebuilding Iraq. Twenty-seven of my House colleagues have joined me in offering this important legislation.

Instead of financing billions of more dollars to continue a failed military occupation, under my plan, the United States would help secure Iraq by rebuilding schools so that children can learn, constructing new water processing plants so that this desert country does not face water shortages, and building new roads so that citizens can travel from one city to another.

Our assistance should not end there. If we want to be truly smart about how we rebuild Iraq, we also need to bring NGOs and humanitarian agencies into the country to help create a robust civil society and ensure that Iraq's economic infrastructure becomes fully viable.

It is time for us to support the Iraqi people by giving them the resources they need, and it is time to support our own troops by bringing them home.

#### HONORING LANCE CORPORAL FRED LEE MACIEL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Mr. Speaker, I rise today in honor of a young American marine from my Southeast Texas district, Marine Lance Corporal Fred Lee Maciel who died valiantly serving our Nation in Iraq. He was assigned to the Third Marine Division. Lance Corporal Maciel in his 20 years had already exhibited a lifetime of sacrifice and selflessness. In the deadliest event for American forces in Iraq since the start of the operations in March of 2003, he and 30 other servicemen were killed in combat when the helicopter in which they were traveling crashed in Al Anbar Province in Iraq.

Lance Corporal Maciel and all his brethren aboard this helicopter, including 6 other U.S. marines from Texas, were on their way to begin security preparations for the ultimately successful and historic Iraqi elections that I personally had the honor to witness several days later. Lance Corporal Maciel died so that freedom could live in the birth of this new democracy that we call Iraq.

This Lance Corporal was a native of Spring, Texas. He graduated from

Spring High School in 2003 and joined the United States Marine Corps that September. He is remembered as an athlete, a leader in the school's Naval Junior ROTC, and a role model for other students. Gloria Marshall, the principal of Spring High School, recalls Fred's participation in basketball and football as well as his rise through the ranks of the ROTC program to become a leader and an officer. She said, "Fred is greatly mourned at our school. The teachers and the students all mourn him. He was truly a fine, fine young man." Lance Corporal Maciel was scheduled to return home following the January 30 elections in Iraq and had plans to marry his fiancée, Jamie Hommel.

Last week when I spoke to Fred's mother, Mrs. Patsy Maciel, she told me that her son went to Iraq to protect Texans and Americans from terrorists. Under extremely grueling circumstances, Lance Corporal Maciel contributed to that very cause. He inspired his fellow marines with his courage, commitment, his character.

Fred's father, Fred Copenhaver, told me that his son had marveled at the thought of becoming a State trooper upon his eventual discharge from the United States Marine Corps. Now Fred pays tribute to his son with a free-standing wall proudly featuring photographs, notes and ribbons in honor of his son.

To date in support of Operation Iraqi Freedom, our United States Marine Corps alone has lost 48 Texans, 3 from the Houston area in combat-related casualties.

And while our military cannot replace individuals of unique character like Lance Corporal Fred Maciel, I believe that his service will provide a stirring example for the men and women who carry forward his unbendable fight against tyranny, terror, and treachery.

Country western singer Billy Ray Cyrus sang, following the first Gulf War, about America's valiant youth who readily insert themselves between us and international villains. He said, "All gave some and some gave all. And some stood tall for the red, white and blue, and some had to fall."

At his memorial service, Pastor Robert Hogan reminded Fred's family and friends and the hundreds of other people at the funeral that he had paid the price for freedom and thus had not died in vain. Pointing to the fruitful elections in Iraq that Sunday, Pastor Hogan said Fred was so loving and willing to give his life for his country and for causes he believed in.

Lance Corporal Maciel died in helping establish democracy in a land far, far away. You know, some causes are worth dying for. And liberty is one of those causes. Fred's brother Carlos echoed his brother's life was not wasted when he said he died for what he believed in.

We live in a culture sometimes where people do not believe in anything. And

so I believe that if today we could hear from Lance Corporal Maciel himself, a member of the once and always United States Marine Corps, as a member of the few and the proud, he would resonate the remainder of the refrain from Billy Ray Cyrus's *Some Gave All*: "And if you ever think of me, think of all your liberties and recall, yes recall some gave all."

Lance Corporal Maciel we will remember, we will forever remember your fight against these international outlaws.

Mr. Speaker, as we extend our prayers and our condolences to his parents, his relatives, his fellow students at Spring High School in Texas and his fiancée, may this American hero's devotion to his country continue to kindle our dreams and ambitions of a free people.

So Semper Fi, Lance Corporal Maciel, Semper Fi.

#### ORDER OF BUSINESS

Ms. BEAN. Mr. Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore (Mr. REHBERG). Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

#### PAYING TRIBUTE TO OUR TROOPS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Illinois (Ms. BEAN) is recognized for 5 minutes.

Ms. BEAN. Mr. Speaker, I rise today to pay tribute to our brave men and women in uniform serving around the world and here at home. Our Active-Duty personnel, Guard members and reservists constitute the best-trained and most dedicated fighting force the world has ever known.

They are our family members, our close friends and our neighbors, our teachers, physicians and small business owners. They have pledged to us their valued time, their honor, and their lives. Let us now take a moment to recognize them and remember their loss.

Mr. Speaker, since 2001, more than 36,000 of my fellow Illinoisans have served in Afghanistan and Iraq. Here in Washington, it is our job to make sure that they have not only the necessary training and equipment to complete their mission, but also fair pay, comprehensive benefits, and the best medical care available.

As we in Congress work to ensure that the men and women of our Armed Forces are properly equipped and trained, we must never forget the costly commitments made by so many of them to protect and defend the United States and our most valued ideals.

Finally, Mr. Speaker, I want to pay tribute to two service members from my district who have paid the ultimate price in service to their country. Marine Lance Corporal Sean Maher and

Army Staff Sergeant Donald Bernard Farmer were both recently killed in action in the Iraq theatre.

I ask my colleagues to join with me today in remembering Lance Corporal Maher and Staff Sergeant Farmer and all Americans who have stood and have fallen for our great Nation.

While the loss to their families is immeasurable, I can only hope that they take some comfort in knowing the thoughts and prayers of a grateful Nation are with them.

Today I can ask my colleagues to never forget the commitments we have asked of our service members and their unwavering dedication to America. Through the actions of this body, let us always strive to honor those who serve and sacrifice in the name of this great Nation.

#### PUBLICATION OF THE RULES OF THE COMMITTEE ON HOMELAND SECURITY, 109TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. COX) is recognized for 5 minutes.

Mr. COX. Mr. Speaker, in accordance with Clause 2 of Rule XI of the Rules of the House, I submit the Rules of Procedure for the Committee on Homeland Security for printing in the CONGRESSIONAL RECORD. On February 9, 2005, the Committee adopted these rules by a voice vote, with a quorum present.

#### COMMITTEE ON HOMELAND SECURITY COMMITTEE RULES

##### I. GENERAL PROVISIONS

A. Applicability of the Rules of the U.S. House of Representatives.—The Rules of the U.S. House of Representatives (the "House") are the rules of the Committee on Homeland Security (the "Committee") and its subcommittees insofar as applicable.

B. Applicability to Subcommittees.—Except where the terms "full Committee" and "subcommittee" are specifically referred to, the following rules shall apply to the Committee's subcommittees and their respective Chairmen and Ranking Minority Members to the same extent as they apply to the full Committee and its Chairman and Ranking Minority Member.

C. Appointments by the Chairman.—The Chairman of the Committee ("the Chairman") shall appoint a Member of the majority party to serve as Vice Chairman of the Committee. The Chairman shall appoint other Members of the majority party to serve as Chairmen of each of the subcommittees.

D. Referral of Bills by Chairman.—Except for bills or measures retained by the Chairman for full Committee consideration or discharged by the Chairman, every bill or other measure referred to the Committee shall be referred by the Chairman to the appropriate subcommittee within two weeks of receipt by the Committee for consideration in accordance with its jurisdiction. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdiction, the Chairman will refer the matter as he or she deems advisable. Bills, resolutions, and other matters referred to subcommittees may be reassigned or discharged by the Chairman when, in his or her sole judgment, the subcommittee is not able to complete its work or cannot reach agreement on the matter in a timely manner.

E. Recommendation of Conferees.—Whenever the Speaker of the House is to appoint a conference committee on a matter within the jurisdiction of the Committee, the Chairman shall recommend to the Speaker of the House conferees from the Committee. In making recommendations of minority Members as conferees, the Chairman shall do so with the concurrence of the Ranking Minority Member of the Committee.

F. Motions to Disagree.—The Chairman is directed to offer a motion under clause 1 of rule XXII of the Rules of the House whenever the Chairman considers it appropriate.

## II. MEETINGS AND HEARINGS

A. Regular Meeting Date.—The regular meeting date and time for the transaction of business of the Committee shall be at 10:00 a.m. on the first Wednesday that the House is in Session each month, unless otherwise directed by the Chairman.

B. Additional Meetings.—The Chairman may call and convene, as he or she considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purposes pursuant to the call of the Chairman.

C. Consideration.—Except in the case of a special meeting held under Clause 2(c)(2) of House Rule XI, the determination of the business to be considered at each meeting of the Committee shall be made by the Chairman.

D. Notice.—

1. Hearings.—The date, time, place and subject matter of any hearing of the Committee shall, except as provided in the Committee rules, be announced by notice at least one week in advance of the commencement of such hearing. The names of all witnesses scheduled to appear at such hearing shall be provided to Members no later than 48 hours prior to the commencement of such hearing. These notice requirements may be abridged or waived in extraordinary circumstances, as determined by the Chairman with the concurrence of the Ranking Minority Member.

2. Meetings.—The date, time, place and subject matter of any meeting, other than a hearing or a regularly scheduled meeting, shall be announced at least 36 hours in advance for a meeting taking place on a day the House is in session, and 72 hours in advance of a meeting taking place on a day the House is not in session, except in the case of a special meeting called under Clause 2(c)(2) of House Rule XI. These notice requirements may be abridged or waived in extraordinary circumstances, as determined by the Chairman in consultation with the Ranking Minority Member.

3. Publication.—The meeting announcement shall be published in the Daily Digest portion of the Congressional Record.

E. Open Meetings.—All meetings of the Committee shall be open to the public except when the Committee, in open session and with a majority present, determines by recorded vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or rule of the House, in accordance with Clause 2(g) or 2(k) of House Rule XI.

F. Quorum Requirements.—Two Members shall constitute a quorum for the purposes of receiving testimony and evidence at a duly noticed hearing or meeting. One-third of the Members of the Committee shall constitute a quorum for the transaction of business, except that a majority of the Committee shall constitute a quorum for ordering a report, entering executive session, releasing execu-

tive session material, issuing a subpoena, immunizing a witness, reporting contempt, or where otherwise required under the rules of the House.

G. Opening Statements.—At any meeting of the full Committee, the Chairman and Ranking Minority Member shall be entitled to present oral opening statements of five minutes each. Other Members may submit written opening statements for the record. In the case of a meeting of any subcommittee, the Chairmen and Ranking Minority Members of the subcommittee and the full Committee shall be entitled to present oral opening statements of five minutes each, and other Members may submit written opening statements for the record. At any hearing of the full Committee, the Chairman of the full Committee, and at any hearing of a subcommittee, the Chairman of that subcommittee, in his or her discretion and with the concurrence of the Ranking Minority Member of the full Committee or of that subcommittee, respectively, may permit additional opening statements by other Members of the full Committee or of that subcommittee at the hearing in question.

H. Questioning of Witnesses.—Committee questioning of witnesses shall be conducted by any Member of the Committee, as well as by such Committee staff as may be authorized by the Chairman or presiding Member to question such witnesses. Committee Members or authorized staff may question witnesses only when recognized by the Chairman for that purpose.

1. Time Limitation.—In the course of any hearing, Members shall be limited to five minutes on the initial round of questioning. No Member shall be recognized for a second opportunity to question a witness until each Member of the Committee who is present has been recognized for that purpose.

2. Order of Recognition.—In questioning witnesses, the Chairman and the Ranking Minority Member shall be recognized first, after which Members who are in attendance when the Chairman gavels the hearing to order will be recognized in the order of their seniority on the Committee, alternating between majority and minority Members. Members arriving after the commencement of a hearing shall be recognized after all Members present at the beginning of the hearing have been recognized, in the order of their appearance, alternating between majority and minority Members.

3. Alternative Questioning Procedure.—The Chairman, or the Committee by motion, may permit an equal number of majority and minority Members to question a witness for a specified, total period that is equal for each side and not longer than 30 minutes for each side. The Chairman, or the Committee by motion, may permit Committee staff of the majority and minority to question a witness for a specified, total period that is equal for each side and not longer than 30 minutes for each side.

I. Oath or Affirmation.—Whenever the full Committee or the Subcommittee on Management, Integration, and Oversight holds a hearing or meeting that the Chairman has designated as an investigatory hearing or meeting in order to take testimony or consider other evidence, the testimony of any person before such Committee or Subcommittee shall be given under oath or affirmation administered by the Chairman or his designee.

J. Statements by Witnesses—

1. Witnesses shall submit a prepared or written statement for the record of the proceedings (including, where practicable an electronic copy) with the Clerk of the Committee, and insofar as practicable and consistent with the notice given, shall do so no less than 48 hours in advance of the witness'

appearance before the Committee, unless such requirement is waived or otherwise modified by the Chairman in consultation with the Ranking Minority Member.

2. To the greatest extent practicable, the written testimony of each witness appearing in a non-governmental capacity shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two preceding fiscal years by the witness or by an entity represented by the witness.

K. Objections and Ruling.—Except as otherwise provided by the rules of the House, any objection raised by a witness shall be ruled upon by the Chairman or other presiding Member, and such ruling shall be the ruling of the Committee unless a Member of the Committee appeals the ruling of the chair and a majority of the Committee present fails to sustain the ruling of the chair.

L. Transcripts.—A transcript shall be made of the testimony of each witness appearing before the Committee during a Committee hearing. All hearings of the Committee which are open to the public shall be printed and made available.

M. Minority Witnesses.—Whenever a hearing is conducted by the Committee upon any measure or matter, the minority party Members on the Committee shall be entitled, upon request to the Chairman by a majority of those minority Members before the completion of such hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

N. Contempt Procedures.—No recommendation that a person be cited for contempt of Congress shall be forwarded to the House unless and until the Committee has, upon notice to all its Members, met and considered the alleged contempt. The person to be cited for contempt shall be afforded, upon notice of at least 72 hours, an opportunity to state why he or she should not be held in contempt, prior to a vote of all the Committee, a quorum being present, on the question whether to forward such recommendation to the House. Such statement shall be, in the discretion of the Chairman, either in writing or in person before the Committee.

O. The Five-Minute Rule.—The time any one Member may address the Committee on any bill, motion, or other matter under consideration by the Committee shall not exceed five minutes, and then only when the Member has been recognized by the Chairman, except that this time limit may be exceeded when permitted by unanimous consent.

P. Postponement of Vote.—The Chairman may postpone further proceedings when a record vote is ordered on the question of approving any measure or matter or adopting an amendment. The Chairman may resume proceedings on a postponed vote at any time, provided that all reasonable steps have been taken to notify Members of the resumption of such proceedings. When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

Q. Breaches of Decorum.—The Chairman may punish breaches of order and decorum, by censure and exclusion from the hearing; and the Committee may cite the offender to the House for contempt.

R. Access to Dais.—Access to the dais during and before a hearing, mark-up or other meeting of the Committee shall be limited to Members and staff of the Committee, and staff of Members of the Committee.

S. Cellular Telephones.—The ringing or conversational use of cellular telephones is prohibited on the Committee dais or in the Committee hearing room during a hearing, mark-up, or other meeting of the Committee.

T. Broadcasting.—Whenever any hearing or meeting conducted by the Committee is open to the public, the Committee shall permit that hearing or meeting to be covered by television broadcast, internet broadcast, print media, and still photography, or by any of such methods of coverage, subject to the provisions of the Legislative Reorganization Act of 1970 (Section 116(b)) and House Rule XI. Priority shall be given by the Committee to members of the Press Galleries.

### III. SUBPOENAS

A. Authorization.—The Committee, or any subcommittee, may authorize and issue a subpoena under clause 2(m)(2)(A) of Rule XI of the House, if authorized by a majority of the members of the Committee or subcommittee (as the case may be) voting, a quorum being present. The power to authorize and issue subpoenas is also delegated to the Chairman of the full Committee, in consultation with the Ranking Minority Member, as provided for under clause 2(m)(3)(A)(i) of Rule XI of the House of Representatives. Subpoenas shall be issued under the seal of the House and attested by the Clerk of the House, and may be served by any person designated by the Chairman. Subpoenas shall be issued under the Chairman's signature or that of a Member designated by the Committee.

B. Disclosure.—Provisions may be included in a subpoena, by concurrence of the Chairman and Ranking Minority Member, or by the Committee, to prevent the disclosure of Committee demands for information when deemed necessary for the security of information or the progress of an investigation, including but not limited to prohibiting the revelation by witnesses and their counsel of Committee inquiries.

C. Subpoena duces tecum.—A subpoena duces tecum may be issued whose return shall occur at a time and place other than that of a regularly scheduled meeting.

D. Requests for Investigations.—Requests for investigations, reports, and other assistance from any agency of the executive, legislative, and judicial branches of the federal government shall be made by the Chairman, upon consultation with the Ranking Minority Member, or by the Committee.

E. Affidavits and Depositions.—The Chairman, in consultation with the Ranking Member, or the Committee may authorize the taking of an affidavit or deposition with respect to any person who is subpoenaed under these rules but who is unable to appear in person to testify as a witness at any hearing or meeting.

### IV. SUBCOMMITTEES

A. Generally.—The Committee shall be organized to consist of five standing subcommittees with the following jurisdiction:

1. Subcommittee on Prevention of Nuclear and Biological Attack: Prevention of terrorist attacks on the United States involving nuclear and biological weapons, including the Department of Homeland Security's role in nuclear and biological counter-proliferation and detection of fissile materials, biological weapons, precursors, and production equipment; the Department of Homeland Security's role in detecting and interdicting commerce in and transit of nuclear and biological weapons, components, precursors, delivery systems, and production equipment; development and deployment of sensors to detect nuclear and biological weapons, components, precursors, and production equipment; inspections conducted domestically

and abroad to detect and interdict nuclear and biological weapons, components, precursors, delivery systems, and production equipment; nuclear and biological threat certification and characterization; preventative use of technology, including forensic analytic techniques, to attribute nuclear and biological weapons-related samples to their sources; border, port, and transportation security designed to prevent nuclear and biological attacks on the United States; integration of federal, state, and local efforts to prevent nuclear and biological attacks, including coordination of border security initiatives for this purpose; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

2. Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment: Intelligence and information sharing for the purpose of preventing, preparing for, and responding to potential terrorist attacks on the United States; the responsibility of the Department of Homeland Security for comprehensive, nationwide, terrorism-related threat, vulnerability, and risk analyses; the integration, analysis, and dissemination of homeland security information, including the Department of Homeland Security's participation in, and interaction with, other public and private sector entities for any of those purposes; communications of terrorism-related information by the federal government to State, local, and private sector entities; issuance of terrorism threat advisories and warnings (including administration of the Homeland Security Advisory System); liaison of the Department of Homeland Security with U.S. intelligence and law enforcement agencies; information gathering, analysis, and sharing by Department of Homeland Security entities; the role of intelligence in terrorism threat prioritization; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

3. Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity: Development of strategies to protect against terrorist attack against the United States; prioritizing risks through analytical tools and cost/benefit analyses; prioritizing investment in critical infrastructure protection across all sectors, including transportation (air, land, sea, and intermodal, both domestic and international); defeating terrorist efforts to inflict economic costs through threats and violence; mitigation of potential consequences of terrorist attacks on critical infrastructure, and related target hardening strategies; border, port, and transportation security; in the wake of an attack on one sector, ensuring the continuity of other sectors including critical government, business, health, financial, commercial, and social service functions; security of computer, telecommunications, information technology, industrial control systems, electronic infrastructure, and data systems; protecting government and private networks and computer systems from domestic and foreign attack; preventing potential injury to civilian populations and physical infrastructure resulting, directly or indirectly, from cyber attacks; with respect to each of the foregoing, assessing the impact of potential protective measures on the free flow of commerce and the promotion of economic growth; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

4. Subcommittee on Management, Integration, and Oversight: Oversight of Department of Homeland Security progress in implementing the management and organizational directives of the Homeland Security Act and other homeland security-related

mandates; Department of Homeland Security offices responsible for the provision of department-wide services, including the Under Secretary for Management, the Chief Information Officer, and the Chief Financial Officer; cross-directorate, Department-wide standardization and programmatic initiatives; investigations and reports by the Inspector General of the Department of Homeland Security; standardization and security of Department of Homeland Security communications systems and information technology infrastructure; harmonization and effectiveness of Department of Homeland Security budgeting, acquisition, procurement, personnel, and financial management systems; incentives and barriers to hiring that affect Department components; Department of Homeland Security-initiated internal reorganizations; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

5. Subcommittee on Emergency Preparedness, Science, and Technology: Preparedness for and collective response to terrorism, including federal support to first responders; terrorism-related incident management and response; consequence mitigation; Department of Homeland Security-administered homeland security grants to first responders; conduct and coordination of exercises and training relating to mitigating the effects of and responding to terrorist attacks (including nuclear, biological, radiological, and chemical attacks on civilian populations); federal government coordination of terrorism-related emergency preparedness and response with and among state and local governments, the private sector, and the public; research, development and deployment of technology for combating terrorism; adaptation of existing technologies to homeland security prevention priorities; coordination and enhancement of Department of Homeland Security interaction on science and technology matters with the private sector, federally funded research and development centers, educational institutions, the National Laboratories, and other scientific resources; Department of Homeland Security-based science and technology entities and initiatives; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

B. Powers and Duties of Subcommittees.—Except as otherwise directed by the Chairman of the full Committee, each subcommittee is authorized to meet, hold hearings, receive testimony, mark up legislation, and report to the Committee on all matters within its jurisdiction. Subcommittee chairmen shall set hearing and meeting dates only with the approval of the Chairman of the Committee.

C. Selection and Ratio of Subcommittee Members.—The Chairman and Ranking Member shall select their respective Members of each Subcommittee. The ratio of majority to minority Members shall be comparable to the ratio of majority to minority Members on the full Committee, except that each subcommittee shall have at least two more majority Members than minority Members.

D. Ex Officio Members.—The Chairman and the Ranking Minority Member of the Committee shall be ex officio members of all subcommittees, with full rights as a member of each subcommittee. They are authorized to vote on all matters that arise before any subcommittee, and may be counted for purposes of establishing a quorum in such subcommittees.

E. Special Voting Provision.—If a tie vote occurs in a subcommittee on the question of reporting any measure to the full Committee, the measure shall be placed on the agenda for full Committee consideration as

if it had been ordered reported by the subcommittee without recommendation.

#### V. COMMITTEE STAFF

A. Generally.—Members of the Committee staff shall work collegially, with discretion, and always with the best interests of the Nation's security foremost in mind. Committee business shall, whenever possible, take precedence over other official and personal business. For the purpose of these rules, Committee staff means the employees of the Committee, consultants engaged by the Committee, and any other person engaged by contract, or otherwise, to perform services for, or at the request of, the Committee, including detailees and fellows. All such persons shall be subject to the same requirements as employees of the Committee under this rule. To be employed or otherwise engaged by the Committee, an individual must be eligible to be considered for routine (non-limited) access to classified information.

B. Staff Assignments.—All Committee staff shall be staff of, and engaged by, the full Committee. Committee staff shall be either majority, minority, or joint. Majority staff shall be designated by and assigned to the Chairman. Minority staff shall be designated by and assigned to the Ranking Minority Member. Joint Committee staff shall be designated by the Chairman, in consultation with the Ranking Minority Member, and assigned to service of the full Committee. The Chairman shall certify Committee staff appointments, including appointments by the Ranking Minority Member and joint staff appointments, to the Clerk of the House in writing.

C. Joint Committee Staff.—The Chairman and Ranking Minority Member may agree to employ joint Committee staff, with duties as mutually agreed. Such joint Committee staff works for the Committee as a whole, under the supervision and direction of the Staff Director of the Committee.

D. Notification of Testimony.—No member of the Committee staff shall be employed by the Committee unless and until such person agrees in writing, as a condition of employment, to notify the Committee of any request for testimony, either while a member of the Committee staff or at any time thereafter, with respect to classified information which came into the staff member's possession by virtue of his or her position as a member of the Committee staff. Such classified information shall not be disclosed in response to such requests except as authorized by the Committee.

E. Divulgence of Information.—Prior to the public acknowledgement by the Chairman or the Committee of a decision to initiate an investigation of a particular person, entity, or subject, no member of the Committee staff shall divulge to any person any information, including non-classified information, which comes into his or her possession by virtue of his or her status as a member of the Committee staff, if such information may alert the subject of a Committee investigation to the existence, nature, or substance of such investigation, unless authorized to do so by the Chairman or the Committee.

#### VI. MEMBER AND STAFF TRAVEL

A. Approval of Travel.—Consistent with the primary expense resolution and such additional expense resolutions as may have been approved, travel to be reimbursed from funds set aside for the Committee for any Member or any Committee staff shall be paid only upon the prior authorization of the Chairman. Travel may be authorized by the Chairman for any Member and any Committee staff only in connection with official Committee business, such as the attendance of hearings conducted by the Committee and

meetings, conferences, site visits, and investigations that involve activities or subject matter under the general jurisdiction of the Committee.

1. Proposed Travel by Majority Party Members and Staff.—In the case of proposed travel by majority party Members or Committee staff, before such authorization is given, there shall be submitted to the Chairman in writing the following: (a) the purpose of the travel; (b) the dates during which the travel is to be made and the date or dates of the event for which the travel is being made; (c) the location of the event for which the travel is to be made; and (d) the names of Members and staff seeking authorization. On the basis of that information, the Chairman shall determine whether the proposed travel is for official Committee business, concerns subject matter within the jurisdiction of the Committee, and is not excessively costly in view of the Committee business proposed to be conducted.

2. Proposed Travel by Minority Party Members and Staff.—In the case of proposed travel by minority party Members or Committee staff, the Ranking Minority Member shall provide to the Chairman a written representation setting forth the information specified in items (a), (b), (c), and (d) of subparagraph (1) and his or her determination that such travel complies with the other requirements of subparagraph (1).

3. Foreign Travel.—All Committee Member and staff requests for Committee-funded foreign travel must be submitted to the Chairman, through the Chief Financial Officer of the Committee, not less than seven business days prior to the start of the travel. Within 60 days of the conclusion of any such foreign travel authorized under this rule, there shall be submitted to the Chairman a written report summarizing the information gained as a result of the travel in question, or other Committee objectives served by such travel.

#### VII. COMMITTEE RECORDS

A. Legislative Calendar.—The Clerk of the Committee shall maintain a printed calendar for the information of each Committee Member showing any procedural or legislative measures considered or scheduled to be considered by the Committee, and the status of such measures and such other matters as the Committee determines shall be included. The calendar shall be revised from time to time to show pertinent changes. A copy of such revisions shall be made available to each Member of the Committee upon request.

B. Members Right To Access.—Members of the Committee and of the House shall have access to all official Committee records. Access to Committee files shall be limited to examination within the Committee offices at reasonable times. Access to Committee records that contain classified information shall be provided in a manner consistent with section VIII of these rules.

C. Removal of Records.—Files and records of the Committee are not to be removed from the Committee offices. No Committee files or records that are not made publicly available shall be photocopied by any Member.

D. Executive Session Records.—Evidence or testimony received by the Committee in executive session shall not be released or made available to the public unless agreed to by the Committee. Members may examine the Committee's executive session records, but may not make copies of, or take personal notes from, such records.

E. Public Inspection.—The Committee shall keep a complete record of all Committee action including recorded votes. Information so available for public inspection shall include a description of each amendment, motion, order or other proposition and the name of each Member voting for and

each Member voting against each such amendment, motion, order, or proposition, as well as the names of those Members present but not voting. Such record shall be made available to the public at reasonable times within the Committee offices.

F. Separate and Distinct.—All Committee records and files must be kept separate and distinct from the office records of the Members serving as Chairman and Ranking Minority Member. Records and files of Members' personal offices shall not be considered records or files of the Committee.

G. Disposition of Committee Records.—At the conclusion of the 109th Congress, the records of the Committee shall be delivered to the Archivist of the United States in accordance with Rule VII of the Rules of the House.

H. Archived Records.—The records of the Committee at the National Archives and Records Administration shall be made available for public use in accordance with Rule VII of the Rules of the House. The Chairman shall notify the Ranking Minority Member of any decision, pursuant to clause 3 (b)(3) or clause 4 (b) of the Rule, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any member of the Committee. The Chairman shall consult with the Ranking Minority Member on any communication from the Archivist of the United States or the Clerk of the House concerning the disposition of noncurrent records pursuant to clause 3(b) of the Rule.

#### VIII. CLASSIFIED AND OTHER CONFIDENTIAL INFORMATION

A. Security Precautions.—Committee staff offices, including majority and minority offices, shall operate under strict security precautions administered by the Security Officer of the Committee. A security officer shall be on duty at all times during normal office hours. Sensitive or classified documents may be examined only in an appropriately secure manner. Removal from the secure area of the Committee's offices of such documents and other materials is prohibited except with leave of the Chairman for use in furtherance of Committee business, in accordance with applicable security procedures.

B. Temporary Custody of Executive Branch Material.—Executive branch documents or other materials containing classified information in any form that were not made part of the record of a Committee hearing, did not originate in the Committee or the House, and are not otherwise records of the Committee shall, while in the custody of the Committee, be segregated and maintained by the Committee in the same manner as Committee records that are classified. Such documents and other materials shall be returned to the Executive branch agency from which they were obtained at the earliest practicable time.

C. Access by Committee Staff.—Access to classified information supplied to the Committee shall be limited to Committee staff members with appropriate security clearance and a need-to-know, as determined by the Committee, and under the Committee's direction, the Majority and Minority Staff Directors.

D. Maintaining Confidentiality.—No Member of the Committee or Committee staff shall disclose, in whole or in part or by way of summary, to any person who is not a Member of the Committee or an authorized member of Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, any testimony given before the Committee in executive session. Classified information shall be handled in accordance with all applicable provisions of law

and consistent with the provisions of these rules.

E. Oath.—Before a Member or Committee staff member may have access to classified information, the following oath (or affirmation) shall be executed: “I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service on the Committee on Homeland Security, except as authorized by the Committee or the House of Representatives or in accordance with the Rules of such Committee or the Rules of the House.”

Copies of the executed oath (or affirmation) shall be retained by the Clerk as part of the records of the Committee.

F. Disciplinary Action.—The Chairman shall immediately consider disciplinary action in the event any member of the Committee staff fails to conform to the provisions of these rules governing the disclosure of classified or unclassified information. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the Committee staff, criminal referral to the Justice Department, and notification of the Speaker of the House. With respect to minority party staff, the Chairman shall consider such disciplinary action in consultation with the Ranking Minority Member.

#### IX. CHANGES TO COMMITTEE RULES

These rules may be modified, amended, or repealed by the Committee provided that a notice in writing of the proposed change has been given to each Member at least 48 hours prior to the meeting at which action thereon is to be taken.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

(Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. FLAKE) is recognized for 5 minutes.

(Mr. FLAKE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. DAVIS) is recognized for 5 minutes.

(Mr. DAVIS of Illinois addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

#### BLUE DOG'S 12-STEP PLAN TO COMMON SENSE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. CARDOZA) is recognized for 5 minutes.

Mr. CARDOZA. Mr. Speaker, I rise this evening to address our Nation's fiscal crisis. The Blue Dog Coalition, of which I am a proud member, has been a leading voice in Congress on fiscal responsibility for over a decade now.

We are dedicated to fighting our Nation's ballooning national debt with every last breath we take, and we will continue to lead the fight for fiscal

sanity until the Members of Congress from both sides of the aisle and the White House realize that we cannot continue to run our Nation deeper and deeper into the deficit hole.

What comes as common sense to American families and the business owners across this country does not come that easily to Members of this Congress and especially to members of the administration.

The Blue Dog Coalition 12-step budget reform plan that we introduce today injects just a little bit of common sense into the way that Congress and the White House does business. Our 12-step plan is the most comprehensive reform program to date and makes the attempted reforms in the President's budget look like child's play.

Here is our plan: Number 1. Require a balanced budget. The Blue Dogs believe a balanced budget amendment is the only way to ensure fiscal discipline in Congress.

□ 1530

Number two, do not let Congress buy on credit. The Blue Dogs want to restore the budget rules that Congress once lived by, including pay-as-you-go budgeting. Restoring PAYGO will put our Nation back on track to fiscal responsibility. We did it once before; we can do it again.

Number three, put a lid on spending. The Blue Dogs want strict spending caps to slow the growth of runaway government programs.

Number four, require agencies to put their fiscal houses in order. Sixteen of 23 major Federal agencies cannot complete a simple audit of their books. These agencies should be doing a better job of tracking the taxpayer dollars. The Blue Dogs propose a budget freeze for any agency who cannot balance its own books like Americans do their checkbooks.

Number five, make Congress tell taxpayers how they are spending the money. Many spending bills slide through Congress on a voice vote with no debate. The Blue Dogs propose that any bill calling for \$50 million in new spending must be put to a roll call vote right here on the floor of the House of Representatives.

Number six, set aside a rainy-day fund. Forty-five States already do this. If the Federal Government had done it when we had surpluses as the Blue Dogs suggested then, we would be a lot better off right now.

Number seven, do not hide votes to raise the debt limit. The current House rules allow for automatic increases in the debt limit. The Blue Dogs believe that increases in the public debt limit should not be hidden from public view. We want to make every increase in the debt limit subject to a rollcall vote.

Number eight, justify the spending for pork barrel projects. Since 1991 Congress has spent \$185 billion on pet projects for Members. While many of these projects are worthy of taxpayer support, some are not. The Blue Dogs

propose that Members of Congress provide written justifications for any earmarked spending for their pet projects.

Number nine, ensure that Congress reads bills that are voted on. What a novel concept. Over the past few years, some of the largest spending bills in history have been voted on only after a few hours of consideration. The Blue Dogs propose that Members of Congress be given 3 full days minimum to have the final text of legislation before there is a vote.

Number 10, require honest cost estimates for every bill that Congress comes to vote on. There are no requirements that the bills come with an honest estimate of their fiscal impact. The Blue Dogs propose that every bill that comes to the floor of the House be accompanied by a cost estimate from the nonpartisan Congressional Budget Office.

Number 11, make sure new bills fit the budget. The new legislation needs to live within the rules agreed upon by the annual budget resolution. The Blue Dogs propose that the Committee on the Budget strengthen its oversight rule by preparing budget-compliant statements for every bill that is considered by the full House.

Finally, number 12, make Congress do a better job of keeping tabs on government programs. Blue Dogs believe that Congress needs to carry out its oversight responsibilities. We propose that each committee submit at least two reports a year that provide an update on how each committee is fulfilling its oversight duties.

Our 12 steps are commonsense ideas that should transcend partisan differences. I hope that this Congress will adopt these measures as we attempt to restore fiscal responsibility for our Nation.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

#### PUBLICATION OF THE RULES OF THE COMMITTEE ON APPROPRIATIONS 109TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. LEWIS) is recognized for 5 minutes.

Mr. LEWIS of California. Mr. Speaker, pursuant to clause 2 of rule XI I submit for printing in the RECORD the Rules and Practices of the Committee on Appropriations as follows:

Practices:

COMMITTEE ON APPROPRIATIONS  
COMMITTEE RULES

EFFECTIVE FOR ONE HUNDRED NINTH CONGRESS  
APPROVED FEBRUARY 15, 2005

*Resolved.* That the rules and practices of the Committee on Appropriations, House of Representatives, in the One Hundred Eighth Congress, except as otherwise provided hereinafter, shall be and are hereby adopted as the rules and practices of the Committee on Appropriations in the One Hundred Ninth Congress.

The foregoing resolution adopts the following rules:

*Sec. 1: Power to Sit and Act*

For the purpose of carrying out any of its functions and duties under Rules X and XI of the Rules of the House of Representatives, the Committee or any of its subcommittees is authorized:

(a) To sit and act at such times and places within the United States whether the House is in session, has recessed, or has adjourned, and to hold such hearings; and

(b) To require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, reports, correspondence, memorandums, papers, and documents as it deems necessary. The Chairman, or any Member designated by the Chairman, may administer oaths to any witness.

(c) A subpoena may be authorized and issued by the Committee or its subcommittees under subsection 1(b) in the conduct of any investigation or activity or series of investigations or activities, only when authorized by a majority of the Members of the Committee voting, a majority being present. The power to authorize and issue subpoenas under subsection 1(b) may be delegated to the Chairman pursuant to such rules and under such limitations as the Committee may prescribe. Authorized subpoenas shall be signed by the Chairman or by any Member designated by the Committee.

(d) Compliance with any subpoena issued by the Committee or its subcommittees may be enforced only as authorized or directed by the House.

*Sec. 2: Subcommittees*

(a) The Majority Caucus of the Committee shall establish the number of subcommittees and shall determine the jurisdiction of each subcommittee.

(b) Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the Committee all matters referred to it.

(c) All legislation and other matters referred to the Committee shall be referred to the subcommittee of appropriate jurisdiction within two weeks unless, by majority vote of the Majority Members of the full Committee, consideration is to be by the full Committee.

(d) The Majority Caucus of the Committee shall determine an appropriate ratio of Majority to Minority Members for each subcommittee. The Chairman is authorized to negotiate that ratio with the Minority; Provided, however, That party representation in each subcommittee, including ex-officio members, shall be no less favorable to the Majority than the ratio for the full Committee.

