

## EXTENSIONS OF REMARKS

### HONORING MIKHAIL VOLYNETS

#### HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 20, 2005*

Mr. WELDON of Pennsylvania. Mr. Speaker, Mr. Mikhail Volynets, recipient of the AFL-CIO's 2004 George Meany-Lane Kirkland Human Rights Award, was elected Chairperson of the Independent Trade Union of Miners of Ukraine in 1995, and became its president in 1997. Having previously worked as a miner, and then as a mining engineer, Mr. Volynets participated in the Ukraine's first miner's strikes in 1989, later leading a series of successful mass protests in 1991. Using his leadership position, Mr. Volynets organized the Trade Union of Miners to become an instrumental part of Ukraine's Orange Revolution, which resulted in Viktor Yushchenko's rise to the Presidency in the fall of 2004. Having first been elected to the Ukrainian Parliament (Rada) in 2002, Mr. Volynets is currently a Deputy in the Rada, working to further secure democracy in Ukraine. I congratulate Mr. Volynets for his courage and determination in the face of fear and uncertainty.

### FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 AND 2007

SPEECH OF

#### HON. PETER A. DeFAZIO

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, July 19, 2005*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 3057) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2006, and for other purposes.

Mr. DeFAZIO. Mr. Chairman, I rise in strong support of both the Kennedy/Hooley/Osbourne/Souder and the Hooley/Souder/Kennedy/Baird amendments. The methamphetamine scourge that has suddenly gained national attention has unfortunately been going on far too long in countless rural communities, including in southwest Oregon, which I represent.

Almost 12.5 million Americans have tried meth at least once during their lifetime. White House Deputy Drug Czar Scott Burns recently was quoted as saying, "I think we would all agree methamphetamine is the most destructive, dangerous, terrible drug that's come along in a long time." That is very true, especially in Oregon. Unfortunately, law enforcement is struggling to stem the spread of meth.

The Kennedy/Hooley/Osbourne/Souder amendment would require that the State Department annually certify the five biggest exporters and the five biggest importers of the meth precursor pseudoephedrine are cooper-

ating with the U.S. We can quickly help law enforcement organizations ensure that precursor chemicals are not suddenly "lost," and then used in the production of meth at international super-labs. These labs account for 80 percent of the meth used in the U.S.

This amendment will allow the State Department to use its existing power, that it currently uses related to heroin and cocaine, to suspend bilateral and multilateral assistance under the Foreign Assistance Act to countries that cannot account for the pseudoephedrine that enters and leaves their borders.

Also, recent efforts by Oregon's statehouse have helped to curb the manufacture of meth in the state, but abuse is still on the rise. States can restrict the sale of pseudoephedrine products to try to stem the proliferation, but until we stop meth from spilling into the U.S. from Mexico, meth will continue to wreak havoc on families, neighbors, communities, and numerous local, state, and federal resources.

Meth super-labs south of the border that are producing the bulk of meth that feeds the addiction of 600,000 current meth addicts, or tweakers. There are Mexican drug cartels smuggling meth across the border daily, even as I stand before you. It is imperative that the U.S. clamp down on illegal border crossings that ultimately result in the deaths of thousands of Americans, while lining the pockets of a handful of Mexican smugglers. The border must be secure.

The Hooley/Souder/Kennedy/Baird amendment will increase the amount of coordination between the State Department and the Mexican government, and between American law enforcement and their Mexican counterparts can only help us defeat the meth scourge.

I urge my colleagues to support both the Kennedy/Hooley/Osbourne/Souder and the Hooley/Souder/Kennedy/Baird amendments.

### OCCUPATIONAL SAFETY AND HEALTH SMALL BUSINESS DAY IN COURT ACT OF 2005

SPEECH OF

#### HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, July 12, 2005*

Mr. MANZULLO. Madam Speaker, I wish to express my strong support for H.R. 739, the Occupational Safety and Health Small Business Day in Court Act; H.R. 740, the Occupational Safety and Health Review Commission Efficiency Act; H.R. 741, the Occupational Safety and Health Independent Review of OSHA Citations Act; and H.R. 742, the Occupational Safety and Health Small Employer Access to Justice Act. As Chairman of the Small Business Committee, I see daily the immense regulatory burden placed upon our small businesses. The Office of Advocacy at the Small Business Administration (SBA) estimates that the average small business is bur-

dened with almost \$7,000 per employee in regulatory compliance costs. I am pleased that the House has taken action to relieve small businesses of some of this burden.

H.R. 739 provides small businesses with additional flexibility by allowing certain exceptions to the arbitrary 15-day deadline for employers to file responses to citations by the Occupational Safety and Health Administration (OSHA). This commonsense measure allows an extension of the 15-day deadline in narrowly tailored circumstances, namely when a small business inadvertently misses this deadline by mistake. H.R. 739 helps ensure that disputes between OSHA and small businesses would be resolved based on the merits of the situation as opposed to legal technicalities. No small business should be foreclosed from a remedy simply because of an arbitrary deadline.

