

into liquid gasoline, is a real solution to rising energy prices and it creates jobs here in the United States.

Taking drastic precautionary steps like those suggested by the EPA will have profound consequences on workers in Southern Illinois and all people throughout the country. Government action to reduce greenhouse gas emissions is not without a heavy cost. It is irresponsible for a group of unelected bureaucrats at the EPA to make significant policy decisions that will restrain and prevent job creation based on unproven science. The EPA's response to their endangerment findings will more certainly endanger the economic well-being of Americans than fulfill the Obama Administration's promise of reducing carbon emissions or lowering global temperature.

HONORING THE ACCOMPLISHMENTS OF MALIA CALI

HON. STEVE SCALISE

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 16, 2009

Mr. SCALISE. Madam Speaker, I rise today to honor Malia Cali, the 2009 High School Heisman Award winner. Malia is a senior at St. Thomas Aquinas High School in Hammond, Louisiana, and is only the second winner in the history of the award from the State of Louisiana. She is a three-year All State selection in track and field, cross-country and soccer. Off the field, Malia founded "Cleats for Kids," a non-profit organization that collects used cleats and distributes them to children in Nicaragua. As if her impressive athletic and community service achievements weren't enough, Malia also has the No. 1 academic ranking in her senior class.

The High School Heisman has been awarded to one male and one female student each year since 1994. The High School Heisman recognizes the Nation's most esteemed high school senior men and women for excellence in academics, athletics and community service. Malia's success both on and off the field is a testament to what can be accomplished with hard work, dedication, and a commitment to others.

It's easy to see why Malia Cali was selected over nearly 55,000 other entrants in this competition. Malia is truly deserving of this prestigious award. Her successes and achievements shine brightly on the State of Louisiana, and I am proud to highlight the accomplishments of Malia Cali here today.

STATEMENT ON H.R. 4173, THE WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

HON. MELISSA L. BEAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 16, 2009

Ms. BEAN. Madam Speaker, as the principal author of the compromise provision regarding the preemption of State consumer fi-

ancial laws under the National Bank Act and the Home Owners Loan Act that was included in the manager's amendment on page 139 to 150, I wanted to take this opportunity to explain to my colleagues my intention in drafting the language.

The compromise language made improvements in several areas to allow national banks and Federal savings associations, which are institutions that operate under a national charter to comply with a uniform national standard where appropriate. I would like to further explain four components of the compromise specifically for the House. Those components include (1) limiting the scope of new preemption procedures to State consumer financial laws, so as not to affect preemption for other State laws; (2) the ability for categories of State consumer financial law to be preempted; (3) modifications of the preemption standard to more accurately reflect the Supreme Court Case of *Barnett Bank v. Nelson*, which established the preemption standard currently applied to national banks and Federal savings associations; and (4) the degree of deference afforded to the Office of the Comptroller of the Currency and Office of Thrift Supervision by the courts.

First, under the compromise, the changes to preemption procedures under the National Bank Act for national banks and the Home Owners Loan Act for Federal savings associations are exclusively limited to State consumer financial laws. During the drafting of the compromise, I removed a sentence, previously suggested by the Committee that said national banks are to generally comply with State law. I removed this sentence because I wanted to make clear that the changes in the Act do not alter the preemption standards and precedents that apply to those State laws which are not State consumer financial laws. Narrowing the scope to just State consumer financial law is consistent with the initial scope of Subtitle D of H.R. 3126, The Consumer Financial Protection Act, when it was introduced in July 2009.

Second, the compromise language included language that allows for categories of State consumer financial law to be preempted. This means that if the Comptroller of the Currency (the regulator of national banks) or the Director of the Office of Thrift Supervision (the regulator of Federal savings associations) determines a State consumer financial law in a particular state should be preempted because it "prevents, significantly interferes with, or materially impairs" the abilities of a national bank or Federal savings association, then that specific determination can be applied to other States' consumer financial laws with equivalent terms. For example, if one state seeks to require additional disclosure requirements for credit cards that the Comptroller of the Currency determines "prevents, significantly interferes with, or materially impairs" the ability of a national bank to engage in the business of banking, that determination can be applied to another state's credit card disclosure laws if those laws have equivalent terms.

Third, a critical portion of the compromise was drafting a preemption standard that embodied existing precedent. The preemption standard that was reported out of the Financial Services Committee stated that a State law could be preempted if it "prevents or significantly interferes with" the ability of a national bank (or a Federal savings association) to en-

gage in the business of banking. "Prevents or significantly interferes with" has been often mentioned as the shorthand citation of the preemption standard established by the Supreme Court in 1996 in *Barnett Bank v. Nelson*. However, as I and many others have noted, the Supreme Court ruling was not limited to those two terms as the only circumstance in which preemption of State laws is appropriate. In fact, they expanded on those words by saying that a State law should be preempted not only when it "prevents or significantly interferes with," but also "stands as an obstacle to the accomplishment of the purposes," "encroach(es) on," "destroy(s) or hamper(s)," or "impair(s)."

Since the *Barnett* case describes a number of situations in which State law is preempted, in addition to the "prevents or significantly interferes with" standard, I was concerned that limiting the underlying text to the shorthand expression of "prevents or significantly interferes with" could be construed as narrowing the Constitutional standard. I therefore added the words "materially impairs," so that there would be no question that the preemption standard is the same as the standard described in *Barnett*, and that State consumer financial law may be preempted if it violates any of the well established Constitutional benchmarks for preemption. I chose the word "materially" because if the impairment is not material—meaning it would only have a negligible effect on the bank—it should not be subject to preemption under current law.

When making preemption determinations on State consumer financial laws, the Comptroller of the Currency for national banks, Director of the Office of Thrift Supervision for Federal savings associations, or the Court must find that Federal law applicable to national banks and Federal savings associations, including regulations and similar issuances, deals with the subject or activity that the State consumer financial law is seeking to regulate. A good example is the detailed disclosure requirements set by Federal law and Federal regulators, developed after substantial consumer testing, that apply to certain types of consumer financial products.

Finally, the compromise language is intended to clarify that when a court is reviewing an OCC determination concerning the proper interpretation of the National Bank Act or other Federal law that the OCC is charged with administering, the court is to apply the traditional deference accorded to an agency, often referred to as "Chevron" deference. The same clarification applies when a court is reviewing an OTS determination regarding the proper interpretation of the Home Owners Loan Act or other Federal law that the OTS administers. Further, while the underlying legislation directed the courts to apply a different type of deference to OCC or OTS preemption determinations, the compromise amendment makes clear that the Chevron deference standard applies to all OCC and OTS interpretations of Federal law, the National Bank Act, and the Home Owners Loan Act, including those made in the context of a preemption determination.

Madam Speaker, I thank you for the opportunity to further explain the preemption compromise I drafted in the manager's amendment.

I yield back the balance of my time.