(e) The Chairman and Ranking Minority Member of the full Committee are authorized to sit as a member of all subcommittees and to participate, including voting, in all its work.

*Sec. 3: Staffing*

(a) Committee Staff—The Chairman is authorized to appoint the staff of the Committee, and make adjustments in the job titles and compensation thereof subject to the

maximum rates and conditions established in Clause 9(c) of Rule X of the Rules of the House of Representatives. In addition, he is authorized, in his discretion, to arrange for their specialized training. The Chairman is also authorized to employ additional personnel as necessary.

(b) Assistants to Members—Each of the top twenty-one senior majority and minority Members of the full Committee may select and designate one staff member who shall serve at the pleasure of that Member. Such staff members shall be compensated at a rate, determined by the Member, not to exceed 75 per centum of the maximum established in Clause 9(c) of Rule X of the Rules of the House of Representatives; Provided, That Members designating staff members under this subsection must specifically certify by letter to the Chairman that the employees are needed and will be utilized for Committee work.

*Sec. 4: Committee Meetings*

(a) Regular Meeting Day—The regular meeting day of the Committee shall be the first Wednesday of each month while the House is in session, unless the Committee has met within the past 30 days or the Chairman considers a specific meeting unnecessary in the light of the requirements of the Committee business schedule.

(b) Additional and Special Meetings:

(1) The Chairman may call and convene, as he considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purpose pursuant to that call of the Chairman.

(2) If at least three Committee Members desire that a special meeting of the Committee be called by the Chairman, those Members may file in the Committee Offices a written request to the Chairman for that special meeting. Such request shall specify the measure or matter to be considered. Upon the filing of the request, the Committee Clerk shall notify the Chairman.

(3) If within three calendar days after the filing of the request, the Chairman does not call the requested special meeting to be held within seven calendar days after the filing of the request, a majority of the Committee Members may file in the Committee Offices their written notice that a special meeting will be held, specifying the date and hour of such meeting, and the measure or matter to be considered. The Committee shall meet on that date and hour.

(4) Immediately upon the filing of the notice, the Committee Clerk shall notify all Committee Members that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Only the measure or matter specified in that notice may be considered at the special meeting.

(c) Vice Chairman To Preside in Absence of Chairman—A member of the majority party on the Committee or subcommittee thereof designated by the Chairman of the full Committee shall be vice chairman of the Committee or subcommittee, as the case may be, and shall preside at any meeting during the temporary absence of the chairman. If the chairman and vice chairman of the Committee or subcommittee are not present at any meeting of the Committee or subcommittee, the ranking member of the majority party who is present shall preside at that meeting.

(d) Business Meetings:

(1) Each meeting for the transaction of business, including the markup of legislation, of the Committee and its subcommittees shall be open to the public except when

the Committee or its subcommittees, in open session and with a majority present, determines by roll call vote that all or part of the remainder of the meeting on that day shall be closed.

(2) No person other than Committee Members and such congressional staff and departmental representatives as they may authorize shall be present at any business or markup session which has been closed.

(e) Committee Records:

(1) The Committee shall keep a complete record of all Committee action, including a record of the votes on any question on which a roll call is demanded. The result of each roll call vote shall be available for inspection by the public during regular business hours in the Committee Offices. The information made available for public inspection shall include a description of the amendment, motion, or other proposition, and the name of each Member voting for and each Member voting against, and the names of those Members present but not voting.

(2) All hearings, records, data, charts, and files of the Committee shall be kept separate and distinct from the congressional office records of the Chairman of the Committee. Such records shall be the property of the House, and all Members of the House shall have access thereto.

(3) The records of the Committee at the National Archives and Records Administration shall be made available in accordance with Rule VII of the Rules of the House, except that the Committee authorizes use of any record to which Clause 3(b)(4) of Rule VII of the Rules of the House would otherwise apply after such record has been in existence for 20 years. The Chairman shall notify the Ranking Minority Member of any decision, pursuant to Clause 3(b)(3) or Clause 4(b) of Rule VII of the Rules of the House, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination upon the written request of any Member of the Committee.

*Sec. 5: Committee and Subcommittee Hearings*

(a) Overall Budget Hearings—Overall budget hearings by the Committee, including the hearing required by Section 242(c) of the Legislative Reorganization Act of 1970 and Clause 4(a)(1) of Rule X of the Rules of the House of Representatives shall be conducted in open session except when the Committee in open session and with a majority present, determines by roll call vote that the testimony to be taken at that hearing on that day may be related to a matter of national security; except that the Committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy furnished to each Member, Delegate, and the Resident Commissioner from Puerto Rico.

(b) Other Hearings:

(1) All other hearings conducted by the Committee or its subcommittees shall be open to the public except when the Committee or subcommittee in open session and with a majority present determines by roll call vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or Rule of the House of Representatives. Notwithstanding the requirements of the preceding sentence, a majority of those present at a hearing conducted by the Committee or any of its subcommittees, there being in attendance the number required under Section 5(c) of these Rules to be present for the purpose of taking testimony, (1) may vote to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would

endanger the national security or violate Clause 2(k)(5) of Rule XI of the Rules of the House of Representatives or (2) may vote to close the hearing, as provided in Clause 2(k)(5) of such Rule. No Member of the House of Representatives may be excluded from nonparticipatory attendance at any hearing of the Committee or its subcommittees unless the House of Representatives shall by majority vote authorize the Committee or any of its subcommittees, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members by the same procedures designated in this subsection for closing hearings to the public; Provided, however, That the Committee or its subcommittees may by the same procedure vote to close five subsequent days of hearings.

(2) Subcommittee chairmen shall coordinate the development of schedules for meetings or hearings after consultation with the Chairman and other subcommittee chairmen with a view toward avoiding simultaneous scheduling of Committee and subcommittee meetings or hearings.

(3) Each witness who is to appear before the Committee or any of its subcommittees as the case may be, insofar as is practicable, shall file in advance of such appearance, a written statement of the proposed testimony and shall limit the oral presentation at such appearance to a brief summary, except that this provision shall not apply to any witness appearing before the Committee in the overall budget hearings.

(4) Each witness appearing in a nongovernmental capacity before the Committee, or any of its subcommittees as the case may be, shall to the greatest extent practicable, submit a written statement including a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

(c) Quorum for Taking Testimony—The number of Members of the Committee which shall constitute a quorum for taking testimony and receiving evidence in any hearing of the Committee shall be two.

(d) Calling and Interrogation of Witnesses:

(1) The Minority Members of the Committee or its subcommittees shall be entitled, upon request to the Chairman or subcommittee chairman, by a majority of them before completion of any hearing, to call witnesses selected by the Minority to testify with respect to the matter under consideration during at least one day of hearings thereon.

(2) The Committee and its subcommittees shall observe the five-minute rule during the interrogation of witnesses until such time as each Member of the Committee or subcommittee who so desires has had an opportunity to question the witness.

(e) Broadcasting and Photographing of Committee Meetings and Hearings—Whenever a hearing or meeting conducted by the full Committee or any of its subcommittees is open to the public, those proceedings shall be open to coverage by television, radio, and still photography, as provided in Clause (4)(f) of Rule XI of the Rules of the House of Representatives. Neither the full Committee Chairman or Subcommittee Chairman shall limit the number of television or still cameras to fewer than two representatives from each medium.

(f) Subcommittee Meetings—No subcommittee shall sit while the House is reading an appropriation measure for amendment under the five-minute rule or while the Committee is in session.

(g) Public Notice of Committee Hearings—The Chairman of the Committee shall make public announcement of the date, place, and subject matter of any Committee or subcommittee hearing at least one week before the commencement of the hearing. If the Chairman of the Committee or subcommittee, with the concurrence of the ranking minority member of the Committee or respective subcommittee, determines there is good cause to begin the hearing sooner, or if the Committee or subcommittee so determines by majority vote, a quorum being present for the transaction of business, the Chairman or subcommittee chairman shall make the announcement at the earliest possible date. Any announcement made under this subparagraph shall be promptly published in the Daily Digest and promptly entered into the Committee scheduling service of the House Information Systems.

*Sec. 6: Procedures for Reporting Bills and Resolutions*

(a) Prompt Reporting Requirement:

(1) It shall be the duty of the Chairman to report, or cause to be reported promptly to the House any bill or resolution approved by the Committee and to take or cause to be taken necessary steps to bring the matter to a vote.

(2) In any event, a report on a bill or resolution which the Committee has approved shall be filed within seven calendar days (exclusive of days in which the House is not in session) after the day on which there has been filed with the Committee Clerk a written request, signed by a majority of Committee Members, for the reporting of such bill or resolution. Upon the filing of any such request, the Committee Clerk shall notify the Chairman immediately of the filing of the request. This subsection does not apply to the reporting of a regular appropriation bill or to the reporting of a resolution of inquiry addressed to the head of an executive department.

(b) Presence of Committee Majority—No measure or recommendation shall be reported from the Committee unless a majority of the Committee was actually present.

(c) Rollcall Votes—With respect to each rollcall vote on a motion to report any measure or matter of a public character, and on any amendment offered to the measure of matter, the total number of votes cast for and against, and the names of those Members voting for and against, shall be included in the Committee report on the measure or matter.

(d) Compliance With Congressional Budget Act—A Committee report on a bill or resolution which has been approved by the Committee shall include the statement required by section 308(a) of the Congressional Budget Act of 1974, separately set out and clearly identified, if the bill or resolution provides new budget authority.

(e) Constitutional Authority Statement—Each report of the committee on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the law proposed by the bill or joint resolution.

(f) Changes in Existing Law—Each Committee report on a general appropriation bill shall contain a concise statement describing fully the effect of any provision of the bill which directly or indirectly changes the application of existing law.

(g) Rescissions and Transfers—Each bill or resolution reported by the Committee shall include separate headings for rescissions and transfers of unexpended balances with all proposed rescissions and transfers listed therein. The report of the Committee accompanying such a bill or resolution shall in-

clude a separate section with respect to such rescissions or transfers.

(h) Listing of Unauthorized Appropriations—Each Committee report on a general appropriations bill shall contain a list of all appropriations contained in the bill for any expenditure not previously authorized by law (except for classified intelligence or national security programs, projects, or activities) along with a statement of the last year for which such expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures.

(i) Supplemental or Minority Views:

(1) If, at the time the Committee approves any measure or matter, any Committee Member gives notice of intention to file supplemental, minority, or additional views, the Member shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays) in which to file such views in writing and signed by the Member, with the Clerk of the Committee. All such views so filed shall be included in and shall be a part of the report filed by the Committee with respect to that measure or matter.

(2) The Committee report on that measure or matter shall be printed in a single volume which—

(i) shall include all supplemental, minority, or additional views which have been submitted by the time of the filing of the report, and

(ii) shall have on its cover a recital that any such supplemental, minority, or additional views are included as part of the report.

(3) Subsection (i)(1) of this section, above, does not preclude—

(i) the immediate filing or printing of a Committee report unless timely request for the opportunity to file supplemental, minority, or additional views has been made as provided by such subsection; or

(ii) the filing by the Committee of a supplemental report on a measure or matter which may be required for correction of any technical error in a previous report made by the Committee on that measure or matter.

(4) If, at the time a subcommittee approves any measure or matter for recommendation to the full Committee, any Member of that subcommittee who gives notice of intention to offer supplemental, minority, or additional views shall be entitled, insofar as is practicable and in accordance with the printing requirements as determined by the subcommittee, to include such views in the Committee Print with respect to that measure or matter.

(j) Availability of Reports—A copy of each bill, resolution, or report shall be made available to each Member of the Committee at least three calendar days (excluding Saturdays, Sundays, and legal holidays) in advance of the date on which the Committee is to consider each bill, resolution, or report; *Provided*, That this subsection may be waived by agreement between the Chairman and the Ranking Minority Member of the full Committee.

(k) Performance Goals and Objectives—Each Committee report shall contain a statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding.

(l) The Chairman is directed to offer a motion under clause 1 of rule XXII of the Rules of the House whenever the Chairman considers it appropriate.

*Sec. 7: Voting*

(a) No vote by any Member of the Committee or any of its subcommittees with respect to any measure or matter may be cast by proxy.

(b) The vote on any question before the Committee shall be taken by the yeas and nays on the demand of one-fifth of the Members present.

(c) The Chairman of the Committee and any of its subcommittees may—

(1) postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment;

(2) resume proceedings on a postponed question at any time after reasonable notice.

When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

#### Sec. 8: Studies and Examinations

The following procedure shall be applicable with respect to the conduct of studies and examinations of the organization and operation of Executive Agencies under authority contained in Section 202(b) of the Legislative Reorganization Act of 1946 and in Clause (3)(a) of Rule X of the Rules of the House of Representatives:

(a) The Chairman is authorized to appoint such staff and, in his discretion, arrange for the procurement of temporary services of consultants, as from time to time may be required.

(b) Studies and examinations will be initiated upon the written request of a subcommittee which shall be reasonably specific and definite in character, and shall be initiated only by a majority vote of the subcommittee, with the chairman of the subcommittee and the ranking minority member thereof participating as part of such majority vote. When so initiated such request shall be filed with the Clerk of the Committee for submission to the Chairman and the Ranking Minority Member and their approval shall be required to make the same effective. Notwithstanding any action taken on such request by the chairman and ranking minority member of the subcommittee, a request may be approved by a majority of the Committee.

(c) Any request approved as provided under subsection (b) shall be immediately turned over to the staff appointed for action.

(d) Any information obtained by such staff shall be reported to the chairman of the subcommittee requesting such study and examination and to the Chairman and Ranking Minority Member, shall be made available to the members of the subcommittee concerned, and shall not be released for publication until the subcommittee so determines.

(e) Any hearings or investigations which may be desired, aside from the regular hearings on appropriation items, when approved by the Committee, shall be conducted by the subcommittee having jurisdiction over the matter.

#### Sec. 9: Official Travel

(a) The chairman of a subcommittee shall approve requests for travel by subcommittee members and staff for official business within the jurisdiction of that subcommittee. The ranking minority member of a subcommittee shall concur in such travel requests by minority members of that subcommittee and the Ranking Minority Member shall concur in such travel requests for Minority Members of the Committee. Requests in writing covering the purpose, itinerary, and dates of proposed travel shall be submitted for final approval to the Chairman. Specific approval shall be required for each and every trip.

(b) The Chairman is authorized during the recess of the Congress to approve travel authorizations for Committee Members and staff, including travel outside the United States.

(c) As soon as practicable, the Chairman shall direct the head of each Government agency concerned not to honor requests of subcommittees, individual Members, or staff for travel, the direct or indirect expenses of which are to be defrayed from an executive appropriation, except upon request from the Chairman.

(d) In accordance with Clause 8 of Rule X of the Rules of the House of Representatives and section 502(b) of the Mutual Security Act of 1954, as amended, local currencies owned by the United States shall be available to Committee Members and staff engaged in carrying out their official duties outside the United States, its territories, or possessions. No Committee Member or staff member shall receive or expend local currencies for subsistence in any country at a rate in excess of the maximum per diem rate set forth in applicable Federal law.

(e) Travel Reports:

(1) Members or staff shall make a report to the Chairman on their travel, covering the purpose, results, itinerary, expenses, and other pertinent comments.

(2) With respect to travel outside the United States or its territories or possessions, the report shall include: (1) An itemized list showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, and any funds expended for any other official purpose; and (2) a summary in these categories of the total foreign currencies and/or appropriated funds expended. All such individual reports on foreign travel shall be filed with the Chairman no later than sixty days following completion of the travel for use in complying with reporting requirements in applicable Federal law, and shall be open for public inspection.

(3) Each Member or employee performing such travel shall be solely responsible for supporting the amounts reported by the Member or employee.

(4) No report or statement as to any trip shall be publicized making any recommendations in behalf of the Committee without the authorization of a majority of the Committee.

(f) Members and staff of the Committee performing authorized travel on official business pertaining to the jurisdiction of the Committee shall be governed by applicable laws or regulations of the House and of the Committee on House Administration pertaining to such travel, and as promulgated from time to time by the Chairman.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

### PUBLICATION OF THE RULES OF THE COMMITTEE ON SMALL BUSINESS, 109TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. MANZULLO) is recognized for 5 minutes.

Mr. MANZULLO. Mr. Speaker, pursuant to Clause 2a of House Rule XI, I submit our attached Rules for the 109th Congress into the CONGRESSIONAL RECORD for publication.

#### RULES AND PROCEDURES OF THE COMMITTEE ON SMALL BUSINESS

##### 1. GENERAL PROVISIONS

The Rules of the House of Representatives, and in particular the committee rules enu-

merated in rule XI, are the rules of the Committee on Small Business to the extent applicable and by this reference are incorporated. Each subcommittee of the Committee on Small Business (hereinafter referred to as the "committee") is a part of the committee and is subject to the authority and direction of the committee, and to its rules to the extent applicable.

##### 2. REFERRAL OF BILLS BY CHAIRMAN

Unless retained for consideration by the full committee, all legislation and other matters referred to the committee shall be referred by the Chairman to the subcommittee of appropriate jurisdiction within 2 weeks. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdictions, the Chairman shall refer the matter, as he may deem advisable.

##### 3. DATE OF MEETING

The regular meeting date of the committee shall be the second Thursday of every month when the House is in session. A regular meeting of the committee may be dispensed with if, in the judgment of the Chairman, there is no need for the meeting. Additional meetings may be called by the Chairman as he may deem necessary or at the request of a majority of the members of the committee in accordance with clause 2(c) of rule XI of the House.

At least 3 days notice of such an additional meeting shall be given unless the Chairman determines that there is good cause to call the meeting on less notice.

The determination of the business to be considered at each meeting shall be made by the Chairman subject to clause 2(c) of rule XI of the House.

A regularly scheduled meeting need not be held if there is no business to be considered or, upon at least 3 days notice, it may be set for a different date.

##### 4. ANNOUNCEMENT OF HEARINGS

Unless the Chairman, with the concurrence of the ranking minority member, or the committee by majority vote, determines that there is good cause to begin a hearing at an earlier date, public announcement shall be made of the date, place and subject matter of any hearing to be conducted by the committee at least 1 week before the commencement of that hearing.

After announcement of a hearing, the committee shall make available as soon as practicable to all Members of the Committee a tentative witness list and to the extent practicable a memorandum explaining the subject matter of the hearing (including relevant legislative reports and other necessary material). In addition, the Chairman shall make available as soon as practicable to the Members of the Committee any official reports from departments and agencies on the subject matter as they are received.

##### 5. MEETINGS AND HEARINGS OPEN TO THE PUBLIC

###### (A) Meetings

Each meeting of the committee or its subcommittees for the transaction of business, including the markup of legislation, shall be open to the public, including to radio, television and still photography coverage, except as provided by clause 4 of rule XI of the House, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be closed to the public because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade or incriminate any person or otherwise

would violate any law or rule of the House; Provided, however, that no person other than members of the committee, and such congressional staff and such executive branch representatives as they may authorize, shall be present in any business meeting or markup session which has been closed to the public.

*(B) Hearings*

Each hearing conducted by the committee or its subcommittees shall be open to the public, including radio, television and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the hearing on that day shall be closed to the public because disclosure of testimony, evidence or other matters to be considered would endanger the national security, would compromise sensitive law enforcement information, or would violate any law or rule of the House; Provided, however, that the committee or subcommittee may by the same procedure vote to close one subsequent day of hearings. Notwithstanding the requirements of the preceding sentence, a majority of those present, there being in attendance the requisite number required under the rules of the committee to be present for the purpose of taking testimony, (i) may vote to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger the national security, would compromise sensitive law enforcement information, or violate clause 2(k)(5) of rule XI of the House; or (ii) may vote to close the hearing, as provided in clause 2(k)(5) of rule XI of the House.

No member of the House may be excluded from non-participatory attendance at any hearing of the committee or any subcommittee, unless the House of Representatives shall by majority vote authorize the committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearing to members by the same procedures designated for closing hearings to the public.

6. WITNESSES

*(A) Statement of witnesses*

Each witness who is to appear before the committee or subcommittee shall file with the committee at least two business days before the day of his or her appearance, 100 copies of his or her written statement of proposed testimony. At least one copy of the statement of each witness shall be furnished directly to the ranking minority member. In addition, all witnesses shall be required to submit with their testimony a resume or other statement describing their education, employment, professional affiliations and other background information pertinent to their testimony unless waived by the Chairman.

Each witness shall also submit to the committee a copy of his or her final prepared statement in an electronic format no later than the day of the hearing unless waived by the Chairman.

The committee will provide public access to its printed materials, including the proposed testimony of witnesses, in electronic form.

*(B) Interrogation of witnesses*

Whenever any hearing is conducted by the committee or any subcommittee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the Chairman by a majority of those minority members, to call one witness selected by the minority to testify with respect to that measure or matter. The witness requested by the minority shall furnish

at least one copy of his or her statement and any supplementary materials directly to the Chairman within two business days before the day of his or her appearance unless waived by the Chairman.

Except when the committee adopts a motion pursuant to subdivisions (B) and (C) of clause 2(j)(2) of rule XI of the rules of the House, committee members may question witnesses only when they have been recognized by the Chairman for that purpose, and only for a 5-minute period until all members present have had an opportunity to question a witness. The 5-minute period for questioning a witness by any one member can be extended only with the unanimous consent of all members present. The Chairman, followed by the ranking minority member and all other members alternating between the majority and minority, shall initiate the questioning of witnesses in both the full and subcommittee hearings.

In recognizing members to question witnesses, the Chairman may take into consideration the ratio of majority and minority members present in such a manner as not to disadvantage the Members of either party. The Chairman, in consultation with the ranking minority member, may decrease the 5-minute time period in order to accommodate the needs of all the Members present and the schedule of the witnesses.

7. SUBPOENAS

A subpoena may be authorized and issued by the Chairman of the committee in the conduct of any investigation or series of investigations or activities to require the attendance and testimony of such witness and the production of such books, records, correspondence, memoranda, papers and documents, as he deems necessary. The ranking minority member shall be promptly notified of the issuance of such a subpoena.

Such a subpoena may be authorized and issued by the chairman of a subcommittee with the approval of a majority of the members of the subcommittee and the approval of the Chairman of the committee.

8. QUORUM

No measure or recommendation shall be reported unless a majority of the committee was actually present. For purposes of taking testimony or receiving evidence, two members shall constitute a quorum. For all other purposes, one-third of the members (or 11 Members) shall constitute a quorum.

9. AMENDMENTS DURING MARK-UP

Any amendment offered to any pending legislation before the committee must be made available in written form when requested by any member of the committee. If such amendment is not available in written form when requested, the Chairman shall allow an appropriate period for the provision thereof.

10. PROXIES

No vote by any member of the committee or any of its subcommittees with respect to any measure or matter may be cast by proxy.

11. POSTPONEMENT OF PROCEEDINGS

The Chairman in consultation with the Ranking Minority Member may postpone further proceedings when a record vote is ordered on the question of approving any measure or matter or adopting an amendment. The Chairman may resume proceedings on a postponed request at any time. In exercising postponement authority, the Chairman shall take all reasonable steps necessary to notify members on the resumption of proceedings on any postponed recorded vote. When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying propo-

sition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

12. NUMBER AND JURISDICTION OF SUBCOMMITTEES

There will be four subcommittees as follows:

Workforce, Empowerment and Government Programs (seven Republicans and six Democrats).

Regulatory Reform and Oversight (seven Republicans and six Democrats).

Rural Enterprises, Agriculture and Technology (six Republicans and five Democrats).

Tax, Finance and Exports (eight Republicans and seven Democrats).

During the 109th Congress, the Chairman and ranking minority member shall be ex officio members of all subcommittees, without vote, and the full committee shall have the authority to conduct oversight of all areas of the committee's jurisdiction.

In addition to conducting oversight in the area of their respective jurisdiction, each subcommittee shall have the following jurisdiction:

WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

Oversight and investigative authority over problems faced by small businesses in attracting and retaining a high quality workforce, including but not limited to wages and benefits such as health care.

Promotion of business growth and opportunities in economically depressed areas.

Oversight and investigative authority over regulations and other government policies that impact small businesses located in high risk communities.

Opportunities for minority, women, veteran and disabled-owned small businesses, including the SBA's 8(a) program.

General oversight of programs targeted toward urban relief.

Small Business Act, Small Business Investment Act, and related legislation.

Federal Government programs that are designed to assist small business generally.

Participation of small business in Federal procurement and Government contracts.

REGULATORY REFORM AND OVERSIGHT

Oversight and investigative authority over the regulatory and paperwork policies of all Federal departments and agencies.

Regulatory Flexibility Act.

Paperwork Reduction Act.

Competition policy generally.

Oversight and investigative authority generally, including novel issues of special concern to small business.

RURAL ENTERPRISES, AGRICULTURE AND TECHNOLOGY

Promotion of business growth and opportunities in rural areas.

Oversight and investigative authority over agricultural issues that impact small businesses.

General oversight of programs targeted toward farm relief.

Oversight and investigative authority for small business technology issues.

TAX, FINANCE AND EXPORTS

Tax policy and its impact on small business.

Access to capital and finance issues generally.

Export opportunities and oversight over Federal trade policy and promotion programs.

13. COMMITTEE STAFF

*(A) Majority staff*

The employees of the committee, except those assigned to the minority as provided below, shall be appointed and assigned, and

may be removed by the Chairman. The Chairman shall fix their remuneration, and they shall be under the general supervision and direction of the Chairman.

*(B) Minority staff*

The employees of the committee assigned to the minority shall be appointed and assigned, and their remuneration determined, as the ranking minority member of the committee shall determine.

*(C) Subcommittee staff*

The Chairman and ranking minority member of the full committee shall endeavor to ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the committee.

14. POWERS AND DUTIES OF SUBCOMMITTEES

Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the full committee on all matters referred to it. Subcommittee chairmen shall set meeting and hearing dates after consultation with the Chairman of the full committee. Meetings and hearings of subcommittees shall not be scheduled to occur simultaneously with meetings or hearings of the full committee.

15. SUBCOMMITTEE REPORTS

*(A) Investigative hearings*

The report of any subcommittee on a matter which was the topic of a study or investigation shall include a statement concerning the subject of the study or investigation, the findings and conclusions, and recommendations for corrective action, if any, together with such other material as the subcommittee deems appropriate.

Such proposed reports shall first be approved by a majority of the subcommittee members. After such approval has been secured, the proposed report shall be sent to each member of the full committee for his or her supplemental, minority, or additional views.

Any such views shall be in writing and signed by the member and filed with the clerk of the full committee within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of the transmittal of the proposed report to the members. Transmittal of the proposed report to members shall be by hand delivery to the members' offices.

After the expiration of such 5 calendar days, the report may be filed as a House report.

*(B) End of Congress*

Each subcommittee shall submit to the full committee, not later than November 15 of each even-numbered year, a report on the activities of the subcommittee during the Congress.

16. RECORDS

The committee shall keep a complete record of all actions, which shall include a record of the votes on any question on which a record vote is demanded. The result of each subcommittee record vote, together with a description of the matter voted upon, shall promptly be made available to the full committee. A record of such votes shall be made available for inspection by the public at reasonable times in the offices of the committee.

The committee shall keep a complete record of all committee and subcommittee activity which, in the case of any meeting or hearing transcript, shall include a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved.

The records of the committee at the National Archives and Records Administration shall be made available in accordance with rule VII of the Rules of the House. The Chairman of the full committee shall notify the ranking minority member of the full committee of any decision, pursuant to clause 3(b)(3) or clause 4(b) of rule VII of the House, to withhold a record otherwise available, and the matter shall be presented to the committee for a determination of the written request of any member of the committee.

17. ACCESS TO CLASSIFIED OR SENSITIVE INFORMATION

Access to classified or sensitive information supplied to the committee and attendance at closed sessions of the committee or its subcommittees shall be limited to members and necessary committee staff and stenographic reporters who have appropriate security clearance when the Chairman determines that such access or attendance is essential to the functioning of the committee.

The procedures to be followed in granting access to those hearings, records, data, charts, and files of the committee which involve classified information or information deemed to be sensitive shall be as follows:

(a) Only Members of the House of Representatives and specifically designated committee staff of the Committee on Small Business may have access to such information.

(b) Members who desire to read materials that are in the possession of the committee should notify the clerk of the committee.

(c) The clerk will maintain an accurate access log, which identifies the circumstances surrounding access to the information, without revealing the material examined.

(d) If the material desired to be reviewed is material which the committee or subcommittee deems to be sensitive enough to require special handling, before receiving access to such information, individuals will be required to sign an access information sheet acknowledging such access and that the individual has read and understands the procedures under which access is being granted.

(e) Material provided for review under this rule shall not be removed from a specified room within the committee offices.

(f) Individuals reviewing materials under this rule shall make certain that the materials are returned to the proper custodian.

(g) No reproductions or recordings may be made of any portion of such materials.

(h) The contents of such information shall not be divulged to any person in any way, form, shape, or manner, and shall not be discussed with any person who has not received the information in an authorized manner.

(i) When not being examined in the manner described herein, such information will be kept in secure safes or locked file cabinets in the committee offices.

(j) These procedures only address access to information the committee or a subcommittee deems to be sensitive enough to require special treatment.

(k) If a member of the House of Representatives believes that certain sensitive information should not be restricted as to dissemination or use, the member may petition the committee or subcommittee to so rule. With respect to information and materials provided to the committee by the executive branch, the classification of information and materials as determined by the executive branch shall prevail unless affirmatively changed by the committee or the subcommittee involved, after consultation with the appropriate executive agencies.

(l) Other materials in the possession of the committee are to be handled in accordance with the normal practices and traditions of the committee.

18. OTHER PROCEDURES

The Chairman of the full committee may establish such other procedures and take such actions as may be necessary to carry out the foregoing rules or to facilitate the effective operation of the committee.

The committee may not be committed to any expense whatever without the prior approval of the Chairman of the full committee.

19. AMENDMENTS TO COMMITTEE RULES

The rules of the committee may be modified, amended or repealed by a majority of the members, at a meeting specifically called for such purpose, but only if written notice of the proposed change has been provided to each such member at least 3 days before the time of the meeting.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

(Mr. EMANUEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. COOPER) is recognized for 5 minutes.

(Mr. COOPER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. DAVIS) is recognized for 5 minutes.

(Mr. DAVIS of Tennessee addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Hawaii (Mr. CASE) is recognized for 5 minutes.

(Mr. CASE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. COSTA) is recognized for 5 minutes.

(Mr. COSTA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. CUMMINGS) is recognized for 5 minutes.

(Mr. CUMMINGS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont (Mr. SANDERS) is recognized for 5 minutes.

(Mr. SANDERS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. BLUMENAUER) is recognized for 5 minutes.

(Mr. BLUMENAUER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

#### CLASS ACTION FAIRNESS ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Virginia (Mr. GOODLATTE) is recognized for 60 minutes as the designee of the majority leader.

Mr. GOODLATTE. Mr. Speaker, with the leave of the Speaker, we have the opportunity for the next hour to talk about major and historic legislation that will come before the Congress tomorrow.

The Senate has already passed legislation reforming class action lawsuit abuses, and now the House of Representatives will take it up and pass it and send it to the President of the United States.

Why is this such a historic occasion? Because abuses in class actions have been going on for many years. In fact, this House has worked for over 6 years to reform this difficulty and get to the point where we are today.

This legislation has passed the House of Representatives in each of the last three Congresses, but each time it was stymied in the United States Senate. The fact of the matter is that as the legislation progressed through the House, it got more and more votes, more and more bipartisan support, but never could get the threshold needed to pass in the other body. That has now changed. The Senate has passed legislation. It is a little different from what the House has passed in the past, but it holds the same core principle of reforming the abuses that are taking place today all across the country with class action lawsuits.

Some of these abuses are absolutely startling. In a nationwide class action lawsuit filed in Alabama against the Bank of Boston over mortgage escrow accounts, the class members won the case, but actually lost money. Under the settlement agreement, the 700,000 class members received small payments of just a couple of dollars or no money at all. About a year later they found out that anywhere from \$90 to \$140 had been deducted from their escrow accounts to pay their lawyers' legal fees of \$8.5 million. In other words, they had to pay more than they have received in settlement in order to satisfy multi-million dollar attorneys' fees.

When some of those class members sued their class action lawyers for malpractice, the lawyers countersued them for \$25 million saying their former clients were trying to harass them.

In another classic case, in the settlement of a class action lawsuit in Madison County, Illinois, against Thompson Consumer Electronics over alleged

faulty television sets, consumers were eligible for rebates on future purchases ranging in value from \$25 to \$50 if you spent more than \$100 on a Thompson Electronics product. So in other words, your settlements was a coupon to buy more of what was alleged to be defective in the first place.

How did the attorneys do? Well, the attorneys pocketed \$22 million in attorneys' fees. Some consumers reportedly walked away from the settlement altogether because the form was so complicated and the attorneys' fees were so high.

Recently, President Bush had down at the Commerce Department a forum to discuss these abuses, and one of these plaintiffs in this Thompson Electronics case was there. And after explaining what she had been through and the frustration of having a television set that did not work and being represented in a class action that did not work and winding up with a coupon to buy something she did not want to buy and seeing the attorneys get \$22 million in attorneys' fees, she said, Where is the justice in that?

The fact of the matter is there is no justice in our current class action system and it is, in effect, a racket.

How did we get to this point? Well, it has to do with a problem with our Federal laws. When our Founding Fathers wrote our Constitution, they very wisely provided for a Federal judiciary, a judiciary that could hear cases from different people in different States so that if in the founding of our country and ever since people felt that they might not be treated as fairly in a foreign jurisdiction in a court across the country somewhere far from where they have lived, they could have the opportunity to remove it to the Federal courts where they would in theory get more impartial treatment. This has persisted for the entire history of our country.

However, our Founding Fathers never heard of class action lawsuits. They are a 20th-century development and they are not without their merit. Class actions afford efficiencies to our courts because if people have an identical claim against one or more defendants, they can be consolidated into a class and brought before the court in an efficient manner and sometimes these cases involve hundreds of thousands or even millions of plaintiffs.

This legislation does nothing to affect the right of people to bring their class action lawsuits in State courts or Federal courts. But under the original establishment of our Federal courts, this diversity jurisdiction of the courts where you had parties from different States disputing each other, had to set a minimum amount before you could bring the case into courts; and over the years that number has risen to \$75,000 per plaintiff.

So in other words, if a person who lives in my State of Virginia has an injury in the State of Maryland across the Potomac River and they bring a

lawsuit in the State court, if that case involves more than \$75,000 in damages, the case can be removed to the Federal courts. However, when you apply that rule to class actions, it is the same. It is \$75,000, but it is per plaintiff. So if you have a million plaintiffs in a case, you have to multiply by one million times \$75,000 or show a \$75 billion case in order to get into Federal court. That is wrong, that a \$75,000 simple case that can easily be handled in the State courts would be entitled to the Federal courts and a \$75 billion case or say a \$70 billion case, less than the \$75 billion threshold there, cannot get into the Federal courts. It is wrong. It should be corrected, and this legislation does it in a very simple fashion.

Instead of \$75,000 per plaintiff, it is \$5 million, but 5 million for the entire class, all the claims added together. And this will mean that no longer will you have what is called "forum shopping" taking place where the plaintiffs' attorneys can choose the jurisdiction they want to bring the case in and keep it there.

Why is that significant? Because we have over 4,000 jurisdictions across the country, 4,000 different State jurisdictions, sometimes simple county governments, sometimes a collection of counties within a State, but 4,000 different places where you can bring a lawsuit. The plaintiffs attorneys, and there are only a small number of plaintiffs attorneys who handle these big class action lawsuits, the plaintiffs attorneys know which of those 4,000 jurisdictions, maybe a dozen, maybe two dozen of them, are overwhelmingly biased and favorable to the plaintiffs in a class action.

There was one State court county in Alabama a few years ago where more nationwide class action lawsuits were considered in that one county than the entire Federal judiciary of more than 600 district court judges combined. That is an abuse. Today the same thing takes place in other jurisdictions around the country, and this legislation would correct that. More importantly, it would treat all the parties fairly because not only could the defendants remove a case to Federal courts, but any or all of the plaintiffs in the case would also have the right to remove that case to Federal court under appropriate circumstances. The judge would have discretion, if the case looked like it really did principally involve people in one State, it would be kept in that State. But if it clearly is a nationwide class action lawsuit, it can be moved to Federal court where it will get more even-handed treatment and a more standard application of the law than these select jurisdictions that are getting all the class action cases today. That is what the problem is.

In addition to changing the jurisdictional requirements, there are also other things that will make it easier for plaintiffs to be treated fairly and defendants to be treated fairly as well. The Washington Post is one of more

than 100 newspapers around the country that have endorsed this legislation. And they said it so wisely a few years ago. They have been supporting this for a long time. We do not often on our side of the aisle cite *The Washington Post*, but this gives you an idea of how serious this problem is and how widespread the support for this problem is: "The clients get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix."

I say to my fellow Members of Congress, tomorrow we are going to do just that, and send a bill identical to the bill with the Senate to the President of the United States for signing into law to once and for all change this abusive extortion racket.

At this time it is my pleasure to recognize some other Members who have come down to speak on this issue. The first one is a new Member of the Congress who campaigned for election on legal reforms and who has identified this legislation as something that has great merit and we thank him for his early support, that is, the gentleman from the State of Kentucky (Mr. DAVIS).

□ 1545

Mr. DAVIS of Kentucky. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise today in support of the Class Action Fairness Act, and I speak as a former small business owner who has watched industry damage, jobs lost and costs increased across the entire spectrum of our economy here in the United States.

This legislation will put an end to trial attorneys' forum shopping to find a friendly court where settlement awards will line their pockets while hitting victims and consumers in their pocketbooks. For too long, we have watched State courts try to manage a crush of cases that have been increasing year by year and that should have never entered the courtroom. These frivolous lawsuits frankly are merchandising the process of justice, making a profit for the few for the expense of freedom, liberty, and justice for the majority of people in this country.