H.R. 740 helps ensure that OSHA reviews cases in a timely and more efficient manner by adding two additional commissioners to the Occupational Safety and Health Review Commission (OSHRC). This change ensures that small businesses do not have long, drawn-out proceedings that monopolize their limited resources.

H.R. 741 is designed to restore the review process that was originally intended by Congress when it enacted the OSHA law. Congress's original intent was to form a separate, independent, and unbiased entity, OSHRC, that presided over OSHA hearings. However, the lines between OSHA and OSHRC have become blurred. This bill restores the original system contemplated by Congress and ensures that OSHRC, and not OSHA, would be the party who interprets the law and provides an independent review of OSHA citations.

Finally, H.R. 742 will assist small businesses by giving these businesses an opportunity to recover attorney fees if successful in challenging an OSHA citation.

In all, this common-sense legislation allows OSHA to continue protecting workers at their place of employment, while giving small businesses the ability to be competitive, create jobs, and to be protected from frivolous lawsuits.

### TRIBUTE TO SUBHASHREE MADHAVAN AND THE REMBRANDT PROJECT TEAM

#### HON. CHRIS VAN HOLLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 20, 2005*

Mr. VAN HOLLEN. Mr. Speaker, I rise today to commend one of my constituents, Subhashree Madhavan, and her Rembrandt Project Team at the National Institutes of Health. Ms. Madhavan and her colleagues were recently named among thirty finalists for the 2005 Service to America medals awarded by the Partnership for Public Service.

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

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

The Service to America award program recognizes career Federal employees for their significant contributions to the Nation. Recipients of the "Sammies" are among the best and brightest of our public servants. While we seldom give public recognition to their efforts, they devote their lives and careers to the cause of our national welfare. They are models to the rest of the Federal workforce and inspirations to us all.

Since joining the National Cancer Institute Center for Bioinformatics at NIH, Ms. Madhavan has overseen the development of the Rembrandt Project. Rembrandt (REpository for Molecular BRAin Neoplasia DaTa) is a database that brings together data from an NCI clinical study with a vast store of existing data on brain tumors. By bridging the gap between clinical and biological information, Rembrandt will facilitate the diagnosis and treatment of individual patients and will assist brain cancer researchers in their search for a cure.

Mr. Speaker, I offer my warmest congratulations to Ms. Madhavan and her team.

### MEDICAL MALPRACTICE AND INSURANCE REFORM ACT OF 2005

**HON. JOHN CONYERS, JR.**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 20, 2005*

Mr. CONYERS, Mr. Speaker, I am pleased to introduce the Medical Malpractice Insurance and Litigation Reform Act of 2005. In response to the issue of frivolous lawsuits, Title I of the bill provides for a series of measures designed to insure that the lawsuit itself is not frivolous and that the pleadings filed in connection with the suit are accurate and meritorious. Title I also provides for alternative dispute resolution designed to encourage resolution of medical malpractice actions outside of court.

The bill also responds to the real problems in the medical malpractice insurance market, namely higher prices driven by lack of competition and investment losses by insurers leading to a boom/bust cycle. In response to these issues, Title II insures that the antitrust laws apply to medical malpractice insurers, price comparisons can be easily obtained, and procedural checks are in place to insure that premium increases are warranted and can be challenged by health care providers.

Above and beyond these requirements, Title III of the legislation responds to concerns that medical malpractice is not available in certain parts of the country. As a result, this title would create monetary grants dispensed through the Health Resources and Services Administration to health care providers who choose to work in geographic areas with a shortage of one or more types of health providers.

In addition, the bill responds to the need to fully examine the recent and dramatic increases in medical malpractice insurance premiums. Title IV creates an Independent Advisory Commission on Medical Malpractice Insurance to evaluate the cause of the recent premium increase. Title V authorizes the Department of Health and Human Services to collect the data necessary to examine the medical malpractice insurance industry. The following is a more detailed description of the legislation:

#### "THE MEDICAL MALPRACTICE AND INSURANCE REFORM ACT OF 2005" SECTION-BY-SECTION ANALYSIS

**Scope.** The legislation narrowly defines "medical malpractice action" to cover "licensed physicians and health professionals" for only cases involving medical malpractice. These definitions are intended to include doctors, hospitals, nurses, and other health professionals who pay medical malpractice insurance premiums. See, Sec. 107(8).

The Republican legislation is broadly drafted to include HMOs, insurance companies, nursing homes, and drug and device manufacturers for a broad range of liabilities including suits by physicians against those companies. The full extent to which H.R. 534 protects the wrongdoings of these companies is still unknown.

