

Mr. McHugh began his career with the City of Rochester, serving 5 years as Project Director in the Department of Urban Renewal & Economic Development. In that capacity, he directed the \$100 million, 175-acre Upper Falls Urban Renewal Project. From there, he moved to the Rochester Housing Authority where he has served as the Executive Director of the Rochester Housing Authority for the past 32 years. As Executive Director, he has ensured that low-income families, elderly, people with disabilities and many other members of the community have access to quality affordable housing.

Mr. McHugh has greatly expanded the affordable housing opportunities in the City of Rochester and Monroe County. When Mr. McHugh started with the RHA in 1974, it had approximately 1,100 Public Housing Units and 93 employees. Today RHA consists of 2,440 Public Housing units, 7,700 Assisted Housing units and 195 employees. Even with the addition of so many units, the Rochester community continues to regard RHA in the highest terms because of the commitment to keep properties in good repair. Mr. McHugh has developed and nurtured collaborations and partnerships with numerous public service agencies and community organizations. He has continuously maintained a positive working relationship with not only the City of Rochester, but also Monroe County, and State and Federal agencies.

While administering housing for more than 10,000 households is a daunting task in and of itself, under Mr. McHugh's leadership, RHA has used its resources in an effective and efficient manner. RHA has reported solid financial performance year after year and achieved high ratings in HUD's assessment programs for Section 8 and public housing.

Mr. McHugh spearheaded the effort to redesign Rochester's first public housing complex, the State-built Hanover Houses that consisted of seven high rise building for low-income families. He replaced the Hanover Houses with townhouse units to house families, seniors and people with disabilities that maintain a much greater degree of livability and security.

Mr. McHugh greatly expanded the scope of resident and educational services at RHA. Through the Family Investment Center Department and a Social Services Department, RHA has provided to thousands of residents training on family self-sufficiency, computers, construction trades apprenticeships, GED attainment and job placement. RHA also now has resources and staff available to assist residents who need counseling services for drug prevention or other types of intervention. Under Mr. McHugh's leadership, RHA developed a summer camp program which serves over 250 young people and created an after school tutoring program. RHA has nutrition programs for seniors and provides a senior escort van to transport them to shopping and doctor appointments.

Mr. McHugh's public service has not been limited to only the Rochester Housing Authority. During his 32-year career at RHA he has had long time affiliations, board memberships and service on committees with many organizations such as: Council of Large Public Housing Agencies (CLPHA), National Association of Housing and Redevelopment Officials (NAHRO), Middle Atlantic Regional Council of NAHRO, National Leased Housing Association, National Low-Income Housing Coalition,

Regional Council on Aging, Legal Aid Society of Rochester, Women's Career Center, St. John the Evangelist Church, Sisters of Mercy Founders Club, SWV Realty Corporation, Monroe Housing Development Corporation, GEVA Theatre, Downstairs Cabaret Theatre, Rochester Area Educational Television Association, Blue Cross of Monroe County, Project Self-Sufficiency Monroe County Task Force, Marie and Joseph Wilson Foundation, Workforce Investment Board and the Family First Federal Credit Union.

Through Mr. McHugh's leadership, compassion and commitment, thousands of people have been able to improve the quality of their lives because they had a good quality, safe, and affordable home. Many have used RHA as a springboard to better jobs, self-sufficiency and home ownership. He is a shining example of the difference one devoted individual can make in providing quality affordable housing opportunities, building communities, encouraging self-sufficiency and protecting the dignity of people with limited resources while at the same time safeguarding the public trust.

As Mr. McHugh heads into retirement, it is with great pleasure that I recognize and commend Mr. McHugh for his 37 years of dedicated and successful public service. If a man can be judged wealthy because he has friends and colleagues who both respect and admire him, then Thomas F. McHugh is truly a wealthy man. He leaves a great legacy that can serve as an example to all of us. My most sincere and heartfelt congratulations go out to Mr. McHugh for a job well done.

CONFERENCE REPORT ON S. 1932,  
DEFICIT REDUCTION ACT OF 2005

SPEECH OF

**HON. BETTY MCCOLLUM**

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Sunday, December 18, 2005*

Ms. MCCOLLUM of Minnesota. Mr. Speaker, I rise in strong opposition to the Republican's so-called budget reconciliation plan. This bill cuts vital services to families to provide tax cuts for the most fortunate. At the same time that the majority adds to our Nation's exploding Federal budget deficit.

The conference committee unfortunately failed to alleviate the draconian cuts in the original House version of this bill. The conference report before us slashes Medicaid, reducing access to health care for children and families, the elderly, and persons with disabilities. It continues the Republican plan to balance the budget on the backs of students by including \$13 billion in cuts to student financial aid: The bill increases costs for local government and decreases services for families by cutting funding for child support enforcement, foster care, and other child welfare programs.

Conferees also chose to disregard the common-sense cost saving measures passed in the Senate bill. The bill before us does not include the elimination of the PPO slush fund which is a \$10 million giveaway to the insurance and drug industry. Republicans have once again chosen to prioritize corporations over families.