Overall, class-action filings in the United States have increased 1,000 percent in the last 10 years, yet there has been no increase in capacity in our courtrooms, and the net result of that is to assure that our courts are slowed. There is a tremendous backlog of legitimate cases that need to be heard, and we are doing our citizens a disservice, again while a few make a tremendous amount of money, and the alleged victims in these cases collect nothing in damages of any substance.

In some jurisdictions, class-action filings have increased 4,000 percent, virtually bringing the legal system to a halt in those areas. Let me repeat that because it is such a significant number. Class-action filings in some jurisdictions have increased 4,000 percent. Mr. Speaker, this has become a money

game, indeed a monopoly; ironically, very similar to the game of Monopoly.

If we look at the chart to my right, we can see how that game is played. Those who are profiteering in this business come up with an idea for a lawsuit. The next thing they do is find a plaintiff to play that off and then finally make allegations. In fact, legitimate rules of evidence need not apply here to simply get a forum to create press and public opinion. And finally, they are free from rule 23 to begin shopping these cases.

I have seen it in a variety of industries. I have seen it hurt our veterans in many ways while lining the pockets of just a few plaintiff attorneys in just a few States, and at the end of the day, business is impeded, jobs are going to be lost, and are lost in a wide variety of sectors.

Let us look at an example of a variety of these claims. Blockbuster, the video rental company, had a claim against it. \$9.25 million were paid to the attorneys who were bringing forth that case. What was the benefit of it to the alleged victims in that case? Free movie coupons. This is an injustice. It is a misuse of our legal system, and frankly, I believe that that money was unethically acquired by those attorneys utilizing the judicial system in an inappropriate way.

The Bank of Boston case, \$8.5 million were paid to attorneys, and indeed, some of the plaintiffs at the end of the settlement had to pay legal fees to cover the damages.

What happens to us? Our employers are hit. Our health insurance and liability policies in small business go up. Ultimately, plaintiffs' attorneys win and the consumer loses. Every Member of this body loses. The American citizen loses.

Unfortunately, the result of this class-action process, what it has become is it makes many of these settlements pass on to consumers considerable hikes in goods and services. It limits our access to markets, and frankly, it limits our ability to compete in the global economy for us, right now. This is bad for us as consumers and in business and for citizens.

The Class Action Fairness Act offers solutions to judicial loopholes that are abused by a minority of trial attorneys. It does not impede the filing of any legitimate claim nor does it prohibit legitimate claimants from seeking redress from a company that has harmed them. Let me make it clear. We are not preventing anybody from having a right to redress for legitimate damages. We are simply preventing a scourge that is hurting our Nation and our economy now.

The Class Action Fairness Act allows Federal courts to hear cases that involve true interstate issues while preserving the State courts for true local issues, which is as the founders built it into the Constitution.

This is a good bill. Mr. Speaker, I am proud to support it.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman. We are also joined by another leader for legal reforms, the gentleman from Florida (Mr. KELLER), who has been very supportive of this class-action legislation for several years now, and we thank him for his leadership on the issue and I am pleased to yield to him.

Mr. KELLER. Mr. Speaker, I thank the gentleman from Virginia for yielding. Our colleagues in Congress owe the gentleman from Virginia (Mr. GOODLATTE) a great debt of gratitude for successfully and persistently pursuing this legislation for a great number of years, and tomorrow he will finally put the ball in the end zone, and he is to be congratulated.

Mr. Speaker, I rise today in strong support of this class-action reform legislation.

The bottom line is that class-action reform is badly needed. Currently, crafty lawyers are able to game the system by filing large, nationwide class-action suits in certain preferred State courts like Madison County, Illinois, where judges are quick to certify class actions and quick to approve settlements which reward attorneys with millions of dollars but give their clients worthless coupons.

Speaking of Madison County, let us look at this chart here, and as we can see, Madison County, Illinois, which by the way has been called the number one judicial hellhole in the United States, there were 77 class-action lawsuits filed in 2002 and 106 class-action lawsuits filed in 2003. Now, the movie "Bridges of Madison County" was a love story. The "Judges of Madison County" would be a horror flick.

Unfortunately, all too often it is the lawyers who drive these cases and not the individuals who are allegedly injured. For example, in a suit against Blockbuster for late fees, the attorneys received \$9.25 million for themselves while their clients got a coupon for a \$1 discount on their next video rental.

Similarly, in a lawsuit against the company who makes Cheerios, the attorneys received \$2 million for themselves, while the plaintiffs received a coupon for a free box of Cheerios.

In a nutshell, these out of control class-action lawsuits are killing jobs, hurting small business people who cannot afford to defend themselves and hurting consumers who have to pay a larger amount for goods and services.

This legislation provides much-needed reform in two key areas. First, it eliminates much of the forum shopping by requiring that most of these nationwide class-action claims be filed in Federal court.

Second, it cracks down on these coupon-based, class-action settlements by requiring that attorney-fee awards be based either on the value of the coupons actually redeemed or by the hours actually billed by the attorney in prosecuting the case.

Mr. Speaker, this legislation should comfortably pass the U.S. House of

Representatives tomorrow. Last week, this exact bill received 72 votes, broad bipartisan support, in the U.S. Senate, and last year we passed a very similar class-action reform bill in the U.S. House with 253 votes.

I urge my colleagues to vote yes on this class-action reform legislation. It is about justice. It is about common sense and it is about time.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman.

One of the issues that the critics of this legislation argue is that it would undermine federalism principles by removing to Federal courts cases that should be decided by the State courts. Well, that is exactly the opposite of what is going on here. These critics are wrong.

The Class Action Fairness Act restores, rather than undermines, federalism principles. Why is that? Because, as I noted earlier, the fact of the matter is that these cases involve plaintiffs from often all 50 jurisdictions, and when the case is brought in one State court, in one county in that State, and that judge then makes a decision, that judge is deciding the law, not just for the State of Illinois, if you happen to be in Madison County, but he or she is deciding that case for all 50 States, and that is something that our Constitution intends be available to people to have decided not in one particular State court jurisdiction but in our Federal courts. That is one of the principal reasons why our Federal courts were established, and it is in those courts that these types of cases should be heard, but under the current rules they cannot be.

So what happens in Madison County, Illinois, as this chart shows, affects the whole country. The overwhelming majority of class actions filed in Madison County are nationwide lawsuits in which 99 percent of the class members live outside of the county. As a result, decisions reached in Madison County's courts affect consumers all over the country, and the county's elected judges effectively set national policies on important commercial issues.

So, in terms of restoring States rights, that is exactly what this legislation does. It makes sure that the rights of all 50 States are protected in the judicial proceedings related to class-action lawsuits and that one State does not have the opportunity to establish policy that directly affects other States.

Let me give my colleagues another example of that. Several years ago, State Farm Insurance Company was sued because they were requiring their adjusters in automobile cases to calculate the adjustments using what are called after-market parts. After-market parts are not used parts. They are new parts, but made by companies other than the original manufacturer of the automobile. There is nothing wrong with the quality of the parts, but they are often less expensive because they are manufactured in a com-

petitive environment where anybody can make these parts. Therefore, the price is generally lower. And the reason why State Farm was doing that was in part because it is good policy to save money for your insureds and keep your insureds premiums low, but also because many of the insurance commissioners of the 50 States also encouraged or, as in the case of Massachusetts, even required the use of after-market parts wherever possible.

Well, this suit was brought, alleging that that was wrong, and State Farm was put in a position of being in a court in Illinois in which they were going to have the decisions of the 50 State insurance commissioners, none of whom had any problem with this policy, overturned by one court judge who was not even experienced in terms of handling insurance policies like the insurance commissioners are that do it day in and day out every day, but one judge could overturn the policies of the other 50 States. So that, indeed, is a reason for concern.

What happened? State Farm decided to go to court, to go to trial in that case and they lost. That jury and that judge found a \$1.3 billion liability for something that 50 State insurance commissioners said was a perfectly legitimate thing to do, that was actually saving consumers money, but now, because they could not remove the case to Federal court, they got stuck with a \$1.3 billion judgment.

Can my colleagues imagine the effect that has on the company's ability to borrow money on the value of the stock of the shareholders of a company? It has a devastating impact. That case is still under appeal.

Other companies see that and they know that when they get into these particular hand-picked jurisdictions where the judges and juries are known to be biased in favor of the plaintiff, in virtually every instance they know that when you get brought into those courts and you cannot remove the case to Federal court, where they will get fairer treatment, they better settle up. That is why we get some of these abusive cases like this one I want to bring to my colleagues' attention.

□ 1600

This one involved Chase Manhattan Bank. Chase Manhattan Bank was sued, and they settled the case rather than go to court and risk that. Well, what do you suppose the plaintiffs got in that settlement? This is an actual copy of one of those settlements. Thirty cents. That is what each plaintiff got in the case. What did the plaintiffs' attorneys get? They got \$4 million in attorneys' fees. But the people they represented got 33 cents each.

There was a catch, though. That was back when postage cost 34 cents and you had to use a 34 cent postage stamp to mail in your acceptance of the 33 cent settlement, for a net loss of one cent. How ridiculous can you get.

It has an impact on other insurance companies, too. A few years ago, I

found I had been made a plaintiff in a case brought in Santa Fe, New Mexico, against Massachusetts Mutual Life Insurance Company. What was it alleged Massachusetts Mutual had done wrong? Well, when you get your premium, your bill, from Massachusetts Mutual, you can pay it on a monthly, quarterly, or annual basis. If you pay it on a monthly basis, you pay a little more than on a quarterly basis, and that is a little bit more than on an annual basis. Why? Because if you pay on an annual basis, it costs them a lot less money to send out one bill than to send out 12 bills a year, and they have the opportunity to get that money sooner invested. So it is a little less expensive to them, and they pass that savings along to the consumer.

The plaintiff in this case and their attorney said they should have to spell out exactly what the difference in savings is rather than simply look at the bill and see that these payments are 12 times what there is and that that is a little more. They said they had to make a disclosure under laws that are not even supposed to apply to insurance companies.

Well, they went ahead and settled that case. Why? I asked them. They said because they did not want to get in the same situation that State Farm Insurance Company found itself in with a \$1.3 million lawsuit. What was the agreed-upon settlement they sent to the judge in that Santa Fe, New Mexico, court? Well, it provided for \$13 million in attorneys' fees, \$5 million up front, \$5 million over a period of time, and a nice \$3 million universal life insurance policy for the plaintiffs' attorneys. Is that not nice?

Now, what did the plaintiffs get? The plaintiffs, all the plaintiffs got a promise that Massachusetts Mutual would not do this again. Now there is a new settlement proposed because that one actually was withdrawn when they realized how embarrassing it was for the plaintiffs' attorneys to get \$13 million in fees and the plaintiffs would simply get a promise for nothing. Now they have changed it so the plaintiffs might get as much as \$50 off on their policy. The plaintiffs' attorneys would still get the massive 8-digit settlement amount in the multimillions of dollars.

That is wrong. And it is just one more clear example of evidence why this is an extortion racket. Here are some more of what we call the class action wheel of fortune.

If you are a company, or if you work for a company that gets caught up in the class action wheel of fortune, watch out, because it can affect your job, it can affect the success of your company and get you tied up in these multimillion dollar cases where there really is little or no damage; or, even if there is, like there was in the Thompson Electronics case, where the television sets were not working, the attorneys got \$22 million and the plaintiffs got a coupon, a \$50 coupon or a \$25 coupon to buy more of the same thing

they were not happy about in the first place.

Now, let us look at the class action wheel of fortune. Kay Bee Toys. The lawyers spin the wheel and get \$1 million. The consumers get 30 percent off on selected products for 1 week. One week to go to the store and use your coupon to buy certain selected products. Maybe if you are unhappy with Kay Bee Toys in the first place you do not want to go back to settle with them. But that is okay, that is what you get, and the lawyers get a million.

Poland Spring Water, \$1.35 million for the lawyers, and the consumers get a coupon for more water.

Ameritech, \$16 million for the lawyers. The consumers? A \$5 phone card.

Premier Cruise Lines, the lawyers got \$887,000. The consumers, \$30 to \$40 cruise coupons. If you were not happy with your cruise and were part of this lawsuit, the lawyers got almost \$1 million and you got a \$30 to \$40 coupon for future use on a cruise.

How about computer monitor litigation involving several companies. The lawyers got \$6 million and the consumers got a \$13 rebate on future product purchases.

Register.com, the lawyers got \$642,500 and the consumers \$5 coupons.

This kind of abuse is what this legislation is designed to correct. It is time to end the class action wheel of fortune and benefit all consumers in America who do not seek companies treated in this fashion and lawyers lining their pockets with excessive attorneys' fees because they have an extortion situation or the defendant in the case knows that if they do not pay those big attorneys' fees and get away with giving a coupon or something to the plaintiffs themselves, they could go to court and wind up with a much larger judgment because they are in an unfair, hostile court, just like State Farm found itself in.

We are going to change that so that people, when they see this situation, both the plaintiffs who find themselves made a party to a case and the defendants, can remove that case to Federal court. They will still have a right to bring the class action, but it will be examined and dealt with under more standard rules and in a fairer and more impartial judiciary.

We have more examples. This is the apple juice example. As this chart shows, in the settlement of a class action lawsuit alleging that Coca Cola improperly added sweeteners to apple juice, it was the lawyers who got a sweet deal: \$1.5 million in fees and costs. Unfortunately, class members came up empty again, receiving 50-cent coupons but no cash.

Crayola Crayons. Another favorite American brand. In the settlement of a class action lawsuit over alleged improper manufacturing of Crayola Crayons, consumers received 75-cent coupons to buy more of the crayons, while their lawyers pocketed \$600,000 in attorneys' fees.

Then we have the famous golf ball case. In the settlement of a class action lawsuit over the terms of a promotion for Pinnacle golf balls, the manufacturer paid \$100,000 in attorneys' fees and no cash to class members, who received three free golf balls.

Well, thankfully, people are beginning to recognize this abuse. Newspapers all across the country, newspapers whose editorial boards reflect widely different ideological viewpoints on many issues have found common ground on the need to adopt the Class Action Fairness Act. More than 100 editorials so far support the legislation.

I earlier cited The Washington Post. They also had this to say about it: "No area of U.S. civil justice cries out more urgently for reform than the high-stakes extortion racket of class actions, in which truly crazy rules permit trial lawyers to cash in at the expense of businesses. Passing this bill would be an important start to rationalizing a system that is out of control."

The Chicago Tribune said that the Class Action Fairness Act would "substantially end the practice of forum shopping, stop seeking a home in State courts that are deemed most likely to produce juicy settlements. This would go a long way to halt the worst class action abuses. It should be the law." And very soon after tomorrow, it will be the law.

News Day, a Long Island newspaper, said: "In a deal that should cement class action lawsuit reform, three Democratic Senators have now signaled support for a bill. The tweaks they won made a good bill better. Class action lawsuits are ripe for reform. The Senate bill would curtail abuses by moving the largest nationwide class actions into Federal courts and toughening judicial scrutiny of settlements. The changes Democrats won will help ensure that largely local cases remain in State courts. Congress should enact this needed reform."

The Orlando Sentinel said: "The Senate's proposal is worthy of becoming law."

The Providence Journal, from Rhode Island: "The Senate should pass a long overdue reform to curb abuses in class action lawsuits. Class action suits involving interstate commerce, which is implied by having plaintiffs in more than one State, clearly belong in Federal court. The consumers should no longer have to bear the onerous costs of the practice of venue shopping."

Spokesman Review, from Washington State: "The Class Action Fairness Act would restore common sense to a valid and needed legal procedure."

The Hartford Courant: "After 5 years of trying, Congress appears ready to curtail the worst abuses. Legislators have debated the issue long enough. There is no good reason to wait another year to adopt this important reform."

They said that last August. They had to wait another year. Let us hope they do not have to wait any longer than to-

morrow when we will have a big bipartisan vote in support of this reform.

Earlier, I think one of my colleagues mentioned the Blockbuster case. That is the deal where in the settlement of a class action lawsuit filed in Texas against Blockbuster Video over late fees, currently on appeal to the Texas Supreme Court, the plaintiffs' lawyers will receive \$9.25 million in fees and expenses and the class members will receive two coupons for movie rentals and a \$1-off coupon.

While the lawyers made enough money to produce their own movie, Blockbuster customers could not even use their coupons to buy a bag of popcorn, because their coupons only covered nonfood items. The settlement allows Blockbuster to continue its practice of charging customers for a new rental period when they return a tape late. Blockbuster later changed that policy, but they should not be put in a position of being in a hostile court where attorneys get a \$9.25 million settlement, and all they do is antagonize their consumers by giving them coupons.

In State court class actions, the lawyers take the money. The Bank of Boston case. The lawyers, \$8.5 million. The plaintiffs actually lost money. The Blockbuster case. The lawyers, \$9.25 million. The plaintiffs, \$1 off the next movie. The Coca Cola case. The lawyers, \$1.5 million and the plaintiffs, 50-cent coupons.

And how about Cheerios? A honey of a deal if you are an attorney. As part of a settlement of a class action lawsuit in Cook County, Illinois, against the manufacturer of Cheerios, the company put coupons for a free box of cereal in the newspapers, but it was the plaintiffs' lawyers who got the prize at the bottom of the cereal box. They milked the company for \$2 million in fees, an estimated \$1,200 per hour for their legal services. For these class action attorneys, Cheerios truly proved to be a "honey of an O."

In the case involving a lawsuit filed in California, more than 50 well-known computer manufacturers and distributors were accused of misrepresenting the screen size of their computer monitors. The nationwide class of an estimated 40 million consumers received an offer of a \$13 rebate on new computers. That is great. You have a computer screen that probably does not bother most people that the size of the computer screen was a little different than was represented to them, but if they want to go out and buy a whole new computer, get a new screen, the size they might want, they get a \$13 rebate. How do you suppose the attorneys did? Well, they got \$6 million in legal fees.

In a recent class action lawsuit in Cane County, Illinois, against Poland Spring, the class members claimed that the company's bottled water was not pure and was not from a spring. Under the settlement, the consumers received coupons for a discount. On

what? More Poland Spring water. Poland Spring admitted no wrongdoing, and it is not changing anything about the way it bottles or markets its waters. So what was that worth to all those plaintiffs, who were represented by the attorneys in that case, who got the opportunity to get a coupon for more water? Well, those lawyers who did that good work, they got \$1.3 million in attorneys' fees.

How about this one, where the lawyers sail away with fees and the consumers get coupons. In a class action lawsuit filed in Florida against Premier Cruise Lines, consumers allege they were charged for port charges higher than Premier actually paid. Under the settlement, the class members received coupons for a \$30 to \$40 discount on another cruise line, because Premier had since gone out of business.

Imagine that. A many-thousands-of-dollars cruise, and you can get a \$30 or \$40 discount if you use this coupon. What do you suppose the lawyers got? They got nearly \$900,000 in attorneys' fees. While the lawyers made off with all the money, another cruise line gained a promotional opportunity.

The lawyers receive \$1 million and sell out their class in the Cook County, Illinois, case against Kay Bee Toys over alleged deceptive pricing practices. The toy company paid attorneys and fees costing \$1 million, but no cash to the class members. As part of the settlement, the store held a 1-week, unadvertised 30-percent-off sale on selected products.

My colleagues, this is indeed an abuse.

In addition, we want to mention something that helps these consumers in these cases. These coupon settlements will get much closer scrutiny after this law takes effect.

□ 1615

The bill provides a number of new protections for plaintiff class members, what you might call a consumer bill of rights, including greater judicial scrutiny for settlements that provide class members only coupons as relief for their injuries. The bill also bars the approval of settlements in which class members suffer a net loss. In addition, the bill includes provisions that protect consumers from being disadvantaged by living far away from the courthouse.

These additional consumer protections will ensure that class-action lawsuits benefit the consumers they are intended to compensate. This legislation does not limit the ability of anyone to file a class-action lawsuit. It does not change anyone's right to recovery. It simply closes the loophole allowing Federal courts to hear big lawsuits involving truly interstate cases, while ensuring that purely local controversies remain in State courts.

This is exactly what the framers of the Constitution had in mind when they established Federal diversity ju-

risdiction. It has taken us more than 200 years but it is now time to make clear that these devices that the framers of the Constitution did not know about, but, certainly if they did, would be very concerned about, now would be entitled to be heard in the court best suited to decide these complicated, multistate, multiplaintiff, sometimes millions of plaintiff cases, sometimes many defendants in the case.

Mr. Speaker, there are more abuses of class-action lawsuits. I think we have covered a great many of them. I think we have made plain that this is a situation deserving of repair by the Congress. In fact, I have been working on this legislation for over 6 years and it is long overdue. These abuses keep piling up. Each time we bring the legislation up, we have more and more of these examples.

It is long overdue that we finally have the opportunity to correct this problem. It is one that has a very simple correction. End the abusive forum shopping by a handful of lawyers who specialize in these cases and know the handful of jurisdictions where they are going to get this kind of spectacular treatment on one side and unfair treatment on the other side, and let us go to what our judicial system is supposed to be all about; and that is fair treatment, equal application of the laws and standards that are imposed to make sure that these kinds of abusive cases are heard in fair courts, so that businesses do not feel like they are forced to deal with a situation where they have to settle the case because they know they are in a jurisdiction that is going to be unfair to them and do not want to wind up in the same situation that State Farm Insurance Company found itself in several years ago, and is still in, because of the slow time it takes to handle an appeal through the courts.

In recent years State courts have been flooded with class actions. As a result of the adoption of different class-action certification standards in the various States, the same class might be certifiable in one State and not another, or certifiable in State court but not in Federal court. This creates the potential for abuse of the class-action device, particularly when the case involves parties from multiple States or requires the application of the laws of many States.

For example, some State courts routinely certify classes before the defendant is even served with a complaint and given a chance to defend itself. Other State courts employ very lax class-action treatment certification criteria, rendering virtually any controversy subject to class-action treatment.

There are instances where a State court in order to certify a class has determined that the law of that State applies to all claims, including those of purported class members who live in other States. This has the effect of making the law of that State applica-

ble nationwide. Where is the State's rights in that? Where are the principles of federalism in that, where one State court judge can tell the other 49 States what the law should be in their States? That is not what is intended and that is why our Founding Fathers intended to have Federal courts handle cases just like these.

The existence of State courts that broadly apply class certification rules encourages plaintiffs to forum shop for the court that is most likely to certify a purported class. Believe me, they do just that. Because most State courts are going to do a good job handling class actions, but because the system is designed the way it is, those attorneys will bring those cases to just a handful, a dozen or two dozen jurisdictions around the country, and that is what creates the unfairness and that is why the Federal courts need to be available as a forum to decide these cases if any of the parties choose to seek to remove the case to those courts.

In addition to forum shopping, parties frequently exploit major loopholes in Federal jurisdiction statutes to block the removal of class actions that belong in Federal court. For example, plaintiffs' counsel may name parties that are not really relevant to the class claims in an effort to destroy diversity. How fair is that? Somebody gets sued and added to a lawsuit not because they have done anything wrong, but because by adding them into the case they can prevent the case from being removed to Federal court. That abuse is also corrected.

In other cases, counsel may waive Federal law claims. In other words, not fully represent their clients, the plaintiffs, in some of the measures that may be available to them under Federal laws, simply ignore those rights, ignore those laws, and bring the case in State court so that it cannot be removed to the Federal court. It will remain in the State court.

Another problem created by the ability of State courts to certify class actions which adjudicate the rights of citizens of many States is that oftentimes more than one case involving the same class is certified at the same time; in other words, in two different States or in two different counties of the same State. Under the Federal rules, that problem is solved.

In the Federal court system, those cases involving common questions of fact may be transferred to one district for coordinated or consolidated pretrial proceedings. When these class actions are pending in State courts, however, there is no corresponding mechanism for consolidating the competing suits. It is inefficient, it is wasteful, and it results in unfair and differing results when you have two different State courts deciding the same thing for the same nationwide group of plaintiffs. There is no corresponding mechanism for consolidating the competing suits in State courts. Instead, a settlement or judgment in any of the cases makes

the other class actions moot. This creates an incentive for each class counsel to obtain a quick settlement of the case, to be the first one to settle, and an opportunity for the defendant to play the various class counsels against each other and drive the settlement value down.

The loser in this system is always the class members, the plaintiffs, the people who are getting these coupons and so on, while they watch their attorneys get multimillion-dollar settlements. The loser in the system is the class member whose claim is extinguished by the settlement at the expense of counsel seeking to be the one entitled to recovery of fees.

This bill is designed to prevent these abuses by allowing large interstate class-action cases to be heard in Federal court. It would expand the statutory diversity jurisdiction of the Federal courts to allow class-action cases to be brought in or removed to Federal court.

Mr. Speaker, I yield to the gentleman from Georgia (Mr. GINGREY), another Member of the House who has been a major contributor to our effort to reform class-action lawsuit abuse, someone who has championed legal reform and has done an outstanding job representing his constituents.

Mr. GINGREY. I thank the gentleman from Virginia (Mr. GOODLATTE) for allowing me to participate in this hour to discuss something of such tremendous import to the people of this country and to the small business men and women who are suffering so much because of class action and lawsuit abuse.

The President was so clear in his recent State of the Union address in talking about the need to reform the civil justice system. He talked about it being kind of a three-legged stool. And class action is an extremely important part of that reform; asbestos litigation and how we deal with a trust fund for people that have been possibly exposed to, and more serious, if they actually have health problems related to asbestos. We need to make sure that that is done in a fair way so that those who are truly hurt are the ones that benefit from any awards that are given or, in the case of asbestos, from a trust fund that is set up.

Class-action reform is something that we have been trying to do in this Congress for a long time. Our friends on the other side of the aisle like to say that this is a bill that has not been marked up, that we just bring this before the House and it does not go through the committee and it does not go through the hearings and the markup of that sort of thing.

Senate bill 5, which we are dealing with now, which we will have an opportunity to debate tomorrow and pass in this Chamber, is almost the exact same bill, I think it is H.R. 1115, that passed this body in the 108th Congress and passed with really strong bipartisan support.

So these arguments from the other side suggesting that we are rushing something through, nothing could be further from the truth. In fact, in the Rules Committee, of which I am a member, we agreed to make in order a rule, an amendment in the nature of a substitute from our friends on the other side of the aisle. In that amendment essentially is every amendment, maybe except for one, but almost every amendment that was offered to this bill, Senate bill 5, in the other body that was thoroughly discussed and debated and defeated in a bipartisan fashion.

We are going to give those on the other side of the aisle an opportunity for one more bite at the apple tomorrow in the abundance of fairness, to give them an opportunity to argue those points once again. I think that it is time. Over 10 years we have been working on this bill, long before I got to the Congress.

Let me just, if I might, go through a little bit of chronology in regard to this bill. The 105th Congress, that is four Congresses ago, 8 years ago, almost 10 years ago, the Senate had a bill, 2083, Class Action Fairness Act. The Senate hearing held, reported by the Senate subcommittee. H.R. 3789, Class Action Jurisdiction Act of 1998, committee hearing, markup held, reported from the House Judiciary Committee, 17-12.

106th Congress, H.R. 1875, Interstate Class Action Jurisdiction Act of 1999, Committee hearing, markup held. Passed the floor of this body 222-207.

107th Congress, H.R. 2341, Class Action Fairness Act, committee hearing, markup held, passed floor 233-190. And on and on and on. So those who would suggest, Mr. Speaker, that this has not had a fair hearing, nothing could be further from the truth.

I want to ask my colleagues to look at this slide here to my left and the title of the slide, "Who Wins?" This is pretty clear. This would be a typical class-action abuse case. Maybe it was in Madison County, Illinois, where so many of these cases are filed in State court. I do not know if this particular one was there but we know lots of cases have been filed there in Madison County. Class members. Coupons for crayons, a video rental, apple juice, popcorn, golf balls. And what do the plaintiffs' attorneys get? \$11.45 million. That is the problem.

Let me just give you an example of another case, this one from Texas, Jefferson County State Court. Shields et al. v. Bridgestone. The suit involves customers who had Firestone tires that were among those that the National Highway Traffic Safety Administration investigated or recalled, but who did not suffer any personal injury or property damage. After a Federal appeals court rejected class certification, the plaintiffs' counsel and Firestone negotiated a settlement which has now been approved by the Texas State court. Under the settlement, the company has

agreed to redesign certain tires, in fact, a move that already was underway irrespective of this lawsuit, and also to develop a 3-year consumer education and awareness campaign. But the members of the class received nada. Nothing. The lawyers? They got \$19 million.

This, Mr. Speaker, is why I am here and grateful to the chairman for letting me participate in this Special Order to make sure that we all understand that when people are injured, when people need a redress of their grievances, they do not need to be getting coupons that are worthless unless they take the trouble of redeeming them, and then they are worth very little and all the money goes to plaintiffs' attorneys. This is just about leveling the playing field.

□ 1630

We will be talking about the other two legs of the stool. I mentioned asbestos and, of course, civil justice reform in regard to medical liability, the Health Act of 2003, so-called tort reform. That is the other leg of the stool that we need to address, because the unintended consequences of not doing anything is if you put small businessmen and -women totally out of business because of the cost of defending these frivolous cases in the health care field, people do not have access to health care in a timely fashion.

Then doctors who practice in a high-risk specialty, such as emergency room care or obstetrics or neurosurgery, hang up their stethoscopes and white coats and pick up a fishing rod or a set of golf clubs at the prime of their career.

So that is why we are here. There is why this is so important. I thank the gentleman for yielding.

Mr. GOODLATTE. I thank the gentleman for his support of this legislation and his very cogent reasoning about why it is needed.

I have one last chart I want to show before we close, and that is this poll taken in USA Today about the opinions of the public on class action lawsuits.

As I said at the outset, this bill does not take away the right of anybody to bring a class action lawsuit, and class action lawsuits have their place in our legal system.

But the American public knows what is going on. When they were asked who benefits most from class action lawsuits? Lawyers for the plaintiffs, by far the number one answer. Forty-seven percent.

The second answer, lawyers for the companies. They get paid too, 20 percent. The companies being sued 7 percent. Remember they get to give out those products promoting their products. They get out of what could be a worse situation. And the buyers of the products, 5 percent. And the plaintiffs 9 percent.

The overwhelming majority of the public, more than 70 percent, know

that class action lawsuits are not serving the people that they are supposed to serve. The lawyers get the cash, the plaintiffs get the coupons, the consumers pay higher prices for goods and services, and it is an abuse.

Tomorrow we have the opportunity to correct it once and for all, to pass a bill that will be identical to the bill passed by the Senate and send it to the President of the United States for his signature. He has been a champion on this issue. He has indicated his willingness to sign that legislation.

I urge my colleagues to get the job done, to pass this legislation and reform the abuses in our class action lawsuit industry that have taken place, and let us return it to class action justice for plaintiffs who deserve it.

#### APPOINTMENT AS MEMBER TO COMMISSION ON CIVIL RIGHTS

The SPEAKER pro tempore (Mr. JINDAL). Pursuant to section 2 of the Civil Rights Commission Amendments Act of 1994 (42 U.S.C. 1975 Note), the order of the House of January 4, 2005, and upon the recommendation of the minority leader, the Chair announces the Speaker's appointment of the following member on the part of the House to the Commission on Civil Rights to fill the remainder of the term expiring on May 3, 2005:

Mr. Michael Yaki, San Francisco, California.

#### ORDER OF BUSINESS

Ms. KAPTUR. Mr. Speaker, I ask unanimous consent to reclaim my 5 minutes.

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

There was no objection.

#### LET US KEEP SECURITY IN SOCIAL SECURITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, Social Security, our Nation's largest retirement insurance program, is supposed to be one leg of a three-legged stool of retirement security for all Americans.

The other two legs are private savings, private savings like certificates of deposit, for example, and private pensions like IRAs and 401(k)s, or defined benefit and contribution plans. However, in an age when personal savings are virtually nonexistent, and company pensions are being scaled back or often stripped away, Social Security has become the basic retirement insurance plan for most Americans, and surely for women.

That is one reason why we have to protect it from those who would harm it. Unfortunately, President Bush wants to dismantle the one guaranteed

element of retirement income that Americans have, by privatizing Social Security, by making retirement security a gamble.

In fact, he is borrowing down the Social Security trust fund to mask huge shortfalls in other places in his budget. So he is creating the real problem in the Social Security trust fund, because it will not be able to meet future obligations.

I ask, how can the President defend his plan in the face of the statistics regarding the diminishment of personal savings by most Americans and numerous recent news reports regarding the collapse of pension plans?

Over the past 3½ decades, personal savings, as a percentage of disposable income, has trended downward in our country. During the 1970s, the average rate of savings was about 10 percent. Then it kept going down, downward to the last first three quarters of last year; it was less than 1 percent per family.

Meanwhile, consumer credit card debt is going through the roof and has up-trended from an average of \$41.8 billion in 1955 to \$2 trillion in November of 2003.

Even as the savings rate has plummeted, pension plans too are becoming less reliable. In Southern California, Abbott Labs recently spun off a division and cut the retirement benefits for employees of the so-called new company.

Shortly after the spin-off, employees were told that Hospira would be freezing their accrual of pension benefits and eliminating retiree health care for many of them. Several of those employees are now suing the companies in an attempt to get back their promised benefits, accusing the companies of plotting the spin-off specifically to deprive the oldest workers of their benefits.

In my own district, Owens-Illinois, one of the world's leading producers of glass and plastics packaging, recently announced that it would be cutting prescription drug coverage for its retirees in favor of forcing the retirees to participate in the Medicare prescription drug plan. The company will cover the \$35 premium for this plan, but will not guarantee that the dollar amount will increase should the plan premium change.

Another local company, Doehler-Jarvis, was a manufacturer of aluminum die cast automotive parts that had two plants in Toledo. The company went through many takeovers such as Harvard Industries, which then filed for reorganizational bankruptcy. At that time, the company canceled retirees' health benefits, but did not tell them. They just stopped paying claims over the weekend. Finally, they filed liquidation bankruptcy and were unable to continue paying pension benefits, so the Pension Benefit Guaranty Corporation, the Federal insurer of the Nation's private defined benefit pension plans, had to step in.

While this helped the situation somewhat, it was by no means perfect. Only actual retirees get benefits under the PBGC, not their survivors; and those who chose early retirement options previously offered by the company were unable to collect benefits at all until their regular retirement ages under the reorganization.

In addition, given the flood of recent companies that have experienced pension problems or breakdowns, the Pension Benefit Guaranty Corporation is no longer failsafe as it once was. In fact, the General Accounting Office recently placed it on the watch list of high-risk Federal agencies for the second year in a row. In fact, the Pension Benefit Guaranty Corporation went from having an \$11 billion surplus in fiscal year 2002 to a record deficit in 2003 of \$11 billion and a \$23 billion deficit in 2004.

Unfortunately, the President's fiscal year 2006 Federal budget will only put more pressure on already-struggling pension plans under the PBGC. Buried under the fine print of his budget is a multi-billion dollar premium hike for the Nation's underfunded defined pension plans. The weakest pension plans will be forced to pay almost \$2 billion in new premiums next year and \$3.3 billion for fiscal year 2007.

The premium hike is in addition to billions more in make-up payments that companies with weaker pension plans must pay to become adequately funded.

Yet through all of these turbulent times with private pension plans, retirees have known that they had one guaranteed source of income that they earned as insurance against old age, one monthly check that would be coming into them called Social Security.

We must continue to ensure that the fundamental security of Social Security remains in this vital and successful program. There should be no gamble with the Social Security guarantee, no roulette of our retirement earned benefits. Let us keep security in Social Security. Our people have earned it.

#### THE FEDERAL DEFICIT

The SPEAKER pro tempore (Mr. JINDAL). Under the Speaker's announced policy of January 4, 2005, the gentleman from South Carolina (Mr. SPRATT) is recognized for 60 minutes as the designee of the minority leader.

Mr. SPRATT. Mr. Speaker, we received last week the budget of the United States, as requested by President Bush, for fiscal year 2006. And having looked at it to some extent, I have to say we regret that it continues the same bad choices that have led to huge deficits and mounting debt during the last 4 years.

For the third year in a row, the Bush administration's budget sets a record level deficit, \$415 billion, and offers no plan to put the budget back in the black again.

Unfazed by these deficits, the Bush administration proposes tax cuts on

top of them which can only go to the bottom line and make the budget's bottom line worse. To offset a small portion of these plans, the Bush administration calls for cuts in services to students and veterans, small business and law enforcement, environmental protection and urban and rural development. And although most of these cuts are significant to those who will be taking the hit, they barely make a dent in the bottom line of the budget.

Let us start and look at where we have been in order to appreciate where we are today. Just to show the Members that the budget can be balanced, this chart shows that in the year 1992, the United States had a deficit of \$290 billion. This was the deficit inherited by President Clinton when he came to office January 20, 1993. By February 17 he had on the doorstep of Congress a plan to cut that deficit by more than half over the next 5 years. That plan was ridiculed here on the House floor, only passed by one vote here, only passed by the Vice President's vote in the Senate, but look at the results. Just to show that it can be done, the budget can be balanced, under the administration of President Clinton over 8 years, the bottom line of the budget got better year after year after year.

Starting with a deficit the year before of \$290 billion, the President lowered that to \$255 billion; \$164 billion a couple of years later; then \$22 billion; and, finally, in the year 2000, due to the Clinton budget passed in 1993 and the Balanced Budget Act of 1997, the budget was in surplus by \$236 billion, 5 short years ago. The year before President Bush came to office, the budget was in surplus by \$236 billion.