#### TITLE I—REDUCING FRIVOLOUS LAWSUITS

**Sec. 101—Statute of Limitations.** This section limits the amount of time during which a patient can file a medical malpractice action to the later of three years from the date of injury or three years from the date the patient discovers (or through the use of reasonable diligence should have discovered) the injury. Children under the age of 18 have the later of three years from their eighteenth birthday or three years from the date the patient discovers (or through the use of reasonable diligence should have discovered) the injury.

The Republican legislation limits it to the earlier of three years from the date an injury "manifests" itself or one year from the date discovered, but in no event can it exceed three years. This makes it more akin to a statute of repose than a statute of limitations. H.R. 534 also establishes a statute of repose for children injured under the age of six that is the later of three years from the date of manifestation or prior to the minor's eighth birthday.

**Sec. 102—Health Care Specialist Affidavit.** This section requires an affidavit by a qualified specialist before any medical malpractice action may be filed. An extension may be granted for such an affidavit if at the time the claim is brought, the claimant has not been able to obtain medical records or other information necessary for the affidavit. A "Qualified Specialist" is a health care professional with knowledge of the relevant facts of the case, expertise in the specific area of practice, and in the case of an action against a physician, board certification in a speciality relating to the area of practice.

Although the Republicans claim their legislation would limit frivolous claims, H.R. 534 does nothing to ensure that the claims filed by plaintiffs are legitimate. H.R. 534 has no certification process prior to the filing of a medical malpractice lawsuit. H.R. 534 only restricts the rights of injured patients and physicians in meritorious lawsuits.

**Sec. 103—Sanctions for Frivolous Actions and Pleadings.** This section reduces the frivolous lawsuits by requiring that every document in a medical malpractice action be signed by at least one attorney of record. Any unsigned paper is stricken. Second, all plaintiff attorneys who file a medical malpractice action are required to certify that the case is meritorious. Attorneys who erroneously file such a certificate are subject to strict civil penalties. First time violators, the court shall require the attorney to pay costs and attorneys fees or administer other appropriate sanctions. Second time violators, the court shall also require the attorney to pay a monetary fine. Third time violators, the court shall also refer the attorney to the appropriate State bar association for disciplinary proceedings.

The Republican legislation does not have a provision that directly addresses the filing of frivolous lawsuits. H.R. 534 only restricts the rights of injured patients and physicians in meritorious lawsuits.

**Sec. 104—Mandatory Mediation.** This section establishes a mandatory alternative dispute resolution (ADR) system for medical malpractice cases. Participation in mediation shall be in lieu of any other ADR method required by law or by contractual arrangements by the parties. States also have the option to allow arbitration. Any party dissatisfied with the result reached through ADR will not be bound by this result and all statements, offers and communication made as part of ADR would be inadmissible as part of an adjudication. A similar approach is recommended by the Committee for Economic Development (CED), which suggests that defendants make and victims accept "early offers." The effect of the "early offer" program, according to the CED, is that defendants will reduce the likelihood of incurring litigation costs, and victims would obtain fair compensation without the delay, expense, or trauma of litigation.

The Republican legislation does not address alternative dispute resolution methods to reduce the number of medical malpractice actions that are litigated. The sole remedy of the Republican legislation is tort reform that will restrict the rights of those who have been legitimately wronged.

**Sec. 105—Punitive Damages.** This section limits the circumstances under which a claimant can seek punitive damages in a medical malpractice action. It also allocates 50% of any punitive damages that are awarded to a trust fund managed by the Department of Health and Human Services (HHS) through the Agency for Healthcare Research and Quality. The money in the trust fund must be used for activities that reduce medical errors and improve patient safety. The Secretary will promulgate regulations that will establish programs and procedures to carry out this objective. See also, Sec. 221-223.

The Republican legislation raises the evidentiary standard, provides an exemption for FDA approved drugs or devices, and caps punitive damages at the greater of twice the economic damages or \$250,000.

**Sec. 106—Reduction in Premiums.** This section requires medical malpractice insurance companies to annually project the savings that will result from Title I of the bill. Insurance companies must then develop and implement a plan to annually dedicate at least 50% of those savings to reduce the insurance premiums that medical professionals pay. Insurance companies must report these activities to HHS annually. The section provides for civil penalties for the noncompliance of insurance companies.

#### TITLE II—MEDICAL MALPRACTICE INSURANCE REFORM

**Sec. 201—Prohibition on Anti-competitive Activities by Medical Malpractice Insurers.** This section would repeal McCarran-Ferguson Act to ensure that insurers do not engage in price fixing. The Act, enacted in 1945, exempts all anti-competitive insurance industry practices, except boycotts, from the Federal antitrust laws. Over the years, even oversight of the insurance industry by the States, coupled with no possibility of Federal antitrust enforcement, have created an environment that fosters a wide range of anti-competitive practices.

**Sec. 202—Medical Malpractice Insurance Price Comparison.** This section creates an internet site at which health care providers could obtain the price charged for the type of coverage the provider seeks from any malpractice insurer licensed in the doctor's