Mr. Speaker, this bill is an outrage. It is outrageous that Republicans dare to claim fiscal responsibility while preparing to pass \$60 bil-

lion in tax breaks for the wealthy. It is outrageous that to pay for these giveaways to their wealthy friends, American families will lose access to health care, critical services, and an affordable college education. And it is outrageous that the leadership of this House is passing this shameful bill in the early hours of the morning while the American public is sleeping.

This reckless bill should be defeated and urge my colleagues to join me in voting against it.

CONFERENCE REPORT ON H.R. 2863,  
DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

SPEECH OF

**HON. JOHN CONYERS, JR.**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Sunday, December 18, 2005*

Mr. CONYERS. Mr. Speaker, I rise in opposition to the legislation. Specifically, I oppose the avian flu liability provision which provides sweeping blanket immunity for the drug companies while again leaving American citizens unprotected. This legislation, which appears both unconstitutional and contrary to federalism, has not been reviewed by any committee of jurisdiction. In fact, this language was added to the Department of Defense Appropriations Conference Report in the middle of the night, long after the conferees approved the bill.

Under the current provision, punitive damages for any claims are barred, allowing for no corporate liability. Drug companies that engaged in the worst kinds of abuses could not be penalized by juries. In addition, the legislation limits the total liability of any manufacturer or distributor. The result is no out of pocket payments by reckless corporations and no real recovery for injured citizens.

Consider this example: The Secretary of Health and Human Services declares a potential public health emergency and designates a vaccine as a countermeasure. Later production of the vaccine demonstrates that the vaccine has vast problems with its potency and may render the vaccine harmful. With this knowledge, the company still sends the vaccine to thousands of distributors and when it is administered, the result is numerous deaths. Under this provision, families who are trying to gain compensation for their losses are left without recourse.

This provision requires that before an injured person can pursue a claim, the Secretary of HHS must determine, by clear and convincing evidence, that there was willful misconduct on the part of the manufacturer, distributor, or administrator of a covered product. First, this would insure that no injured person, including first responders and medical personnel, would have coverage. Second, it is doubtful that "willful misconduct," which is defined as actual knowledge that a covered product would cause harm, could actually be proven. Third, even if an injured victim proved willful misconduct by clear and convincing evidence, the massive tort reform such as no punitive damages and capped non-economic damages would severely limit any compensation.

In addition, this portion of the conference report applies to a wide range of drugs, vaccines, and other products. The provision does

not limit its application to only new drugs or vaccines used in a pandemic context. Instead, it applies to any "drug, biological product or device" that is used to treat or cure a pandemic, epidemic or limit the harm that a pandemic or epidemic might cause. As drafted, this legislation would include drugs such as Tylenol or Advil.

Finally, the conference report falsely claims to establish a compensation process. This "compensation process", under the sole direction of the Secretary of HHS, is governed by regulations created by the Secretary alone and includes caps on compensation awards. Further, no monies have been appropriated for the fund and consequently, the "compensation process" is whole inoperable. The provision has no true compensation program.

Attached to my statement is a letter from Professor Erwin Chemerinsky, Alston & Bird Professor at the Duke University School of Law which further outlines the problems and issues concerning this preparedness provision. Instead of putting the burden on the victim by cutting compensation and protecting the drug manufacturers, we must ensure corporate accountability and protection for our citizens. I strongly urge a "no" vote.

ALSTON & BIRD PROFESSOR OF LAW  
AND POLITICAL SCIENCE, DUKE  
UNIVERSITY SCHOOL OF LAW,

December 20, 2005.

DEAR SENATOR: I understand that the Congress is considering legislation that has been denominated as the "Public Readiness and Emergency Preparedness Act." This legislation would give the Secretary of Health and Human Services extraordinary authority to designate a threat or potential threat to health as constituting a public health emergency and authorizing the design, development, and implementation of countermeasures, while providing total immunity for liability to all those involved in its development and administration. In addition to according unfettered discretion to the Secretary to grant complete immunity from liability, the bill also deprives all courts of jurisdiction to review those decisions. Sec. (a)(7). I write to alert the Congress to the serious constitutional issues that the legislation raises.

First, the bill is of questionable constitutionality because of its broad, unfettered delegation of legislative power by Congress to the executive branch of government. Under the nondelegation doctrine, Congress may provide another branch of government with authority over a subject matter, but "cannot delegate any part of its legislative power except under the limitation of a prescribed standard." *United States v. Chicago*, M., St. P. & P.R. Co., 282 U.S. 311, 324 (1931). Recently, the Supreme Court endorsed Chief Justice Taft's description of the doctrine: "the Constitution permits only those delegations where Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform.'" *Clinton v. City of New York*, 524 U.S. 417, 484 (1998)(emphasis in original), quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). The breadth of authority granted the Secretary without workable guidelines from Congress appears to be the type of "delegation running riot" that grants the Secretary a "roving commission to inquire into evils and upon discovery correct them" of the type condemned by Justice Cardozo in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 553 (1935)(Cardozo, J., concurring).