President Bush came to office committed to substantial tax cuts. We warned him at the time to be careful about assuming that these surpluses would continue indefinitely and keep rising. He nevertheless pushed through his substantial tax cuts and his other spending policies, and we can see what has happened every year since. The bottom line of the budget has gotten worse and worse to the point where 3 years ago, it was \$378 billion in deficit, a record amount. That was 2003. In 2004 it was \$412 billion in deficit, another record level. And this year the Office of Management and Budget, the President's budget shop, tells us recently that they expect a deficit this year of \$427 billion. A dubious record, but that will be the third year in a row that the bottom line of the budget has registered a worse deficit than the year before, \$427 billion.

□ 1645

Now, the President set a goal last year looking at these dismal results for improving the bottom line of the budget. He said over 5 years we are going to cut that deficit in half. In my book, 5 years is not good enough. Nevertheless, that was the goal he set for himself, and he claims that the budget he submitted this year will achieve that re-

sult. But in truth, the budget he submitted this year is more notable for what it omits, excludes, than for what it includes.

The President has not included in his budget for 2006 sent up last week any reasonable allocation of likely expense for the deployment of our troops in Iraq and Afghanistan in 2006. I would like to think they would not be there, but we have to be realistic. We know from 3 years' experience approximately what it has cost to maintain those deployments. They should be recognized in the budget, but they are not.

The President proposes to privatize or partially privatize Social Security and he gives us a likely cost for the first few years of implementation of those privatization plans between 2009 and 2015. His cost, OMB's cost for that time period, is \$749 billion. That is nowhere to be found in these numbers. Even though it falls within the 10-year time frame of the budget, it is not included in the numbering.

The President asks for additional tax cuts. He asks for the tax cuts that he passed in 2001, 2002, and 2003 that expire for the most part on December 31, 2010, to be renewed and made permanent. Even though we now know that given the bottom line of the budget, the red condition, the fact it is a historic deficit, \$427 billion, the bottom line can only get worse if those tax cuts are extended and made permanent. The President says, "I want to do that." In addition, there is another \$383 billion of expiring tax cuts that will have to be handled as well.

But there is one big item called the Alternative Minimum Tax. Over the next several years, this tax will affect more and more tax filers. Last year, to buy us a little time so we could repair that particular formula of the Tax Code so that it does not hit middle-income taxpayers, for whom it was never intended but is hitting now because it is not indexed to inflation, we built a little patch in last year's budget to at least leave the effect of it in constant status for 1 year.

Mr. KIND. Mr. Speaker, if the gentleman will yield, I thank the gentleman for highlighting the huge budget shortfalls we are facing, but one other item that seems to be masked in the budget numbers on the previous chart, does that include the amount of money that is currently being borrowed from the Social Security and Medicare trust funds? Is that amount also reflected in those figures showing deficits?

Mr. SPRATT. Mr. Speaker, reclaiming my time, the deficit is worse, and the gentleman makes an excellent point. When the surplus, and Social Security is running a surplus next year and this of \$150 billion to \$160 billion, that amount is actually offset against the gross deficit in the regular budget of the United States. So if you remove that offset, the surplus in Social Security, which is netted out against the deficit, that number becomes \$687 billion instead of \$427 billion.

Mr. KIND. If the gentleman will yield further, the current raid on both the Social Security and Medicare trust funds makes those budget deficit numbers much worse?

Mr. SPRATT. That is correct. I had another chart up which the gentleman is familiar with which shows you on the back of an envelope in a simple form the net effect of the three Bush budgets sent up in 2002, 2003, and 2004.

When the President sold his tax cuts to the Congress, his Treasury Secretary and his Director of OMB both said, We will not need to come back to you until 2008 to ask for the debt ceiling of the United States to be increased. They were back the next year, 2002. They said, We have incurred so much debt, despite our intentions, that we need to raise the legal ceiling on the debt of the United States by \$450 billion.

The next year, 2003, they were back again. The tax cuts were beginning to be fully implemented, taking a toll on the bottom line, with other effects like a recession, like increased military expenses. But all of this added up to a need to increase the debt ceiling by \$984 billion.

Let me put that in context. The entire national debt of the United States before Ronald Reagan took office was less than \$984 billion accumulated since the beginning of the Republic. Then last November, before we could adjourn, Treasury was back, the administration was back, and they said, Before you can leave here, unless the government is going to shut down, the ceiling on the debt of the United States has to be raised again by \$800 billion.

That means that this \$984 billion increase made on May 26, 2003, lasted only 16 months. We are in effect adding \$1 trillion to our national debt every 18 months. Nobody in his right mind thinks that that course can be continued.

This is the net total by which Congress had to raise, Republicans for the most part voting for it, had to raise the debt ceiling of the United States in order to accommodate Mr. Bush's budgets for the first 4 years, \$2.234 trillion. That was the amount we had to raise the debt ceiling over 3 years in order to accommodate his budget.

Let me go back to the things that were left out of the President's budget, because, as I said, it is more notable for what it excludes than what it includes. As I said, there was nothing in the calculation of the taxes that he wanted to make permanent to fix the AMT, though all know this is a looming problem that politically has to be addressed in the next several years. There was not even money to patch it over for another year to study how to fix it.

Secondly, there was not a dime for Social Security privatization. Ten years of budget, not a dime for Social Security privatization, even though the President has made it his number one agenda initiative.

Thirdly, there was nothing for the cost of the war in Afghanistan, the insurgency there, nothing for the cost of our deployment in Afghanistan or Iraq or enhanced security in North America. The Congressional Budget Office, recognizing that that is a number that is there and has to be somehow or another estimated and included in the budget, captured, in order to have the budget be a complete and full account of what we are likely to spend, did a model.

They said, assume we can reduce our forces beginning in 2006, between 2006 and 2010, down to 40,000 troops in the theater, the CENTCOM theater, not necessarily Iraq, but in the CENTCOM theater, with 18,000 troops remaining in Afghanistan. What is the cost over the 10-year period of this budget? The cost to do that is \$384 billion. Let us hope we do not have to incur that, but some significant number has to be included in this budget to make it a realistic budget.

Finally, when you add those three items, then we have less surplus. When you have less surplus, you have a bigger deficit, you have more debt service, because you borrowed more principal on which you have to pay interest. You add all of those items together, you get a \$2 trillion adjustment to the budget.

This, therefore, is what we see, adjusting for the four items that I have just outlined, the budget path that the Bush budget will take over the next 10 years. \$427 billion, third year in a row, it sets a record level, a deficit of \$427 billion for the year 2005. It goes up the next year and levels off in the range of \$400 billion, and then comes out at the end of 10 years at \$566 billion.

We are not reaching to make this point; we are simply putting back in the budget costs we think are realistic and need to be captured in order to have a truthful portrayal of what the budget looks like.

This is the course that the Bush administration is plotting for us in the budget they have just submitted, and most people think that this is not a sustainable course.

I yield to the gentleman from Virginia (Mr. SCOTT).

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

Mr. Speaker, on this chart the gentleman shows the blue line as to the President's promise to cut the deficit in half within 5 years. Cutting the deficit in half within 5 years is certainly a modest goal.

Is it not true that the projected surpluses that we started off this administration with would have created \$5 trillion in surplus? Yet according to the first chart you had, we are very much in debt, and we come up with a promise to cut the deficit in half in 5 years. What kind of goal is that? Why are we not talking about returning to surplus, where we were, and not having all of these deficits? Is cutting the deficit in half not somewhat of a bizarre goal?

Mr. SPRATT. Mr. Speaker, reclaiming my time, first of all, the gentleman

is absolutely correct. When the President came to office, he had an advantage that no President in recent times had enjoyed, a surplus projected to be \$5.6 trillion between 2002 and 2011, over a 10-year period of time; \$5.6 trillion. That surplus is now gone, vanished. In its place there is a deficit over the same time period of \$3 trillion to \$4 trillion. This shows you how the \$3 trillion to \$4 trillion accumulates over that period of time.

We have had a swing of \$8.5 trillion to \$9 trillion in the budget over a 4- to 5-year period of time, a swing in the wrong direction of \$8 trillion to \$9 trillion.

Mr. SCOTT of Virginia. Mr. Speaker, I would say to the gentleman that one of the things when you run up all this deficit, you have to pay interest on the national debt every year. The interest on the national debt, you have a chart that shows what we spent in 2004, what we are going to have to spend.

Mr. SPRATT. The big red bar is the amount of interest, or debt service, that we pay, first in 2004, and then to its right, 2010.

Mr. SCOTT of Virginia. Mr. Speaker, if the gentleman will yield further, interestingly enough, I remember when President Clinton left office that we expected to pay off the national debt held by the public by 2008, in which case we would be paying zero interest on the national debt. Here you show in 2010 a \$300 billion interest expense.

Is it not true that with \$300 billion at \$30,000 each, you could hire 10 million Americans? That is even more than the number of people unemployed today.

Mr. SPRATT. The gentleman is correct. When the President came to office, we had before us in Congress a novel idea, which would have been truly a conservative fiscal proposal, namely, that we would take the surplus in Social Security alone and instead of buying up new debt and funding new spending, we would use that surplus to buy old debt, retire that debt. We would add that money, \$3 trillion-plus, to net national savings, bringing down the cost of capital, boosting the growth of our economy; and then in 2020, when the Social Security beneficiaries, the baby boomers, begin to press their claims for benefits, Treasury would be more solvent than ever to meet those obligations.

That would have been the first long step we could have taken toward Social Security solvency. There was support for it on both sides of the aisle. The President rejected that in preference for his own budget, which has led us to the deficit which appears there now.

Mr. SCOTT of Virginia. Mr. Speaker, if the gentleman will yield further, when we have all that interest on the national debt, that means that NASA will not have any money. NASA-Langley in my district is suffering cutbacks, laying off people. Shipbuilding, we would not be able to build the number of Navy ships, we are particularly trying to cut back on aircraft carriers.

Pell grants are not going up with inflation. We are cutting back veterans health care. We are not keeping up with inflation to maintain present services and veterans health care in the middle of the war.

Is that not the kind of thing that happens?

Mr. SPRATT. Mr. Speaker, reclaiming my time, the gentleman is right on the mark. When you have an enormous increase in debt service like this, what it does is crowd off, trade off, other things that would normally be purchased, defense and non-defense goods and services.

Instead, the one thing that is truly obligatory in the budget is interest on the national debt. We cannot fail to pay it, or the credit of the United States collapses. So it takes precedence over everything else. You can see it has become the big boy on the block. It eclipses other non-defense spending priorities. From education to health care to veterans health care, you name it, interest on the national debts will be crowding out these other priorities, and the American people will pay substantial taxes to service this debt and wonder why they get nothing in return.

□ 1700

Mr. SCOTT of Virginia. Mr. Speaker, I had just one other question. On the first chart that the gentleman had up there, on the other side, the first chart the gentleman had, I remember we had something called pay-go during the Clinton years.

Can the gentleman explain how that helped us keep the trend up, and then what happened?

Mr. SPRATT. Mr. Speaker, we had two rules in the 1990s that applied from 1990 through the year 2000, really until 2002, and those rules effectively said, number one, the pay-go rule, if you want to increase an entitlement, liberalize the benefits of an entitlement program, you have to pay for them with an identified new source of revenues, or you have to cut some other entitlement somewhere else of the same amount.

Secondly, if you want to cut taxes, you have to have another tax to offset the revenue loss, or you have to cut entitlements enough so the bottom-line effect is neutral. Those two rules, with a discretionary spending cap, those rules that helped us put the budget in surplus for the first time in 30 years to a \$236 billion surplus, what the Bush administration did was let those rules lapse, expire.

Mr. SCOTT of Virginia. So during those years, we had fiscal responsibility. We could not spend money unless we paid for it; we could not cut taxes unless we cut spending; and maintaining that fiscal responsibility kept that line going up. And, at the top of that line, we stopped pay-go and we passed tax cuts without spending cuts, and we passed spending increases without paying for them; is that right?

Mr. SPRATT. That is correct.

Mr. SCOTT of Virginia. And that graph shows what happens.

Mr. KIND. Mr. Speaker, if the gentleman will yield for a question, this is a little bit before my time, but correct me if I'm wrong; it was really a Democratic Congress, working with the first Bush administration, the current President's father, that first instituted the pay-as-you-go rules back in the 1992 budget; is that correct?

Mr. SPRATT. That is correct. The Budget Enforcement Act of January 1991, President Bush.

Mr. KIND. It was President Clinton in his first budget that he submitted during his first administration that asked for maintaining and continuing the pay-as-you-go rules that Democrats had to pass without one single Republican vote in the House of Representatives; is that right?

Mr. SPRATT. That is correct; and in the Senate.

Mr. KIND. And, Mr. Speaker, not one Republican back then had supported the pay-as-you-go rules that required tough political decision-making, trade-offs, in essence, with the budget, which is something that the Democrats in Congress today are advocating in the alternative budget resolutions that were submitted, because it worked so well in the 1990s, the pay-as-you-go rules, which are very simple. If you are proposing a pay increase or a tax cut in one area, you have to find an offset in the budget to pay for it in order to maintain balance.

And it led to the 4 years of budget surpluses, as the gentleman pointed out, 2 years of which the Social Security-Medicaid trust fund was not even being raided but, instead, we could use that money for important debt reduction, starting to pay off the national debt.

I was here during that first Bush tax-cut debate we had a few years ago where the big concern, on the Republican side at least, was that we were going to pay off the national debt too fast, if you could believe those days, which never materialized. But now today, we are back into chronic budget deficits, and one of the fastest growing areas in the budget today is interest on the national debt.

I see two major problems with the huge budget deficits today that are unprecedented and we did not face before. One is, who is owning that debt? Who is paying for our deficit financing? Right now, Japan is the number one purchaser of our government debt, soon to be surpassed by China. I do not believe it is in our country's long-term economic interests to be so dependent on foreign entities, let alone China, to be the number one purchaser of our debt in financing these deficits.

The other big difference we have today is ever since those long-ago years when the pound sterling was a viable currency, we have never had a rival currency up against the dollar in the international marketplace. That is changing today with the strength of

the euro in the European Union and in the common marketplace.

Now, if these countries that are currently investing in buying our bonds decide to take their investment somewhere else, such as in the euro, which is gaining in strength, and the dollar, which is declining in value, we are going to get caught holding the bag in trying to finance these deficits, and that could be the perfect financial storm being created.

So again, I think it is a reason why we need to work together in a bipartisan fashion and, at the very least, reach agreement in reinstating something that worked in the 1990s, the pay-as-you-go rules.

I commend the gentleman from South Carolina (Mr. SPRATT), our Ranking Member on the Committee on the Budget, for the leadership and the honesty that he has shown in presenting the figures so that we can, at the very least, agree on the facts and the challenges that we are facing, and then coming up with some common-sense solutions that have a proven history of working in the past. I am going to continue to work with the gentleman and the rest of my colleagues here in trying to put together an honest and reasonable budget in order to get us back on that glidepath of fiscal discipline and fiscal responsibility again.

Mr. SPRATT. Mr. Speaker, let me turn to the gentleman from Virginia, but if I could briefly demonstrate, before I yield. This chart right here shows something else that is left out of the budget for 2006. The President, acknowledging that he has a deficit in 2005 of \$427 billion, and it is likely to be at least that large in 2006, nevertheless asked for renewal and making permanent tax cuts that total 1 trillion, 7 billion dollars.

As for the effect of these tax cuts, this chart right here is pretty simple, but pretty instructive. This blue line at the top indicates the level that the administration told us projected the individual income tax revenues would follow if their tax cuts were passed. As my colleagues can see, it projected that revenues for last year would be 1 trillion, 118 billion dollars from the individual income tax. In truth, they were \$804 billion. That is more than \$300 billion short of what was projected. Do it on the back of an envelope. It is simplistic accounting.

But we cannot avoid the conclusion: that is three-fourths of the deficit in the year 2004. This is the effect, undeniable effect that tax cuts have had on the bad bottom line that we are looking at now.

Mr. MORAN of Virginia. Mr. Speaker, I would like to ask the gentleman if the revenue numbers also include the surplus that is coming in from FICA taxes, from Social Security. Because what this administration has been doing is really masking the seriousness of the deficit that they have created, because they have been taking the So-

cial Security surpluses and offsetting it against the actual deficit to make the deficit appear much smaller.

Mr. SPRATT. Mr. Speaker, we discussed this a bit earlier, and the gentleman is absolutely right. The numbers we are talking about are the unified deficit numbers. That is to say, we consolidate all of the accounts of the budget. Social Security is actually in surplus now and will be for some years to come, so the surplus of about \$160 billion in Social Security is offset against the deficit and the rest of the budget, making that deficit appear smaller than it truly is.

Mr. MORAN of Virginia. Mr. Speaker, what I am getting at is, I remember, as the gentleman does, when the Clinton administration acquired a substantial surplus and was projecting at the end of the year 2000 about \$5.5 trillion of surplus. To meet the Social Security obligations for the next 75 years, what they were going to do is to take the Social Security surplus and put it back into the Social Security trust funds, so we would not have this issue with regard to supposedly bankrupting Social Security. All of that could have been avoided if we had followed through on those policies. Unfortunately, what this administration did was to promptly pay out that money in tax cuts.

We have been talking about these high numbers, trillions and billions; in fact, I wish the people, if there is anyone watching at home, they might write down what \$1.7 trillion represents. It is 1 comma 7, and then 11 zeroes.

Mr. Speaker, \$1 trillion is a thousand billion; a billion is a thousand million. This is an enormous amount of money that we have reduced our revenue by as a result of tax cuts, most of which went to the people who needed it the least.

Now, what is most troubling, I think to many people that we represent, is the cuts that are going to occur in the lives of people dependent upon programs. I want the gentleman to conclude his points, but when we talk about cutting \$60 billion out of Medicaid nursing home costs and health costs for children and eliminating vocational education, all of it relates back to this policy, and it seems almost as though it is an excuse to cut domestic social programs that represent only 16 percent of the deficit, and yet almost 100 percent of the cuts are coming out of these domestic social programs.

But I would like to address that, and I would like to elaborate on that in a bit. I know the gentleman wants to conclude his comments and hear from our friend, the gentleman from Maine, as well.

Mr. ALLEN. Mr. Speaker, I thought I would say a few words about an event I did not so long ago, just before the election, or right after the election in my district in Maine. I went to Windham High School, which is not so

far outside of Portland, and talked to a group of students, civics students and their teacher, Bruce Bowers. They had asked me to come and talk to them about the Federal deficit, the Federal debt, the growing national debt, and what it means to them, because I had said on numerous occasions during the course of the campaign that the Republican budgets which have been passed here are immoral. We are passing on our current expenses, our current choices, to our children and grandchildren.

Well, they had studied the issue. They knew more than people in this House did, in many cases, I think, and they held up these signs. They had these signs in back of where I was speaking, and believe me, I got a grilling. But here were some of the signs: "Pay as you go." "No taxation without representation." "Fiscal mismanagement should not tax our future."

These kids understood what is not immediately obvious; that they were going to pay the bills for tax cuts that had been passed today or in the last 4 years, and for the war in Iraq, because essentially we are borrowing money to do those things. And they know that 20 years from now, when they want to be sending their kids to college, they will be paying taxes to the Federal Government, and there will be less of that money to pay for education, there will be less of that money to help them get job training, there will be less of that money to help their kids find the assistance they need to go to college, there will be less of that money to pay for their own national defense, because they will be paying exorbitant interest, levels of interest on the national debt; much more of what our tax dollars pay for 20 and 30 years from now will be just interest, interest on today's obligations.

Let us talk just about a couple of those. We are spending \$1 billion a week in Iraq. Remember Paul Wolfowitz, the Assistant Secretary of Defense, who came before the committee and said, this is a case where Iraq can pay for the cost of its reconstruction, and reasonably quickly at that. Wrong. Not just wrong about weapons of mass destruction, not just wrong about the connection to al Qaeda, but wrong about what we would be paying. We are paying over and over again, and we are borrowing that money and our kids will pay the bill, eventually.

But it is also true that in 2005, \$89 billion would go to people in tax cuts, \$89 billion would go to people for tax cuts from households earning \$350,000 a year or more; \$89 billion. And those kids in Windham understand. They know that that is going straight to add to the annual deficit, the overall Federal debt that they are going to pay interest on that bill for years to come. Not just the \$89 billion in 2005 that go to tax cuts for the rich, but probably \$100 billion in 2006 and on and on and on.

The Republicans in the House and the Bush administration are bankrupting this country. They are imposing a burden on our children and grandchildren that is unconscionable, and they will sit and tell us, oh, well, we will grow our way out of this. These revenues will simply vanish. And the truth is, now, after all they have done to hurt the American middle class in the last 4 years, they have now come up with these cockamamie private accounts in Social Security idea that will, by itself, double the national debt in 20 years.

Mr. SPRATT. Mr. Speaker, I have just put up a chart to show exactly what the gentleman was just saying. Privatization means that tax funds that are now put in a public trust fund will instead go into private accounts that will cause the government to borrow more and more and more over time. The Bush administration acknowledges that between 2009 and 2015, when it first implements this particular proposal, that the cost will be \$754 billion. We have obtained, using the Social Security actuary numbers, the true impact for the first 10 years of implementation and for the second 10 years of implementation, fully implemented. The cost right there, that little blue bar chart, bar on the graph there, the plan that the President is proposing adds \$4.9 trillion to the unified deficit of the United States by 2028.

But we are only halfway up the slope at this point. The borrowing in the trillions goes on and on and on until the year 2055 to the mid-2050s, an enormous increase in the national debt.

□ 1715

So we even if the budget were to be cut in half, the deficit were to be cut in half by 2009, which it will not, the numbers simply will not support that outcome, there is a huge change in the budget deficit looming on the horizon at that point in time which means that the deficit will not be balanced again or anywhere close to it in our lifetime when this debt is added to it.

Mr. CASE. Mr. Speaker, I want to be clear that I understand exactly what the gentleman is saying.

I appreciate very much the opportunity to have this opportunity to learn from the gentleman. I want to go back to the context that we are talking about for just a second because I did take the opportunity to read the budget that came out of this administration.

More specifically, I took the opportunity to read the historical tables because I think it is important for us to see what has been before we can talk about what is coming up in the future. And we have talked already quite a bit about the total debt, and I am very happy that the gentleman is focusing on debt because we can talk about deficits, annual deficits every single year, but it is not as if annual deficits are static. If you have got deficits every

year, you are borrowing it from somewhere; that means that debt goes up. If you have a deficit of \$300 billion this year, that is borrowed money. Another deficit the next year, \$600 billion.

Mr. SPRATT. Your debt service goes up, too.

Mr. CASE. Yes, that is absolutely right. The gentleman has an excellent chart that demonstrated that earlier, that under this President's own budget the interest on the national debt will double or more in the next 5 years while every other program is remaining basically at the same level of funding.

So the question that I have got, I am looking here at the President's own budget, noting that in 2004 we had a total national debt of \$7.3 trillion. That was just a year ago and that was up, as the gentleman pointed out earlier, by \$2 trillion just over a few years. So we are going up pretty darn fast.

I am looking here at the President's budget. This is the President talking; this is not us talking. It shows here in 2010, just 5 short years from now, we will have, according to this President's budget, a national total debt of \$11.1 trillion. So \$7.3 trillion last year. Under this budget, we are going to \$11.1 trillion and, of course, that is the aggregate, is it not?

Mr. SPRATT. In 4 years.

Mr. CASE. Absolutely, in 4 years. And the point that the gentleman is making now, and by the way, that is a 60 percent increase in the total national debt in just a few short years, so obviously something is out of whack.

Now what the gentleman is pointing out in the chart that he is pointing us to right now is that essentially when we talk about this national debt, we are not talking, we are not including some very key aspects here. We are not talking about the cost of the privatization plan, right?

Mr. SPRATT. No, it is not included. And what I am saying here is this additional debt will be stacked on top of what is already monumental statutory debt of the United States growing every year because of the deficit in our regular budget, growing every year.

Mr. CASE. In the same spirit, we are not talking in this budget about any fix to the Alternative Minimum Tax, right?

Mr. SPRATT. No.

Mr. CASE. Nor are we talking about the costs of the war which are now projected to be astronomical if we project out over a reasonable period of time. That is additional debt.

Mr. SPRATT. When those adjustments are made, the numbers the gentleman just gave will only get worse.

Mr. CASE. We are not talking about additional debt service on the additional debt that will be incurred as a result of the first three. Those do not enter into the additional interest payment.

So what we are really talking about, I guess the point I am trying to make and trying to get clarity from the gentleman, is that when we are talking

even under the President's own budget of an increase of 60 percent in the national debt, assuming we agree to this budget straight out, we will assume if the President gets his way on privatization and on the Alternative Minimum Tax which we all want to do on the reasonable costs of the war, on other initiatives, not to mention further cuts in any taxes or continuation of any tax reductions, we are talking about trillions of dollars of additional debt during that same period.

Mr. SPRATT. No question about it. When you add this on top of it, it becomes almost irreversible. I do not see how you can add this and ever expect to see the budget close to balance again.

Mr. CASE. Let me conclude by making one other point that came out of our Committee on the Budget hearings just a week ago when I asked Office of Management and the Budget Director Bolton, hey, I have not heard much about debt. I have heard plenty about deficits, but I have not heard much about debt. Of course, frankly, I speculate that the reason is it is a lot easier to talk about reducing the deficit in half. But if we only reduce the deficit in half every year, we are still talking about compounded total debt because that is borrowed every single year. So it is not good enough to talk about reducing the deficit in half. It is a matter of balancing our books.

Mr. SPRATT. Absolutely correct.

Mr. CASE. I thank the gentleman for his good work, and I am happy to learn at his feet.

Mr. SPRATT. The gentlewoman from Pennsylvania (Ms. SCHWARTZ).

Ms. SCHWARTZ of Pennsylvania. I would like to make a few comments, and I ask for some of the gentleman's comments on some of my observations as a new member of the Committee on the Budget. I really sought to get on the Committee on the Budget. It is something I wanted to do because I know that my constituents sent me here to speak up for them, to look out for them and really to be an advocate for fiscal discipline, fiscal responsibility and for wise Federal spending.

As a former State legislator, as a State senator for 14 years, I know how important Federal Government investments are, that they do allow our State and local governments to meet their obligations without assuming the costs and responsibility for Federal shortfalls. They allow for shared responsibility of new initiatives aimed at promoting economic growth, quality education, access to health care, protecting the environment, and providing for a safe and secure homeland.

To do this, I want to mention three principles; and I would appreciate comments on it. I believe that we have to first recognize our obligations. The gentleman has talked about this, a good bit about our obligations that we already have. We have to work within our budgetary limits to meet them, and we have to make smart invest-

ments focused on the Nation's current and future fiscal well-being.

Unfortunately, as the gentleman has been pointing out with his charts, the President's budget does not meet any of these three simple rules.

Similar to his previous budgets, the President's fiscal year 2006 blueprint prioritizes the tax cuts for wealthiest Americans over meeting our obligations to all Americans, failing to adequately invest in keeping and creating new jobs, failing to expand affordable health insurance, failing to meet the health care needs of our veterans, and some of the other speakers talked about that, and failing to protect those who were working on our front lines to keep our Nation safe from terrorism.

As the gentleman's chart points out, one of the greatest failings of this President's proposal is his intention to change our commitment to older Americans.

Just last week, the President visited my district. He came to Montgomery County to promote his plan to change Social Security. Now, my constituents listened pretty carefully. Quite a few of them turned out. And they were anxious to know some of the details, some of the things the gentleman has on the charts, and what it would mean to them and to their families.

I am going to just mention a few, and maybe the gentleman can help us with some of the answers.

They wanted to know exactly what the term "private account" means. They wanted to know how private accounts would affect the value of their guaranteed benefit. They wanted to know whether it would provide more or less security for their retirement. They wanted to know how much they would really be able to control these accounts.

And they wanted to know how the proposal would impact disability and survivor benefits. They wanted to know how this proposal could possibly strengthen Social Security for the long term. And, moreover, they wanted to know how we as a Nation could afford to pay that \$4.9 trillion that it would cost to create these private accounts out of Social Security.

I ask the gentleman to comment on some of these questions because before we can begin to talk at all about some of the long-term fiscal health of Social Security, we have to give the American people some of the answers the President has not given.

What we do know, and I think the gentleman has some charts on this, is that the President's proposal will do two things. It will dramatically reduce guaranteed benefits, and it will significantly add to the Nation's growing debt. So I ask the gentleman to confirm these, and I will say one third thing that I know it does, and that is that it does nothing to promote the long-term solvency of Social Security.

Mr. SPRATT. The gentlewoman has touched upon major impacts. One of our problems is the President's budget

is lacking in detail as to all of the program, project and activity cuts that they would actually propose in the years after 2006. It is hard to tell. We have a chart here that shows what we know about the reduction in what is called nondefense domestic discretionary spending. And we can see here that we expect a reduction below purchasing power of about \$180 billion over a 5-year period of time. That is education. That is veterans health care. That is highways. That is the government as we know it. Everything that people tend to identify the government with is included in these accounts. They have only come all together to \$350 billion.

So you can, of course, out of \$350 billion achieve some cost reduction, but there is only so much that can be achieved there. And keep in mind, this is not the source of the problem. These accounts have not increased in the last 3 years, but this is where the administration is going to squeeze as much as they possibly can, but there will never be enough in these accounts to eradicate a deficit of \$427 billion next year.

Nevertheless, there will be deep pits, student loans, Pell grants, all of these things that matter to American families, kitchen-table issues.

Ms. SCHWARTZ of Pennsylvania. I have heard from many of my constituents, just some of the initiatives and some of the deep cuts that the President is talking about, even though they are not going to affect the savings that we need to provide these private accounts. It does not equate. I have nurses asking me about loan forgiveness programs, teachers asking me about education.

Mr. SPRATT. This is before the private accounts. When the private accounts are layered on top of this, they add so much to the deficit it is hard to predict what will be left of the accounts and items and projects that were just referenced.

Ms. SCHWARTZ of Pennsylvania. It is true the private accounts really do not have the details from the President about how they would work, what they would really mean; and it is true that they do not strengthen the fiscal viability of Social Security unless what we are really talking about is deeply cutting benefits. Is that right?

Mr. SPRATT. Exactly.

Ms. SCHWARTZ of Pennsylvania. Mr. Speaker, I can say as someone new to the Committee on the Budget, I appreciate the gentleman's wisdom on this. If we are going to meet some of our obligations to families and communities and to local governments, we have to be able to correct this budget, work together. I think the President has suggested that. I know that the gentleman has always worked closely with Republican counterparts.

As a new member of the Committee on the Budget, I know that we as Democrats and Republicans want to be honest with the American people, tell them the real consequences of what we

are doing, and come to a budget resolution that will meet the obligations of the American people.

I thank the gentleman very much for his detailed information. I look forward to working with him to accomplish that goal.

Mr. SPRATT. Mr. Speaker, I yield to the gentleman from Texas (Mr. CUELLAR).

Mr. CUELLAR. Mr. Speaker, I appreciate the leadership the gentleman has shown in the Committee on the Budget.

I want to focus on one part of the administration budget and that deals with education. When I looked at this 3,000-page budget proposal the other day, I was quickly struck by the fact that out of the 150 programs that are slated for elimination, 48 of them, that is one out of three, were in education.

Education has the power to break the cycle of poverty. Education has the power to change lives. As millions of Americans have proven, education has the power to change the future. It has changed mine.

I think the gentleman will agree with me that if we would call, or any Member would call, any economic development foundation in their district and ask them about the importance of a broad-based comprehensive education system, I think they would get the answer, an answer that we all know, that is, there is no greater resource today in our great Nation to attract better jobs with better wages to our communities than a strong education program that we have.

Mr. SPRATT. There is no other individual in the Congress I could point to who is a better testament to that principle than the gentleman from Texas (Mr. CUELLAR), who I believe has four degrees. Am I correct?

Mr. CUELLAR. I thank the gentleman very much.

I think the gentleman agrees with me that educational programs alone are no guarantee. These programs are successful only with the inspiration of our parents, the support of our community, and the hard work of our students. Many educational programs are threatened by this budget which includes the Upward Bound Program, the Talent Search, the GEAR UP among other programs. But I think today, if the gentleman would allow me just a few minutes to talk about one program, and that program exemplifies what it means to offer opportunity to an individual, what it means to offer opportunity to a family, a community and a country.

I think the gentleman is familiar with this program called Even Start. The budget calls for a \$225 million cut from the Even Start program. That is a cut that would basically eliminate this program. In my own State, there are 90 Even Start programs in the State of Texas serving more than 5,500 families. In my part of the district, Seguin, Texas, there are 60 families that depend on this.

This is a very remarkable program that allows the parents to learn along with the children, where they are able to get their GED, where they are able to pull themselves up and not only educate their children but also to get trained, educated so they can get a job. It provides a sense of pride that makes them better parents, and that is what we are trying to do through our educational system.

□ 1730

I think the gentleman from South Carolina (Mr. SPRATT) would agree that if we have these budget cuts in education, as is proposed, this will not make our families stronger, this education will not make our Nation stronger, and I believe these cuts in education will make it very hard on thousands of families that are working hard, playing by the rules to make this transition from poverty to prosperity.

You know, now as we are talking about providing the tools to break this cycle of poverty and provide more home and opportunity for the children, I think we need to talk about something you have been talking about, Mr. SPRATT, and I would ask you this particular question. We agree that we need to have budget discipline. And, yes, we need to preserve educational programs like the Even Start program. So how do we do both?

And I think, just like you have said before, in order for us to do this, just do it just like we do the budget at home, we set priorities. We set priorities. We need to decide in Congress what are those priorities? Is it spending \$280 million to study the icy moons of Jupiter, or do we educate our children? Is it spending \$480 million to support the states of the former Soviet Union, or are we going to save America's farms?

I think, like you have been saying, Mr. SPRATT, it is a time to set priorities for our Nation, and now it is the time to make sure that we set those priorities, not only for our Nation, but for our own individual districts. And I ask you to continue the efforts and the endeavor to make sure that the American public understands that we can have a budget, balance the budget, but at the same time, the way we lower the deficit is to set the priorities, the priorities in education and health care, and economic development.

Mr. SPRATT. We can balance the budget and also balance our priorities. In 1997 when we did the Balanced Budget Agreement of 1997, we had the biggest plus-up in education in 15 or 20 years. We will have a budget resolution, a Democratic budget resolution on the floor, and it will adequately fund education. That will be the last thing that we will cut. Certainly we will not have 38 educational programs eliminated in our budget.

Now, in the time remaining let me recognize the gentlewoman from Georgia.

Ms. MCKINNEY. Mr. Speaker, to continue the discussion about the budget,

let me just say that the purpose of a budget, the budget is the most important legislative document that the Congress will produce; and in fact, all legislative bodies produce a budget, be it the school board, city council, county commission, the legislature, and of course us here in Washington, D.C., in the Congress.

And the budget is our statement of values. It is a statement of values, because we look at the definition of politics, and it is the authoritative allocation of values in a society; and how are those values authoritatively allocated? They are reflected in the decisions that we make with respect to how we are going to spend our money.

And so when the President sends his budget to the Congress, the budget of the President then reflects the values of the President. And so this President has talked about an American prosperity, an America of prosperity and opportunity. But the America that the President seems to value is a very narrow America indeed.

In other words, our mantra ought to be leave no American behind in our quest for opportunity and prosperity for all. But, sadly, many Americans have indeed been left behind. And the situation is not getting better, it is getting worse.

A very few Americans are doing extremely well. But many of us are being left behind, and, in fact, too many of us are being left behind. For the latest statistics available, it takes 100 million Americans at the bottom to equal the share of national income received by the top 2.7 million Americans.

And this budget does not even begin to address the widening income gulf in our country. In fact, it exacerbates it. The employment and income picture has gotten worse for people of color, in particular, since 2000, eroding the tremendous progress that was made during the decade of the 1990s.

And in fact, since 2000 more than one-third of the progress made in reducing poverty among African American families has been completely, totally, absolutely 100 percent erased, as 300,000 African American families fell below the poverty line just from the year 2000 to the year 2003.

I would like to bring your attention to the product of an organization, a product that I have become dependent on as I try and travel around the country and educate folks about the true conditions faced by people in this country.

It is the State of the Dream from United for a Fair Economy. And every year they produce a report, "The State of the Dream 2004," "The State of the Dream 2005," about the inequalities, the disparities that exist in our country along the racial divide.

Now, I have got a couple of charts here that I would just like to show. Now, on the index of income, can you imagine that from 1968 to 2001, the average black income was 55 cents compared to that for white income, and 57 cents in 2001?

What United For a Fair Economy has found is that since the murder of Dr. Martin Luther King, Junior, on some of those most important indices, the situation has gotten worse, not better, for people in our country.

And here over the span of 33 years, we have only increased the well-being by 2 cents. And at the current rate, it would take 581 years to even out the black-white gap in income.

Or we can look at poverty. Overall poverty to close the gap, 150 years to close the gap, the poverty gap as experienced by black Americans and white Americans.

Or we can look at child poverty. The President says he wants to leave no child behind, but sadly, if we look at the numbers, and these numbers represent real children, it will take us 210 years to close the child poverty gap.

The President talked about housing, and we all know that homeownership is the cornerstone for the beginning of the accumulation of wealth, and look here at homeownership. It will take us 1,664 years to close the homeownership gap. Is that not incredible?

What does that tell us about our country's values and priorities? Our President talks about making this an opportunity, making this a prosperity society for all Americans, but if the President's budget does not deal with these very real differences in the way real Americans live, then the President has talked to us but he has not really backed his words with a policy statement that will change the way the bulk of Americans live in this country. The President cannot create an ownership society without addressing these disparities, and sadly, his budget proposal falls short of even his stated goals.

I look forward to actually being able to call the gentleman from South Carolina (Mr. SPRATT) Mr. Chairman and have folks on the other side of the aisle call him Mr. Chairman, too.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to vehemently state my disappointment, frustration, and objection to the FY 2006 budget submitted by President Bush.

When President Bush submitted his 2006 budget to Congress recently, he said, "The taxpayers of America don't want us spending our money into something that's not achieving results." I couldn't agree more.

The President's 2006 budget cuts money from America's veterans, America's first responders, students, small businesses, health, urban and rural development, and environmental protection.

Is the President saying our veterans, first responders, students, and small businesses are not achieving results?

The unnecessary tax cuts for the rich and an optional war with Iraq are not producing results.

The President's budget does not contain a single dime of money for war effort in Iraq or his proposed reforms to privatize Social Security.

How is this possible? How can the budget for the country omit the two most important

issues mentioned during the President's address to the Nation on the State of the Union?

Instead, those costs are hidden from the American people in the form of an \$80 billion emergency supplemental request to Congress. A request that was not mentioned during prime time coverage on national television.

This budget continues the same bad choices of this administration and will lead to the same bad results—huge deficits and increasing debt.

This President and this administration has squandered an inheritance of a 10-year surplus of \$5.6 trillion and has replaced it with deficits that our children may have as their responsibility.

This budget will severely impact Texas citizens negatively as well as other American citizens. They deserve better.

Never before has America faced such an array of issues that demand creative, competent leadership.

But the Bush administration has pursued solutions that serve only to escalate the problems we are facing.

We should be making progress, but in too many areas we are either backsliding or simply holding the line.

Programs and policies that not only provide assistance for the poor but for a large portion of the American people who need help to keep their heads above water are under attack.

To cut the Medicaid program for the poor of \$60 billion over 10 years, to cut the Small Business Administration's technical assistance program to small businesses by 37.9 percent, and to cut community policing programs up to 95.6 percent is not only immoral but irresponsible.

Eight million Americans are unemployed. But Republicans passed a new set of tax breaks that reward corporations who send jobs overseas.

About 45 million Americans have no health insurance. But Republicans have proposed Health Savings Accounts that benefit a wealthy few, encourage employers to drop insurance coverage and will increase the number of uninsured by 350,000.

Over 8 million children nationwide are struggling to meet new national education standards. But Republicans refused to provide promised help to our schools, leaving millions of children without the help they need in reading and math.

America needs a budget that reflects the morals of this country, a budget the American people can trust and support, one that supports the national security policy that is as strong and brave and as decent as the heroes who serve to protect us.

America needs a budget that includes all its citizens and a budget that is fair and balanced.

The President needs to do for all of America what he is asking the rest of the world to do—to treat all its people with decency and respect.

Mr. BISHOP of New York. Mr. Speaker, I rise today to express my opposition to the President's FY06 budget—a budget that I believe goes against our values as a society. If the proposed budget passes, it would be a disaster for constituents in my home district on Long Island and districts nationwide, forcing working families to make up for many of the cuts in the form of higher State and local taxes.

The American people deserve honesty, and this budget is dishonest by omission, and dishonest in how it portrays the overall budget projections. The President claims that the steep budget cuts he advocates are necessary to cut the deficit in half in 5 years. This is simply not true, and the budget the President proposes fails to accomplish his stated goal.

First, the budget is dishonest by omission. Nowhere in the FY06 budget does the President account for significant costs, including:

Fails to account for the enormous costs of privatizing Social Security as proposed by the President; a whopping \$6 trillion over the next 20 years; \$754 billion over the period from 2009–2015;

Fails to account for the continuing presence of our troops in Iraq—the administration knows we are going to approve an Iraq supplemental upward of \$80 billion for the first part of this year alone—and an estimated \$384 billion over 10 years—yet still omits it in the budget;

Fails to account for growth in interest costs;

Fails to reform the Alternative Minimum Tax that is disproportionately burdening middle income families in my district on Long Island.

As troubling as the glaring budget omissions is the knowledge that the deficit is largely a self-inflicted wound. The President inherited a record annual surplus of \$236 billion—which now, 4 years later, has tanked into a deficit in excess of \$400 billion. Any attempt at honest accounting suggests that we are looking at a decade or more of similar deficits.

The reason we are faced with an unethical budget is because the President refuses to acknowledge the fiscal irresponsibility of his choices, and will not entertain even the most moderate suggestions, such as repealing only the portion of the tax cuts that benefit the top 1 percent of taxpayers.

Unfortunately this budget builds on a disturbing trend. This administration and the leadership in Congress appear to be intent on valuing wealth over work, thereby placing working families at a distinct disadvantage. The tax policies the President advocates disproportionately advantage the wealthiest to the detriment of working Americans, and working families will continue to bear the brunt of the rising inflation spurred by the rising interest rates.

The Bill Gates' of the world pocketed their tax cut in the insistence of the President. However, this President sees no problem eliminating funding for Perkins Loans in his budget, even though the cost of tuition is rising and will continue to rise as the administration's policies force inflation. As a result of the decision to eliminate Perkins, this year more than 670,000 student borrowers could lose out on loan forgiveness if they become teachers, law enforcement officers or if they serve in the military. This is just one of many examples of valuing wealth over work.

In my district, the budget scales back and eliminates several long-term shore protection projects important to the safety and economic security of Long Island.

The President has no problem zeroing out the Fire Island to Montauk Point Study, just as it nears completion.

The President eliminates funding to dredge the Patchogue River, even though this creates a huge safety hazard for boaters.

The President does not hesitate to slash funding for the Long Island Sound Study Office from \$7 million to less than \$500,000, even though this is vital to the livelihoods and economy of the east end of Long Island.

The President falls far short of his promise under the No Child Left Behind bill, even though this means that taxpayers will have to foot the bill at the local level to pay for education.

Finally, the President does not seem to mind taxing veterans' health care at \$250 per year, and doubling copayments for veterans' prescription drugs, at a time when we should be saluting our veterans.

Our values as a society are not reflected in this budget. We must ban together in Congress to force an honest accounting, and insist upon the restoration of long-term fiscal responsibility to our Nation. It's not enough to talk about compassion—it is high time that we refocus our priorities and show some compassion.

#### GENERAL LEAVE

Mr. SPRATT. 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 the subject of my Special Order today.

The SPEAKER pro tempore (Mr. CONAWAY). Is there objection to the request of the gentleman from South Carolina?

There was no objection.

#### SETTING THE RECORD STRAIGHT ON THE COST OF THE MEDICARE PRESCRIPTION DRUG BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mrs. JOHNSON) is recognized for 5 minutes.

Mrs. JOHNSON of Connecticut. Mr. Speaker, the landmark Medicare Prescription Drug and Modernization Act that this body passed in 2003 was the subject of heated rhetoric and partisan attacks at that time. Most recently, we have heard the claim that the costs of this wonderful Medicare prescription drug benefit have skyrocketed far above the estimates relied upon when we passed the bill in 2003. Allow me to set the record straight.

The cost of the Medicare prescription drug benefit that will guarantee every senior in America affordable prescription drug coverage has not changed. In November of 2003, the Congressional Budget Office estimated that the costs of the drug benefit from 2004 to 2013 would be \$408 billion. Today, they estimated it at \$410 billion.

In December of 2003, the Centers for Medicaid and Medicare Services, using different assumptions, estimated that the cost of the bill over the same 10-year period would be \$511 billion. Today, they are saying it will cost \$518 billion. So, whatever estimates we use, whichever set of assumptions we wish to rely on, CBO's or CMS', the answer is the cost estimates have not changed. They varied about plus or minus 1 percent.

So what is the issue? What is the big uproar over? The answer is simple. New estimates just released by the adminis-

tration are for a 10-year period that begin in 2006, not 2004. These estimates cite a cost of \$724 billion. That is because they drop 2 years when there was no drug program and add 2 years when millions more Medicare beneficiaries are going to enjoy the benefits of our Medicare Modernization and Prescription Drug Act. It is just that simple. The 10-year estimating period changed. So, of course, the estimates went up.

But it is easy for the estimators to count the new number of people who benefit from the program in the 2 additional years and drop the 2 years when there was no program. It is more difficult for them, and so they do not do it, estimate the saving that the Medicare modernization and prescription drug bill will enable Medicare to enjoy while at the same time improving the quality of care we will be able to deliver to our seniors.

The Medicare Modernization Act fundamentally changed the way Medicare delivers care to our seniors. By offering welcome to Medicare physicals and disease management programs, we have transformed Medicare from simply an illness treatment program to a wellness and preventative health program.

Medicare has always been good at treating our seniors once they got sick, but did nothing to prevent them from getting sick. Worse, Medicare did nothing to help seniors with chronic illnesses to prevent that chronic illness from worsening.

America's seniors deserve the changes we made in the Medicare Modernization Act. That act modernized the delivery system of care to enable Medicare to deliver the most recent medical advances to our seniors, particularly to those with chronic diseases.

□ 1745

By moving from an illness model to a preventive care model, we can keep seniors out of high-cost care settings, like hospitals and emergency rooms. If you are looking for a sensible way to control costs, this is the way to do it. Disease management programs, like the ones the Medicare Modernization Act have introduced into Medicare, have proven they save health care dollars and they improve health care quality.

PacificCare has already saved \$244 million through existing disease management programs to their 720,000 Medicare beneficiaries. They have saved \$75 million through medication management for patients with congestive heart failure and reduced hospitalizations by 50 percent. They have saved \$185 million by improving blood sugar and cholesterol levels in diabetics. They have saved \$72 annually through their congestive heart failure program, which has served 15,000 patients.

McKesson, which will bring Medicare seniors into the Medicare Modernization Chronic Care Improvement Pro-

gram this year, currently saves \$3,089 per patient each year in their disease management programs. They have reduced emergency department visits by 61 percent. They have reduced hospitalizations by 66 percent.

XLHealth, which operates a Medicare Chronic Care Improvement Program, has reduced medical costs in 2,500 Medicare patients since 2000. Their disease management program has reduced hospitalizations by 25 percent, amputations by more than 50 percent, and heart bypass surgery by 65 percent.

The bottom line: disease management programs save money and improve health care quality. And thanks to the Medicare Modernization Act, these programs will create a better quality of life for seniors with congestive heart failure, diabetes, chronic obstructive disease, and other chronic illnesses and bend the curve of Medicare's cost growth.

These recent estimates we have been hearing so much about simply do not include any consideration of the power of disease management programs to reduce the cost of chronic disease and to improve the quality of care in Medicare. Twenty percent of our seniors have five or more chronic conditions and account for two-thirds of Medicare spending. Twenty percent. Of course disease management will reduce the cost of Medicare.

MMA also initiated another new, though related, development in Medicare that will create significant savings while improving quality, but isn't reflected in cost estimates drawing attention today. For the first time, electronic prescribing will become routine in the Medicare program, with electronic medical trends coming along thereafter.

Electronic prescribing technology will save lives and money by eliminating adverse drug interactions, eliminating handwriting errors, and by notifying physicians when a lower cost generic alternative is available. As we all know, generic drugs often far cheaper than brand name drugs. Electronic prescribing will save money, and while this technology called for in the MMA, the cost savings are not reflected in the cost estimates.

Repealing the MMA would be the wrong medicine for America's seniors. Doing so would deprive them of prescription drugs and the high level of coordinated and preventive care that will keep our seniors healthier and control Medicare spending by improving the quality of our health delivery system.

#### CODEL TO PAKISTAN AND AFGHANISTAN

The SPEAKER pro tempore (Mr. CONAWAY). Under the Speaker's announced policy of January 4, 2005, the gentleman from Indiana (Mr. PENCE) is recognized for 60 minutes.

Mr. PENCE. Mr. Speaker, I am glad to have the opportunity this evening to address you on a subject that is both a meaningful memory for me, as the elected representative of the people of eastern Indiana's Sixth Congressional District, but also, as I believe we will hear not only from my recollection but

from colleagues who will join us, and a very rare opportunity to have a contemporary conversation about the critical importance and the extraordinary success of the United States of America in Afghanistan.

I had the privilege, as a Member of the House Committee on International Relations, to lead a congressional delegation both to Pakistan and Afghanistan this past December. Between the dates of 7 December and 14 December, I had the opportunity of traveling through Pakistan. We landed in Islamabad. We drove by ground transportation to the border of the tribal areas, the city of Peshawar, but also the areas both north and south, Waziristan, where many may recognize the areas most often associated with theories about the hiding place of one Osama bin Laden.

While I and the Members of our delegation were in the city of Peshawar, we actually sat down for a meal with tribal leaders from that central area of south Waziristan, which is in effect in the western area of Pakistan, and it probably is analogous to the Wild West in American history and folklore. As we met with the Prime Minister of Pakistan and the Governor of the Peshawar Province, they referred to this area of Pakistan as the ungoverned areas of their country.

So they really are dominated, Mr. Speaker, by tribal leaders who are, in effect, military and familial leaders of communities ranging from 20,000 to 100,000 persons that dot the mountainous landscape of western Pakistan.

Now, while we stopped in Pakistan and evaluated the progress of the war on terror in that country, the primary purpose for our trip was to visit Afghanistan, where Operation Enduring Freedom has been an extraordinary success since the months immediately following the devastating attack on our country on September 11, 2001. It was my happy privilege to lead what came to be known as CODEL Pence, but the happier part of that was to be joined by colleagues and senior staff personnel of the House Committee on International Relations, who made this trip that much more meaningful and informative for the four policymakers that were alongside for the journey.

My colleagues, some of whom will join me here tonight to share their reflections on Afghanistan and the experience that they had, both in Kabul as well as at provisional reconstruction sites around the country, but my colleagues who joined me included the gentleman from Arizona (Mr. FLAKE), the gentleman from Tennessee (Mr. DAVIS), and my good friend and colleague, the gentleman from Indiana (Mr. CHOCOLA).

There were also noteworthy senior staff personnel from the House Committee on International Relations who joined us, as well as members of the media, all of whom, I might add, demonstrated an extraordinary degree of compassion toward the soldiers that we

met and an extraordinary degree of compassion toward the regular Afghani adults and children that we encountered.

And I might also add that while at no time was our delegation in any physical peril, I do want to commend all those who traveled with us for the willingness to go into a combat environment and to carry the encouragement of the people that we serve to these soldiers in what was the holiday season, when they found themselves so far away from home.

From that dinner in Peshawar with the tribal leaders, we embarked by a C-130 and traveled for our first day into Afghanistan. We arrived in Kabul, Afghanistan, in the belly of a C-130 cargo plane, and we made our way through Kabul. By way of my first recollection, it was an extraordinarily war-torn city.

Our victory in Operation Enduring Freedom was so overwhelming and so quick against the Taliban and the al Qaeda that they harbored that I do not know that I did not really expect to see a metropolitan capital relatively unmolested by war. But that is only because I was not thinking. I was not thinking that it was not the military engagement of the United States of America in Kabul that has wreaked havoc on that, the largest city in Afghanistan. Rather it was years and decades of warfare in that country.

More on that later. More on how that has affected the attitudes of the Afghans both toward the American military commitment and presence in the region and how it bears on our relationship going forward.

But this city had been torn asunder by the military barbarism of the Taliban and, of course, by a decades-long struggle with the former Soviet Union that used barbaric military force again and again and again to attempt to defeat and subjugate the Afghan people and the Afghan military, ultimately to their defeat and ultimately to their national demise.

During our trip, we had a number of great privileges. We met while we were in Kabul with President Karzai. We had the privilege, Mr. Speaker, of being the very first congressional delegation to meet with President Hamid Karzai after his inauguration as the first elected President of Afghanistan. It was an extraordinary privilege for us to be there on December 13, 2004, sitting in the presidential palace and sitting in the office with President Karzai.

By way of reporting to this Chamber a few personal reflections on Hamid Karzai, he is a man who I truly believe is the George Washington of this generation of the Afghan people. He is, as General Washington, whose portrait hangs in this very Chamber, he is in every sense the indispensable man of the transition from the brutalities of Soviet Communism to the brutalities of Taliban extremism to the free era of an Islamic democratic republic in Afghanistan.

I started to get a sense, as we sat in his office in the palace, about why this man has been so successful. He is, first and foremost, a man whose personal biography is deeply compelling. Hamid Karzai comes from the region of Afghanistan down along the border. We were headed to his hometown, which if memory serves, is Kandahar.

His father had been, in effect, a tribal leader in Kandahar during the rise of the Taliban regime in Afghanistan; and as history records, Hamid Karzai's father had been initially very supportive of the Taliban, but very soon saw their twist into totalitarianism and brutality, and Hamid Karzai's father spoke out against the Taliban. And as often happens in brutal dictatorships, Hamid Karzai's father was assassinated, at which point he was spirited across the border into Pakistan. And during much of the reign of the Taliban, he essentially hid out in parts of Pakistan, which of course is very familiar to Hamid Karzai because he had been educated in the country of Pakistan. And to this day he bears both the Pakistani's facile ability with the English language as well as a deep understanding of history and academic thought.

It is that Hamid Karzai who, first with his biography was from a family that had suffered under the Taliban, that then he is able to come back and be the first elected president.

□ 1800

But I think also, and maybe my colleague from Indiana (Mr. CHOCOLA) can reflect on our meeting with Hamid Karzai as well, I found him to be an extraordinarily compelling personality as well. The one message, and I will yield to my colleague for reflections on that meeting and maybe invite my colleague, Mr. Speaker, to a bit of a give-and-take as we tell the story of our journey through Afghanistan. I found him to be an individual who was deeply humble, who had a profound understanding of history, particularly the history of democracy, and who said to us again and again, I will not steal the gentleman from Indiana's thunder because he really asked a profound question of Hamid Karzai that I hope he recites and refers to, but I had a sense again and again that President Karzai understood that we were probably hearing back home that his people may not want the United States to stay around in Afghanistan. He looked at us again and again, Mr. Speaker, and said, When you go home, tell the people that you serve that we will never in Afghanistan fail to be grateful for what you have done and that we love the American soldier, we are grateful for their sacrifices and we love the American people.

To hear that from the elected President of a country that within a matter of years ago was not only one of the great enemies of our country in the world but harbored the al Qaeda, it was

just an extraordinary miracle of history and a great testament to this President's leadership.

With that, Mr. Speaker, and I hope he will stick around for much of our conversation as we tell the story of journeying through this area, is the gentleman from Indiana (Mr. CHOCOLA) who is beginning his second term in Congress, a member of the Committee on Ways and Means. We are proud of his leadership in Indiana. I was especially grateful that his family was willing to spare him to travel through a pretty difficult part of the world to gain a greater understanding as a policy leader. I yield to the gentleman for any reflections on our trip, but most especially would press him for an anecdote about our meeting with President Karzai.

Mr. CHOCOLA. I thank the gentleman for yielding. I want to thank my colleague from Indiana for his leadership in putting this trip together. It was an extraordinary trip full of extraordinary lessons. I only wish that all of the American people could have joined us on that trip and learned what we learned and saw what we saw, to see really the birth of democracy in a country, being the first delegation to meet with President Karzai after his inauguration in free elections, that went off very successfully. The terrorists were unable to stand in the way of people pursuing freedom. It is a wonderful thing to see.

I do recall our meeting with President Karzai and I think he is an extraordinary individual, the right man at the right time, and a great partner for the United States. I do not know if I asked him any profound questions; but one of the questions I asked him was, What would you say to the American people or what would you say if you could go to a town hall meeting in the Second District of Indiana? I invited him to come, as you may recall. He was a little busy and could not join us. But what he said, I do think, was interesting. You would expect him to say thank you. You would expect him to thank the American people for our support for democracy in Afghanistan and giving really the people of Afghanistan the opportunity to rebuild their country and their lives. But, instead, he said congratulations to the American people. He said, I could say thank you, but I would rather say congratulations, because what we have achieved together is an extraordinary thing.

It is extraordinary to think that just a couple of years ago that Afghanistan was under Taliban rule, was harboring the terrorists that attacked us on September 11, and today we could sit in his office and after having driven through the streets of Kabul and seen economic freedom flourishing, entrepreneurship in the streets, in partnership with Afghans and Americans working side by side, he said, it is an extraordinary thing that we have accomplished and an extraordinary thing that we will continue to accomplish together. So

congratulations to the American people in having such a wonderful partnership with the Afghans.

I also remember what he said: I would also point out that the strength of Afghanistan is not our buildings, it is not our economy, it is not the Afghan national army, it is the people of Afghanistan. That is the greatest strength that will continue to build hope and opportunity in this country.

I think he sounded a little bit like our Founding Fathers and, in fact, he sounded a little bit like Ronald Reagan whom I consider one of the best Presidents in our Nation's history when he said, I think his exact words were, "The government that governs the least governs the best." I think we have heard that before somewhere.

But he understands that it is the government that creates an environment for success, that the Afghan government is not going to create success for the Afghan people, but they are fully capable of doing that on their own; and if the Afghan government can help create an environment where people can achieve their own success, really enjoy the fruits of their own success and encourage them to share that with others and grow their economy and help their neighbor, that Afghanistan is well on its way to a free and democratic and successful country.

I would love to stay here with my colleague and discuss other great opportunities and lessons we had. Again, thank you for your leadership and thank you for your creativity in helping to share that story with some people here in the United States by having some media with us that did tell the story. I just wish we could have the whole country hear the story loud and clear, because it is a true success story.

Mr. PENCE. I am grateful for the gentleman's remarks, Mr. Speaker.

This is an area, and I hope anyone that might be looking in to this august Chamber tonight might hear what my colleague from Indiana just said about the gratitude that came out of President Hamid Karzai. I had literally forgotten until you recited the story that that is precisely how he answered the gentleman's question, was to say our success is the success of the American people.

It has been an incredible success. Afghanistan, as the station chief where we overnighted at the American embassy in Kabul told us, and I will never forget it as we met for a briefing there on the embassy compound. He said, Afghanistan is a place where American power and American generosity are working. Let me say it again for the benefit of any here: Afghanistan is a place where American power and American generosity are working.

We have our challenges in Iraq and with this strong Commander in Chief that we have, we will see our way through this and we will see those good people with their ink-stained fingers through to the freedom they so richly deserve. But Afghanistan is a place we

do not read about as much in the news. I think that animated my colleague from Indiana and my desire to go there and tell the story of the success that we had seen.

One of the things that we saw there was to travel in Kabul to the northern outskirts of the city to what has come to be known as Camp Phoenix, a large military installation and principally where, as near as this non-veteran could appreciate, where a great deal of the supplies are managed on a regular basis for Operation Enduring Freedom. And also, I might add, it is also a place where, if we can brag for just a moment and go to a different poster, 15 percent of the Army National Guard in Afghanistan are stationed and every single one of them is a Hoosier. For anyone looking in who does not know the vernacular, that means from Indiana.

This, of course, is a photograph that my colleague actually should be in this picture because the gentleman from Indiana actually brought this Indiana flag, but all of these soldiers, this photograph taken at the provisional reconstruction team site in Jalalabad are of some 1,500 members of the Indiana Army National Guard, away from their families, away from their husbands and their spouses and their wives and their children and their grandchildren, and doing the kind of work day in and day out that is the building of schools, the establishing of fresh water, the establishing of basic services through these provisional reconstruction teams.

We took a memorable helicopter ride on, I think it was a CH-53, a Hercules helicopter, very much like Luke Skywalker through the mountains of Jalalabad, hugging the mountainsides, and landed softly at this provisional reconstruction site. And these folks who, when they are not in uniform, are insurance salesmen and small business owners and pastors and business people and blue-collar workers, but here they are American soldiers and they are impacting the lives every day of regular, ordinary Afghans. They are a source of enormous pride to this Hoosier for the sacrifices that they are making.

As we think about the role, particularly of General Moorhead who commands the Hoosiers at Camp Phoenix, who are literally fanned out all across Afghanistan, I am reminded as I prepare to yield to my colleague for any memories of that part of our trip and the Hoosiers that we met, the night before we left, many of us, my colleague included, and our spouses were able to be with the President and the First Lady at the White House for a holiday celebration. In the few minutes I had with the President, I told him I was leaving for Afghanistan the next day and he thanked me for that, as the Commander in Chief would, and asked me to thank my delegation for going. And then I said to the President, you know, 15 percent of your Army National Guard over there are Hoosiers. And without missing a beat, the President of the United States said, "That's

why it's going so well, Mike." I told that to every single one of the Hoosiers that we met. I thought the President was just being nice, but when we went over there and saw the professionalism and the commitment and the compassion with which these Hoosiers are bringing, in many ways, civilization, stability and democracy to the people of Afghanistan, I became convinced that the President's generous comment was actually pretty close to right. I yield to the gentleman.

Mr. CHOCOLA. I thank the gentleman for yielding. That is a great picture. If you will recall, just behind the group, I guess on their right, behind them is a school. We toured the school. The students there and the headmaster were so thankful to the soldiers that had helped rebuild the school and helped provide school supplies that the children previously really did not have. On the other side, you can see a little bit of it, there is an orchard.

I think the one thing that we have to recognize is that our soldiers are really soldiers of mercy, that we can kill bad guys all day long and we need to kill the enemy, but for the most part what our soldiers are doing there is helping to build a future for the children and the families of Afghanistan. Right there in Jalalabad, helping to build a school, helping to cultivate an orchard and teaching the lessons of how to grow an economy. I think one of the most important lessons that I learned on our trip was that the two most effective tools in weapons in the war on terror is education and economic growth.

One of the most stunning statistics that I learned during our trip was that 40 percent of the Afghan population is under 14 years of age, many of them in the picture you have there. If we do not help the Afghan children, the leaders of tomorrow, have a good education and have an opportunity for a good job in a growing economy, then they will choose a path that is destructive. They will choose a path of terrorism and crime. If they have an education and they have an opportunity for economic growth and a good job, they will be our partners in peace and democracy.

Mr. PENCE. If I may interrupt the gentleman on that point, before the gentleman arrived, I was reflecting on our experience in Pakistan and in Islamabad; and I might, Mr. Speaker, with your permission, encourage the gentleman to speak about precisely that point, which is a profound point which he made both on national television appearances related to this trip, that economic development and education, I think his phrase was, are the principal means to combat terrorism long term.

I am wondering, Mr. Speaker, if the gentleman might reflect on what we saw in the advances at what are known as madrassas or traditionally religious education facilities. We were one of the few American delegations to be per-

mitted to visit a traditional Islamic madrassa in Islamabad, Pakistan. Mr. Speaker, I would ask the gentleman to reflect on that and how that bears on his keen insight about the need to encourage greater, more expansive education in this difficult part of the world.

Mr. CHOCOLA. I thank the gentleman. Certainly a very important part of our trip was our stop in Pakistan. Again, I appreciate the gentleman's leadership in helping to arrange a visit to a madrassa.

When I heard we were going to a madrassa, I was a little concerned, a little skeptical, that here we were going to visit a facility that basically educated religious fanatics, that hated America, hated western values and basically everything we stood for. I was pleased to find out that it was a moderate facility. The thing I was probably most encouraged to learn from the Pakistan government about education in madrassas is that the Pakistan government's strategy is to build secular schools right next to the extreme madrassas in their country.

□ 1815

Because when parents are given the opportunity to send their child to a school that provides education, boarding, and food when the average income is a few hundred dollars a year, certainly they will do that.

But when the school only provides a religious education that provides no marketable skills in the economy, their child does not necessarily have a bright future, and their options are limited when they graduate, and they are susceptible to some of the radical teachings.

But if their child is given the opportunity to go to a school next door that provides a secular education, that teaches them reading, math, and life skills to be able to be constructive, contributing members to a country and an economy, the parents are going to make the same choice every single time. They are going to make sure their child has a bright future, has every opportunity possible to them that they can gain through that education.

So the Pakistan government is doing some very good things in support of combating terrorism, by going right to the root by addressing the hope and the opportunity of the youth of that part of the world so that they choose a positive path in life rather than terrorism and crime and a very destructive path in life.

I thank the gentleman for yielding to me.

Mr. PENCE. Mr. Speaker, reclaiming my time, I thank the gentleman for that memory and, more importantly, the observation about the critical importance of education.

This photograph is just so meaningful to me, and I think I could live to be a lot older and have just a little bit more gray hair and not cherish any

photograph more. And I hope anyone peeking in would examine this or even go to my Web site and take a careful look at it.

As the gentleman will remember, we were walking down this road outside of the provisional reconstruction team's compound in Jalalabad. We were surrounded by soldiers carrying very large weapons and wearing body armor; and we were walking along what we can see is a small village, which, like most villages in that area, was walled with a rustic door. But what struck me and what strikes me about this photograph, it speaks to the gentleman's point about education and it speaks to the gentleman's point about whether it be in Afghanistan or Pakistan or other parts of the world that if we can win the hearts of the children for freedom and to understand the heart and the intent of the good people of the United States of America, we will have gone a long way toward defeating terrorism in the 21st century.

What I love about this photograph is that, and the gentleman will recall, as we came down this street again in an intimidating environment, we were surrounded by big men carrying big guns and wearing body armor, but these children came streaming out of this door running up to the soldiers as long-lost friends. Every one of the soldiers, after checking the perimeter carefully, took a knee. Many of them began to speak in the native tongue with the children. The gentleman from Indiana (Mr. CHOCOLA), the gentleman from Arizona (Mr. FLAKE), and the gentleman from Tennessee (Mr. DAVIS), all of us kind of fanned out and started learning names and chatting with children and posing for pictures; and the most striking thing to me about this photograph, and these are all children, and I am sure we were told but I cannot imagine what their families live on per year but it has to be pennies a day in our currency, and yet every child in this photograph is smiling. Every child in this photograph looks healthy and well fed.

And I know the only reason that is true is because of the United States of America and because of the American soldier; that Jalalabad was an area that was destitute, impoverished, lacking in fundamental basic services, lacking in schools because, as we met with regular Afghans, they told us, We have never had little girls be able to come to school. The Taliban would never allow it, and we never had buildings to come to school in until the United States of America.

So what this picture represents to me with almost an Old Testament-looking wall and door behind it, which if one goes through Afghanistan, it is pretty Old Testament. I mean, it literally looks like a scene out of an Easter pageant. The whole country does, with mud walls and mud streets and ox-drawn carts, and yet to see these children and to see the looks on their faces that is evident in this photograph just

moved me and blessed my heart at a level that said what these soldiers have done, what their families who have sacrificed their time and in some cases they have said good-bye forever to their sons who have fallen in Operation Enduring Freedom, is in some way recompensed by these smiles and by the affection.

I do not know if the gentleman remembers that or the times that we went into classrooms in Jalalabad. The reaction that we got from children was just extraordinary to me to see the way these children were responding to American soldiers and to American personnel and to know they knew we were from America and that America was doing all of these things in Jalalabad and in Kabul and all over Afghanistan for their people. It just was deeply moving to me.

Mr. CHOCOLA. Mr. Speaker, will the gentleman yield?

Mr. PENCE. I yield to the gentleman from Indiana.

Mr. CHOCOLA. Mr. Speaker, I thank the gentleman for yielding to me.

I share his recollection and impact from those moments. They say a picture is worth a thousand words, and that one is worth several million, I think.

I have always argued that the United States has been the greatest force for good in the history of the world. And we talk about the Greatest Generation, and we generally refer to those who served in World War II as that generation; and I think that is a very fitting description. But I think we are very fortunate that the reality is that every generation of Americans has been truly great, and most of those generations have been defined by those who volunteered to serve in this Nation's uniform.

And as the President said before, we sacrifice for the liberty of strangers. And we were with some strangers who have just witnessed the first democratic election in their nation's history, and it is something that they will remember the rest of their lives, and they will grow up to be our friends and our allies and our partners in a better and safer world.

We saw in this Chamber, during the President's State of the Union speech, one of the most moving moments I have ever witnessed when the mother of a fallen Marine embraced a young woman who had recently voted and been the advocate for human rights. In fact, that advocacy cost her father his life when he was assassinated by Saddam Hussein. So this is just a small representation that every American, I think, should be very proud of. The fact that children come streaming out behind a wall of a village with American soldiers in full uniform and full gear with smiles on their faces, and they run towards them, not away from them, and that we have the opportunity to sit there and talk to them and get to know them a little bit, and we only get to do that because of the

greatness of this Nation and the greatness of those serving in uniform.

Mr. PENCE. Mr. Speaker, reclaiming my time, that is especially well said, and it is fitting because in some of the time that we have remaining, I wanted to reflect on the American soldier and the opportunity that we had both at Camp Phoenix in Kabul, in Jalalabad, and then Bagram Air Force Base and probably for me as well being able to visit injured soldiers at Landstuhl Regional Medical Center on the way back.

But one of the things that was a great privilege for me was, Mr. Speaker, along with the gentleman from Indiana, thinking of the 1,500 Hoosier National Guard who were in Afghanistan and thinking, Mr. Speaker, of the holiday season that was upon us, the gentleman from Indiana (Mr. CHOCOLA) and I developed what we came to call Operation Holiday Greeting. And it resulted in our inviting our constituents, three quarters of a million people in north central Indiana and three quarters of a million people in eastern Indiana, to send in holiday greeting cards to soldiers. We announced the initiative on November 11; and within 10 days we received, Mr. Speaker, more than 25,000 lovingly handmade holiday greeting cards that we were able to take with us to Operation Enduring Freedom.

This photograph captures just one of literally dozens and dozens of scenes where the gentleman from Indiana (Mr. CHOCOLA), the gentleman from Arizona (Mr. FLAKE), and the gentleman from Tennessee (Mr. DAVIS) and I were handing out greeting cards to the delight of soldiers who read them. One soldier in the foreground of this photograph has completely forgotten about us and is into what we can clearly see from the American flag was a hand-crafted card very likely by some grade schooler in South Bend or a grade schooler in Muncie, Indiana.

And this was such an extraordinary blessing to be able to be a part of it because it does strike me, and then I will yield to the gentleman for his memories of this particular part of our trip, that having some politician walk up to someone on a far-flung theater of operation and deployment and say, Hey, the folks back home are praying for you, appreciate what you are doing, and have got you in their hearts, it is a whole other thing for that politician, who by and large we do not trust anyway, to hand to the soldier a fist full of lovingly crafted holiday greeting cards that say we are praying for them, we are thinking of them, we would love a note from them to say how things are going.

I saw some of the biggest, toughest most grizzled soldiers at Bagram Air Force Base in that cafeteria where we wandered, when we walked up to them and they kind of had that lockjawed look and they do not know who we are and they do not know if they like us; and when we tell them we are Congressmen from Indiana, they think, well, that is okay, thanks for coming over and we appreciate it.

But then when I would hand them the cards, these big guys would melt. Just one after another I saw more than one guy start to wipe tears from his eyes. And as the song goes, "It Ain't Funny When a Soldier Cries," but I saw more than a few well up with tears, not because of anything I did or I would say anything that the gentleman from South Bend did, but these cards and the fact that in 10 short days Hoosiers of all ages, senior citizens, grade school kids, people at churches and synagogues, took time to sit down and express their prayers and their good wishes and their greetings to these soldiers.

And the gentleman from Indiana (Mr. CHOCOLA) and I, I must say, Mr. Speaker, we lugged a lot of boxes, and I want to commend the gentleman from Indiana (Mr. CHOCOLA) for his tireless effort in passing these cards out.

Mr. Speaker, I yield to the gentleman from Indiana for any memories of Operation Holiday Greeting.

Mr. CHOCOLA. Mr. Speaker, the memories are obviously wonderful and rewarding. And as the gentleman recalls, we got to Camp Phoenix about midday and went to the mess hall where there were several soldiers in there enjoying lunch. It was a delicious lunch, as I recall. And having the opportunity during the holiday season to walk in there and hand a little piece of home to a Hoosier soldier unexpectedly is something that certainly I think we got more out of it than anyone else. And I have to thank our constituents for responding in such a generous way. It is an amazing response in a very short period of time for people to go to the effort to thank our men and women in uniform for their service, for being away from home at a very difficult time of year to be away from home.

And the gentleman is right. We would hand them a pile of cards, and they would kind of forget we were there. They would start looking through those cards and reading the messages. There were a lot of unique approaches in the messages, and so it was a great thrill that certainly I will always remember. And I remember one soldier in particular whose name was Oliver Jackson, and I walked up to him, and he said, Hey, I know you. He said, I am from South Bend, Indiana.

And I said, I know where that is and thank you for your service. So we sat down and talked for a while, and he said he was going to be home on leave in a couple weeks. And I said, When you come home, call me. And I gave him my contact information. And he did. He came home a few weeks later, and he did not stop by just to say hi. He stopped by. As the gentleman will recall, we gave a couple of flags to the soldiers at Camp Phoenix. We gave them an American flag and an Indiana flag. Then a constituent of mine has designed a battle flag that really commemorates and honors all the major battles that our Armed Forces have been in since the founding of our country.

□ 1830

I left two of those flags there. In the spirit of our soldiers giving more than we could ever give them, and I will have to give you a copy of this, all of the Hoosier members of that unit signed that flag and sent it back. Oliver Jackson brought that flag back. It will be hanging in my office very proudly as one of the most memorable things that I will ever receive; which is we tried to do a nice thing for them, our constituents did, and I think they one-upped us, not only by serving our Nation so valiantly and bravely and effectively, but thinking about us at a time when they are away from home and saying "thank you" in an extraordinary way.

Mr. PENCE. Mr. Speaker, reclaiming my time, I thank the gentleman for yielding, and I am jealous to learn about the signed battle flag, but it is to the gentleman's credit, because it was the gentleman from Indiana (Mr. CHOCOLA) who remembered to bring those flags from home, and I want to commend him again for his thoughtfulness in remembering to bring that for our soldiers, but also to have them return, to have them show their appreciation.

I guess I just appreciate, Mr. Speaker, the gentleman's reflection on the character of the soldiers that we saw in Operation Enduring Freedom. There is a toughness there. I think, candidly, we were there at a very tough time of the year.

I have had the privilege in my 45 years of never not being home for a little bit of Christmas. I have always been able to be home for part of Christmas. It is a grievous thing to not be home, and yet beyond what on the surface you could tell was not an easy time for many of them, was a seriousness and a professionalism and an understanding of the importance of what we are doing in Afghanistan, which is still a dangerous place.