Second, the bill raises important federalism issues because it sets up an odd form

of federal preemption of state law. All relevant state laws are preempted. Sec. (a)(8). However, for the extremely narrow instance of willful (knowing) misconduct by someone in the stream of commerce for a countermeasure the bill establishes that the substantive law is the law of the state where the injury occurred, unless preempted. Sec. (e)(2). The sponsors appear to be trying to have it both ways, which may not be constitutionally possible. The bill anticipates what is called express preemption, because the scope of any permissible lawsuits is changed from a state-based to a federally based cause of action. See *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003).

Usually, that type of "unusually 'powerful'" preemptive statute provides a remedy for any plaintiff's claim to the exclusion of state remedies. *Id.* at 7 (citation omitted). Here, rather than displace state law in such instances, the bill adopts the different individual laws of the various states, but amends them to include a willful misconduct standard that can only be invoked if the Secretary or Attorney General initiates an enforcement action against those involved in the countermeasure and that action is either pending at the time a claim is filed or concluded with some form of punishment ordered.

Such a provision raises two important constitutional concerns. One problem is that this hybrid form of preemption looks less like an attempt to create a federal cause of action than an direct attempt by Congress to amend state law in violation of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) and basic principles of federalism. Although Congress may preempt state law under the Supremacy Clause by creating a different and separate federal rule, see *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000), it may not directly alter, amend, or negate the content of state law as state law. That power, the *Erie* Court declared, "reserved by the Constitution to the several States." 304 U.S. at 80. It becomes clear that the bill attempts to amend state law, rather than preempt it with a federal alternative, when one realizes that States will retain the power to enact new applicable laws or amend existing ones with a federal overlay that such an action may only be commenced in light of a federal enforcement action and can only succeed when willful misconduct exists. The type of back and forth authority between the federal and state governments authorized by the bill fails to constitute a form of constitutionally authorized preemption.

The other problem with this provision is that the unfettered and unreviewable discretion accorded the Secretary or Attorney General to prosecute an enforcement action as a prerequisite for any action for willful misconduct violates the constitutional guarantee of access to justice, secured under both the First Amendment's Petition Clause and the Fifth Amendment's Due Process Clause. See *Christopher v. Harbury*, 536 U.S. 403, 415 n. 12 (2002). In fact, the Court has repeatedly recognized that that "the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances." *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 741 (1983), citing *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). First Amendment rights, the Supreme Court has said in a long line of precedent, cannot be dependent on the "unbridled discretion" of government officials or agencies. See, e.g., *City of Lake wood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988). At the same time, the Due Process Clause guarantees a claimant an opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The obstacles

placed before a claimant, including the insuperable one of inaction by the Secretary or Attorney General, raise significant due process issues. The Supreme Court has recognized that official inaction cannot prevent a claimant from being able to go forth with a legitimate lawsuit. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). The proposed bill seems to reverse that constitutional imperative.

Third, the complete preclusion of judicial review raises serious constitutional issues. The Act, through Sec. 319F-3(b)(7), expressly abolishes judicial review of the Secretary's actions, ordaining that "[n]o court of the United States, or of any State, shall have subject matter jurisdiction," i.e., the power, "to review . . . any action of the Secretary regarding" the declaration of emergencies, as well as the determination of which diseases or threats to health are covered, which individual citizens are protected, which geographic areas are covered, when an emergency begins, how long it lasts, which state laws shall be preempted, and when or if he shall report to Congress.

The United States Supreme Court has repeatedly stressed that the preclusion of all judicial review raises "serious questions" concerning separation of powers and due process of law. See, e.g., *Johnson v. Robison*, 415 U.S. 361 (1974); see also, *Oestereich v. Selective Service System Local Board No. 14*, 393 U.S. 233 (1968); *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991); *Reno v. Catholic Social Services*, 509 U.S. 43 (1993). Judicial review of government actions has long regarded as "an important part of our constitutional tradition" and an indispensable feature of that system," *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973).

The serious constitutional issues raised by this legislation deserve a full airing and counsels against any rush to judgment by the Congress. Whatever the merits of the bill's purposes, they may only be accomplished by consideration that assures its constitutionality.

ERWIN CHEMEIRINSKY.

UNITED STATES-BAHRAIN FREE  
TRADE AGREEMENT IMPLEMEN-  
TATION ACT (H.R. 4340)

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 22, 2005

Ms. McCOLLUM of Minnesota. Mr. Speaker, I rise in strong opposition to the United States-Bahrain Free Trade Agreement Implementation Act (H.R. 4340).

The Kingdom of Bahrain has been an American ally in the Persian Gulf for decades, and I support expanding opportunities for trade between our nations. Trade is a valuable tool to strengthen America's global partnerships and advance a higher quality of life at home and abroad. The U.S.-Bahrain Free Trade Agreement, however, does not pursue trade that is free and fair. Rather, it expands a system of globalization that benefits large multinational corporations at the expense of working people and their families.

Under this free trade agreement, Bahrain is only required to comply with its domestic labor laws, which do not need to be consistent with international recognized labor rights. As a result, workers can be denied their right to organize and bargain collectively and have no guarantee of freedom from child labor, forced