I guess that is where I would like to close our reflections tonight as we have talked about President Karzai and our meetings in Kabul, as we have talked about the children that we saw, the provisional reconstruction team, but is to say it is my hope that anyone looking in, Mr. Speaker, would understand that Afghanistan is not succeeding because there are no bad guys there. Afghanistan is not succeeding because it is an easier place to build a democracy than Iraq. Afghanistan is succeeding because American generosity and American power, in partnership with the good people of Afghanistan, is causing that success, day in and day out.

As we approach, I believe, the parliamentary elections this coming April, where the legislative body of that government will be elected, that is all being made possible because the people of Afghanistan, who, as I suggested earlier in this conversation, it strikes me that from our conversations with regular Afghans as well as President Karzai, is the one thing you hear

from folks, is this: They are bone weary of war in Afghanistan, the war that was pressed down on them by the Soviet communists, the war that was pressed down on them through tribal in-fighting, the war that was pressed down on them by the Taliban and al Qaeda under its patronage. And when the American military came in and the generosity of the American people was unleashed, the people of Afghanistan have opened their arms and said, "Yes, come, stay, help us build stability, help us create a country that is no longer dependent on the narcotics trade. Help us transition to an agricultural economy."

But it is all working. I guess my real burden in trying to take up an hour of the people's time tonight, Mr. Speaker, and I will yield to the gentleman for any closing thoughts, is just to make sure that as we go into a debate over additional funding for Afghanistan, as we go into a debate for additional counternarcotics funding, and there will be those of us that would argue that those things should happen in the regular budget as opposed to the supplemental, but beyond all of those arguments, it is my hope that the American people would understand that we are succeeding in Afghanistan because of American generosity and American power and the Afghan people are making it happen.

It is not happening automatically. It is not the absence of conflict or the absence of danger that is resulting in this success. It is in spite of those things that we are succeeding. And even though no news rarely makes it in the newspaper, the truth is if things are not blowing up on a daily basis, things slip out of the news, and Afghanistan has slipped out of the news and the American people tend to, and I think I am as guilty as the next person; before we went, I tended to think it is not that tough over there. It is tough. It is hard. It is commitment and focus every single day.

But it is working, and it is my hope that we really celebrate that. As we have a debate over additional funding for Afghanistan, at every level, that we will understand that the good people of Afghanistan have embraced the American people with gratitude, they have embraced the American soldier, as the gentleman from Indiana (Mr. CHOCOLA) just recited, as the Iraqi woman embraced the mother of the fallen soldier just yards away from where we are standing now, and to understand that we must keep that commitment to bring these good people of Afghanistan the freedom they so richly deserve.

I yield for closing remarks to the gentleman.

Mr. CHOCOLA. Mr. Speaker, just once again I want to thank my colleague, the gentleman from Indiana (Mr. PENCE), for leading the trip and leading tonight's discussion.

I think it is important for the American people to understand how much success they have helped provide in Af-

ghanistan. It never ceases to amaze me, the deafening silence that we fail to see in the national media about the successes that are being achieved in Afghanistan on a daily basis. And although the silence is deafening, the success is undeniable.

I will never forget the opportunity to meet with General Petraeus when I was in Iraq, in Mosul, in the summer of 2003. General Petraeus pointed out that we have to make sure we understand that the money that we invest in places like Afghanistan and Iraq, it is important that we buy guns and bullets, but you cannot distinguish between military aid and humanitarian aid. It gets back to the most effective weapons on the war on terror, I think, are education and economic growth.

If we can maintain our resolve, if we can prioritize those investments, I think we will look back at this period of history and say it was extraordinary in the growth of democracy around the world.

I think it is unfortunate that the elections in Afghanistan were not celebrated here in the United States like I think they should have been. It was the defeat of the Taliban. The Taliban had said that they were going to disrupt the registration process. Over 10 million Afghans registered to vote. They said they would disrupt the elections. I think it was close to an 80 percent turnout, much higher than we have here in the United States. So the Taliban has been rendered relatively ineffective because of the investment we have made with the Afghan people, both in military action and force, as well as humanitarian aid.

I was surprised that we met members from the United States Department of Agriculture, we met USAID members, we met State Department members, that are all over there in a relatively dangerous environment, that are risking their life to do the right thing because they understand that this is the right thing for a more safe and secure world, because the more jobs and the more education there is in Afghanistan, the safer we are here in the United States.

So I think that the American people should be very proud of their investment, they should be very proud of their effort, they should certainly be very proud of the men and women in uniform that have done the heavy lifting. If we can maintain that focus and that resolve and commitment, I know this will be a safer world.

Afghanistan and the 14-year-olds that are 40 percent of the country and younger will have hope and opportunity rather than oppression and a dead-end street for their future days. They will continue to be our partners, they will continue to run out of the front doors of their home and embrace us, and not run away from us and try to do to us harm.

I hope we have been able to share just a little bit tonight with the American people about the hope and opportunity that is really taking place every

single day. And I would encourage the American people, when they turn on the 6 o'clock news or any 24-hour news channel and they do not hear about what is going on in Afghanistan, that means it is one more day of success.

So I yield back, and again thank the gentleman for all of his efforts.

Mr. PENCE. Mr. Speaker, I do want to express my profound gratitude to the gentleman from Indiana (Mr. CHOCOLA) for being willing to leave family and his constituents behind and travel, as we described tonight, through Islamabad, Pakistan; through Parachinar, where we met with tribal leaders; into Kabul, where we went to Camp Phoenix; through the mountains of Jalalabad to Bagram Air Base, and then out of the country.

It was a great, great privilege to travel with the gentleman from Indiana (Mr. CHOCOLA), the gentleman from Tennessee (Mr. DAVIS), and the gentleman from Arizona (Mr. FLAKE), all of whom I think exemplified the very best of a servant's attitude about public service.

I told many soldiers as we traveled that there was not hardly a person that I served in all of eastern Indiana who would not rather be standing right there in front of them thanking them for their service, assuring them of their prayers, and expressing the gratitude that the gentleman from Indiana (Mr. CHOCOLA) just described, that the American people feel for the success that the American soldier has wrought and is continuing to provide to the good people of Afghanistan.

I close by just reminding, Mr. Speaker, anyone that might be looking in, what the gentleman from Indiana (Mr. CHOCOLA) heard from President Karzai. As I have said again and again tonight, Afghanistan is a place where American power and American generosity of work are working. But when the gentleman from Indiana (Mr. CHOCOLA) asked President Karzai at the presidential palace, "What would you have us tell our constituents if you were there," and he said, "Tell the American people our success is their success, and that the President of Afghanistan said congratulations, America, on being a part of freedom and stability and opportunity coming to the good people of this historic land."

So, Mr. Speaker, with a grateful heart for the opportunity to have led CODEL Pence through Pakistan and Afghanistan, I yield back the balance of my time.

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. WYNN (at the request of Ms. PELOSI) for today on account of personal business.

Mr. REICHERT (at the request of Mr. DELAY) for today and the balance of the week on account of attending a funeral.

#### SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Ms. LEE, for 5 minutes, today.  
 Ms. WOOLSEY, for 5 minutes, today.  
 Mr. PALLONE, for 5 minutes, today.  
 Mr. DAVIS of Illinois, for 5 minutes, today.  
 Mr. BROWN of Ohio, for 5 minutes, today.  
 Mr. DEFAZIO, for 5 minutes, today.  
 Mr. EMANUEL, for 5 minutes, today.  
 Mr. CARDOZA, for 5 minutes, today.  
 Mr. COOPER, for 5 minutes, today.  
 Mr. DAVIS of Tennessee, for 5 minutes, today.  
 Mr. CASE, for 5 minutes, today.  
 Mr. COSTA, for 5 minutes, today.  
 Mr. CUMMINGS, for 5 minutes, today.  
 Ms. BEAN, for 5 minutes, today.  
 Mr. SANDERS, for 5 minutes, today.  
 Mr. BLUMENAUER, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.  
 (The following Members (at the request of Mr. POE) to revise and extend their remarks and include extraneous material:)

Mr. COX, for 5 minutes, today.  
 Mr. POE, for 5 minutes, February 17.  
 Mr. FLAKE, for 5 minutes, today.  
 Mrs. JOHNSON of Connecticut, for 5 minutes, today.  
 Mr. LEWIS of California, for 5 minutes, today.  
 Mr. MANZULLO, for 5 minutes, today.  
 Mr. GOODLATTE, for 5 minutes, February 17.

#### ADJOURNMENT

Mr. PENCE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 43 minutes p.m.), the House adjourned until tomorrow, Thursday, February 17, 2005, at 10 a.m.

#### NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,  
 OFFICE OF COMPLIANCE,

Washington, DC, February 15, 2005.

Hon. J. DENNIS HASTERT,  
 Speaker, House of Representatives, The Capitol,  
 Washington, DC.

DEAR MR. SPEAKER: Section 304(b)(1) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1384(b)(1), requires that, with regard to the initial proposal of substantive regulations under the CAA, the Board "shall publish a general notice of proposed rulemaking" and "shall transmit such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal."

The Board of Directors of the Office of Compliance is transmitting herewith the enclosed Notice of Proposed Rulemaking which

accompanies this transmittal letter. The Board requests that the accompanying Notice be published in both the House and Senate versions of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal.

Any inquiries regarding the accompanying Notice should be addressed to William W. Thompson II, Executive Director of the Office of Compliance, 110 2nd Street, SE., Room LA-200, Washington, DC 20540; 202-724-9250, TDD 202-426-1912.

Sincerely,

SUSAN S. ROBFOGEL,  
 Chair of the Board of Directors.

#### FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

#### Notice of Proposed Rulemaking, and Request for Comments From Interested Parties

#### NEW PROPOSED REGULATIONS IMPLEMENTING CERTAIN SUBSTANTIVE EMPLOYMENT RIGHTS AND PROTECTIONS FOR VETERANS, AS REQUIRED BY 2 U.S.C. 1316a, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (CAA).

#### Background

The purpose of this Notice is to issue proposed substantive regulations which will implement the 1998 amendment to the CAA which applies certain veterans' employment rights and protections to employing offices and employees covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations? In 1998, the CAA was amended through addition of 2 U.S.C. 1316a, a provision of the Veterans' Employment Opportunities Act of 1998 (VEOA), which states in relevant part: "The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35 of Title 5, shall apply to covered employees." As will be described in greater detail below, these sections of Title 5 accord certain hiring and retention rights to veterans of the uniformed services. Section 1316a(4)(B) states that "The regulations issued . . . shall be the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions . . . except insofar as the Board may determine for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section."

Will these regulations, if approved, apply to all employees otherwise covered by the CAA? No. Subsection (5) of 2 U.S.C. 1316a, states that, for the purpose of application of these veterans' employment rights, the term "covered employee" shall not apply to any employee of an employing office: (A) whose appointment is made by the President with the advice and consent of the Senate; (B) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress; or (C) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position. . . . These regulations would apply to all other covered employees.

Do other veterans' employment rights apply via the CAA to Legislative Branch employing offices and covered employees? Yes. Another statutory scheme regarding veterans' and armed forces members' employment rights is incorporated in part through section 206 of the Congressional Accountability Act of 1995 (CAA). Section 206 of the CAA, 2 U.S.C. 1316, applies certain provisions of Title 38 of the U.S. Code regarding "Employment and Re-employment Rights of Members of the Uniformed Services." Section 206 of the CAA also requires the Board of Directors to issue substantive regulations patterned upon the regulations promulgated by the Secretary of Labor to implement the Title 38 rights of

members of the uniformed services. As of this date, the Secretary of Labor has not finally promulgated any such regulations. Therefore, regulations implementing CAA section 206 rights will not be proposed by the Board until the Labor Department regulations have been promulgated. The proposed regulations in this Notice are not based on section 206 of the CAA, but solely on the other veterans' rights referenced in 2 U.S.C. 1316a.

**What are the veterans' employment rights applied to covered employees and employing offices in 2 U.S.C. 1316a?** In recognition of their duty to country, sacrifice, and exceptional capabilities and skills, the United States government has accorded veterans a preference in federal employment through a series of statutes and Executive Orders, beginning as the Civil War drew to a close. While interpreting regulations have been modified over time, many of the current core statutory protections have remained largely unchanged since they were first codified in the historic Veterans' Preference Act of 1944, Act of June 27, 1944, ch. 287, 58 Stat. 387, amended and codified in various provisions of Title 5, U.S.C. In 1998, Congress passed the Veterans Employment Opportunities Act ("VEOA"), Pub. L. 105-339, 112 Stat. 3186 (October 31, 1998), which "strengthen[s] and broadens" (Sen. Rept. 105-340, 105 Cong., 2d Sess. at 19 (Sept. 21, 1998)) the rights and remedies available to military veterans who are entitled to preferred consideration in hiring and in retention during reductions in force ("RIFs"). Among other provisions of the VEOA, Congress clearly stated, in the law itself, that henceforth the "rights and protections" of certain veterans' preference law provisions, originally drafted to cover certain Executive Branch employees, "shall apply" to certain "covered employees" in the Legislative Branch. VEOA §4(c)(1) and (5) (emphasis added).

The selected statutory sections which Congress determined "shall apply" to covered employees in the Legislative Branch include, first, a definitional section describing the categories of military veterans who are entitled to preference ("preference eligibles"). 5 U.S.C. §2108. Generally, a veteran must be disabled or have served on active duty in the Armed Forces during certain specified time periods or in specified military campaigns to be entitled to preference. In addition, certain family members (mainly spouses, widow[er]s, and mothers) of preference eligible veterans are entitled to the same rights and protections.

The VEOA also makes applicable to the Legislative Branch certain statutory preferences in hiring. In the hiring process, a preference eligible individual who is tested or otherwise numerically evaluated for a position is entitled to have either 5 or 10 points added to his/her score, depending on his/her military service, or disabling condition. 5 U.S.C. §3309. Where experience is a qualifying element for a job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civil activities. 5 U.S.C. §3311. Where physical requirements (age, height, weight) are a qualifying element for a position, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3512.

For certain positions (guards, elevator operators, messengers, custodians), only preference eligible individuals may be considered for hiring so long as such individuals are available. 5 U.S.C. §3310. (These statutory provisions on hiring in the Executive Branch apply specifically to the competitive service; this point will be discussed further below.)

Finally, in prescribing retention rights during Reductions In Force for Executive Branch positions (in both the competitive and in the excepted service), the sections in subchapter I of chapter 35 of Title 5, U.S.C., with a slightly modified definition of "preference eligible," require that employing agencies retain an employee with retention preference in preference to other competing employees, provided that the employee's performance has not been rated unacceptable. 5 U.S.C. §3502(c) (emphasis added).

Along with this explicit command to retain qualifying employees with retention preference, agencies are to follow regulations governing the release of competing employees, giving "due effect" to the following factors: (a) employment tenure (i.e., type of appointment); (b) veterans' preference; (c) length of service; and, (d) performance ratings. 5 U.S.C. §3502(a). 5 U.S.C. §3502 also requires certain notification procedures, providing, inter alia, that an employing agency must provide an employee with 60 days written notice (the period may be reduced in certain circumstances) prior to being released during a RIF. 5 U.S.C. §3502(d)(1). Certain protections also apply in connection with a transfer of agency functions from one agency to another. 5 U.S.C. §3503. In addition, where physical requirements (age, height, weight) are a qualifying element for retention, preference eligible individuals (including those with disabilities) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3504.

**Are there veterans' employment regulations already in force under the CAA? No.**

#### Procedurals Summary

**How are substantive regulations proposed and approved under the CAA?** Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors adopt proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record*; (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President pro tempore of the Senate for publication in the *Congressional Record*; (4) committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and (5) final publication of the approved regulations in the *Congressional Record*, with an effective date prescribed in the final publication. For more detail, please reference the text of 2 U.S.C. 1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

**Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate?** As required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the House of Representatives and the Acting Deputy Executive Director for the Senate.

**Has the Board of Directors previously proposed substantive regulations implementing these veterans' employment rights and benefits pursuant to 2 U.S.C. 1316a?** Yes. On February 28, 2000, and March 9, 2000, the Office published an Advanced Notice of Proposed

Rulemaking ("ANPR") in the *Congressional Record* (144 Cong. Rec. S862 (daily ed., Feb. 28, 2000), H916 (daily ed., March 9, 2000)). On December 6, 2001, upon consideration of the comments to the ANPR, the Office published a Notice of Proposed Rulemaking ("NPR") in the *Congressional Record* (147 Cong. Rec. S12539 (daily ed. Dec. 6, 2001), H9065 (daily ed. Dec. 6, 2001)). The Board has not acted further on those earlier Notices, and has decided to issue this Notice as the first step in a new effort to promulgate implementing regulations.

As noted above, 2 U.S.C. 1316a mandates application to the Legislative Branch of certain statutory provisions originally drafted for the Executive Branch. In its initial proposed rules, the Board noted that this statutory command raised the quandary of determining which Legislative Branch employees should be covered by which statutory provisions. There are longstanding and significant differences between the personnel policies and practices within these two branches. For instance, the Executive Branch distinguishes between employees in the "competitive service" and the "excepted service," often with differing personnel rules applying to these two services. The Legislative Branch has no such dichotomy.

When Congress directed in the VEOA that certain veterans' employment rights and protections currently applicable to Executive Branch employees shall be made applicable to Legislative Branch employees, the Board took note of a central distinction made in the underlying statute: certain veterans' preference protections (regarding hiring) applied only to Executive Branch employees in the "competitive" service, while others (governing reductions in force and transfers) applied both to the "competitive" and "excepted" service.

The Board's initial approach in 2000 was to maintain this distinction by attempting to discern which Legislative Branch employees should be considered as working in positions equivalent to the "competitive" service, and which should be considered equivalent to the "excepted" service. At that point, the Board concluded that all Legislative Branch employees, with certain possible exceptions (such as those of the Office of the Architect of the Capitol) should be considered excepted service employees. The Board therefore issued regulations, closely following Office of Personnel Management ("OPM") regulations for the various statutory provisions, with the caveat that the regulations governing hiring would apply only to those employees whom the Board currently deemed working at jobs equivalent to the competitive service (e.g. the Office of the Architect of the Capitol). The NPR acknowledged: "The Board recognizes that the adoption of these definitions (e.g., competitive and excepted services), consistent with the mandate of section 225 [of the CAA], yields an unusual result in that no "covered employee" in the Legislative Branch currently satisfies the definition of "competitive service." Moreover, as the substantive protections of veterans' preference in Legislative Branch appointment apply only to "competitive service" positions, the regulations which the Board proposes regarding preference in appointment would with one noted exception [employees appointed under the Architect of the Capitol Human Resources Act], currently apply to no one. . . ." This left the Board in the position of drafting intricate regulations that may have applied to only a minority of "covered employees," or perhaps even to no "covered employees" at all—a result in obvious tension with the VEOA's statutory mandate that these veterans' protections "shall apply" to "covered employees" in the Legislative Branch.

The Board received Comments to its initial proposed regulations from the Office of the Architect of the Capitol, the Office of House Employment Counsel, and the Office of the Senate Chief Counsel for Employment, all finding fault with the initial approach. The Comments generally included the following observations. First, commenting offices noted that the Board's approach of drafting intricate regulations that may not apply to any covered employees creates more problems than it solves. This approach was seen as "impracticable," "obfuscating" the true sense of the VEOA and what requirements in fact must apply to employing offices; it was seen, in effect, as an attempt to "place a square peg in a round hole." Others charged that the adoption of such regulations went beyond the Board's statutory authorization, and would require, without basis in law, the employing offices to adopt complicated procedures, some governing employment decisions that affected only non-veteran applicants or employees. A commenting office also complained about the application of terms "foreign and inapplicable" to its personnel system. Employing offices also submitted that statutes drafted for the Executive Branch competitive service should not apply at all to any Legislative Branch employee.

Furthermore, one employing office commented that such modification of OPM regulations does not constitute an adoption of the "most relevant regulations," as regulations that apply to no covered employees can not possibly be the most relevant regulations applicable. As another commenting office aptly put it, "Unfortunately, the unintended result could very well be that the underlying principles of the veterans' preference laws would lie fallow while the affected legislative branch entities struggle with the task of adopting civil-service type personnel management systems." Comments of the Office of House Employment Counsel, Feb. 6, 2002 at 9. Additionally, all three employing offices argued that the Board should issue three individual sets of regulations (to pertain to the Senate, House, and covered Congressional instrumentalities), rather than one set. Finally, the Office of the Architect of the Capitol also argued that the Architect of the Capitol Human Resources Act did not create a competitive service in the sense of the veterans' preference laws.

**How are the regulations being proposed in this Notice different from those regulations which the Board previously proposed?** In the period since the initial proposed regulations were issued by the Board of Directors and commented upon by various stakeholders, the Office of Compliance has engaged in extensive informal discussions with various stakeholders across Congress and the Legislative Branch, in an effort to ascertain how best to effect the basic purposes of veterans' employment rights in the Legislative Branch.

After careful consultation and deliberation, the Board is issuing new proposed regulations which differ in many respects from the initial proposed regulations. The new approach is responsive to the clear statutory mandate contained in the VEOA, and to various Comments regarding the initial proposed regulations. This approach also applies insights gained from the informal discussions with stakeholders.

The Board has decided to apply the plain language of the statutory provisions to all covered employees in the Legislative Branch. By doing so, the Board avoids what commenting employing offices styled as the "anomaly" of complicated regulations which would practically apply to no employees, an anomaly which not only poorly served the

clear Congressional intent that protections "shall apply to covered employees," but which also created confusion for the employing offices.

Not only is application of these rights to all covered employees compelled by the plain language of the statute, the legislative history of the VEOA also clearly indicates that the principles of veterans' preference protections must be applied in the Legislative Branch. The authoritative report of the Senate Committee on Veterans' Affairs (Senate Report 105-340, pages 15 & 17), recognized that the competitive service did not exist in the Legislative Branch, and that 2 U.S.C. 1316a did not require the establishment of such a competitive service. Nonetheless, the Committee noted that veterans' preference principles should be incorporated into the Legislative Branch personnel systems.

For these reasons, the Board is persuaded that Congress, in enacting the VEOA's extension of veterans' employment rights to the Legislative Branch, intended a broad application to all CAA covered employees, except for the staff of those employing offices in the House of Representatives and the Senate which Congress specifically excluded from coverage in section 206a(5) of the CAA (2 U.S.C. §1316a(5)). This result is faithful to the statutory language. Furthermore, the Board has concluded, for the reasons stated above, that the most relevant substantive Executive Branch OPM regulations are at times inapposite to a meaningful implementation of the VEOA in the Legislative Branch, such that a modification of the regulations is necessary for the effective implementation of the rights and protections under the VEOA. As a result, the Office is proposing regulations that reflect the principles of the veterans' preference laws, as discussed by the Senate Committee on Veterans Affairs, without linking such coverage to employees or positions with competitive service status.

Furthermore, the Board has also taken note of the legislative history suggesting that employing offices with employees covered by the VEOA should create systems incorporating these veterans' preference principles: "The Committee notes that the requirement that veterans' preference principles be extended to the legislative and judicial branches does not mandate the creation of civil service-type evaluation or scoring systems by these hiring entities. It does require, however, that they create systems that are consistent with the underlying principles of veterans' preference laws." Sen. Comm. Report at 17. The implementation of that provision in the Senate Report can only be accomplished by the employing offices.

In their Comments, employing offices strongly expressed their need to preserve their autonomy in determining and administering their respective personnel systems. For example, the Office of the Architect of the Capitol commented that it was incumbent upon the employing offices to create "systems that are consistent with the underlying principles of veterans' preference laws," pursuant to the Senate Committee Report. The Board agrees, and the newly proposed regulations allow employing offices to do so. What the regulations also do is clearly define the "underlying principles of veterans' preference laws" made applicable to these employing offices, so as to provide a benchmark for the employing offices, applicants, and covered employees, as to whether the systems developed are consistent with these principles.

**What is the approach taken by these revamped proposed substantive regulations?** The Board has taken great heed to avoid the intricate, OPM-like regulations that formed

the basis for its first proposed regulations. Under the current proposed regulations, employing offices will retain their wide latitude, not similarly enjoyed by many employing agencies in the Executive Branch, to devise and administer their own unique and often flexible personnel systems. However, employing offices with covered employees must incorporate into these individual personnel systems the basic veterans' preference protections under the specific statutory mandate that Congress issued in the VEOA, and they must carry out the administration of these veterans' preference provisions in a manner consistent with the Board's commitment to promoting administrative transparency and accountability.

Under this approach, employing offices with the specified covered employees must meet the requirements contained in the statutory mandate of the VEOA, but need not necessarily adopt any of the trappings of an OPM-like personnel system. Thus, should such an employing office choose to administer numeric evaluations of applicants for a position, it must add to a preference eligible's evaluation the points called for in the veterans' preference statutes. If it does not numerically evaluate applicants, it must determine how it will factor veterans' preference status into its employee evaluations and hiring decisions at a level commensurate with the statutory directive. Similarly, should an employing office currently have a policy of placing covered employees who may be potentially subject to a reduction in force on a retention register, it must rank said employees taking into account the directives of the veterans' preference statute. Should an employing office elect not to keep formal retention registers, nothing in these regulations requires it to start doing so. It still must, however, follow the statutory mandate to provide certain veterans' preferences in the course of a reduction in force that affects employees covered by the VEOA.

The goal of preserving employing office autonomy in fashioning personnel systems has further compelled the Board to minimize the impact of these proposed regulations on employment decisions not directly involving preference eligibles. Thus, unlike the initial proposed regulations, should an employing office properly determine that no preference eligibles are qualified applicants, or that no preference eligibles are subject to a RIF, these proposed regulations are designed so as not to govern the employment decisions taken by the employing office. By allowing for such employing office autonomy, the Board hopes to allay the concerns of some of the employing offices, expressed in the initial Comments, that a "morass" of intricate regulations would apply to decisions that did not affect preference eligibles. (One isolated, but necessary exception to this approach limiting the effect of the regulations to personnel actions involving preference eligibles is proposed §1.115, governing the transfer of functions between one employing office and another, and the replacement of one employing office by another. This section provides protections for all covered employees, as the term is defined and limited in the VEOA, including non-preference eligibles. The clear statutory language of 5 U.S.C. §3503 (applying to both the competitive and excepted services) commands this result. Congress chose to include this broad statutory provision in the set of provisions made applicable to the Legislative Branch in the VEOA.)

The overall discretion and autonomy reserved to employing offices to administer veterans' preference protections within the context of their personnel systems comes with a responsibility on the part of the employing offices to provide all applicants for covered positions and all covered employees

with certain notice and informational rights, as discussed below. This is to ensure that employing offices are equipped with all information necessary to determine and administer veterans' preference eligibility and that such applicants and employees are properly informed of how their employing office has chosen to give life to the veterans' preference protections.

In sum, should an employing offices already use personnel policies and procedures similar to those in the competitive service, it must factor in the various veterans' preference protections with respect to applicants for covered positions and covered employees. If an employing office chooses to follow more flexible, or merely different, personnel policies from those referenced in the competitive service, it may do so—but may not refuse to apply the veterans' preferences called for in the statute. This would contravene the clear statutory directive to affirmatively apply the veterans' preference protections to the specified covered employees in the Legislative Branch.

In proposing these regulations, the Board has sought to remain faithful to the explicit statutory language of the VEOA. In some cases, we have been guided by OPM veterans' preference implementing regulations. In many cases, "for good cause shown," we have not adopted the OPM regulations so as to tailor simpler and more streamlined regulations. We have issued proposed regulations based on the direct statutory language whenever possible, reserving implementation to the individual employing offices, who then are charged with crafting their own processes and procedures for integrating veterans' preference protections within their personnel systems.

Therefore, in accord with 2 U.S.C.1316a(4)(B), which mandates that "the Board may determine, for good cause shown and stated . . . a modification of such regulations would be more effective for the implementation of the rights and protections under this section," these proposed regulations may not track the most relevant substantive regulations applicable with respect to the Executive Branch. However, the proposed regulations endeavor, to the maximum practical extent, to effect the veterans' preference principles that Congress made applicable to the Legislative Branch through section 206a(2) of the CAA, 2 U.S.C. §1316a(2).

**What responsibilities would employing offices have in effectively implementing these regulations?** The Board is charging the employing offices with the responsibility of duly factoring the veterans' preference principles into their individualized hiring and retention processes. We will require that such measures be substantive and verifiable. Otherwise, VEOA implementation would be illusory and the Office's remedial responsibility under 2 U.S.C.1316a(3) might be compromised.

Therefore, the proposed regulations would require that all employing offices with covered employees or seeking applicants for covered positions develop a written program, within 120 days of the Congressional approval of the regulations, setting forth each employing office's modality for effecting the veterans' preference principles in its hiring and retention systems. These programs would demonstrate each employing office's efforts to comply with the VEOA. However, technical promulgation of such procedures does not per se relieve an employing office of substantive compliance with the VEOA.

Similarly, Subpart E of the proposed regulations contains various important provisions governing recordkeeping, dissemination of VEOA policies, written notice prior to a RIF, and informational requirements re-

garding veterans' preference determinations. Certain of these provisions (notably that requiring written notice prior to a RIF) derive directly from statutory provisions made applicable to covered employees by the VEOA. The Board has adopted others so as to ensure that the employing offices, which have significant autonomy and discretion in integrating the veterans' preference requirements into their personnel systems, administer the preferences in a way that promotes accountability and transparency. In response to the earlier Comments of the employing offices, however, the Board has refrained from adopting more burdensome procedural requirements, such as keeping formal retention registers (see 5 CFR §351.505).

**Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices?** No. The Board of Directors has identified no "good cause" for varying the text of these regulations. Therefore, if these proposed regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees.

**Are these proposed substantive regulations available to persons with disabilities in an alternate format?** This Notice of Proposed Regulations is available on the Office of Compliance web site, [www.compliance.gov](http://www.compliance.gov), which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA-200, Washington, D.C. 20540; 202-724-9226; TDD: 202-426-1912; FAX: 202-426-1913.

### 30 Day Comment Period Regarding the Proposed Regulations

**How can I submit comments regarding the proposed regulations?** Comments regarding the proposed new regulations of the Office of Compliance set forth in this NOTICE are invited for a period of thirty (30) days following the date of the appearance of this NOTICE in the *Congressional Record*. In addition to being posted on the Office of Compliance's section 508 compliant web site ([www.compliance.gov](http://www.compliance.gov)) this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202-724-9250 (voice) or 202-426-1912 (TDD).

**Submission of comments** must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA-200, Washington, D.C. 20540-1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202-426-1913 (a non-toll-free number.) Those wishing to receive confirmation of the receipt of their comments must provide a self-addressed, stamped post card with their submission.

**Copies of submitted comments will be available for review** on the Office's web site at [www.compliance.gov](http://www.compliance.gov), and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540-1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

**Supplementary Information:** The Congressional Accountability Act of 1995 (CAA), PL 104-1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 11 federal labor and employment statutes to covered employees and employ-

ing offices within the Legislative Branch of Government. The CAA was amended by adding 2 U.S.C. 1316a as part of the enactment of the Veterans' Employment Opportunities Act of 1998 (VEOA), PL 105-339, section 4(c), to provide additional substantive employment rights for veterans. Those additional rights are the subject of these regulations. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

### More Detailed Discussion of the Text of the Proposed Regulations

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

1.101 Purpose and scope. This section clarifies that the purpose of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the employing offices' existing employment and retention policies and processes, as per the explicit statutory mandate contained in the VEOA. Additionally, through these regulations, the Board seeks to fulfill its goal of achieving transparency in the application of veterans' preference in covered appointment and retention decisions.

Finally, it is noted that nothing in these regulations shall be construed to require an employing office to reduce any existing veterans' preference rights and protections that it may currently afford to preference eligible individuals. Any employing agencies that currently provide greater veterans' preferences than required by these regulations may retain them. Note also that, while the VEOA does not directly cover the GAO, GPO, or Library of Congress, should Congress extend Board jurisdiction over any of these entities in the future, it should take their existing veterans' preference policies into account, which may be based on independent statutory mandates. Note, for example, that 31 U.S.C. §732(h)(1) already mandates that the GAO must afford veterans' preferences (largely similar to those in subchapter I of chapter 35 of title 5 U.S.C.).

1.102 General definitions. This section provides straightforward definitions of key terms referred to in the regulations. Several of the definitions are derived from the statutory provisions made applicable via the VEOA, including "veteran," from 5 U.S.C. §2108(1), "disabled veteran" from 5 U.S.C. §2108(2), and "preference eligible" from 5 U.S.C. §2108(3). It also contains several other definitions included for explanatory purposes.

The term "appointment" is defined as an individual's appointment to employment in a covered position. Consistent with the OPM regulations in 5 C.F.R. §211.102(c), the term excludes inservice placement actions such as promotions. The term "covered employee" follows the language of section 101(3) of the CAA, as limited by section 4(c)(5) of the VEOA. Section 4(c)(5) of the VEOA excludes employees whose appointment is made by a committee or subcommittee of either House of Congress. The Board believes this statutory exclusion extends to joint committees and has expressly excluded such employees from the definition of "covered employee".

The term "qualified applicant," while not directly originating in the text of U.S.C. Title V, is used to capture the principle in 5 U.S.C. §3309 that only a preference eligible applicant who has received a passing grade in an examination or evaluation for entrance into the competitive service need receive additional points accorded to his or her application (except for certain "restricted" positions, discussed below). "Qualified applicant" is borrowed from the Americans with Disabilities Act ("ADA," 42 U.S.C. §12101 et

seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). The ADA's reference to "requisite skill, experience, education and other minimum job-related requirements" has been shortened to "requisite minimum job-related requirements," as not every job may require a particular level of acquired skill, experience, or education.

As will be discussed further, we are not requiring an employing office to establish any particular prerequisites or type of evaluation or examination system for applicants. Instead, the term "qualified applicant" serves as a means of implementing the statutory mandate that only preference eligible applicants with "passing scores" receive preference in the hiring process in the context of appointment processes that do not involve "scoring" or similar numeric evaluation.

Where the employing office does not use a numerically scored entrance examination or evaluation, we have authorized the employing office to make the determination of whether the applicant is minimally "qualified" for a covered position. In doing so, the employing office may rely on any job-related requirements or on any evaluation system, formal or otherwise, which it chooses to employ in assessing and rating applicants for covered positions, provided that the employing office in no way seeks to create or manipulate a standard as to whether an applicant is "qualified" so as to avoid obligations imposed upon it by the VEOA.

If, however, the employing office uses an entrance examination or evaluation that is numerically scored, the term "qualified applicant" shall mean that the applicant has obtained a passing score on the examination or evaluation. The Board notes that it expects the level of "passing scores" to be roughly comparable to that in the OPM regulations (70 points on a 100 point scale; 5 CFR §337.101). We are not requiring employing offices to administer entrance exams at all, or to model an exam or the grading thereof after OPM's models. However, employing offices may not set the bar on a scored entrance examination or evaluation for a covered position so high that minimally qualified preference eligible applicants cannot pass. Moreover, the determination of what will constitute a "passing score" should be made and communicated to applicants before they are evaluated or sit for the entrance examination.

1.103 Adoption of regulations. This section details the process by which the regulations shall be adopted. It also clarifies that, as discussed extensively in the prefatory comments, *supra*, the Board has at times deviated from the regulations which otherwise were most applicable, i.e. the regulations issued by OPM implementing these selected provisions of U.S.C. Title V. When the Board has so deviated from the OPM regulations, it has done so in an effort to implement the statutory language of the VEOA in a way that respects the autonomy of employing offices' personnel systems and avoids placing undue administrative burdens upon these offices, and that otherwise respects the legislative intent of the VEOA.

1.104 Coordination with section 225 of the Congressional Accountability Act. This section notes that the VEOA requires that regulations promulgated are consistent with section 225 of the CAA. These proposed regulations are consistent with section 225; the regulations follow CAA principles contained therein, including applying CAA definitions and exemptions, and reserving enforcement through CAA procedures, rather than through recourse to the Executive Branch.

#### SUBPART B—VETERANS' PREFERENCE— GENERAL PROVISIONS

1.105 Responsibility for administration of veterans' preference. This section clarifies

that employing offices have responsibility for administering veterans' preference, within the parameters of the VEOA and these regulations.

1.106 Procedures for bringing claims under the VEOA. This section establishes the procedures for contesting an adverse determination.

#### SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

1.107 Veterans' preference in appointments to restricted covered positions. The VEOA makes 5 U.S.C. §3310 applicable to the Legislative Branch, thereby extending an absolute preference to veterans who apply for the positions of guard, elevator operator, messenger and custodian. Despite concerns raised by certain employing offices regarding the singling out of these particular positions, the Board may not ignore the statutory requirement that veterans who apply for them be afforded an absolute preference over non-veteran applicants.

We have based our definitions of the restricted position terms "guards," "elevator operators," "custodians," and "messengers," upon the definitions employed in the veterans' preference context by the U.S. Office of Personnel Management in its "Delegated Examining Operations Handbook." See [http://www.opm.gov/deu/Handbook\\_2003](http://www.opm.gov/deu/Handbook_2003). The definitions of custodian and messenger have been modified to include a "primary duty" requirement, to allow the performance of some custodial or messenger duties in positions having other primary duties without transforming those positions into restricted positions.

1.108 Veterans' preference in appointments to non-restricted covered positions. This section clarifies that preference eligible status is an affirmative factor in the hiring process for covered positions. The requirement that preference eligible status be applied as an "affirmative factor" is derived from the directive of the VEOA that the underlying principles of the veterans' preference laws be applied within the Legislative Branch.

Where an employing office assigns points to applicants competing for appointment to a covered position, it should add commensurate points for veterans' preference eligible applicants consistent with 5 U.S.C. §3309, one of the sections made applicable to the Legislative Branch by the VEOA. Should the office choose not to conduct formal evaluations on a point scale, it must apply veterans' preference as an affirmative factor, to a degree consistent with the level of preference applied in 5 U.S.C. §3309.

In no way does this require the creation of any particular type of system of examining or evaluating applicants, and an employing office may properly choose to not assign points at all to applications for covered positions. Rather, this regulation merely states that, whatever system the employing office uses to choose among qualified applicants for a covered position, it must accord a level of preference to preference eligible qualified applicants consistent with the point system indicated in the statute. Thus, the preference must be comparable to affording an additional 5 or 10 points (depending on the status of the preference eligible) on a 100 point scale to qualified applicants, while understanding that under such a point system the applicant must have attained at least 70 points to be considered qualified. (OPM provides a scale for converting other point scales (5 point, 10 point, 25 point, etc.) to a 100-point scale.)

Section 1.108 applies to both restricted and non-restricted positions. While restricted positions are limited to preference eligibles (should there be preference eligible

applicants), in the event that more than one preference eligible applies, the employing office should apply the requirement in this section to provide a higher preference to a disabled preference eligible. Thus, 5 U.S.C. §3310, while restricting certain positions to preference eligibles (so long as preference eligibles are available), does not except these positions from this requirement in 5 U.S.C. §3309 to provide higher preference to a disabled preference eligible applicant.

1.109 Crediting experience in appointments to covered positions. This language is taken from 5 CFR §337.101(c), which interprets 5 U.S.C. §3311, one of the sections made applicable to the Legislative Branch by the VEOA. We have elected to use the regulatory language as it is more clearly written, and serves to better guide employing offices than does the direct statutory text. The statutory and regulatory provisions are laid out below for an easy comparison:

#### SEC. 3311. PREFERENCE ELIGIBLES; EXAMINATIONS; CREDITING EXPERIENCE

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

5 U.S.C. §3311

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

5 CFR §337.101(c). Section 1.109 does not require an employing office to consider experience as an element of qualification, but only requires that preference eligibles be afforded credit for certain experience if the employing office chooses to do so. Also, section 1.109 does not preclude an employing office from granting credit for experience to non-preference eligibles, so long as the credit afforded preference eligibles complies with the VEOA. Note also that section 1.109 of these proposed regulations applies equally to restricted and non-restricted positions.

Section 1.110 Waiver of physical requirements in appointments to covered positions. This section contains language derived directly from 5 U.S.C. §3312, one of the sections made applicable to the Legislative Branch by the VEOA. It requires an employing office to waive physical requirements for a position if it determines, after considering any recommendations of an accredited physician that may be submitted by such an applicant, that he or she is physically able to perform efficiently the duties of the position. Note that OPM has chosen to promulgate regulations interpreting 5 U.S.C. §3312 which make clear that: "[A]gencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or

without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.’’

5 CFR 339.204. The Board does not believe that these proposed regulations are the proper vehicle for issuing regulations concerning the Americans with Disabilities Act (“ADA,” 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). Therefore, section 1.110(a)(2) tracks the statutory language rather than the OPM regulation. It also clarifies that the employing office need consider a recommendation of an accredited physician only if such a recommendation is submitted by the preference eligible.

The Board does note, however, that Congress passed the ADA subsequent to the veterans’ preference protections contained in 5 U.S.C. §3312, and that, under the ADA as applied by the CAA, employing offices may have obligations towards applicants that may in some circumstances be greater than the protections accorded preference eligible applicants in 5 U.S.C. §3312. For example, these regulations do not relieve employing offices from complying with the restrictions imposed on disability-based inquiries under the ADA but, as is discussed in the comments to section 1.118, recognize that an employing office may use information obtained through voluntary self-identification of one’s disabled status. Accordingly, the Board has made clear in section 1.110 that nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the ADA.

#### SUBPART D—VETERAN’S PREFERENCE IN REDUCTIONS IN FORCE

1.111 Definitions applicable in reductions in force. This section provides definitions of several terms used in the regulations applying veterans’ preference principles in the context of reductions in force. Unless clearly stated otherwise, the general definitions in proposed regulation 1.102 continue to apply in the context of reductions in force. For example, as used in the proposed reduction in force regulations, the term “covered employee” excludes employees whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate and other employees excluded under the proposed regulation 1.202(f). The term “reduction in force” has been defined to encompass actions that result in termination of employment, reductions in grade or demotions expected to continue for more than 30 days. This definition derives from OPM regulations, which clearly interpret 5 U.S.C. §3502 to include demotions and include the requirement that the personnel action be for more than 30 days [5 CFR §351.201 (a)(2)], and from the statutory provisions of the VEOA that charge the Board to follow OPM’s regulations except where the Board may determine that a modification of those regulations would be more effective for the implementation of the rights and protections under the VEOA. Caselaw interpreting the veterans’ preference laws also indicates that the inclusion of demotions in what constitutes a reduction in force stems from statutory, not just regulatory, language. (See, e.g., *AFGE Local 1904 v. Resor*, 442 F. 2d 993, 994 (3rd Cir. 1971); *Alder v. U.S.*, 129 Ct. Cl. 150 (1954).)

5 U.S.C. §3501, which has been included in the CAA through Section (c)(2) of the VEOA, contains special definitions for determining whether an employee is a “preference eligible” for purposes of applying veterans’ preference in reductions in force. The definitions that appear in section 1.111(b) of the regula-

tions are taken directly from the statutory language in 5 U.S.C. §3501. Note, however, that these definitions do not apply to the application of the provisions of 5 U.S.C. §3504 (and section 1.114 of these regulations) regarding the waiver of physical requirements in determining qualifications for retention. In that context, the definition of “preference eligible” set forth in 5 U.S.C. §2108 (and section 1.102(o) of the Board’s regulations) shall apply.

As discussed below, 5 U.S.C. §3502(c) provides that preference eligibles are entitled to retention over other “competing employees”. In the Executive Branch, the question of who are “competing employees” is answered by reference to detailed and rather complex retention registers that Executive Branch agencies are required to maintain. (See, e.g., 5 CFR §351.203, 5 CFR §351.404 and 5 CFR §351.501.) The Comments to our initial proposed regulations noted that few if any employing offices in the Legislative Branch maintain retention registers, and that many of the OPM regulations regarding retention registers rely on personnel practices and systems that do not exist in the Legislative Branch.

In keeping with our new approach to the implementation of the VEOA, these regulations do not impose a requirement that an employing office create or maintain OPM-like retention registers but instead provide a framework for determining groups of “competing employees” for purposes of applying retention preferences as mandated by 5 U.S.C. §3502(c). In this respect, the Board has determined that several of the terms in the OPM regulations may be used to implement the concept of “competing employees” in the Legislative Branch without imposing Executive Branch personnel practices or systems: generally, “competing covered employees” are the covered employees within a particular “position classification or job classification,” at or within a particular “competitive area”.

The definition of “position classification or job classification” is derived from OPM’s basic definition of “competitive level” in 5 CFR §351.403(a)(1). The remaining regulations in 5 CFR §351.403(a)(2)–(4), (b)(1)–(5) and (c)(1)–(4) prescribe the manner in which an Executive Branch agency may determine a covered employee’s competitive level. While some of these rules could be adopted in the Legislative Branch, others are clearly inapplicable. The Board has decided not to adopt these portions of the OPM regulations in order to provide employing offices with a great amount of flexibility in determining an employee’s “position classification or job classification”. This is in keeping with our understanding that the personnel systems used by employing offices within the Legislative Branch vary significantly from those used in the Executive Branch. This flexibility is, of course, subject to the understanding that such determinations may not be manipulated in order to avoid the employing office’s obligations under the VEOA.

The definition of “competitive area” more closely tracks OPM’s definition of the same term in 5 CFR §351.402. We note that the OPM regulations define “competitive area” in terms of an agency’s “organizational units” and “geographical locations”. The Board is not adopting OPM definitions or descriptions of these terms, but will allow employing offices flexibility in applying these concepts to their own organizational structure. The Board has retained the OPM requirement that the minimum competitive area be a department or subdivision “under separate administration”. In this respect, “separate administration” is not considered to require that the administration of a proposed competitive area has final authority to

hire and fire but that it has the authority to administer the day to day operations of the department or subdivision in question.

The OPM regulations incorporate the term “tenure” in their definition of “competitive group.” We have used the term in our definition of “position classification or job classification” because the statutory language in 5 U.S.C. §3502 identifies “tenure” as a factor that will override veterans’ preference in determining employee retention in a reduction in force. However, we have not adopted OPM’s definition of tenure, as it is tied to Executive Branch service classifications that do not exist in the Legislative Branch. See 5 CFR 351.501. Instead, the use of the term “tenure” in these definitions refers only to the type of appointment. For example, an employing office may choose to make “tenure” distinctions between permanent and temporary employees, probationary and non-probationary employees, etc. By referring to “permanent” positions, we are referring to jobs that are not limited in advance to a specific temporal duration. Nothing in these Comments and Regulations is intended to address the “at-will” status of any covered position.

The Chief Counsel for the Senate noted, in her Comments to the prior proposed regulations, that the Senate does not employ the concept of “tenure”. If an employing office chooses not to make such distinctions, nothing in these regulations requires it to do so. If the office does, that is one of the factors in the constitution of the “position classifications or job classifications”. Again, the Board notes that an employing office should not manipulate the creation of tenure so as to avoid its obligations under the VEOA.

We have also included a definition of “undue interruption” that is taken directly from the definition of the same term in the OPM regulations, 5 CFR §351.203. The term is used in determining whether various jobs should be included within the same “position classification” or “job classification,” and is meant to strike a balance between the interests of employing offices in retaining employees who will be able to perform the jobs remaining after a reduction in force, and the interests of preference eligibles whose jobs are being eliminated in remaining employed. OPM struck this balance by generally suggesting that an employee should be able to perform or “complete” required work within 90 days of being placed in the position, and the Board considers this time period to be appropriate in the Legislative Branch as well. For example, this protection against “undue interruption” would apply if a preference eligible would have to complete a training program of more than 90 days in order to safely and efficiently perform the covered position to which he or she would otherwise be transferred as a result of a RIF. Finally, we note that, since “undue interruption” is an affirmative defense, an employing office has the burden of raising it and proving that an employee may not perform work without “undue interruption” by objectively quantifiable evidence.

1.112 Application of reductions in force to veterans’ preference eligibles. The crux of this regulation derives from 5 U.S.C. §3502(c), which provides:

An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees. (Emphasis added.)

This provision is the statutory lynchpin underlying veterans’ preferences in RIF’s. The statutory language in section 3502(c) above in effect requires the employing office

to terminate covered employees subject to a RIF in inverse order of their veterans' preference status, within the appropriate group of covered employees with similar jobs, so long as the employees' performance has not been rated unacceptable. Under section 3502(c), a preference eligible covered employee (without an unacceptable performance appraisal) must be retained in preference to non-preference eligibles—even if the other covered employees in the group in fact have greater length of service or more favorable performance evaluations.

A separate provision in 5 U.S.C. § 3502(a) requires Executive Branch agencies to give "due effect" to four factors: tenure, veterans' preference, length of service, and performance or efficiency evaluations. OPM has promulgated regulations addressing these four factors, but which also incorporate the concept that, within the group of employees competing for retention, appropriate veteran's preference status is a factor that may override other factors such as length of service and performance or efficiency evaluations. ("Tenure," as discussed below, is factored in to the group of employees within which employees compete for retention during a RIF.)

Case law has also made abundantly clear that section 3502(c) requires that this preference eligible status "trumps" the "due effect" given to length of service and performance. Courts have interpreted the separate requirement under section 3502(a) to give "due effect" to these four enumerated factors as being relevant to retention determinations between two preference eligibles, or between two non-preference eligibles—and not relevant to retention determinations between a preference eligible and a non-preference eligible. *Hilton v. Sullivan*, 334 U.S. 323, 335, 336 (1948). The Board has chosen not to explicitly require that length of service or performance or efficiency evaluations be taken into account during RIF's—only that, if they are, veterans' preference remains the controlling factor in making retention decisions within "position or job classifications" in a competitive area (assuming other appropriate requirements are also met).

Federal courts have interpreted the present statutory language of section 3502(c) as providing preference eligible employees with an "absolute preference," although only within the confines of their competing group. *Dodd v. TWA*, 770 F. 2d 1038, 1041 (Fed. Cir. 1985); see also *McKee v. TWA*, 1999 LEXIS 25663 at \*5 (Fed. Cir. 1999) (unpublished). Additionally, the source of this key language in § 3502(c), the Veterans' Preference Act of 1944 (in turn deriving from a series of historical statutes and executive orders, commencing in 1865), and the legislative history of this Act indicate that the section 3502(c) predecessor language was considered the "heart of the section". *Hilton v. Sullivan*, 334 U.S. 323, 338 (1948). To this effect, courts have interpreted § 3502(c) (or its predecessor under the Veterans' Preference Act of 1944) as overriding such factors as length of service when considering retention standing. *Hilton v. Sullivan*, 334 U.S. at 335, 336, 339 (noting that "Congress passed the bill with full knowledge that the long standing absolute retention preference of veterans would be embodied in the Act;" *Elder v. Brannan*, 341 U.S. 277, 285 (1951)). Thus, courts have interpreted section 3502(c) as requiring preference to be given to a minimally qualified preference eligible, within his or her competing group, regardless of the preference eligible's length of service or performance in comparison to non-preference eligibles.

To follow this clear statutory directive, the Board has decided that veterans' preference shall be the "controlling" factor (provided that the covered employee's perform-

ance was not rated unacceptable), in an employment decision taken within "position or job classifications" in "competitive areas," as discussed in the Comments to section 1.111 of these proposed regulations, regardless of such factors as length of service or performance or efficiency ratings. Restricting the veterans' preference to RIF's taken within "position or job classifications" in "competitive areas" provides important limitations on the scope of the preference accorded. As noted above, the preference eligible does not normally compete for retention against all covered employees of an employing office; the definitional terms in section 1.111 restrict the scope of competition only to covered employees in similar occupational groupings (with the further qualification that the preference eligible must perform the position in question without "undue interruption" (see discussion regarding section 1.111 of these proposed regulations)); in certain facilities involved; and with similar "tenure," or employment status (such as, for example, whether the employee is a permanent or probationary employee). Note that OPM regulations incorporate the concept of "tenure" into the definition of "competing group"; covered employees only compete for retention against co-workers of the same tenure type. As noted in the Comments to section 1.111 of these proposed regulations, employing offices may or may not incorporate the concept of "tenure," and may choose not to make such distinctions as permanent, temporary, or probationary employees. Nothing in these proposed regulations requires employing offices to adopt such distinctions.

Another qualification on the veterans' preference as a "controlling factor" is that the preference eligible employee's performance must not have been rated "unacceptable." While 5 U.S.C. § 3502(c) contains a reference to performance appraisal systems implemented under 5 U.S.C. § 4301 et seq., we are not requiring employing offices to implement a performance appraisal system following 5 U.S.C. § 4301 et seq. An employing office may continue to use its own methods for evaluating covered employees and appraising performance, and need not adopt any formal policy regarding performance appraisal. However, the Board notes that employing offices should not manipulate performance appraisals or evaluations so as to avoid obligations under the VEOA.

Another significant qualification on this regulation is that it only governs retention decisions in so far as they affect preference eligible covered employees. In no way does it govern decisions that do not affect preference eligible covered employees; in such cases, an employing office is free to make whatever determinations it so chooses, provided that these determinations are consistent with any other applicable law, and are not used to avoid responsibilities imposed by the VEOA. (Of course, an employing office with covered employees must disseminate information regarding its VEOA policy to covered employees, so as to allow for self-identification of preference eligibles. Furthermore, the notice required by section 1.120 of these regulations will allow covered employees who have not been identified as preference eligibles to assert that status before the RIF becomes effective.) Nor does the regulation require the keeping of formal retention registers, as OPM (and these regulations, as initially proposed) generally requires. However, an employing office must preserve any records kept or made regarding these retention decisions, as detailed in Subpart E of these proposed regulations.

Note also that the Board has included the provision that a preference eligible covered employee who is a "disabled veteran" under

section 1.102(h) above, who has a compensable service-connected disability of 30 percent or more, and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. This provision derives from 5 U.S.C. § 3502(b), which provides a higher level of preference to certain disabled preference eligibles with regard to other preference eligibles.

Finally, the Board notes that this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. § 1302(a)(9), which would of course apply to all employees covered by the CAA, not only to preference eligible employees covered by the VEOA.

1.113 Crediting experience in reductions in force. This section closely follows 5 U.S.C. § 3502(a), one of the sections made applicable to the Legislative Branch by the VEOA, requiring the employing office to provide preference eligible covered employees with credit for certain specified forms of prior service as the office calculates "length of service" in the context of a RIF. This provision in no way requires an employing office to utilize "length of service" as a factor in its retention decisions regarding employees in the event that the RIF decision does not impact any preference eligible covered employees.

1.114 Waiver of physical requirements—retention. This provision closely follows 5 U.S.C. § 3504, one of the sections made applicable to the Legislative Branch by the VEOA, requiring that, when making decisions regarding employee retention during a RIF, an employing office must waive physical requirements for a job for preference eligibles in certain specified circumstances. As discussed in the Comments to section 1.110, nothing in this regulation relieves an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. § 1302(a)(3).

1.116 Transfer of functions. The language in this section derives from 5 U.S.C. § 3503, one of the sections made applicable to the Legislative Branch by the VEOA, requiring covered employees to be transferred to another employing office in the event of a transfer of functions from one employing office to the other, or in the event of the replacement of one employing office by another employing office. The Board expects that employing offices shall coordinate any such transfers in a way that respects both the requirements of this regulation and, to the greatest extent possible, the employing offices' own personnel systems and policies. This section is one of the rare instances where an employing office must follow the regulation even in the event that the personnel action taken does not involve any preference eligible covered employees; however, the clear statutory language of 5 U.S.C. § 3503 requires such a result.

Employees and employing offices are reminded that the definition of "covered employee" in these proposed regulations does not include employees appointed by a Member of Congress, a committee or subcommittee of either House of Congress, or a joint committee of the House of Representatives and the Senate. See proposed regulation 1.102(f)(bb). Therefore, proposed regulation 1.116 will not apply to any such employees affected by the election of new Members of Congress or the transfer of jurisdiction from one committee to another.

SUBPART E: ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

We note that, of the six sections in this Subpart, only section 1.120 derives directly from statutory language. The other sections are borrowed from various other employment statutes, and are promulgated pursuant to the authority granted the Board by section 4(c)(4)(A) of the VEOA because they are considered necessary to the implementation of the VEOA. For example, the informational regulations in sections 1.120 and 1.121 are derived from informational regulations promulgated under the Family and Medical Leave Act, which provides employers with some flexibility in determining how the FMLA will be implemented within their own workforce. The Board is strongly committed to transparency as a policy matter. Moreover, for the VEOA rights to become meaningful, applicants for covered positions and covered employees will have to participate in ensuring that this system works properly, since employing offices are permitted to have flexibility in determining their policies, and the Board will not be taking the same active role in policing the veterans' preference requirements that OPM takes in the Executive Branch.

We also note that while this approach differs from OPM's, it reflects the far greater flexibility that employing offices have to tailor substantive requirements to their existing personnel systems and imposes less burdensome obligations on employing offices than that which is imposed on executive agencies: under our regulatory approach, employing offices will have reduced procedural burdens in that they will not be subject to the more detailed requirements of keeping formal retention registers, to the more highly regulated requirements regarding employee access to files (see e.g., 5 CFR §293.101 et seq., 5 CFR §297.101 et seq., and 5 CFR §351.505(b)), or to examining or evaluating applicants on a 100-point scale, seeking prior OPM approval of RIF's, etc.

Section 1.116 Adoption of veterans' preference policy. As noted at the outset of these Comments, the regulations will require each employing office that employs one or more covered employees or seeks applicants for covered positions to develop, within 120 days of the Congressional approval of the regulations, a written program or policy setting forth that employing office's methods for implementing the VEOA's veterans' preference principles in the employing office's hiring and retention systems. Employing offices that have no employees covered by the VEOA are not required to adopt such a policy or program.

Because these regulations afford the employing offices a great amount of flexibility in determining how to implement veterans' preference within their own personnel systems, it is imperative that the methods chosen by the employing offices be reduced to writing and disseminated to covered applicants and employees. This will further the goals of accountability and transparency, as well as consistency in the application of the employing office's veterans' preference procedures. An existing policy may be amended or replaced by the employing office from time to time, as it deems necessary or appropriate to meet changing personnel practices and needs. We note, however, that the employing office's policy or program will at all times remain subject to the requirements of the VEOA and these regulations. Accordingly, while the adoption of a policy or program will demonstrate the employing office's efforts to comply with the VEOA, it will not relieve an employing office of substantive compliance with the VEOA.

Sections 1.117 Preservation of records kept or made. The requirements set forth in this section are derived from OPM regulations regarding retention of RIF records, 5 CFR §351.505, and EEOC regulations regarding the preservation of personnel and employment records kept or made by employers, 29 CFR §1602.14. This section requires that relevant records be retained for one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or employee is notified of the personnel action. In addition, where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office must preserve all personnel records relevant to the claim until final disposition of the claim.

Section 1.118 Dissemination of veterans' preference policies to applicants for covered positions. Section 1.118 requires that employing offices must furnish information to applicants for covered positions before appointment decisions are made. Before these decisions are made, it is important that applicants be given the opportunity to self-identify themselves as preference eligibles, and that they receive information regarding the employing office's policies and procedures for implementing the VEOA, in order to ensure that they are aware of the VEOA obligations that may apply to their situation. Accordingly, the regulations require that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be furnished to applicants at various stages when the employing office is hiring into covered positions. We note that inviting applicants to voluntarily self-identify as a disabled veteran for purposes of the application of an employing office's veterans' preference policies, as outlined in the proposed regulation, is consistent with the EEOC's ADA *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (EEOC Oct. 10, 1995).

This requirement does not prevent an employing office from appropriately modifying its veterans' preference policies when it sees fit to do so, but is intended to ensure that applicants will be made aware of the employing office's then-current policies and procedures. The requirement that an employing office allow applicants a "reasonable time" to provide information regarding their veterans' preference status is intentionally flexible. If an employing office must fill a covered position within a matter of days, one working day may be a "reasonable time" for submission of the information. However, if the employing office's appointment process is more prolonged, more time should be allowed.

Sections 1.119 and 1.120 Dissemination of information of veterans' preference policies to covered employees, and notice requirements applicable in RIFs. It is also important that covered employees receive information regarding the employing office's policies and procedures for implementing the VEOA in connection with RIFs, in order to ensure that they are aware of the VEOA obligations that may apply to that situation. Accordingly, section 1.119 requires that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be disseminated through employee handbooks, if the employing office has covered employees and ordinarily distributes such handbooks to those employees, or through any other written policy or manual that the employing office may distribute to covered employees concerning their employee rights or reductions in force.

The notice requirements attendant to a RIF are set out separately in section 1.120 of

the regulations. These regulations derive from the express statutory language in 5 USC §3502(d) and (e), which have been applied to the Legislative Branch by the VEOA. The language of section 3502(d) and (e) has been modified in section 1.120 to be consistent with the terms and approach used in the rest of these regulations. Among other changes, section 1.120 refers to "covered employees" and the provision in 5 U.S.C. §3502(e) that the "President" may shorten the 60 day advance notice period to 30 days has been changed to the "director of the employing agency." Additionally, the provision regarding Job Training Partnership Act notice has been omitted. The requirement to inform the employee of the place where he or she may inspect regulations and records pertaining to this case derives from 5 CFR §351.802(a)(3).

The statutory language requiring notice of "the employee's ranking relative to other competing employees, and how that ranking was determined" has been modified to require that the notice state whether the covered employee is preference eligible and that the notice separately state the "retention status" (i.e., whether the employee will be retained or not) and preference eligibility of the other covered employees in the same job or position classification within the covered employee's competitive area. The Board is not requiring the keeping of retention registers or the ranking of employees within a job or position classification affected by a RIF. However, the statutory language clearly compels employing offices to provide employees who will be adversely affected by a reduction in force with advance notice of how and why the agency decided to subject that particular employee to the reduction in force. At a minimum, this includes whether the affected employee has preference eligible status, and an objective indication why the employee was not retained in relation to other employees in the affected position classifications or job classifications.

Section 1.121 Informational requirements regarding veterans' preference determinations. Once an appointment or reduction in force decision has been made, it is important that applicants for covered positions and covered employees receive information regarding the employing office's decision, in order to ensure that the rights and obligations created by the VEOA may be effectively enforced under the CAA as contemplated by section 4(c)(3)(B) of the VEOA. Accordingly, section 1.121 of the regulations requires that certain limited information regarding the employing office's decision be made available to applicants for covered positions and to covered employees, upon request.

#### Proposed Substantive Regulations

PART 1—Extension of Rights and Protections Relating to Veterans' Preference Under Title 5, United States Code, to Covered Employees of the Legislative Branch (section 4(c) of the Veterans Employment Opportunities Act of 1998)

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

Sec.

1.101 Purpose and scope.

1.102 Definitions.

1.103 Adoption of regulations.

1.105 Coordination with section 225 of the Congressional Accountability Act.

#### SEC. 1.101 PURPOSE AND SCOPE

(a) Section 4(c) of the VEOA. The Veterans Employment Opportunities Act (VEOA) applies the rights and protections of sections 2108, 3309 through 3312, and subchapter I of chapter 35 of title 5 U.S.C., to certain covered employees within the Legislative Branch.

(b) Purpose and scope of regulations. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 4(c)(4) of the VEOA, in accordance with the rulemaking procedure set forth in section 304 of the CAA (2 U.S.C. §1384). The purpose of subparts B, C and D of these regulations is to define veterans' preference and the administration of veterans' preference as applicable to Federal employment in the Legislative Branch. (5 U.S.C. §2108, as applied by the VEOA). The purpose of subpart E of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the existing employment and retention policies and processes of those employing offices with employees covered by the VEOA, and to provide for transparency in the application of veterans' preference in covered appointment and retention decisions. Provided, nothing in these regulations shall be construed so as to require an employing office to reduce any existing veterans' preference rights and protections that it may afford to preference eligible individuals.

#### SEC. 1.102 DEFINITIONS

Except as otherwise provided in these regulations, as used in these regulations:

(a) Act or CAA means the Congressional Accountability Act of 1995, as amended (Pub. L. 104-1, 109 Stat. 3, 2 U.S.C. §§1301-1438).

(b) Active duty or active military duty means full-time duty with military pay and allowances in the armed forces, except (1) for training or for determining physical fitness and (2) for service in the Reserves or National Guard.

(c) Appointment means an individual's appointment to employment in a covered position, but does not include inservice placement actions such as promotions.

(d) Armed forces means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) Board means the Board of Directors of the Office of Compliance.

(f) Covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Board; (4) the Capitol Police Board; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance, but does not include an employee (aa) whose appointment is made by the President with the advice and consent of the Senate; (bb) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (cc) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

(g) Covered position means any position that is or will be held by a covered employee.

(h) Disabled veteran means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(i) Employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(j) Employee of the Capitol Police Board includes any member or officer of the Capitol police.

(k) Employee of the House of Representatives includes an individual occupying a position the pay of which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(l) Employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(m) Employing office means: (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(n) Office means the Office of Compliance.

(o) Preference eligible means veterans, spouses, widows, widowers or mothers who meet the definition of "preference eligible" in 5 U.S.C. §2108(3)(A)-(G).

(p) Qualified applicant means an applicant for a covered position whom an employing office deems to satisfy the requisite minimum job-related requirements of the position. Where the employing office uses an entrance examination or evaluation for a covered position that is numerically scored, the term "qualified applicant" shall mean that the applicant has received a passing score on the examination or evaluation.

(q) Separated under honorable conditions means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(r) Uniformed services means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(s) VEOA means the Veterans Employment Opportunities Act of 1998 (Pub. L. 105-339, 112 Stat. 3182).

(t) Veteran means persons as defined in 5 U.S.C. §2108, or any superseding legislation.

#### SEC. 1.103 ADOPTION OF REGULATIONS

(a) Adoption of regulations. Section 4(c)(4)(A) of the VEOA generally authorizes the Board to issue regulations to implement section 4(c). In addition, section 4(c)(4)(B) of the VEOA directs the Board to promulgate regulations that are "the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)" of section 4(c) of the VEOA. Those statutory provisions are section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code. The regulations issued by the Board herein are on all matters for which section 4(c)(4)(B) of the VEOA requires a regulation to be issued. Specifically, it is the Board's considered judgment based on the information available to it at the time of promulgation of these regulations, that,

with the exception of the regulations adopted and set forth herein, there are no other "substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)" of section 4(c) of the VEOA that need be adopted.

(b) Modification of substantive regulations. As a qualification to the statutory obligation to issue regulations that are "the same as the most substantive regulations (applicable with respect to the Executive Branch)," section 4(c)(4)(B) of the VEOA authorizes the Board to "determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under" section 4(c) of the VEOA.

(c) Rationale for Departure from the Most Relevant Executive Branch Regulations. The Board concludes that it must promulgate regulations accommodating the human resource systems existing in the Legislative Branch; and that such regulations must take into account the fact that the Board does not possess the statutory and Executive Order based government-wide policy making authority underlying OPM's counterpart VEOA regulations governing the Executive Branch. OPM's regulations are designed for the competitive service (defined in 5 U.S.C. §2102(a)(2)), which does not exist in the employing offices subject to this regulation. Therefore, to follow the OPM regulations would create detailed and complex rules and procedures for a workforce that does not exist in the Legislative Branch, while providing no VEOA protections to the covered Legislative Branch employees. We have chosen to propose specially tailored regulations, rather than simply to adopt those promulgated by OPM, so that we may effectuate Congress' intent in extending the principles of the veterans' preference laws to the Legislative Branch through the VEOA.

#### SEC. 1.104 COORDINATION WITH SECTION 225 OF THE CONGRESSIONAL ACCOUNTABILITY ACT

Statutory directive. Section 4(c)(4)(D) of the VEOA requires that promulgated regulations must be consistent with section 225 of the CAA. Among the relevant provisions of section 225 are subsection (f)(1), which prescribes as a rule of construction that definitions and exemptions in the laws made applicable by the CAA shall apply under the CAA, and subsection (f)(3), which states that the CAA shall not be considered to authorize enforcement of the CAA by the Executive Branch.

#### SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

Sec.

1.105 Responsibility for administration of veterans' preference.

1.106 Procedures for bringing claims under the VEOA.

#### SEC. 1.105 RESPONSIBILITY FOR ADMINISTRATION OF VETERANS' PREFERENCE

Subject to Section 1.106, employing offices are responsible for making all veterans' preference determinations, consistent with the VEOA.

#### SEC. 1.106 PROCEDURES FOR BRINGING CLAIMS UNDER THE VEOA

Applicants for appointment to a covered position and covered employees may contest adverse veterans' preference determinations, including any determination that a preference eligible is not a qualified applicant, pursuant to sections 401-416 of the CAA, 2 U.S.C. §§1401-1416, and provisions of law referred to therein; 206a(3) of the CAA, 2 U.S.C. §§1401, 1316a(3); and the Office's Procedural Rules.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

Sec.

- 1.107 Veterans' preference in appointments to restricted covered positions.  
 1.108 Veterans' preference in appointments to non-restricted covered positions.  
 1.109 Crediting experience in appointments to covered positions.  
 1.110 waiver of physical requirements in appointments to covered positions

SEC. 1.107 VETERANS' PREFERENCE IN APPOINTMENTS TO RESTRICTED POSITIONS

In each appointment action for the positions of custodian, elevator operator, guard, and messenger (as defined below and collectively referred to in these regulations as restricted covered positions) employing offices shall restrict competition to preference eligibles as long as preference eligibles are available. The provisions of sections 1.109 and 1.110 below shall apply to the appointment of a preference eligible to a restricted covered position. The provisions of section 1.108 shall apply to the appointment of a preference eligible to a restricted covered position, in the event that there is more than one preference eligible applicant for the position.

**Custodian**—One whose primary duty is the performance of cleaning or other ordinary routine maintenance duties in or about a government building or a building under Federal control, park, monument, or other Federal reservation.

**Elevator operator**—One whose primary duty is the running of freight or passenger elevators. The work includes opening and closing elevator gates and doors, working elevator controls, loading and unloading the elevator, giving information and directions to passengers such as on the location of offices, and reporting problems in running the elevator.

**Guard**—One who is assigned to a station, beat, or patrol area in a Federal building or a building under Federal control to prevent illegal entry of persons or property; or required to stand watch at or to patrol a Federal reservation, industrial area, or other area designated by Federal authority, in order to protect life and property; make observations for detection of fire, trespass, unauthorized removal of public property or hazards to Federal personnel or property. The term guard does not include law enforcement officer positions of the U.S. Capitol Police Board.

**Messenger**—One whose primary duty is the supervision or performance of general messenger work (such as running errands, delivering messages, and answering call bells).

SEC. 1.108 VETERANS' PREFERENCE IN APPOINTMENTS TO NON-RESTRICTED COVERED POSITIONS

(a) Where employing offices opt to examine and rate applicants for covered positions on a numerical basis they shall add points to the earned ratings of those preference eligibles who receive passing scores in an entrance examination, in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. § 3309.

(b) In all other situations involving appointment to a covered position, employing offices shall consider veterans' preference eligibility as an affirmative factor that is given weight in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. § 3309 in the employing office's determination of who will be appointed from among qualified applicants.

SEC. 1.109 CREDITING EXPERIENCE IN APPOINTMENTS TO COVERED POSITIONS

When considering applicants for covered positions in which experience is an element

of qualification, employing offices shall provide preference eligibles with credit:

(a) for time spent in the military service (1) as an extension of time spent in the position in which the applicant was employed immediately before his/her entrance into the military service, or (2) on the basis of actual duties performed in the military service, or (3) as a combination of both methods. Employing offices shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(b) for all experience material to the position for which the applicant is being considered, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he/she received pay therefor.

SEC. 1.110 WAIVER OF PHYSICAL REQUIREMENTS IN APPOINTMENTS TO COVERED POSITIONS

(a) Subject to (c) below, if an employing office determines, on the basis of evidence before it, that an applicant for a covered position is preference eligible, the employing office shall waive in determining whether the preference eligible applicant is qualified for appointment to the position:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position;

(b) Subject to (c) below, if an employing office determines that, on the basis of evidence before it, an otherwise qualified applicant who is a preference eligible described in 5 U.S.C. § 2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office, within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the position, taking into account the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. § 1302(a)(3).

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

Sec.

- 1.111 Definitions applicable in reductions in force.  
 1.112 Application of preference in reductions in force.  
 1.113 Crediting experience in reductions in force.  
 1.114 Waiver of physical requirements in reductions in force.  
 1.115 Transfer of functions.

SEC. 1.111 DEFINITIONS APPLICABLE IN REDUCTIONS IN FORCE

(a) Competing covered employees are the covered employees within a particular posi-

tion or job classification, at or within a particular competitive area, as those terms are defined below.

(b) Competitive area is that portion of the employing office's organizational structure, as determined by the employing office, in which covered employees compete for retention. A competitive area must be defined solely in terms of the employing office's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an employing office. The minimum competitive area is a department or subdivision of the employing office under separate administration within the local commuting area.

(c) Position classifications or job classifications are determined by the employing office, and shall refer to all covered positions within a competitive area that are in the same grade, occupational level or classification, and which are similar enough in duties, qualification requirements, pay schedules, tenure (type of appointment) and working conditions so that an employing office may reassign the incumbent of one position to any of the other positions in the position classification without undue interruption.

(d) Preference Eligibles. For the purpose of applying veterans' preference in reductions in force, except with respect to the application of section 1.114 of these regulations regarding the waiver of physical requirements, the following shall apply:

(1) "active service" has the meaning given it by section 101 of title 37;

(2) "a retired member of a uniformed service" means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his/her service as such a member; and

(3) a preference eligible covered employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his/her retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his/her service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he/she was employed in a position to which this subchapter applies and thereafter he/she continued to be so employed without a break in service of more than 30 days.

The definition of "preference eligible" as set forth in 5 U.S.C. § 2108 and section 1.102(o) of these regulations shall apply to waivers of physical requirements in determining an employee's qualifications for retention under section 1.114 of these regulations.

(e) Reduction in force is any termination of a covered employee's employment or the reduction in pay and/or position grade of a covered employee for more than 30 days and that may be required for budgetary or workload reasons, changes resulting from reorganization, or the need to make room for an employee with reemployment or restoration rights. This does not encompass terminations or other personnel actions predicated upon performance, conduct or other grounds attributable to an employee.

(f) Undue interruption is a degree of interruption that would prevent the completion of required work by a covered employee 90 days after the employee has been placed in a different position under this part. The 90-day

standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if a covered employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a program accorded low priority by the employing office, or to a vacant position. An employing office has the burden of proving "undue interruption" by objectively quantifiable evidence.

#### SEC. 1.112 APPLICATION OF PREFERENCE IN REDUCTIONS IN FORCE

Prior to carrying out a reduction in force that will affect covered employees, employing offices shall determine which, if any, covered employees within a particular group of competing covered employees are entitled to veterans' preference eligibility status in accordance with these regulations. In determining which covered employees will be retained, employing offices will treat veterans' preference as the controlling factor in retention decisions among such competing covered employees, regardless of length of service or performance, provided that the preference eligible employee's performance has not been rated unacceptable. Provided, a preference eligible who is a "disabled veteran" under section 1.102(h) above who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. Provided, this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. § 1302(a)(9).

#### SEC. 1.113 CREDITING EXPERIENCE IN REDUCTIONS IN FORCE

In computing length of service in connection with a reduction in force, the employing office shall provide credit to preference eligible covered employees as follows:

(a) a preference eligible covered employee who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(b) a preference eligible covered employee who is a retired member of a uniformed service is entitled to credit for:

(1) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) the total length of time in active service in the armed forces if he is included under 5 U.S.C. § 3501(a)(3)(A), (B), or (C); and

(c) a preference eligible covered employee is entitled to credit for:

(1) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service rendered as an employee described in 5 U.S.C. § 2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in 5 U.S.C. § 2105(c).

#### SEC. 1.114 WAIVER OF PHYSICAL REQUIREMENTS IN REDUCTIONS IN FORCE

(a) If an employing office determines, on the basis of evidence before it, that a covered

employee is preference eligible, the employing office shall waive:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an employing office determines that, on the basis of evidence before it, a preference eligible described in 5 U.S.C. § 2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the covered position, taking into account the evidence before it, including the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. § 1302(a)(3).

#### SEC. 1.115 TRANSFER OF FUNCTIONS

(a) When a function is transferred from one employing office to another employing office, each covered employee in the affected position classifications or job classifications in the function that is to be transferred shall be transferred to the receiving employing office for employment in a covered position for which he/she is qualified before the receiving employing office may make an appointment from another source to that position.

(b) When one employing office is replaced by another employing office, each covered employee in the affected position classifications or job classifications in the employing office to be replaced shall be transferred to the replacing employing office for employment in a covered position for which he/she is qualified before the replacing employing office may make an appointment from another source to that position.

#### SUBPART E—ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

Sec.

1.116 Adoption of veterans' preference policy.

1.117 Preservation of records made or kept.

1.118 Dissemination of veterans' preference policies to applicants for covered positions.

1.119 Dissemination of veterans' preference policies to covered employees.

1.120 Written notice prior to a reduction in force.

1.121 Informational requirements regarding veterans' preference determinations.

#### SEC. 1.116 ADOPTION OF VETERANS' PREFERENCE POLICY

No later than 120 calendar days following Congressional approval of this regulation, each employing office that employs one or

more covered employees or that seeks applicants for a covered position shall adopt its written policy specifying how it has integrated the veterans' preference requirements of the Veterans Employment Opportunities Act of 1998 and these regulations into its employment and retention processes. Upon timely request and the demonstration of good cause, the Executive Director, in his/her discretion, may grant such an employing office additional time for preparing its policy. Each such employing office will make its policies available to applicants for appointment to a covered position and to covered employees in accordance with these regulations and to the public upon request. The act of adopting a veterans' preference policy shall not relieve any employing office of any other responsibility or requirement of the Veterans Employment Opportunity Act of 1998 or these regulations. An employing office may amend or replace its veterans' preference policies as it deems necessary or appropriate, so long as the resulting policies are consistent with the VEOA and these regulations.

#### SEC. 1.117 PRESERVATION OF RECORDS MADE OR KEPT

An employing office that employs one or more covered employees or that seeks applicants for a covered position shall maintain any records relating to the application of its veterans' preference policy to applicants for covered positions and to workforce adjustment decisions affecting covered employees for a period of at least one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or covered employee is notified of the personnel action. Where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office shall preserve all personnel records relevant to the claim until final disposition of the claim. The term "personnel records relevant to the claim," for example, would include records relating to the veterans' preference determination regarding the person bringing the claim and records relating to any veterans' preference determinations regarding other applicants for the covered position the person sought, or records relating to the veterans' preference determinations regarding other covered employees in the person's position or job classification. The date of final disposition of the charge or the action means the latest of the date of expiration of the statutory period within which the aggrieved person may file a complaint with the Office or in a U.S. District Court or, where an action is brought against an employing office by the aggrieved person, the date on which such litigation is terminated.

#### 1.118 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO APPLICANTS FOR COVERED POSITIONS

(a) An employing office shall state in any announcements and advertisements it makes concerning vacancies in covered positions that the staffing action is governed by the VEOA.

(b) An employing office shall invite applicants for a covered position to identify themselves as veterans' preference eligibles, provided that in doing so:

(1) the employing office shall state clearly on any written application or questionnaire used for this purpose or make clear orally, if a written application or questionnaire is not used, that the requested information is intended for use solely in connection with the employing office's obligations and efforts to provide veterans' preference to preference eligibles in accordance with the VEOA; and

(2) the employing office shall state clearly that disabled veteran status is requested on

a voluntary basis, that it will be kept confidential in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3), that refusal to provide it will not subject the individual to any adverse treatment except the possibility of an adverse determination regarding the individual's status as a preference eligible as a disabled veteran under the VEOA, and that any information obtained in accordance with this section concerning the medical condition or history of an individual will be collected, maintained and used only in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

(c) An employing office shall provide the following information in writing to all qualified applicants for a covered position:

(1) the VEOA definition of veterans' "preference eligible" as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition in a manner designed to be understood by applicants, along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions, including any procedures the employing office shall use to identify preference eligible employees;

(3) the employing office may provide other information to applicants, but is not required to do so by these regulations.

(d) Except as provided in this subparagraph, the written information required by paragraph (c) must be provided to all qualified applicants for a covered position so as to allow those applicants a reasonable time to respond regarding their veterans' preference status.

(e) Employing offices are also expected to answer applicant questions concerning the employing office's veterans' preference policies and practices.

#### SEC. 1.119 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO COVERED EMPLOYEES

(a) If an employing office that employs one or more covered employees or that seeks applicants for a covered position provides any written guidance to such employees concerning employee rights generally or reductions in force more specifically, such as in a written employee policy, manual or handbook, such guidance must include information concerning veterans' preference entitlements under the VEOA and employee obligations under the employing office's veterans' preference policy, as set forth in subsection (b) of this regulation.

(b) Written guidances and notices to covered employees required by subsection (a) above shall include, at a minimum:

(1) the VEOA definition of veterans' "preference eligible" as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to workforce adjustments; and the procedures the employing office shall take to identify preference eligible employees.

(3) The employing office may include other information in the notice or in its guidances, but is not required to do so by these regulations.

(c) Employing offices are also expected to answer covered employee questions concerning the employing office's veterans' preference policies and practices.

#### 1.120 WRITTEN NOTICE PRIOR TO A REDUCTION IN FORCE

(a) Except as provided under subsection (b), a covered employee may not be released, due

to a reduction in force, unless the covered employee and the covered employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (b), at least 60 days before the covered employee is so released.

(b) Any notice under paragraph (a) shall include—

(1) the personnel action to be taken with respect to the covered employee involved;

(2) the effective date of the action;

(3) a description of the procedures applicable in identifying employees for release;

(4) the covered employee's competitive area;

(5) the covered employee's eligibility for veterans' preference in retention and how that preference eligibility was determined;

(6) the retention status and preference eligibility of the other employees in the affected position classifications or job classifications within the covered employee's competitive area;

(7) the place where the covered employee may inspect the regulations and records pertinent to him/her, as detailed in section 1.121(b) below; and

(8) a description of any appeal or other rights which may be available.

(c) (1) The director of the employing office may, in writing, shorten the period of advance notice required under subsection (a), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) No notice period may be shortened to less than 30 days under this subsection.

#### SEC. 1.121 INFORMATIONAL REQUIREMENTS REGARDING VETERANS' PREFERENCE DETERMINATIONS

(a) Upon written request by an applicant for a covered position, the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's appointment decision regarding that applicant. Such explanation shall state at a minimum:

(1) Whether the applicant is preference eligible and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not preference eligible. If the applicant is not considered preference eligible, the explanation need not address the remaining matters described in subparagraphs (2) and (3).

(2) If the applicant is preference eligible, whether he/she is a qualified applicant and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not a qualified applicant. If the applicant is not considered a qualified applicant, the explanation need not address the remaining matters described in subparagraph (3).

(3) If the applicant is preference eligible and a qualified applicant, the employing office's explanation shall advise whether the person appointed to the covered position for which the applicant was applying is preference eligible.

(b) Upon written request by a covered employee who has received a notice of reduction in force under section 1.120 above (or his/her representative), the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's retention decision regarding that covered employee. Such explanation shall state:

(1) Whether the covered employee is preference eligible and, if not, the reasons for the employing office's determination that the covered employee is not preference eligible.

(2) If the covered employee is preference eligible, the employing office's explanation shall include:

(A) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible,

(B) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were not retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible, and

(C) a brief statement of the reason(s) for the employing office's decision not to retain the covered employee.

#### END OF PROPOSED REGULATIONS

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

825. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; South Haven, MI; correction [Docket No. FAA-2004-17096; Airspace Docket No. 04-AGL-05] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

826. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class D Airspace; Camp Douglas, WI; Correction [Docket No. FAA-2004-17136; Airspace Docket No. 04-AGL-08] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

827. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Northwood, ND; correction [Docket No. FAA-2004-17094; Airspace Docket No. 04-AGL-03] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

828. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class D Airspace; Mount Clemens, MI; correction [Docket No. FAA-2004-16705; Airspace Docket No. 03-AGL-20] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

829. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Southeast, AK [Docket No. FAA-2003-16342; Airspace Docket No. 03-AAL-15] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

830. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class C Airspace, Des Moines International Airport, Des Moines, IA [Docket No. FAA-2004-17145; Airspace Docket No. 04-ACE-19] (RIN: 2120-AA66) received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

831. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Restricted Areas 3801A, 3801B, and 3801C, Camp Claiborne, LA [Docket No. FAA-2003-16438; Airspace Docket No. 03-ASW-02]

(RIN: 2120-AA66) received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

832. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; St. Francis, KS [Docket No. FAA-2004-18821; Airspace Docket No. 04-ACE-47] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

833. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Jonesville, VA [Docket No. FAA-2004-18736; Airspace Docket No. 04-AEA-10] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

834. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Correction to Class E Airspace; Durango, CO [Docket No. FAA 2004-16971; Airspace Docket 02-ANM-14] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

835. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Kennett, MO [Docket No. FAA-2004-18820; Airspace Docket No. 04-ACE-46] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

836. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Revision of Class E Airspace; Kotezue, AK [Docket No. FAA-2004-18897; Airspace Docket No. 04-AAL-12] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

837. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Warrensburg, MO. [Docket No. FAA-2004-19333; Airspace Docket No. 04-ACE-62] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

838. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Harvard, NE. [Docket No. FAA-2004-19330; Airspace Docket No. 04-ACE-60] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

839. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Hastings, NE. [Docket No. FAA-2004-19330; Airspace Docket No. 04-ACE-59] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

840. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Hartington, NE [Docket No. FAA-2004-19332; Airspace Docket No. 04-ACE-61] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

841. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Hastings, NE.

[Docket No. FAA-2004-19330; Airspace Docket No. 04-ACE-59] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

842. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Dodge City, KS [Docket No. FAA-2004-19325; Airspace Docket No. 04-ACE-54] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

843. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Amendment to Restricted Areas 2932, 2933, 2934, and 2935; Cape Canaveral, FL. [Docket No. FAA-2004-19438; Airspace Docket No. 04-ASO-9] (RIN: 2120-AA66) received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

844. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Revision of Class E Airspace; Sunriver, OR. [Docket FAA 2003-16567; Airspace Docket 03-ANM-14] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

845. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establish Class D Airspace; Provo, UT [Docket FAA 2003-16805; Airspace Docket 03-ANM-22] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

846. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Harrisonville, MO. [Docket No. FAA-2004-18825; Airspace Docket No. 04-ACE-51] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

847. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Kennett, MO. [Docket No. FAA-2004-18820; Airspace Docket No. 04-ACE-46] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

848. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class D Airspace; and Modification of Class E Airspace; Joplin, MO. [Docket No. FAA-2004-18824; Airspace Docket No. 04-ACE-50] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

849. A letter from the Chair of the Board of Directors, Office of Compliance, transmitting notice of proposed procedural rule-making regulations under Section 304(b)(1) of the Congressional Accountability Act of 1995 for publication in the Congressional Record, pursuant to 2 U.S.C. 1384(b)(1); jointly to the Committees on Education and the Workforce and House Administration.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. NORWOOD:

H.R. 836. A bill to require the Secretary of Defense to take such actions as are necessary to change the reimbursement rates

and cost sharing requirements under the TRICARE program to be the same as, or as similar as possible to, the reimbursement rates and cost sharing requirements under the Blue Cross/Blue Shield Standard Plan provided under the Federal Employee Health Benefit program under chapter 89 of title 5, United States Code; to the Committee on Armed Services.

By Mr. DOGGETT (for himself, Mr. SHAYS, Mr. ANDREWS, Mr. BLUMENAUER, Mr. KUCINICH, Mr. LEWIS of Georgia, Mr. MARKEY, Mr. MCGOVERN, Mr. SANDERS, Mr. BERMAN, Mr. COOPER, Ms. DELAURO, Mr. GRIJALVA, Ms. LEE, Mr. MCDERMOTT, Mr. MORAN of Virginia, Mr. SCHIFF, Mr. STARK, Mr. TAYLOR of Mississippi, and Mr. TIERNEY):

H.R. 837. A bill to amend the Internal Revenue Code of 1986 to eliminate the inflation adjustment of the phaseout of the credit for producing fuel from a nonconventional source and to repeal the extension of the credit for facilities producing synthetic fuels from coal; to the Committee on Ways and Means.

By Mr. LANTOS (for himself, Mr. GRAVES, Mr. MCGOVERN, Mr. SHAYS, Mr. OLVER, Ms. WATSON, Mr. GEORGE MILLER of California, Ms. KAPTUR, Mr. RUPPERSBERGER, Mrs. CAPPs, Mr. STRICKLAND, Mr. GRIJALVA, Mr. CUMMINGS, Mr. GENE GREEN of Texas, Ms. DELAURO, Mrs. MCCARTHY, Mr. BLUMENAUER, Mr. OWENS, Mr. MCDERMOTT, Mr. BROWN of Ohio, Mr. JEFFERSON, Mr. MOORE of Kansas, Mr. DELAHUNT, Mr. ETHERIDGE, Ms. NORTON, Mr. CHANDLER, Mrs. MALONEY, Mr. FALBOMAVAEGA, Mr. CLAY, Mr. COSTELLO, Mr. JONES of North Carolina, and Mr. STARK):

H.R. 838. A bill to ensure that the reserve components are able to maintain adequate retention and recruitment levels by protecting the financial security of the families of activated members of the National Guard and of the Reserve; to the Committee on Ways and Means, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WAXMAN (for himself and Mr. GORDON):

H.R. 839. A bill to protect scientific integrity in Federal research and policymaking; to the Committee on Government Reform, and in addition to the Committee on Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TOM DAVIS of Virginia (for himself, Mr. WAXMAN, Mrs. CAPPs, Mr. LYNCH, and Mr. WEINER):

H.R. 840. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Energy and Commerce.

By Mr. SENSENBRENNER (for himself, Mr. DREIER, Mrs. MILLER of Michigan, Mr. CHABOT, Mr. BARTLETT of Maryland, Mr. PAUL, and Mr. COLE of Oklahoma):

H.R. 841. A bill to require States to hold special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes; to the Committee on House Administration.

By Mrs. MALONEY (for herself, Mr. TOM DAVIS of Virginia, Mr. HOEKSTRA, Mr. WAXMAN, Ms. HARMAN, Mr. CONYERS, Mr. HINCHEY, Mr. TOWNS, Mr. ACKERMAN, Mr. NADLER, Mr. VAN HOLLEN, Mr. CROWLEY, and Mr. SHAYS):

H.R. 842. A bill to extend the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years; to the Committee on Government Reform.

By Mr. ABERCROMBIE (for himself and Mr. CASE):

H.R. 843. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii and to amend the Hawaii Water Resources Act of 2000; to modify the water resources study; to the Committee on Resources.

By Mr. BACA (for himself, Mr. TERRY, Mr. MCGOVERN, Mr. TOWNS, Ms. BORDALLO, Mr. LYNCH, Mr. SERRANO, and Mr. BUTTERFIELD):

H.R. 844. A bill to amend the Richard B. Russell National School Lunch Act to provide for automatic eligibility for free school lunch and breakfast programs to children of parents who are enlisted members of the Armed Forces on active duty; to the Committee on Education and the Workforce.

By Mr. BARRETT of South Carolina (for himself and Mr. GREEN of Wisconsin):

H.R. 845. A bill to amend the Congressional Budget Act of 1974 to simplify annual concurrent resolutions on the budget and to budget for emergencies; to the Committee on the Budget, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. GINNY BROWN-WAITE of Florida (for herself, Mr. DAVIS of Florida, Mr. SHERMAN, Ms. ROS-LEHTINEN, Mr. LARSEN of Washington, Ms. BORDALLO, Mr. LEWIS of Georgia, Mr. WELDON of Florida, Ms. HOOLEY, Mr. WOLF, Ms. WASSERMAN SCHULTZ, Mr. BILIRAKIS, Mr. GENE GREEN of Texas, and Mr. FEENEY):

H.R. 846. A bill to establish a Federal program to provide reinsurance to improve the availability of homeowners' insurance; to the Committee on Financial Services.

By Mr. FOLEY (for himself, Mr. MARIO DIAZ-BALART of Florida, Mr. HASTINGS of Florida, Mr. SHAW, and Mr. DAVIS of Florida):

H.R. 847. A bill to authorize ecosystem restoration projects for the Indian River Lagoon and the Picayune Strand, Collier County, in the State of Florida; to the Committee on Transportation and Infrastructure.

By Mr. GARRETT of New Jersey:

H.R. 848. A bill to provide that the income tax shall not apply for taxable years during which the taxpayer, or either spouse of a married couple, is serving in the war in Iraq; to the Committee on Ways and Means.

By Mr. GIBBONS (for himself, Mr. PORTER, and Ms. BERKLEY):

H.R. 849. A bill to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Resources.

By Mr. HOYER (for himself and Mr. NEY):

H.R. 850. A bill to amend chapter 95 of the Internal Revenue Code of 1986 to establish a uniform date for the release of payments from the Presidential Election Campaign Fund to eligible candidates for election to the office of President of the United States; to the Committee on House Administration.

By Mr. LARSEN of Washington (for himself and Mr. INSLEE):

H.R. 851. A bill to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes; to the Committee on Resources.

By Mr. MCDERMOTT:

H.R. 852. A bill to extend Federal recognition to the Duwamish Tribe, and for other purposes; to the Committee on Resources.

By Mr. MCKEON:

H.R. 853. A bill to remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States; to the Committee on Resources.

By Mr. MCKEON:

H.R. 854. A bill to provide for certain lands to be held in trust for the Utu Utu Gwaitu Paiute Tribe; to the Committee on Resources.

By Mr. ORTIZ:

H.R. 855. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Brownsville Public Utility Board water recycling and desalination project; to the Committee on Resources.

By Mr. OSBORNE (for himself, Mr. FORD, Mr. HOEKSTRA, and Mr. PAYNE):

H.R. 856. A bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Education and the Workforce.

By Mr. PALLONE (for himself, Mr. BILIRAKIS, Ms. MALONEY, Mr. CALVERT, Mr. VAN HOLLEN, Mr. LOBIONDO, Mr. ANDREWS, Mr. ROGERS of Alabama, Mr. HINCHEY, Mr. MENENDEZ, Mr. MCGOVERN, and Mr. MCNULTY):

H.R. 857. A bill to amend the International Claims Settlement Act of 1949 to allow for certain claims of nationals of the United States against Turkey, and for other purposes; to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PAUL (for himself, Mr. BARTLETT of Maryland, Mr. DUNCAN, Mr. GARRETT of New Jersey, Mr. GOODE, Mr. MCCOTTER, and Mr. WAMP):

H.R. 858. A bill to amend title II of the Social Security Act and the Internal Revenue Code of 1986 to provide prospectively that wages earned, and self-employment income derived, by individuals who are not citizens or nationals of the United States shall not be credited for coverage under the old-age, survivors, and disability insurance program under such title, and to provide the President with authority to enter into agreements with other nations taking into account such limitation on crediting of wages and self-employment income; to the Committee on Ways and Means.

By Mr. PETERSON of Minnesota (for himself, Mr. SHERWOOD, Mr. SWEENEY, Ms. BALDWIN, Mr. GREEN of Wisconsin, Mr. OBEY, Mr. OBERSTAR, Mr. ENGLISH of Pennsylvania, Mr. SENSENBRENNER, Mr. PETERSON of Pennsylvania, Mr. RYAN of Wisconsin, Mr. KIND, Mr. PETRI, Mr. KENNEDY of Minnesota, and Ms. SLAUGHTER):

H.R. 859. A bill to amend the Farm Security and Rural Investment Act of 2002 to ex-

tend contracts for national dairy market loss payments through the end of fiscal year 2007; to the Committee on Agriculture.

By Mr. REYES:

H.R. 860. A bill to provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District, El Paso County, Texas; to the Committee on International Relations.

By Mr. REYES:

H.R. 861. A bill to amend the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act to decrease the requisite blood quantum required for membership in the Ysleta del Sur Pueblo tribe; to the Committee on Resources.

By Mr. REYES:

H.R. 862. A bill to redesignate the Rio Grande American Canal in El Paso, Texas, as the "Travis C. Johnson Canal"; to the Committee on Resources.

By Mr. REYES:

H.R. 863. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the El Paso, Texas, water reclamation, reuse, and desalination project, and for other purposes; to the Committee on Resources.

By Ms. ROYBAL-ALLARD (for herself, Mr. WOLF, Mr. OSBORNE, Ms. DELAURO, Mr. WAMP, Mr. VAN HOLLEN, Mrs. NAPOLITANO, Mr. GEORGE MILLER of California, Mr. WAXMAN, Mr. CASE, Mrs. JONES of Ohio, Mr. FORTUÑO, Mr. FRANK of Massachusetts, Mr. CAPUANO, Mr. CARDOZA, Mr. SANDERS, Mr. PLATTS, Mrs. JO ANN DAVIS of Virginia, Mrs. BONO, and Mr. GRIJALVA):

H.R. 864. A bill to provide for programs and activities with respect to the prevention of underage drinking; to the Committee on Energy and Commerce.

By Mr. SAXTON (for himself, Mr. ANDREWS, Ms. JACKSON-LEE of Texas, Mr. COBLE, Ms. ROS-LEHTINEN, Mrs. JO ANN DAVIS of Virginia, Mr. ENGEL, Mr. WEINER, Mr. LANGEVIN, Mr. ETHERIDGE, Mr. FORTUÑO, and Mr. HOSTETTLER):

H.R. 865. A bill to amend title 28, United States Code, to clarify that persons may bring private rights of actions against foreign states for certain terrorist acts, and for other purposes; to the Committee on the Judiciary.

By Mr. SENSENBRENNER (for himself and Mr. CONYERS):

H.R. 866. A bill to make technical corrections to the United States Code; to the Committee on the Judiciary.

By Mr. SMITH of Texas:

H.R. 867. A bill to promote openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on Government Reform.

By Mr. SMITH of Washington (for himself, Mr. BAIRD, Mr. DICKS, Mr. INSLEE, Mr. LARSEN of Washington, and Mr. MCDERMOTT):

H.R. 868. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SOUDER (for himself, Mr. CUMMINGS, Mr. CAPUANO, Mr. TOM DAVIS of Virginia, Mr. PORTMAN, Mr. RANGEL, Mr. RAMSTAD, Mrs. MCCARTHY, Mr. MEEKS of New York, Mr.

KENNEDY of Rhode Island, Mr. WEINER, Mr. BOOZMAN, Mr. WAMP, Mrs. BIGGERT, Mr. SERRANO, Mr. ACKERMAN, Mrs. MALONEY, Mr. PRICE of North Carolina, Mr. OWENS, Mr. GENE GREEN of Texas, Mr. WYNN, and Mrs. CHRISTENSEN):

H.R. 869. A bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STARK (for himself and Mr. BERRY):

H.R. 870. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide enhanced criminal penalties for certain violations of the Act involving knowing concealment of evidence of a serious adverse drug experience, and for other purposes; to the Committee on Energy and Commerce.

By Mr. THOMPSON of California (for himself, Mr. BERRY, Mrs. TAUSCHER, Mr. CASE, Mr. SCOTT of Georgia, Mr. COOPER, Mr. TANNER, Mr. MATHESON, Mr. ROSS, Mr. SCHIFF, Ms. HARMAN, Mr. PETERSON of Minnesota, Ms. HERSETH, Mr. BOSWELL, Mr. COSTA, Mr. ISRAEL, Mr. CHANDLER, Mr. CARDOZA, Mr. DAVIS of Tennessee, Mr. MICHAUD, Ms. LORETTA SANCHEZ of California, and Mr. MELANCON):

H.R. 871. A bill to establish reporting requirements relating to funds made available for military operations in Iraq or the reconstruction of Iraq and for military operations in Afghanistan or the reconstruction of Afghanistan, and for other purposes; to the Committee on Armed Services, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TOWNS (for himself and Mr. UPTON):

H.R. 872. A bill to amend title XVIII of the Social Security Act to provide for reimbursement of certified midwife services and to provide for more equitable reimbursement rates for certified nurse-midwife services; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MURTHA:

H.J. Res. 21. A joint resolution proposing an amendment to the Constitution of the United States relating to school prayer; to the Committee on the Judiciary.

By Mr. POE:

H. Con. Res. 66. Concurrent resolution providing for the adjournment or recess of the two Houses; considered and agreed to.

By Ms. EDDIE BERNICE JOHNSON of Texas (for herself, Mr. YOUNG of Alaska, and Mr. OBERSTAR):

H. Con. Res. 67. Concurrent resolution honoring the soldiers of the Army's Black Corps of Engineers for their contributions in constructing the Alaska-Canada highway during World War II and recognizing the importance of these contributions to the subsequent integration of the military; to the Committee on Transportation and Infrastructure.

By Mr. EVANS (for himself, Ms. BORDALLO, Mr. HONDA, Mr. TOWNS, Mr. GRIJALVA, Mr. MCGOVERN, Mr.

ABERCROMBIE, Mr. FRANK of Massachusetts, Mrs. NAPOLITANO, Mr. KUCINICH, Ms. NORTON, Mr. GEORGE MILLER of California, Mr. CROWLEY, and Mr. SANDERS):

H. Con. Res. 68. Concurrent resolution expressing the sense of Congress that the Government of Japan should formally issue a clear and unambiguous apology for the sexual enslavement of young women during colonial occupation of Asia and World War II, known to the world as "comfort women"; and for other purposes; to the Committee on International Relations.

By Mr. TANCREDO (for himself, Mr. SOUDER, Ms. ROS-LEHTINEN, Mr. TOWNS, and Mr. SHIMKUS):

H. Con. Res. 69. Concurrent resolution expressing the sense of Congress that the United States should resume normal diplomatic relations with the Republic of China on Taiwan, and for other purposes; to the Committee on International Relations.

By Mr. BOEHLERT:

H. Res. 105. A resolution providing amounts for the expenses of the Committee on Science in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. DREIER (for himself and Ms. SLAUGHTER):

H. Res. 106. A resolution providing amounts for the expenses of the Committee on Rules in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. HYDE:

H. Res. 107. A resolution providing amounts for the expenses of the Committee on International Relations in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. GALLEGLY (for himself, Mr. SMITH of New Jersey, and Mr. WEXLER):

H. Res. 108. A resolution commemorating the life of the late Zurab Zhvania, Prime Minister of the Republic of Georgia; to the Committee on International Relations.

By Mr. MANZULLO:

H. Res. 109. A resolution providing amounts for the expenses of the Committee on Small Business in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. BOEHNER (for himself and Mr. GEORGE MILLER of California):

H. Res. 110. A resolution providing amounts for the expenses of the Committee on Education and the Workforce in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. MENENDEZ:

H. Res. 111. A resolution electing Members to certain standing committees of the House of Representatives; considered and agreed to.

By Mr. POE:

H. Res. 112. A resolution electing a certain Member to a certain standing committee of the House of Representatives; considered and agreed to.

By Mr. BUYER (for himself and Mr. EVANS):

H. Res. 113. A resolution providing amounts for the expenses of the Committee on Veterans' Affairs in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. GREEN of Wisconsin:

H. Res. 114. A resolution expressing the sense of the House of Representatives that a postage stamp should be issued honoring American farm women; to the Committee on Government Reform.

By Ms. KAPTUR:

H. Res. 115. A resolution expressing the sense of the United States House of Representatives that the United States should adhere to moral and ethical principles of

economic justice and fairness in developing and advancing United States international trade treaties, agreements, and investment policies; to the Committee on Ways and Means, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LEACH (for himself and Mr. TIERNEY):

H. Res. 116. A resolution creating a select committee to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism; to the Committee on Rules.

By Mr. NUSSLE:

H. Res. 117. A resolution providing amounts for the expenses of the Committee on the Budget in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. SENSENBRENNER:

H. Res. 118. A resolution providing amounts for the expenses of the Committee on the Judiciary in the One Hundred Ninth Congress; to the Committee on House Administration.

#### ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 13: Mr. MCCAUL of Texas, Mr. OTTER, and Mr. PETERSON of Pennsylvania.

H.R. 29: Mrs. MYRICK, Mr. MURPHY, Mrs. BLACKBURN, and Mr. ROSS.

H.R. 113: Mr. GUTKNECHT and Mr. SOUDER.

H.R. 114: Mr. OLVER and Ms. SLAUGHTER.

H.R. 136: Mr. KLINE.

H.R. 147: Mr. BAIRD, Mr. BISHOP of Utah, Mr. WU, Mrs. MUSGRAVE, Ms. WOOLSEY, Mr. CASE, Mr. BILIRAKIS, Mr. LARSEN of Washington, Mr. TAYLOR of North Carolina, Mr. BECERRA, Mr. GIBBONS, and Mr. GONZALEZ.

H.R. 181: Mr. EVERETT and Mr. ROGERS of Michigan.

H.R. 203: Mr. CROWLEY, Mr. McNULTY, Mr. RANGEL, Mr. TOWNS, and Mr. WEINER.

H.R. 204: Mr. CROWLEY, Mr. McNULTY, Mr. RANGEL, Mr. TOWNS, and Mr. WEINER.

H.R. 274: Mr. CAMP, Mr. BUYER, and Mr. KANJORSKI.

H.R. 282: Mr. DAVIS of Illinois, Mr. PALLONE, Mr. BUTTERFIELD, and Mrs. MILLER of Michigan.

H.R. 341: Mr. UPTON and Mr. RENZI.

H.R. 342: Mrs. LOWEY, Mr. GRIJALVA, Mr. FRANK of Massachusetts, Ms. CARSON, Mr. WEINER, Mr. HINCHEY, Mr. LANTOS, Mr. GUTIERREZ, and Ms. LINDA T. SANCHEZ of California.

H.R. 354: Mr. TOM DAVIS of Virginia, Mr. MENENDEZ, Mr. BLUNT, Mr. ORTIZ, and Mr. MILLER of North Carolina.

H.R. 357: Mrs. BLACKBURN.

H.R. 358: Ms. DEGETTE, Ms. SCHAKOWSKY,

Mr. STARK, Mr. ACKERMAN, Mr. CLEAVER, Ms. SLAUGHTER, Mr. SIMMONS, Mr. WELLER, Mr. WELDON of Pennsylvania, Mr. WHITFIELD, Mr. ISSA, Mr. MURTHA, Mr. LAHOOD, and Mr. CAPUANO.

H.R. 376: Mr. TAYLOR of Mississippi, Mr. ENGEL, Mrs. CHRISTENSEN, Ms. LINDA T. SANCHEZ of California, Ms. CORRINE BROWN of Florida, Mr. OLVER, Mr. DEFazio, Mr. HINCHEY, Mr. WEINER, Mr. DOYLE, Mr. SIMPSON, Mr. RANGEL, Ms. MCCOLLUM of Minnesota, Mrs. DAVIS of California, Mr. SKELTON, Mr. McNULTY, Mr. MARSHALL, Mr. OWENS, Mr. SNYDER, and Mr. McDERMOTT.

H.R. 389: Mr. MURTHA and Ms. HART.

H.R. 390: Mr. PETERSON of Minnesota.

H.R. 414: Mr. LINCOLN DIAZ-BALART of Florida, Mr. HALL, Mr. JOHNSON of Illinois, Mr. McCOTTER, Mr. SHAYS, Mr. WALSH, Mr. MARIO DIAZ-BALART of Florida, Mr. BOEHLERT, Mr. GRIJALVA, Mr. PETERSON of Minnesota, Mr. FITZPATRICK of Pennsylvania, and Mr. GUTKNECHT.

H.R. 438: Ms. WATSON, Mr. McDERMOTT, Mr. GEORGE MILLER of California, Mr. FARR, Mr. BECERRA, Mr. BACA, Mr. LANTOS, Mr. ISSA, Ms. WOOLSEY, Ms. PELOSI, and Mr. FILNER.

H.R. 454: Mr. WICKER, Mr. HALL, Mr. BURGESS, Mr. SMITH of Texas, and Mr. BLUNT.

H.R. 459: Mr. FRANK of Massachusetts.

H.R. 516: Ms. HARMAN, Mr. GARY G. MILLER of California, and Mr. MCCAUL of Texas.

H.R. 550: Ms. CARSON, Mr. ETHERIDGE, Mr. OLVER, Mr. BISHOP of New York, Mr. CROWLEY, Ms. CORRINE BROWN of Florida, Mr. BISHOP of Georgia, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. TOWNS, Mr. INSLEE, Ms. HOOLEY, Mr. RANGEL, Mr. GUTIERREZ, Mr. DOGGETT, Mr. DELAHUNT, Mr. EMANUEL, Mr. DOYLE, Mr. GRIJALVA, Mr. RAHALL, Mr. MURTHA, Mr. SNYDER, Mr. THOMPSON of California, and Mr. PASTOR.

H.R. 556: Mr. GALLEGLY and Mr. LIPINSKI.

H.R. 577: Mr. LINCOLN DIAZ-BALART of Florida.

H.R. 581: Mr. ENGEL, Ms. SLAUGHTER, and Mr. BLUNT.

H.R. 598: Mr. McINTYRE.

H.R. 623: Mr. ROSS.

H.R. 649: Mr. TIBERI.

H.R. 651: Mr. GREEN of Wisconsin, Mr. PAUL, and Mr. ENGLISH of Pennsylvania.

H.R. 655: Mr. McNULTY and Mr. WEXLER.

H.R. 682: Mrs. BLACKBURN, Mr. POE, and Mr. GREEN of Wisconsin.

H.R. 703: Mr. BURTON of Indiana, Mr. ENGLISH of Pennsylvania, Mr. FOSSELLA, Mr. WOLF, Mr. CULBERSON, Mr. SOUDER, Mr. PITTS, and Mr. HOSTETTLER.

H.R. 731: Mr. MATHESON and Ms. BORDALLO.

H.R. 743: Mr. DAVIS of Illinois.

H.R. 744: Mr. SCHWARZ of Michigan, Mr. CONYERS, Mr. CASE, and Mr. GREEN of Wisconsin.

H.R. 746: Mrs. JONES of Ohio.

H.R. 759: Mr. CASE, Mr. FRANK of Massachusetts, Mrs. MALONEY, and Mr. HONDA.

H.R. 762: Mr. TOWNS and Mr. McNULTY.

H.R. 763: Mr. TOWNS and Mr. McNULTY.

H.R. 771: Mr. DAVIS of Illinois, Mr. BUTTERFIELD, and Mr. LYNCH.

H.R. 772: Mr. WEXLER, Mr. DeFAZIO, and Mr. UDALL of New Mexico.

H.R. 783: Mr. GORDON, Mr. EVERETT, Mr. HOSTETTLER, Mr. OBERSTAR, Mr. MENENDEZ, Mr. HASTINGS of Florida, and Mr. PAYNE.

H.R. 788: Mrs. NAPOLITANO, Mr. RAHALL, Mr. CANNON, Ms. BORDALLO, and Mr. GRIJALVA.

H.R. 792: Mr. HINCHEY and Ms. KILPATRICK of Michigan.

H.R. 793: Mr. BARTLETT of Maryland.

H.R. 795: Mr. MEEHAN, Mr. HOLDEN, Mrs. BONO, Mr. EVANS, Mr. UDALL of New Mexico, Mr. CHABOT, Mr. KILDEE, Mrs. CHRISTENSEN, Mr. Bass, Ms. CARSON, Mr. WELDON of Pennsylvania, Mr. HULSHOF, and Mr. WELLER.

H.R. 809: Mr. HAYWORTH, Mr. HULSHOF, and Mr. PORTMAN.

H.R. 815: Mr. GALLEGLY, Mr. PITTS, and Mr. GARY G. MILLER of California.

H.R. 818: Mr. WEXLER.

H. Con. Res. 42: Mr. PLATTS.

H. Con. Res. 52: Mr. JONES of North Carolina and Mr. SOUDER.

H. Con. Res. 56: Mr. GARRETT of New Jersey.

H. Res. 15: Mr. FOLEY, Mr. RAMSTAD, and Mrs. MALONEY.

H. Res. 26: Mr. HYDE and Mr. LAHOOD.

H. Res. 41: Mr. BACA and Mr. ETHERIDGE.

H. Res. 55: Ms. CARSON, Mr. MEEKS of New York, Mr. COOPER, Mr. RYAN of Ohio, Mr. GORDON, Mr. BUYER, Ms. ROS-LEHTINEN, Mr. BILIRAKIS, Ms. MCCOLLUM of Minnesota, Mr. PETERSON of Minnesota, and Mr. MEEHAN.

H. Res. 77: Mr. WEXLER.

H. Res. 91: Ms. HARRIS, Mr. Mack, Mr. POE, Mr. ROYCE, Mr. BERMAN, Mr. BOOZMAN, Mr. ACKERMAN, Ms. WATSON, Mr. ROHRBACHER, Mr. TANCREDO, Ms. JACKSON-LEE of Texas, Mr. PRICE of North Carolina, Mr. GILCHREST, Ms. KAPTUR, Mr. HINCHEY, and Mr. ENGEL.

H. Res. 101: Mr. WILSON of South Carolina.